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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

RUDY JIMENEZ,  
Plaintiff,  
v.  
SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF KINGS, et al.,  
Defendants.

Case No. 1:19-cv-01780-DAD-SKO (PC)

**FINDINGS AND RECOMMENDATIONS  
TO DISMISS ACTION**

(Doc. 13)

21-DAY DEADLINE

Plaintiff Rudy Jimenez alleges that he is unlawfully incarcerated. (*See* Doc. 13.) As discussed below, Plaintiff’s claims are barred by the favorable termination rule of *Heck v. Humphrey*, 512 U.S. 477, 487 (1994). When, as here, a plaintiff seeks damages on the grounds that he is unlawfully confined, he may not pursue claims under section 1983 until his “sentence has been declared invalid ... or called into question by a ... court’s issuance of a writ of habeas corpus.” *Heck*, 512 U.S. at 487.

Given that Plaintiff’s claims are *Heck* barred, and that Plaintiff received a prior opportunity to amend (*see* Doc. 8), the Court finds that further amendment would be futile. *See Akhtar v. Mesa*, 698 F.3d 1202, 1212-13 (9th Cir. 2012). Accordingly, the Court recommends that this case be dismissed.

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1     **I.     SCREENING REQUIREMENT**

2             The Court is required to screen complaints brought by prisoners seeking relief against a  
3 governmental entity or an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).  
4 The Court must dismiss a complaint or portion thereof if the complaint is frivolous or malicious,  
5 fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant  
6 who is immune from such relief. 28 U.S.C. § 1915A(b). The Court should dismiss a complaint if  
7 it lacks a cognizable legal theory or fails to allege sufficient facts to support a cognizable legal  
8 theory. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

9     **II.    PLAINTIFF'S ALLEGATIONS**

10            Plaintiff's alleges that he is being unlawfully confined past his release date. (*See* Doc. 1 at  
11 3-5.) Plaintiff has been incarcerated for 24 years. (*Id.* at 3.) He alleges that he was convicted of  
12 and sentenced for vandalism with a "gang enhancement." (*Id.*) Plaintiff alleges that, once he  
13 arrived at Wasco State Prison, prison officials had "different paperwork on [him] with different  
14 charges," including sex offenses with a sentence of 30 years to life. (*Id.*) In September 2019,  
15 Plaintiff filed a "petition for vacating of murder conviction and resentencing" in Kings County  
16 Superior Court, pursuant to California Penal Code section 1170.95. (*See id.* at 7.) In its order  
17 denying the petition, the Superior Court stated that Plaintiff was convicted of two counts of  
18 vandalism and one count of a gang enhancement in Case No. 96CM7648-002; thus, Penal Code  
19 1170.95 did not apply to this case. (*Id.*) Plaintiff states that "the truth was finally revealed to  
20 [him] by the judge ... the truth of [his] charges." (*Id.* at 5.) Plaintiff alleges that CDCR is  
21 responsible for "changing [his] charges into worse ones." (*Id.*)

22            In his first amended complaint, Plaintiff alleges that, during his arrest and interrogation,  
23 police officers denied him due process by failing to present a warrant and read him his *Miranda*  
24 rights. (Doc. 13 at 2, 3.) He alleges that the deputy district attorney assigned to his case  
25 committed prosecutorial misconduct by not presenting exculpatory evidence or calling an expert  
26 on DNA evidence to testify, and instead relying on hearsay. (*Id.*) Plaintiff requests that the Court  
27 "dismiss and strike the allegation section 1385 for insufficient evidence." (*Id.* at 3.)

28            In addition to suing a probation officer, a deputy clerk, the Kings County District

1 Attorney's Office, and a Kings County Superior Court judge, Plaintiff sues a correctional  
2 counselor and analyst, presumably at California Correctional Institution, where Plaintiff is  
3 currently incarcerated. (Doc. 13 at 1, 2.) The claims against the prison officials are unclear;  
4 Plaintiff states the following: "When you put a request of your Privacy Act information to Ms.  
5 Baker, she will refer[] to the counselor, then ... the counselor will point finger to the BOP  
6 Sacramento main office or the court." (*Id.* at 5.)

### 7 **III. DISCUSSION**

8 "[W]hen a state prisoner is challenging the very fact or duration of his physical  
9 imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or  
10 a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus."  
11 *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). Thus, a prisoner may not challenge the fact or  
12 duration of his confinement in a section 1983 action. *Id.* at 489. Additionally, "in order to recover  
13 damages for allegedly unconstitutional conviction or imprisonment, ... a [section] 1983 plaintiff  
14 must prove that the conviction or sentence has been reversed on direct appeal, expunged by  
15 executive order, declared invalid by a state tribunal authorized to make such determination, or  
16 called into question by a federal court's issuance of a writ of habeas corpus." *Heck v. Humphrey*,  
17 512 U.S. 477, 486-87 (1994).

18 Plaintiff alleges that he is unlawfully incarcerated, and he requests declaratory and  
19 injunctive relief and \$75 million in damages. (*See* Doc. 13 at 6-7.) It is unclear whether Plaintiff  
20 bases the alleged illegality of his incarceration on (a) improprieties by the district attorney and  
21 state court or (b) improprieties by prison officials. (*See id.* at 2-5; *see also* Doc. 1 at 3-5.) In either  
22 case, Plaintiff's claims are barred. Plaintiff may not seek release from custody in a section 1983  
23 action; he may only seek release in federal court by filing a petition for *habeas corpus*.<sup>1</sup> *Preiser*,  
24 411 U.S. at 500. Additionally, Plaintiff may not seek damages under section 1983 unless his  
25 conviction or sentence has been declared invalid by a state court or a federal court's issuance of a  
26 writ of *habeas corpus*. *See Heck*, 512 U.S. at 486-87.

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28 <sup>1</sup> The Court informs Plaintiff that he may not file a petition for *habeas corpus* in federal court unless and until he has exhausted his remedies in state court. *See Heck*, 512 U.S. at 480-81; 28 U.S.C. § 2254(b).

