



1 On August 15, 2011, the Court ordered Respondent to file a response to the petition. (Doc. 3).  
2 On November 1, 2011, Respondent filed the instant motion to dismiss, contending that, because  
3 Petitioner is serving a life sentence upon which the loss of credits has no effect, the Court lacks subject  
4 matter jurisdiction over the petition. (Doc. 12). On November 16, 2011, Petitioner filed his  
5 opposition. (Doc. 13). On November 17, 2011, Petitioner filed an addendum to his opposition. (Doc.  
6 14).

7 On December 8, 2011, the Court issued Findings and Recommendations to deny Respondent's  
8 motion to dismiss. (Doc. 15). On February 6, 2012, the District Judge adopted the Findings and  
9 Recommendations of the Magistrate Judge, denied the motion to dismiss, and referred the case back to  
10 the Magistrate Judge for further proceedings. (Doc. 18). On February 10, 2012, the Court again  
11 ordered Respondent to file a response to the petition. (Doc. 19). On April 3, 2012, Respondent filed  
12 the instant motion to dismiss, contending that the petition was moot because the finding of guilt  
13 arising from the disciplinary hearing had been reversed and the proceedings expunged from  
14 Petitioner's prison record. (Doc. 20). On April 12, 2012, Petitioner filed an opposition to the motion  
15 to dismiss, contending that, while his record had been expunged of the disciplinary violation, he  
16 continued to suffer sanctions, i.e., loss of email and telephone privileges, despite the expungement.  
17 (Doc. 21, p. 2).

### 18 **DISCUSSION**

19 The case or controversy requirement of Article III of the Federal Constitution deprives the  
20 Court of jurisdiction to hear moot cases. Iron Arrow Honor Soc'y v. Heckler, 464 U.S. 67, 70 104  
21 S.Ct. 373, 374-75 (1983); N.A.A.C.P., Western Region v. City of Richmond, 743 F.2d 1346, 1352  
22 (9th Cir. 1984). A case becomes moot if the "the issues presented are no longer 'live' or the parties  
23 lack a legally cognizable interest in the outcome." Murphy v. Hunt, 455 U.S. 478, 481 (1982). The  
24 Federal Court is "without power to decide questions that cannot affect the rights of the litigants before  
25 them." North Carolina v. Rice, 404 U.S. 244, 246 (1971) *per curiam*, quoting Aetna Life Ins. Co. v.  
26 Hayworth, 300 U.S. 227, 240-241 (1937).

27 Here, a careful review of the instant petition discloses that the only relief requested by  
28 Petitioner was the expunging of the incident report that gave rise to the disciplinary proceedings.

1 (Doc. 1, p. 11). A careful review of the petition also reveals that nowhere in the body of the petition  
2 does Petitioner reference the loss of email and telephone privileges as habeas claims, much less does  
3 he request their restoration as a remedy. As mentioned, the only remedy requested was expungement  
4 of the contested incident report. Petitioner concedes that this was done. Thus, it appears that the only  
5 relief *requested by Petitioner* has been provided by Respondent, and therefore there is no further relief  
6 this Court can provide Petitioner. Because there is no further relief that this Court can provide to  
7 Petitioner, the petition is now moot. Hence, Respondent’s motion to dismiss should be granted.<sup>1</sup>

8 **RECOMMENDATION**

9 Accordingly, the Court RECOMMENDS as follows:

- 10 1. Respondent’s Motion to Dismiss (Doc. 20), be GRANTED;
- 11 2. The Petition for Writ of Habeas Corpus (Doc. 1), be DISMISSED as moot; and
- 12 3. The Clerk of Court be DIRECTED to enter judgment.

13 This Findings and Recommendations is submitted to the United States District Judge assigned  
14 to this case, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local Rules  
15 of Practice for the United States District Court, Eastern District of California. Within twenty (20) days  
16 after being served with a copy, any party may file written objections with the Court and serve a copy  
17 on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and  
18 Recommendations.”

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24 <sup>1</sup> To the extent Petitioner is now arguing that mere loss of email and telephone privileges as a result of a disciplinary  
25 hearing that has been entirely expunged would, by themselves, support the Court’s habeas jurisdiction, the Court disagrees.  
26 The Supreme Court’s decisions in Nelson v. Campbell, 541 U.S. 637, 124 S.Ct. 2117, 158 L.Ed.2d 924 (2004) and Preiser  
27 v. Rodriguez, 411 U.S. 475, 93 S.Ct. 1827, 36 L.Ed.2d 439 (1973), determined that 42 U.S.C. § 1983 provides no remedy  
28 in “conditions of confinement” cases where the claims asserted lie “at the core of habeas.” Id. Here, Petitioner’s loss of  
email and telephone privileges claims do not lie “at the core of habeas” because they do not affect the execution of his  
criminal sentence. Thus, those claims, standing alone, are not cognizable under § 2241. See Castillo v. FBOP FCI Fort Dix,  
221 Fed. Appx. 172 (3d Cir. 2007)(not selected for official publication)(rejecting § 2241 petitioner’s claim that loss of  
telephone and visitation privileges were sufficient to support habeas jurisdiction).

