

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JUAN A. PORTILLO,

vs.

VICTOR M. ALMAGER, Warden,

Respondent.

CASE NO. 08cv0706-LAB (JMA)
**ORDER DENYING HABEAS
PETITION**

On August 13, 2010, Respondent moved to dismiss Portillo’s habeas petition on the ground that Portillo failed to exhaust his state court remedies. Portillo has not opposed the motion to dismiss, although an order setting a briefing schedule required him to do so no later than September 10, 2010. (See Doc. No. 15.) While the Court finds Respondent’s motion to be persuasive, it **DENIES** Portillo’s petition on the merits.

“An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.” 28 U.S.C. § 2254. Here, the sole basis of Portillo’s habeas claim is that the Board of Parole violated his rights under the Due Process Clause “because its decision failed to reflect consideration of [his] institutional behavior as a circumstance tending to demonstrate his suitability for parole.” (First Amended Petition at 6–7.) Specifically, Portillo argues that a psychological evaluation conducted by Dr. Nancy Petasa is “supportive of release.” (*Id.*)

