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

MICHAEL A. SIMMONS, E-70748,)	
)	
Petitioner,)	No. C 10-3002 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 decision of the Governor of the State of California to revoke a parole date granted him by the California Board of Parole Hearings ("BPH"). He also seeks leave to proceed in forma pauperis.

BACKGROUND

On June 29, 1990, petitioner was convicted by a jury in San Bernardino County Superior Court of second degree murder with use of a firearm and was sentenced to seventeen years to life in state prison.

On October 2, 2008, the BPH found petitioner suitable for parole and set a parole date; however, Governor Schwarzenegger reversed the BPH's parole suitability determination and revoked the parole date.

Petitioner has unsuccessfully challenged the governor's decision in the state courts. On June 9, 2010, the Supreme Court of California denied his final petition for state habeas relief.

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 decision of the
12 governor to revoke a parole date granted him by the BPH on the ground that the
13 governor's decision does not comport with due process because it is not supported
14 by some evidence demonstrating that he poses a current unreasonable threat to
15 the public. Liberally construed, petitioner's claim appears colorable under § 2254
16 and merits an answer from respondent. See Hayward v. Marshall, 603 F.3d 546,
17 561-64 (9th Cir. 2010) (en banc) (finding cognizable on federal habeas review
18 claims that 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.

