

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

3 MARVIN CAVIL HARRIS,

No. C 11-02123 SBA (PR)

4 Petitioner,

**ORDER DENYING PETITION FOR A  
WRIT OF HABEAS CORPUS; AND  
DENYING CERTIFICATE OF  
APPEALABILITY**

5 v.

6 JAMES HARTLEY, 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 2009 denying him parole. Petitioner specifically claims that the decision  
12 does not comport with due process because it is not supported by "some evidence" demonstrating  
13 that he poses a current unreasonable threat to the public.

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

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

22 For the foregoing reasons, the petition for a writ of habeas corpus is DENIED. Pursuant to  
23 Rule 11 of the Rules Governing Section 2254 Cases, a certificate of appealability under 28 U.S.C.  
24 § 2253(c) is DENIED because it cannot be said that "reasonable jurists would find the district court's  
25 assessment of the constitutional claims debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484  
26 (2000). Petitioner may seek a certificate of appealability from the Ninth Circuit Court of Appeals.

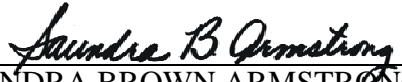
27 Petitioner's application to proceed in forma pauperis is GRANTED.  
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The Clerk of the Court shall enter judgment in favor of Respondent, terminate all pending motions, and close the file.

IT IS SO ORDERED.

DATED: 5/10/11

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

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

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5  
6 MARVIN CAVIL HARRIS,  
7 Plaintiff,

Case Number: CV11-02123 SBA  
**CERTIFICATE OF SERVICE**

8 v.

9 JAMES HARTLEY et al,  
10 Defendant.

11  
12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
Court, Northern District of California.

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

16  
17 Marvin Cavil Harris C-91589  
18 Avenal State Prison  
19 P.O. Box 900  
Avenal, CA 93204

20 Dated: May 13, 2011

21 Richard W. Wieking, Clerk  
By: LISA R CLARK, Deputy Clerk