



1 the decision in *Johnson v. Shaffer*, No. 2:12-cv-1059 KJM AC, 2013 WL 5934156 (E.D. Cal.  
2 Nov. 1, 2013). In *Johnson*, the plaintiff brought a § 1983 action alleging systematic deficiencies  
3 with the psychological assessments being relied upon by the California Board of Parole Hearings.  
4 2013 WL 5934156, at \*1, 4. Given the nature of the claims before it, the court concluded:

5 *Swarthout* has no effect on the continuing viability of *Wilkinson v.*  
6 *Dotson*, 544 U.S. 74, 125 S. Ct. 1242, 161 L.Ed.2d 253 (2005),  
7 which holds that inmates may challenge the constitutionality of  
8 state parole procedures under section 1983. Here as in *Wilkinson*,  
9 plaintiff challenges the process by which the state assesses parole  
10 suitability, but does not seek an injunction ordering his immediate  
or speedier release into the community. *See id.* at 82. *Swarthout*  
limits federal habeas review of individual parole decisions, but does  
not foreclose section 1983 challenges to the process by which a  
state assesses parole suitability.

11 *Id.* at \*7. In so concluding, the court distinguished the case before it from those, like this one,  
12 where § 1983 “plaintiffs challenged the evidentiary basis for their individual denials of parole,”  
13 acknowledging that such claims “were foreclosed by *Swarthout*.” *Id.* at \*7, n. 4.

14 Here, plaintiff presents a direct challenge to his November 17, 2015 initial parole  
15 suitability hearing and the basis for the Board’s decision finding him unsuitable for parole at that  
16 time. (Doc. No. 1.) Although plaintiff claims that he is not challenging the length of his  
17 confinement, a fair reading of his complaint establishes otherwise. Indeed, in terms of relief  
18 plaintiff specifically seeks injunctive relief in the form of an order vacating the Board’s  
19 November 17, 2015 parole suitability determination and directing that the Board to provide him  
20 with a new parole hearing within thirty days. (Doc. No. 1 at 57.) Therefore, the decision in  
21 *Johnson* is clearly distinguishable and the claims presented by plaintiff here are foreclosed by the  
22 Supreme Court’s decision in *Swarthout*.

23 For all of the reasons set forth above, plaintiff’s motion for reconsideration (Doc. No. 12)  
24 is denied.

25 IT IS SO ORDERED.

26 Dated: February 24, 2017

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28 UNITED STATES DISTRICT JUDGE