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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 DEONTRAY THOMAS,

12 Plaintiff,

13 v.

14 JAIME OROZCO, *et al.*,

15 Defendants.  
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Case No. 1:18-cv-00191-JDP

ORDER TO SHOW CAUSE WHY THIS CASE  
SHOULD NOT BE DISMISSED AS BARRED  
BY THE FAVORABLE TERMINATION RULE

(Doc. No. 1.)

14-DAY DEADLINE

18 Plaintiff Deontray Thomas, an inmate at Kern County Jail, proceeds without counsel in  
19 this civil rights action brought under 42 U.S.C. § 1983. In plaintiff's complaint, filed February 7,  
20 2018, he alleges that Officers Jaime Orozco, Danni Melendez, Martin Karl, and M. Gomez are  
21 liable for an unlawful stop and search. (*See* Doc. 1 at 3-4.) It appears, however, that plaintiff's  
22 claims may not be heard by this court because "judgment in favor of the plaintiff would  
23 necessarily imply the invalidity of his conviction or sentence." *Heck v. Humphrey* 512 U.S. 477,  
24 486-87 (1994). Therefore, the plaintiff is ordered to show cause why this case should not be  
25 dismissed as barred by the favorable termination rule.

26 **I. THE COMPLAINT**

27 Plaintiff contends that on August 11, 2016, at about 1:12 p.m., a robbery occurred in  
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1 Bakersfield, California, and that “three black male suspects” wearing hats fled the scene of the  
2 crime in “a white four door sedan . . . with bright yellow plates.” (Doc. No. 1, at 3.) Sheriff’s  
3 Sergeant M. Gomez arrived at the scene of the crime and took a statement from the 911 caller,  
4 Buster Hernandez. (*Id.*)

5 Later that afternoon, plaintiff was driving alone in Bakersfield in a “white two door Buick  
6 Grand Sports.” (*Id.* at 4.) Plaintiff was not violating any traffic laws. (*Id.*) Nonetheless, Officer  
7 Martin Karl followed plaintiff and advised other police officers that plaintiff’s vehicle was  
8 “suspicious” and “possibly involved in an earlier robbery.” (*Id.* at 3.) Accordingly, “Officer  
9 Orozco and Officer Melendez performed a traffic stop on the vehicle of [plaintiff] without . . .  
10 probable cause [and] removed [plaintiff] from the vehicle at gun point, conducted a pat-down  
11 search of his person without . . . reasonable cause to do so, [and] felt what he believed to be a  
12 concealed firearm in [plaintiff’s] waistband.” (*Id.*) Officer Orozco then placed plaintiff in  
13 handcuffs, “removed a firearm from his person,” and placed him in the back of a police car. (*Id.*)

14 Officer Karl then contacted Sheriff’s Sergeant M. Gomez, instructing him to bring Buster  
15 Hernandez to the scene of the arrest for an “open field identification.” (*Id.* at 4.) When Mr.  
16 Hernandez arrived, he informed the police officers that he did not recognize plaintiff as one of the  
17 robbery suspects. (*Id.*) Plaintiff “was later booked into the Kern County Jail, and [his] motions of  
18 suppressed evidence was denied.” (*Id.*)

19 Plaintiff alleges the incident caused him mental distress and pain and suffering. (*Id.* at 3.)  
20 Plaintiff claims that defendants violated his right to be free from unreasonable searches and  
21 seizures and seeks a monetary award of \$300,000. (*Id.* at 3, 6.)

## 22 **II. DISCUSSION**

### 23 **A. *Heck v. Humphrey***

24 In *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994), the Supreme Court held that to  
25 recover damages for “harm caused by actions whose unlawfulness would render a conviction or  
26 sentence invalid,” a § 1983 plaintiff must prove that the conviction or sentence was reversed,  
27 expunged, or otherwise invalidated. The favorable-termination rule laid out in *Heck* provides that  
28 claims that, if successful, would necessarily imply the invalidity of a conviction or sentence, must

1 be brought by way of a petition for writ of habeas corpus, after exhausting appropriate avenues  
2 for relief. *See Muhammad v. Close*, 540 U.S. 749, 750-51 (2004).

3 “The applicability of the favorable termination rule turns solely on whether a successful  
4 § 1983 action would *necessarily* render invalid a conviction, sentence, or administrative sanction  
5 that affected the length of the prisoner’s confinement.” *Ramirez v. Galaza*, 334 F.3d 850, 856  
6 (9th Cir. 2003). In *Smithart v. Towery*, 79 F.3d 951, 952 (9th Cir. 1996), the court held that, “if a  
7 criminal conviction arising out of the same facts stands and is fundamentally inconsistent with the  
8 unlawful behavior for which section 1983 damages are sought, the 1983 action must be  
9 dismissed.” But if the “action, even if successful, will *not* demonstrate the invalidity of any  
10 outstanding criminal judgment against the plaintiff, the action should be allowed to proceed, in  
11 the absence of some other bar to the suit.” *Heck*, 512 U.S. at 487. “In evaluating whether claims  
12 are barred by *Heck*, an important touchstone is whether a § 1983 plaintiff could prevail only by  
13 negating ‘an element of the offense of which he has been convicted.’” *Cunningham v. Gates*, 312  
14 F.3d 1148, 1153-54 (9th Cir. 2002) (quoting *Heck*, 512 U.S. at 487).

### 15 **B. Analysis**

16 Plaintiff seeks to bring a § 1983 suit challenging the search and seizure that led to his arrest  
17 and subsequent criminal conviction, but his claim appears to be barred by *Heck v. Humphrey*. In  
18 Case No. BF165209A of the Kern County Superior Court,<sup>1</sup> plaintiff was charged with (1)  
19 possession of a firearm by a felon, (2) concealment of a stolen firearm, (3) carrying a loaded

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21 <sup>1</sup> The court may take judicial notice of a fact that “is not subject to reasonable dispute because it  
22 (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and  
23 readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid.  
24 201; *see also United States v. Bernal-Obeso*, 989 F.2d 331, 333 (9th Cir. 1993). The official  
25 records of the Superior Court of Kern County, as contained in the court’s official website, are  
26 sources whose accuracy cannot reasonably be questioned, and judicial notice may be taken of facts  
27 on a website of a government agency. *See O’Toole v. Northrop Grumman Corp.*, 499 F.3d 1218,  
28 1225 (10th Cir. 2007) (“It is not uncommon for courts to take judicial notice of factual information  
found on the world wide web”); *Denius v. Dunlap*, 330 F.3d 919, 926-27 (7th Cir. 2003) (taking  
judicial notice of information on the website of a government agency); *United States ex rel. Dingle*  
*v. BioPort Corp.*, 270 F.Supp.2d 968, 972 (W.D. Mis. 2003) (“government documents are  
generally considered not to be subject to reasonable dispute . . . This includes public records and  
government documents available from reliable sources on the Internet”). Further, judicial notice  
may be taken of court records. *See Mullis v. United States Bank. Ct.*, 828 F.2d 1385, 1388 n.9 (9th  
Cir. 1987). Accordingly, judicial notice is taken of the court’s docket related to Case No.  
BF165209A.

1 firearm without registration, (4) carrying a concealed/unregistered firearm, and (5) carrying a  
2 stolen loaded firearm. *Criminal Case Search*, KERN COUNTY SUPERIOR COURT,  
3 [https://www.kern.courts.ca.gov/online\\_services/criminal\\_case\\_search](https://www.kern.courts.ca.gov/online_services/criminal_case_search). On August 24, 2018,  
4 plaintiff pled *nolo contendere* to possession of a firearm by a felon; all other charges were  
5 “dismissed in the furtherance of justice.” *Id.* In his civil complaint, plaintiff admits that his  
6 motions to suppress evidence in a criminal case were denied. (Doc. No. 1, at 4.) The court infers  
7 that Case No. BF165209A is the case in question.

8 Here, if the court rules that plaintiff’s Fourth Amendment rights were violated by  
9 defendants’ search, the ruling would imply that his conviction for possession of a firearm by  
10 a felon is invalid. *See Heck*, 512 U.S. at 487. Therefore, plaintiff’s complaint must be  
11 dismissed unless he can demonstrate that his conviction for possession of a firearm by a  
12 felon has been invalidated. *See id.* Accordingly, the court will order plaintiff to make such  
13 a demonstration. If he cannot demonstrate that his conviction is invalid, the undersigned  
14 will recommend that this civil rights case be dismissed as barred by the favorable-  
15 termination rule.

### 16 **III. CONCLUSION AND ORDER**

17 Plaintiff’s claims appear to be barred under *Heck*. Plaintiff is ordered to show cause why  
18 this complaint should not be dismissed.

19 Accordingly,

- 20 1. Within fourteen (14) days from the date of service of this order, plaintiff is  
21 directed to show cause why this action should not be dismissed as barred by the  
22 favorable-termination rule. Plaintiff may make this showing by demonstrating that  
23 his conviction for possession of a firearm by a felon has been invalidated
- 24 2. Failure to comply with this order may result in the dismissal of this action.

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26 IT IS SO ORDERED.

27 Dated: September 10, 2018

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UNITED STATES MAGISTRATE JUDGE

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