

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUN 03 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

LEONEL CANTU LOPEZ,

Petitioner - Appellant,

v.

J. F. SALAZAR, Warden,

Respondent - Appellee.

No. 07-55676

D.C. No. CV-06-00839-SVW

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Stephen V. Wilson, District Judge, Presiding

Submitted May 25, 2010**

Before: CANBY, THOMAS, and W. FLETCHER, Circuit Judges.

California state prisoner Leonel Cantu Lopez appeals from the district court's judgment denying his 28 U.S.C. § 2254 habeas petition. We have jurisdiction

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

under 28 U.S.C. § 2253¹. Following an independent review of the record, *see Himes v. Thompson*, 336 F.3d 848, 853 (9th Cir. 2003), we conclude that the state court’s conclusion that some evidence supports the Board’s decision was not objectively unreasonable. *See* 28 U.S.C. § 2254(d); *see also Hayward v. Marshall*, No. 06-55392, 2010 WL 1664977, at *11, *17 (9th Cir. Apr. 22, 2010).

Cantu Lopez contends that the Board’s 2005 decision to deny him parole was not supported by “some evidence” and therefore violated his due process rights. The state court did not unreasonably conclude that some evidence supports the Board’s decision. *See* 28 U.S.C. § 2254(d); *see also Hayward*, 2010 WL 1664977, at *11, *17 (9th Cir. Apr. 22, 2010). Contrary to Cantu Lopez’s contention, both static and dynamic factors support the Board’s determination. *See id.* at *10.

AFFIRMED.

¹We certify for appeal, on our own motion, the issue of whether the 2005 decision of the California Board of Prison Terms to deny parole violated due process.