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United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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| JESSE HERNANDEZ, |) | No. C 09-5311 MMC (PR) |
| Petitioner, |) | ORDER TO SHOW CAUSE |
| vs. |) | |
| C. NOLL, Warden, |) | |
| Respondent. |) | |
| _____ |) | |

On November 9, 2009, petitioner, a California prisoner incarcerated at the Correctional Training Facility at Soledad and proceeding pro se, filed the above-titled petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging the denial of parole by the California Board of Parole Hearings (“Board”). Petitioner has paid the filing fee.

BACKGROUND

In 1996, in the Superior Court of San Diego County, petitioner was convicted of attempted murder. He was sentenced to a term of seven years to life in state prison. In 2008, the Board, for the second time, denied petitioner parole. Petitioner challenged that decision by habeas petitions filed in the Superior Court and the California Court of Appeal, and by a petition for review filed in the California Supreme Court. The Supreme Court denied the

1 petition for review on October 14, 2009.

2 **DISCUSSION**

3 A. Standard of Review

4 This Court may entertain a petition for a writ of habeas corpus “in behalf of a person
5 in custody pursuant to the judgment of a State court only on the ground that he is in custody
6 in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a);
7 Rose v. Hodges, 423 U.S. 19, 21 (1975). A district court shall “award the writ or issue an
8 order directing the respondent to show cause why the writ should not be granted, unless it
9 appears from the application that the applicant or person detained is not entitled thereto.”
10 28 U.S.C. § 2243. Summary dismissal is appropriate only where the allegations in the
11 petition are vague or conclusory, palpably incredible, or patently frivolous or false. See
12 Hendricks v. Vasquez, 908 F.2d 490, 491 (9th Cir. 1990) (quoting Blackledge v. Allison,
13 431 U.S. 63, 75-76 (1977)).

14 B. Petitioner’s Claim

15 In his petition, petitioner asserts the Board’s decision to deny him parole violated his
16 right to due process because it was not based on any reliable evidence that petitioner poses a
17 risk to the community, but rather was based on unchanging facts regarding his commitment
18 offense and criminal history. Liberally construed, such claim is cognizable and may proceed.
19 Additionally, petitioner asserts that the denial of parole was unlawful because the Board
20 required petitioner, in violation of California statutory and regulatory law, to admit guilt
21 before he can be released on parole. Such additional claim, however, must be dismissed, as
22 federal habeas corpus relief is not available for violations of state law. See Estelle v.
23 McGuire, 502 U.S. 62, 67-68 (1991).

24 **CONCLUSION**

25 For the reasons stated above, the Court orders as follows:

- 26 1. The Clerk shall serve by certified mail a copy of this order, the petition and all
27 attachments thereto, on respondent and respondent’s counsel, the Attorney General for the
28 State of California. The Clerk shall also serve a copy of this order on petitioner.

