

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

VICTOR BENITEZ,

1:06-cv-00142 LJO SMS HC

Petitioner,

ORDER VACATING FINDINGS AND  
RECOMMENDATION, DISMISSING  
PETITION FOR WRIT OF HABEAS CORPUS  
AS MOOT, DIRECTING CLERK OF COURT  
TO TERMINATE ACTION, AND DECLINING  
TO ISSUE CERTIFICATE OF  
APPEALABILITY

v.

SCOTT P. RAWERS, Warden,

Respondent.

/ [Doc. 28]

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On January 28, 2010, the Magistrate Judge issued Findings and Recommendation that the Petition for Writ of Habeas Corpus be GRANTED, and the Governor’s 2003 reversal of the Board of Parole Hearings’ 2002 decision setting a parole release date be vacated. This Findings and Recommendation was served on all parties and contained notice that any objections were to be filed within thirty (30) days of the date of service of the order.

On March 30, 2010, Respondent filed timely objections to the Findings and Recommendation. (Court Doc. 35.) Then, on April 7, 2010, Respondent filed a notice of Petitioner’s removal from the United States. (Court Doc. 26.)

The case or controversy requirement of Article III of the Federal Constitution deprives the Court of jurisdiction to hear moot cases. Iron Arrow Honor Soc’y v. Heckler, 464 U.S. 67, 70 104 S.Ct. 373, 374-75 (1983); NAACP., Western Region v. City of Richmond, 743 F.2d 1346, 1352 (9th Cir. 1984). A case becomes moot if the “the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.” Murphy v. Hunt, 455 U.S. 478, 481, 102 S.Ct. 1181, 1183 (1984). The Federal Court is “without power to decide questions that

1 cannot affect the rights of the litigants before them” North Carolina v. Rice, 404 U.S. 244, 246,  
2 92 S.Ct. 402, 406 (1971) *per curiam*, quoting Aetna Life Ins. Co. v. Hayworth, 300 U.S. 227,  
3 240-241, 57 S.Ct. 461, 463-464 (1937). To satisfy the Article III case or controversy  
4 requirement, a litigant “must have suffered some actual injury that can be redressed by a  
5 favorable judicial decision.” Iron Arrow, 464 U.S. at 70, 104 S.Ct. at 375; Simon v. Eastern Ky.  
6 Welfare Rights Org., 426 U.S. 26, 38, 96 S.Ct. 1617, 1924 (1976); NAACP, Western Region,  
7 743 F.2d at 1353. Because Petitioner has been removed from the United States, the instant  
8 challenge to his release on parole and/or credit toward his parole term in the United States is now  
9 MOOT.<sup>1</sup>

10 Accordingly, IT IS HEREBY ORDERED that:

- 11 1. The Findings and Recommendation issued January 28, 2010, is HEREBY  
12 VACATED;
- 13 2. The Petition for Writ of Habeas Corpus is DISMISSED as MOOT;
- 14 3. The Clerk of Court is directed to terminate this action in its entirety; and,
- 15 4. The Court declines to issue a Certificate of Appealability. 28 U.S.C. § 2253(c);  
16 Slack v. McDaniel, 529 U.S. 473, 484 (2000) (in order to obtain a COA,  
17 petitioner must show: (1) that jurists of reason would find it debatable whether the  
18 petition stated a valid claim of a denial of a constitutional right; and (2) that jurists  
19 of reason would find it debatable whether the district court was correct in its  
20 procedural ruling. Slack v. McDaniel, 529 U.S. 473, 484 (2000). In the present  
21 case, the Court does not find that jurists of reason would not find it debatable  
22 whether the petition was properly dismissed as moot. Petitioner has not made the  
23 required substantial showing of the denial of a constitutional right.

24 IT IS SO ORDERED.

25 **Dated:** April 8, 2010

26 /s/ Lawrence J. O'Neill  
27 UNITED STATES DISTRICT JUDGE

28 <sup>1</sup> Petitioner was released from custody on April 9, 2009 to a 5-year determinate term, and subsequently  
deported to Mexico. (Court Docs. 30, 36 .)