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

DAVID GENE LANCASTER,

Petitioner,

Respondent.

No. C 10-1418 MMC (PR) ORDER TO SHOW CAUSE

B. CURRY, Warden,

v.

On April 5, 2010, petitioner, a California prisoner incarcerated at the Correctional
 Training Facility at Soledad, California, 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 1991, in the Superior Court of San Joaquin County ("Superior Court"), petitioner
was found guilty of second degree murder. He was sentenced to a term of fifteen years to
life in state prison. On September 4, 2008, the Board found petitioner unsuitable for parole.
Petitioner's subsequent state habeas corpus petitions challenging the Board's decision were
denied, respectively, by the Superior Court on June 5, 2009, the California Court of Appeal
on August 20, 2009, and the California Supreme Court on February 10, 2010.

DISCUSSION

2 A. <u>Standard of Review</u>

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

B. <u>Petitioner's Claim</u>

Petitioner claims the denial of parole violated his federal constitutional right to due
process because it was not based on some evidence that petitioner's release would pose an
unreasonable risk to public safety. Liberally construed, petitioner's claim is cognizable.

CONCLUSION

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

19 1. The Clerk shall serve by certified mail a copy of this order and the petition, along
 20 with the exhibits lodged in support thereof, upon respondent and respondent's counsel, the
 21 Attorney General for the State of California. The Clerk shall also serve a copy of this order
 22 on petitioner.

23 2. Respondent shall file with the Court and serve on petitioner, within ninety (90)
24 days of the date this order is filed, an answer conforming in all respects to Rule 5 of the
25 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not
26 be granted based on petitioner's cognizable claims. Respondent shall file with the answer
27 and serve on petitioner a copy of all portions of the state trial record that have been
28 transcribed previously and that are relevant to a determination of the issues presented by the

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1 petition.

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If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the Court and serving it on respondent within **thirty** (**30**) days of the date the answer is filed.

3. In lieu of an answer, respondent may file, within ninety (90) days of the date this
order is filed, a motion to dismiss on procedural grounds, as set forth in the Advisory
Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If respondent files
such a motion, petitioner shall file with the Court and serve on respondent an opposition or
statement of non-opposition within thirty (30) days of the date the motion is filed, and
respondent shall file with the Court and serve on petitioner a reply within fifteen (15) days of
the date any opposition is filed.

4. Petitioner is reminded that all communications with the Court must be served onrespondent by mailing a true copy of the document to respondent's counsel.

5. It is petitioner's responsibility to prosecute this case. Petitioner must keep the
Court and respondent informed of any change of address and must comply with the Court's
orders in a timely fashion. Failure to do so may result in the dismissal of this action for
failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

17 6. Upon a showing of good cause, requests for a reasonable extension of time will be
18 granted as long as they are filed on or before the deadline they seek to extend.

IT IS SO ORDERED.

²⁰ DATED: October 18, 2010

ited States District

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