

MAY 25 2011

No. 10-868

In the Supreme Court of the United States

MATTHEW CATE, *Petitioner, et al.*

v.

JOHN PIRTLE, *Respondent, et al.*

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

**REPLY TO RESPONDENT SNEED'S AND
SLATER'S BRIEFS IN OPPOSITION**

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REPLY BRIEF

In their briefs in opposition to the consolidated petition for writ of certiorari, respondents Anthony Sneed and Michael Slater argue that due process mandates the substantive review of the merits of state parole decisions. Resp. Sneed Opp. at 10-20; Resp. Slater Opp. at 5-8. This argument mirrors respondent Robert Johnson's opposition and is equally unavailing. As discussed in the State's reply to Johnson's brief, this Court's decisions in *Swarthout v. Cooke*, 131 S. Ct. 859 (2011) (per curiam), and *Greenholtz v. Inmates of Nebraska Penal and Correctional Complex*, 442 U.S. 1 (1979), plainly limit the due process inquiry to whether a prisoner received an opportunity to be heard and a statement of reasons for the parole denial. *Id.* The Constitution "does not require more." *Cooke*, 131 S. Ct. at 862; *Greenholtz*, 442 U.S. at 16. Indeed, the Ninth Circuit has acknowledged that Sneed's and Slater's argument is meritless under *Cooke*. *Roberts v. Hartley*, ___ F.3d ___, 2011 WL 1365811, at * 3-4 (9th Cir. 2011); *Pearson v. Muntz*, ___ F.3d ___, 2011 WL 1238007, at *5 (9th Cir. 2011).

Respondent Sneed also asserts that the Ninth Circuit's judgment should stand because he did not have an opportunity to speak with the Governor before he was denied parole. Resp. Sneed Opp. at 9. This argument is also foreclosed by *Cooke*. One of the respondents in *Cooke*, Elijah Clay, was denied parole by the Governor and this Court found that due process was satisfied because Clay was afforded an opportunity to be heard at his hearing before the parole board. *Cooke*, 131 S. Ct. at 861-62. Like Clay, Sneed also received an opportunity to be heard at his parole hearing. Thus, Sneed's claim lacks merit.

CONCLUSION

The consolidated petition for writ of certiorari should be granted and the judgments below should be summarily reversed.

Respectfully submitted,

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