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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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9 MIGUEL AMARO,

No. C 08-2338 TEH (PR)

10 Petitioner,

ORDER TO SHOW CAUSE

11 vs.

12 BEN CURRY, Warden,

13 Respondent.
14 _____/

15 Petitioner, a California state inmate at the Correctional Training Facility in
16 Soledad, California, has filed a pro se petition for a writ of habeas corpus pursuant to 28
17 U.S.C. § 2254 challenging the February 14, 2007 decision of the California Board of
18 Parole Hearings (“BPH”) to deny him parole. Petitioner has paid the filing fee. This
19 order directs Respondent to show cause why the petition should not be granted.

20 **BACKGROUND**

21 According to the petition and the attachments thereto, Petitioner was convicted in
22 Los Angeles County Superior Court in 1984 of second degree murder and kidnapping and
23 was sentenced to a term of fifteen years-to-life. Petitioner challenges the BPH’s decision
24 finding him unsuitable for parole after a “split decision” that was referred to an en banc
25 panel for review who found him unsuitable by unanimous vote on March 20, 2007.
26 According to the petition, Petitioner filed a state petition for writ of habeas corpus in the
27 Los Angeles County Superior Court, which denied the petition on October 2, 2007.
28 Petitioner filed a petition for a writ of habeas corpus in the Court of Appeal, which denied

1 relief on February 21, 2008. Petitioner filed a petition for review in the California
2 Supreme Court, which denied review on April 23, 2008. The petition was filed in this
3 Court on May 6, 2008.

4 DISCUSSION

5 A. Standard of Review

6 The Court may entertain a petition for a writ of habeas corpus “in behalf of a
7 person in custody pursuant to the judgment of a State court only on the ground that he is
8 in custody in violation of the Constitution or laws or treaties of the United States.” 28
9 U.S.C. § 2254(a).

10 It shall “award the writ or issue an order directing the Respondent to show cause
11 why the writ should not be granted, unless it appears from the application that the
12 applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

13 B. Legal Claims

14 Petitioner seeks federal habeas corpus relief from the BPH’s decision finding him
15 not suitable for parole on the following grounds: 1) there was no evidence in the record
16 showing that Petitioner is a current threat and danger to society; and 2) Petitioner’s
17 conduct in the commitment offense was not particularly egregious. Liberally construed,
18 Petitioner’s claims appear colorable under § 2254 and merit an answer from Respondent.
19 See Biggs v. Terhune, 334 F.3d 910, 914-15 (9th Cir. 2003) (finding that initial refusal to
20 set parole date for prisoner with fifteen-to-life sentence implicated prisoner’s liberty
21 interest in release on parole which cannot be denied without adequate procedural due
22 process protections).

23 CONCLUSION

24 For the foregoing reasons and for good cause shown,

25 1. The Clerk shall serve by certified mail a copy of this order and the petition
26 and all attachments thereto on Respondent and Respondent’s attorney, the Attorney
27 General of the State of California. The Clerk also shall serve a copy of this order on
28 Petitioner.

1 2. Respondent shall file with the Court and serve on Petitioner, **within sixty**
2 **(60) days** of the issuance of this order, an answer conforming in all respects to Rule 5 of
3 the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus
4 should not be issued. Respondent shall file with the answer and serve on Petitioner a
5 copy of all portions of the state trial record that have been transcribed previously and that
6 are relevant to a determination of the issues presented by the petition.

7 3. If Petitioner wishes to respond to the answer, he shall do so by filing a
8 traverse with the Court and serving it on Respondent **within thirty (30) days** of his
9 receipt of the answer.

10 4. Petitioner is reminded that all communications with the Court must be
11 served on Respondent by mailing a true copy of the document to Respondent's counsel.
12 Petitioner must also keep the Court and all parties informed of any change of address.

13 SO ORDERED.

14 DATED: 10/9/08

THELTON E. HENDERSON
United States District Judge