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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CARLO TOPALIAN,	1:09-cv-00034-AWI-DLB (HC)
Petitioner,	FINDINGS AND RECOMMENDATION
v.	RECOMMENDING DISMISSAL OF
	PETITION AS MOOT
	[Doc.
JAMES A. YATES,	
Respondent.	

Petitioner is a state prisoner proceeding with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner is represented by Keither Wattley, Esq.

On December 12, 2008, Petitioner filed the instant federal petition for writ of habeas corpus in this Court. Petitioner challenges the Board of Parole Hearings August 16, 2007 decision finding him unsuitable for parole violated his federal constitutional rights.

On November 2, 2009, Respondent filed a notice that Petitioner was released on parole on May 14, 2009. (Notice, Exhibit 1.) Because Petitioner has been granted the relief he requested, the case is now moot. 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 (1984). The Federal Court is “without power to decide

1 questions that cannot affect the rights of the litigants before them.” North Carolina v. Rice, 404
2 U.S. 244, 246 (1971) per curiam, quoting Aetna Life Ins. Co. v. Hayworth, 300 U.S. 227, 240-
3 241, (1937).

4 **RECOMMENDATION**

5 Accordingly, IT IS HEREBY RECOMMENDED that:

- 6 1. The Petition for Writ of Habeas Corpus be DISMISSED as moot; and,
7 2. The Clerk of Court be DIRECTED to enter judgment.

8 This Findings and Recommendation is submitted to the assigned United States District
9 Court Judge, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule 72-304 of
10 the Local Rules of Practice for the United States District Court, Eastern District of California.
11 Within thirty (30) days after being served with a copy, any party may file written objections with
12 the court and serve a copy on all parties. Such a document should be captioned “Objections to
13 Magistrate Judge’s Findings and Recommendation.” Replies to the objections shall be served and
14 filed within ten (10) court days (plus three days if served by mail) after service of the objections.
15 The Court will then review the Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636 (b)(1)(C).
16 The parties are advised that failure to file objections within the specified time may waive the right
17 to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

18 IT IS SO ORDERED.

19 **Dated: November 13, 2009**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE