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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

ALBERT ANDREW LUCERO,  
Petitioner,  
v.  
KIM HOLLAND, Warden,  
Respondent.

Case No. 1:10-CV-01714-AWI-SKO-HC  
ORDER DIRECTING RESPONDENT TO  
PROVIDE STATUS REPORT  
[Doc. 73]

Petitioner, Albert Andrew Lucero, is a state prisoner proceeding through counsel with an application for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner filed his petition for writ of habeas corpus on September 10, 2010, alleging five grounds for habeas relief: (1) improper admission of evidence; (2) violation of Petitioner’s right to confrontation; (3) insufficient evidence; (4) violation of Petitioner’s Due Process Rights; and (5) state law errors.

On May 15, 2015, the Court denied the petition and entered judgment for Respondent. Petitioner appealed to the Ninth Circuit Court of Appeals. On August 31, 2018, the Ninth Circuit affirmed in part, reversed in part, and remanded the petition with instructions for this Court to grant Petitioner’s petition for writ of habeas corpus on his claim that his conviction for possession of a shank while in custody (Cal. Penal Code §4502(a)) violated Jackson v. Virginia, 443 U.S. 307 (1979).

On October 29, 2018, the Court issued an order granting the petition with respect to his

1 claim that his conviction for possession of a shank violated Jackson. Respondent was directed  
2 to vacate Petitioner's conviction for possession of a shank in violation of California Penal Code  
3 § 4502(a), and to recalculate Petitioner's sentence in accordance with the order.

4 On August 31, 2020, Petitioner mailed a letter to the Ninth Circuit Court of Appeals, which  
5 in turn forwarded the letter to this Court. (Doc. 73.) In his letter, Petitioner states he has not yet  
6 been resentenced in accordance with the Court's order.

7 Accordingly, IT IS HEREBY ORDERED: Respondent is DIRECTED to provide a status  
8 report within thirty (30) days of the date of service of this order advising whether the conviction  
9 for possession has been vacated and Petitioner's sentence has been recalculated in accordance  
10 with the Court's order, and if not, why Respondent has not done so.

11 IT IS SO ORDERED.

12 Dated: October 8, 2020

13   
14 SENIOR DISTRICT JUDGE