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

ROBERT L. FRYBERGER, E-06303,)	
)	
Petitioner,)	No. C 10-2378 CRB (PR)
)	
vs.)	ORDER TO SHOW CAUSE
)	
R. GROUNDS, Acting Warden,)	(Docket # 2)
)	
Respondent(s).)	
_____)	

Petitioner, a state prisoner incarcerated at the Correctional Training Facility in Soledad, California, has filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging the California Board of Parole Hearings' ("BPH") January 16, 2009 decision to deny him parole. He also seeks to proceed in forma pauperis under 28 U.S.C. § 1915.

BACKGROUND

On January 9, 1989, petitioner was sentenced to an indeterminate term of 15 years to life in state prison after a jury in Fresno County Superior Court found him guilty of second degree murder.

Petitioner has been found not suitable for parole each time he has appeared before the BPH. On April 14, 2010, the Supreme Court of California denied his state habeas challenge to the BPH's decision of January 16, 2009.

1 **DISCUSSION**

2 A. Standard of Review

3 This court may entertain a petition for a writ of habeas corpus "in behalf
4 of a person in custody pursuant to the judgment of a State court only on the
5 ground that he is in custody in violation of the Constitution or laws or treaties of
6 the United States." 28 U.S.C. § 2254(a).

7 It shall "award the writ or issue an order directing the respondent to show
8 cause why the writ should not be granted, unless it appears from the application
9 that the applicant or person detained is not entitled thereto." Id. § 2243.

10 B. Legal Claims

11 Petitioner seeks federal habeas corpus relief from the BPH's January 16,
12 2009 decision finding him not suitable for parole on the ground that the decision
13 does not comport with due process because it is not supported by some evidence
14 demonstrating that he poses a current unreasonable threat to the public. Liberally
15 construed, petitioner's claim appears colorable under § 2254 and merits an answer
16 from respondent. See Hayward v. Marshall, 603 F.3d 546, 561-64 (9th Cir.
17 2010) (en banc) (finding cognizable on federal habeas review claims that
18 California parole denials were made without some evidence of future
19 dangerousness).

20 **CONCLUSION**

21 For the foregoing reasons and for good cause shown,

22 1. Petitioner's request to proceed in forma pauperis (docket # 2) is
23 GRANTED.

24 2. The clerk shall serve by certified mail a copy of this order and the
25 petition and all attachments thereto on respondent, the Attorney General of the
26 State of California. The clerk also shall serve a copy of this order on petitioner.

