

1 The Ninth Circuit has allowed Respondent's to file a motion to dismiss in lieu of an answer if
2 the motion attacks the pleadings for failing to exhaust state remedies or being in violation of the state's
3 procedural rules. See, e.g., O'Bremski v. Maass, 915 F.2d 418, 420 (9th Cir. 1990) (using Rule 4 to
4 evaluate motion to dismiss petition for failure to exhaust state remedies); White v. Lewis, 874 F.2d
5 599, 602-03 (9th Cir. 1989) (using Rule 4 as procedural grounds to review motion to dismiss for state
6 procedural default); Hillery v. Pulley, 533 F.Supp. 1189, 1194 & n.12 (E.D. Cal. 1982) (same). Thus,
7 a respondent can file a motion to dismiss after the court orders a response, and the court should use
8 Rule 4 standards to review the motion. See Hillery, 533 F. Supp. at 1194 & n. 12.

9 In this case, Respondent's motion to dismiss is based on the contention that the petition and its
10 claims are moot. Because Respondent's motion to dismiss is similar in procedural standing to a
11 motion to dismiss for failure to exhaust state remedies or for state procedural default and Respondent
12 has not yet filed a formal answer, the Court will review Respondent's motion to dismiss pursuant to its
13 authority under Rule 4.

14 II. Mootness

15 The case or controversy requirement of Article III of the Federal Constitution deprives the
16 Court of jurisdiction to hear moot cases. Iron Arrow Honor Soc'y v. Heckler, 464 U.S. 67, 70 (1983);
17 N.A.A.C.P., Western Region v. City of Richmond, 743 F.2d 1346, 1352 (9th Cir. 1984). A case
18 becomes moot if the "the issues presented are no longer 'live' or the parties lack a legally cognizable
19 interest in the outcome." Murphy v. Hunt, 455 U.S. 478, 481 (1982). The Federal Court is "without
20 power to decide questions that cannot affect the rights of the litigants before them." North Carolina v.
21 Rice, 404 U.S. 244, 246 (1971) (per curiam) (quoting Aetna Life Ins. Co. v. Hayworth, 300 U.S. 227,
22 240-241 (1937)).

23 The instant petition requests immediate release from indefinite detention. Respondent submits
24 that Petitioner was removed to Mexico on August 26, 2016. As proof, Respondent has provided a
25 copy of Form I-205, Warrant of Removal/Deportation, which shows Petitioner was removed on
26 August 26, 2016. (Doc. No. 12, Ex. B.) Because there is no further relief that this Court can provide
27 to Petitioner, the petition is now moot. Hence, Respondent's motion to dismiss should be granted.

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ORDER

Accordingly, the Clerk of Court is **DIRECTED** to assign a district judge to this case.

RECOMMENDATION

Accordingly, the Court **RECOMMENDS** that:

1. Respondent’s Motion to Dismiss (Doc. No. 12), be **GRANTED**;
2. The Petition for Writ of Habeas Corpus (Doc. 1), be **DISMISSED** as moot; and
3. The Clerk of Court be **DIRECTED** to enter judgment.

This Findings and Recommendations is submitted to the United States District Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local Rules of Practice for the United States District Court, Eastern District of California. Within twenty-one days after being served with a copy, any party may file written objections with the Court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Replies to the objections shall be served and filed within ten court days (plus three days if served by mail) after service of the objections. The Court will then review the Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are 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: November 17, 2016

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE