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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

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Daniel Alejandro Cardenas-Leal,

No. CV-17-00914-PHX-ROS

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Petitioner,

**ORDER**

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v.

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Enrique Lucero, et al.,

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Respondents.

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On September 7, 2017, Magistrate Judge John Z. Boyle issued a Report and Recommendation (“R&R”) recommending the petition for writ of habeas corpus be denied and dismissed with prejudice. Petitioner did not file objections. The R&R will be adopted in full, subject to the following regarding the nature of the dismissal.

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The R&R concludes the petition should be dismissed based on mootness. Courts disagree on whether the dismissal of a petition for writ of habeas corpus based on mootness should be with or without prejudice. In general, the Ninth Circuit views “a dismissal for mootness [as] a dismissal for lack of jurisdiction.” *Tur v. YouTube, Inc.*, 562 F.3d 1212, 1214 (9th Cir. 2009). And “[d]ismissals for lack of subject-matter jurisdiction . . . must be without prejudice, because a lack of jurisdiction deprives the dismissing court of any power to adjudicate the merits of the case.” *Hampton v. Pac. Inv. Mgmt. Co. LLC*, 869 F.3d 844, 846 (9th Cir. 2017). Some district courts, however, have concluded the particular context of a moot habeas petition means a dismissal with prejudice is appropriate. *See, e.g., Noyola v. Dep’t of Homeland Sec.*, No. SACV 15-

1 00544-JGB KK, 2015 WL 3644006, at \*2 (C.D. Cal. June 8, 2015); *Hearn v. Sanders*,  
2 No. CV 09-2220-PA (AGR), 2009 WL 3073128, at \*4 (C.D. Cal. Sept. 19, 2009). Those  
3 courts reason a moot habeas petition involves conduct that cannot possibly recur and,  
4 therefore, a dismissal with prejudice is appropriate. *Id.*

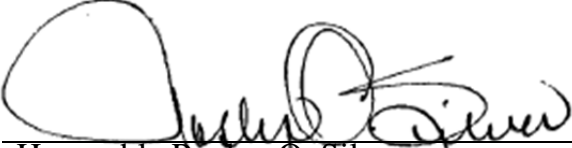
5 In this case, the R&R reasoned the petition should be dismissed with prejudice and  
6 Petitioner did not file any objections. There is a reasonable basis for concluding a  
7 dismissal with prejudice is appropriate and, absent objections, there is no need to wade  
8 into the issue in more detail. Therefore, the Court will adopt the R&R in full.

9 Accordingly,

10 **IT IS ORDERED** the Report and Recommendation (Doc. 16) is **ADOPTED IN**  
11 **FULL** and the Petition for Writ of Habeas Corpus is **DENIED** and **DISMISSED WITH**  
12 **PREJUDICE**.

13 **IT IS FURTHER ORDERED** the Motion for Preliminary Injunction (Doc. 2) is  
14 **DENIED AS MOOT**.

15 Dated this 10th day of October, 2017.

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20 Honorable Roslyn O. Silver  
21 Senior United States District Judge  
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