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7 UNITED STATES DISTRICT COURT  
8 EASTERN DISTRICT OF CALIFORNIA  
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10 JOHN MICHAEL BEAMES,

11 Petitioner,

12 v.

13 RON DAVIS, Warden of California State Prison  
14 at San Quentin,

15 Respondent.  
16  
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Case No. 1:10-cv-01429-DAD

DEATH PENALTY CASE

FINDINGS AND RECOMMENDATIONS  
ON PETITIONER'S MOTION TO VACATE  
FINDINGS AND RECOMMENDATIONS  
AND DISMISS PETITION AS MOOT

(ECF No. 236)

FOURTEEN (14) DAY DEADLINE TO  
OBJECT

18 Petitioner John Michael Beames was convicted and sentenced to death in Tulare County  
19 Superior Court on October 11, 1995. The judgment of conviction and sentence was affirmed by  
20 the California Supreme Court on March 22, 2007. Petitioner's state habeas petition was denied  
21 by the California Supreme Court on July 28, 2010.

22 On August 9, 2010, Petitioner initiated this action by filing requests for appointment of  
23 counsel, stay of execution, and in forma pauperis status. On July 27, 2011, Petitioner, through  
24 counsel, filed a federal habeas petition pursuant to 28 U.S.C. § 2254. On October 23, 2013, the  
25 Court granted an evidentiary hearing on Claim 11 of the federal petition. On February 1, 2016,  
26 the United States District Judge assigned to the case referred conduct of the evidentiary hearing  
27 to the undersigned United States Magistrate Judge for issuance of findings and  
28 recommendations.

1 On October 2, 2017, the undersigned issued findings and recommendations following  
2 February 1-3, 2016 evidentiary hearing, that Claim 11 be denied. On December 1, 2017,  
3 Petitioner filed objections to the findings and recommendations. Respondent replied to the  
4 objections on January 22, 2018. The October 2, 2017 findings and recommendations remain  
5 under submission.

6 On September 2, 2020, counsel for Petitioner filed a motion to vacate findings and  
7 recommendations and dismiss the petition filed in this action as moot, based upon Petitioner's  
8 death on July 21, 2020. The motion attaches Petitioner's certificate of death as Exhibit A  
9 thereto.

10 As this Court has observed:

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12 Federal courts have jurisdiction to hear cases and controversies. U.S. Const. art.  
13 III, § 2. An actual controversy must exist between the parties throughout all stages  
14 of the proceeding. Alvarez v. Smith, —U.S. —, —, 130 S.Ct. 576, 580, 175  
15 L.Ed.2d 447 (2009). An action becomes moot when the issues “are no longer  
16 ‘live,’ ” i.e., when the “parties lack a legally cognizable interest in the outcome.”  
17 Powell v. McCormack, 395 U.S. 486, 496, 89 S.Ct. 1944, 23 L.Ed.2d 491 (1969).  
18 [I]n these habeas proceedings the relief sought, i.e., petitioner's immediate release  
19 from custody, is unique to the petitioner himself and cannot be transferred. “In  
20 other words, the claims [are] extinguished upon [a] petitioner's death and no party  
can be substituted for him.” Pennewell v. Carey, No. 2:06-cv0598 JKS EFB,  
2008 WL 1860166, at \*1 (E.D. Cal. Apr.23, 2008) (citing Fed. R. Civ. P. 25(a)).  
“Because petitioner's death renders this case moot, the petition for writ of habeas  
corpus should be dismissed as moot.” Garceau v. Woodford, 399 F.3d 1101 (9th  
Cir.2005). See also Dove v. United States, 423 U.S. 325, 96 S.Ct. 579, 46 L.Ed.2d  
531 (1976) (dismissing a certiorari petition because petitioner had died); Griffey  
v. Lindsey, 349 F.3d 1157 (9th Cir.2003) (dismissing a petition for writ of habeas  
corpus as moot because petitioner had died).

21 Germino v. Marshall, No. CIV S-08-3010, 2010 WL 5393907, at \*1 (E.D. Cal. Dec. 21, 2010).

22 Accordingly, for the reasons stated above, IT IS HEREBY RECOMMENDED that the  
23 findings and recommendations filed October 2, 2017 (ECF No. 226) be vacated, and this action  
24 be dismissed as having been rendered moot by Petitioner's death.

25 These findings and recommendations will be submitted to the United States District  
26 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen**  
27 **(14) days** after the filed date of these findings and recommendations, Respondent may file  
28 written objections with the Court. The document should be captioned “Objections to Magistrate

1 Judge's Findings and Recommendations." Any failure to file objections within the specified  
2 time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39  
3 (9th Cir. 2014), citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991).

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5 IT IS SO ORDERED.

6 Dated: September 8, 2020

  
UNITED STATES MAGISTRATE JUDGE

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