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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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8 RIZALINO G. CAYABO,

9 Petitioner,

10 vs.

11 ARNOLD SCHWARZENEGGER,
12 Warden,

13 Respondent.
14

No. C 07-5309 JSW (PR)

**ORDER DENYING PETITION FOR
WRIT OF HABEAS CORPUS**

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16 Petitioner, a prisoner of the State of California, filed this pro se petition for a writ
17 of habeas corpus pursuant to 28 U.S.C. § 2254. The petition challenges the decision by
18 the Governor of California to deny him parole in 2006.

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20 Petitioner claims that the denial of parole violated his right to due process because
21 there was insufficient evidence of his current dangerousness. The United States Supreme
22 Court has recently held that a California prisoner is entitled to only “minimal” procedural
23 protections in connection with a parole suitability determination. *Swarthout v Cooke*, No
24 10-333, slip op. at 4-5 (U.S. Jan. 24, 2011). Specifically, the Due Process Clause of the
25 Fourteenth Amendment to the U.S. Constitution only entitles a California prisoner to an
26 opportunity to be heard and a statement of the reasons why parole was denied. *Id.* at 4-5.
27 The parole hearing transcript makes it clear that Petitioner received an opportunity to be
28 heard and a statement of the reasons parole was denied. The Constitution does not
require more. *Id.* at 5. The Court explained that no Supreme Court case “supports

1 converting California's 'some evidence' rule into a substantive federal requirement." *Id.*
2 It is simply irrelevant in federal habeas review "whether California's 'some evidence' rule
3 of judicial review (a procedure beyond what the Constitution demands) was correctly
4 applied." *Id.* at 6. In light of the Supreme Court's determination that due process does
5 not require that there be any amount of evidence to support the parole denial, the petition
6 must be denied.

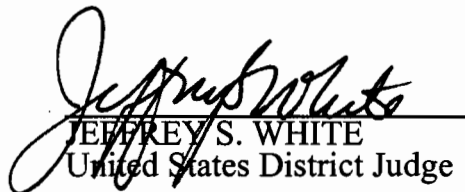
7 Petitioner requests an evidentiary hearing to determine what evidentiary standard
8 the Governor applied. There is no need to conduct a hearing on this issue because under
9 *Swarthout* due process does not require the Governor's decision to be supported by any
10 evidence or to apply any particular evidentiary standard.

11 Accordingly, the petition for a writ of habeas corpus is DENIED. Rule 11(a) of
12 the Rules Governing Section 2254 Cases now requires a district court to rule on whether
13 a Petitioner is entitled to a certificate of appealability in the same order in which the
14 petition is decided. Petitioner has failed to make a substantial showing that his claims
15 amounted to a denial of his constitutional rights or demonstrate that a reasonable jurist
16 would find this Court's denial of his claim debatable or wrong. *Slack v. McDaniel*, 529
17 U.S. 473, 484 (2000). Consequently, no certificate of appealability is warranted in this
18 case.

19 The Clerk shall enter judgment and close the file.

20 IT IS SO ORDERED.

21 DATED: FEB 17 2011

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23 JEFFREY S. WHITE
24 United States District Judge
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