

1 judgment has been “used to effectuate Petitioner’s false and illegal imprisonment.” (ECF No. 19.)
2 Plaintiff argues that the Parole Hearing Board ordered Plaintiff released on October 23, 2000, and
3 ordered the Pasadena Superior Court case dismissed. Plaintiff reports that the dismissal was not
4 appealed by the District Court or the Attorney General. Plaintiff believes that an order enforcing the
5 administrative judgment is appropriate. (ECF No. 13.)

6 **II. Discussion**

7 Plaintiff filed his motion pursuant to [Rule 70 of the Federal Rules of Civil Procedure](#). In
8 relevant part, [Rule 70](#) states:

9 If a judgment requires a party to convey land, to deliver a deed or other document, or to
10 perform any other specific act and the party fails to comply within the time specified, the
11 court may order the act to be done—at the disobedient party’s expense—by another
12 person appointed by the court. When done, the act has the same effect as if done by the
party.

13 [Fed. R. Civ. P. 70\(a\)](#). [Rule 70](#) is only operative when a party refuses to comply with a judgment
14 issued by the court. *Cf.* [Contreraz v. Salazar, 2012 WL 280564, at *1 \(S.D. Cal. Jan. 30, 2012\)](#)
15 (declining to use [Rule 70](#) as authority for contempt or sanctions where defendants failed to timely
16 respond to amended complaint); [Selectron Indus. Co., Inc. v. Selectron Intern., 2007 WL 5193735, at](#)
17 [*2 \(C.D. Cal. Sept. 25, 2007\)](#) (noting that [Rule 70](#) did not apply because the court had not yet entered
18 judgment in the matter). Here, there has been no judgment entered by the Court, so [Rule 70](#) does not
19 apply.

20 Further, Plaintiff essentially requests that this Court order his release from prison. A [section](#)
21 [1983](#) action, such as this one, cannot be used to challenge an inmate’s conviction or sentence. It has
22 long been established that state prisoners cannot challenge the fact or duration of their confinement in
23 a [section 1983](#) action and their sole remedy lies in habeas corpus relief. [Wilkinson v. Dotson, 544](#)
24 [U.S. 74, 78, 125 S.Ct. 1242 \(2005\)](#). Often referred to as the favorable termination rule, this exception
25 to [section 1983](#)’s otherwise broad scope applies whenever state prisoners “seek to invalidate the
26 duration of their confinement - either *directly* through an injunction compelling speedier release or
27 *indirectly* through a judicial determination that necessarily implies the unlawfulness of the State’s
28 custody.” [Wilkinson, 544 U.S. at 81](#) (emphasis in original). Thus, “a state prisoner’s [§ 1983](#) action is

1 barred (absent prior invalidation) - no matter the relief sought (damages or equitable relief), no matter
2 the target of the prisoner's suit (state conduct leading to conviction or internal prison proceedings) - *if*
3 success in that action would necessarily demonstrate the invalidity of confinement or its duration.” Id.
4 at 81-2 (emphasis in original). Here, Plaintiff's success on the instant motions would necessarily
5 demonstrate the invalidity of Plaintiff's confinement or its duration. As a result, Plaintiff's request for
6 a court order enforcing the judgment is barred in this action.

7 Moreover, Plaintiff has been unable to provide any reliable evidence suggesting that he would
8 be entitled to release. In support of his motion, Plaintiff submitted exhibits purporting to be a
9 Summary of Revocation Hearing and Decision of October 23, 2000, for a parole revocation held
10 regarding Plaintiff. (ECF No. 14.) Included in the exhibits is a declaration from the Custodian of
11 Records for the California Board of Parole Hearings, which states that the submitted document is a
12 true copy of the record in the parole hearing. (ECF No. 14, pp. 1-2.) However, the purported
13 transcript of the parole revocation hearing includes an excessive number of spelling and formatting
14 errors, and the transcript itself is not signed or otherwise certified. Based on its appearance and
15 content, the Court does not find sufficient indicia of reliability to indicate that the transcript is a true
16 and accurate copy of the revocation hearing. Additionally, the Summary of Revocation Hearing and
17 Decision form, which is included in Plaintiff's supporting exhibits, includes at least three different sets
18 of handwriting. These handwriting discrepancies call into question the authenticity of the document.¹

19 **III. Conclusion and Recommendation**

20 For the reasons stated, the Court HEREBY RECOMMENDS as follows:

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23 ¹ At this time, the Court declines to make a finding that Plaintiff has submitted inaccurate or otherwise falsified
24 documents or that Plaintiff has made factual contentions without evidentiary support. However, Plaintiff is warned that all
25 future filings are subject to Federal Rule of Civil Procedure 11. Rule 11 provides that “[b]y presenting to the court a
26 pleading, written motions, or other paper—whether by signing, filing, submitting, or later advocating it—an . . .
27 unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry
28 reasonable under the circumstances: (1) it is not being presented for any improper purpose, such as to harass, cause
unnecessary delay, or needlessly increase the cost of litigation; . . . [and] (3) the factual contentions have evidentiary
support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further
investigation or discovery” Fed. R. Civ. P. 11(b). Rule 11(c) provides for the imposition of appropriate sanctions for
the violation of Rule 11(b). Fed. R. Civ. P. 11(c). Accordingly, Plaintiff's failure to adhere to Rule 11 may result in the
imposition of sanctions, including dismissal of this action.

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1. Plaintiff’s motion for an order enforcing administrative judgment, filed on September 4, 2012, be DENIED; and
2. Plaintiff’s motion for an order enforcing administrative judgment, filed on December 3, 2012, be DENIED.

These Findings and Recommendations will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of [Title 28 U.S.C. § 636\(b\)\(1\)](#). Within thirty (30) days after being served with these Findings and Recommendations, Plaintiff may file written objections with the court. The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections within the specified time may waive the right to appeal the District Court’s order. [Martinez v. Ylst, 951 F.2d 1153 \(9th Cir. 1991\)](#).

IT IS SO ORDERED.

Dated: August 2, 2013

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE