

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

3 ROBERT GOMEZ,

No. C 10-02262 SBA (PR)

4 Petitioner,

**ORDER DENYING PETITION FOR A
WRIT OF HABEAS CORPUS; DENYING
CERTIFICATE OF APPEALABILITY;
AND DENYING PENDING MOTIONS AS
MOOT**

5 v.

6 RANDY GROUNDS, Warden,

7 Respondent.
8 _____/

9 Petitioner has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 claiming
10 that his constitutional rights were violated in connection with a decision by the California Board of
11 Parole Hearings (Board) in 2007 denying him parole.

12 In an Order dated August 25, 2010, the Court ordered Respondent to show cause why the
13 petition should not be granted.

14 On November 22, 2010, Respondent filed a motion to dismiss the petition as untimely under
15 28 U.S.C. § 2244(d), the statute of limitations established by the Antiterrorism and Effective Death
16 Penalty Act of 1996. Thereafter, Petitioner filed an opposition to the motion, and Respondent filed a
17 reply to the opposition.

18 In his petition, Petitioner specifically claims that the Board's 2007 denial does not comport
19 with due process because it is not supported by some evidence demonstrating that he poses a current
20 unreasonable threat to the public.

21 A prisoner subject to California's parole statute receives adequate process when he is allowed
22 an opportunity to be heard and is provided with a statement of the reasons why parole was denied.
23 Swarthout v. Cooke, 131 S. Ct. 859, 862 (2011). The attachments to the petition show Petitioner
24 received at least this amount of process. The Constitution does not require more. Id.

25 Whether the Board's decision was supported by some evidence of current dangerousness is
26 irrelevant in federal habeas. The Supreme Court has made clear that "it is no federal
27 concern . . . whether California's 'some evidence' rule of judicial review (a procedure beyond what
28 the Constitution demands) was correctly applied." Id. at 863.

1 For the foregoing reasons, the petition for a writ of habeas corpus is DENIED, and the
2 Court's Order to Show Cause is DISCHARGED. Pursuant to Rule 11 of the Rules Governing
3 Section 2254 Cases, a certificate of appealability under 28 U.S.C. § 2253(c) is DENIED because it
4 cannot be said that "reasonable jurists would find the district court's assessment of the constitutional
5 claims debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484 (2000). Petitioner may seek a
6 certificate of appealability from the Ninth Circuit Court of Appeals.

7 Respondent's motion to dismiss is DENIED as moot.

8 The Clerk of the Court shall enter judgment in favor of Respondent, terminate all pending
9 motions, and close the file.

10 This Order terminates Docket no. 7.

11 IT IS SO ORDERED.

12 DATED: 2/28/11


SAUNDRA BROWN ARMSTRONG
United States District Judge

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 ROBERT GOMEZ,
5 Plaintiff,

Case Number: CV10-02262 SBA

CERTIFICATE OF SERVICE

6 v.

7 RANDY GROUNDS et al,
8 Defendant.

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
10 Court, Northern District of California.

11 That on February 28, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
14 located in the Clerk's office.

14 **Robert Gomez**
15 H-51048
16 Salinas Valley State Prison - Soledad
17 P.O. Box 689
18 Soledad, CA 93960-0689

19
20 Dated: February 28, 2011

21 Richard W. Wieking, Clerk

22 By: LISA R CLARK, Deputy Clerk