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6	UNITED STATES DIST	TRICT COURT
7	EASTERN DISTRICT OF CALIFORNIA	
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11	BRIAN KEITH BRIM,	Case No.: 1:11-cv-01293-AWI-JLT
12	Petitioner,	FINDINGS AND RECOMMENDATIONS TO GRANT RESPONDENT'S MOTION TO DISMISS
13	v.	PETITION FOR WRIT OF HABEAS CORPUS AS
14	H. A. RIOS, JR., Warden,	MOOT (Doc. 20)
15	Respondent.	ORDER REQUIRING OBJECTIONS TO BE FILED WITHIN TWENTY DAYS
16)	
17	Petitioner is a federal prisoner proceeding in propria persona with a petition for writ of habeas	
18	corpus pursuant to 28 U.S.C. § 2241.	
19	PROCEDURAL HISTORY	
20	The instant petition for writ of habeas corpus was filed on August 5, 2011. (Doc. 1).	
21	Petitioner is presently serving a life sentence at the United States Penitentiary, Atwater, California, for	
22	his 1996 conviction in the United States District	Court for the Central District of California for the
23	manufacture and possession of phencyclidine. (Doc. 12, Ex. 1). The petition challenges the results of	
24	a July 27, 2010 prison disciplinary hearing finding Petitioner guilty of Attempted Introduction of	
25	Narcotics and Use of the Telephone to Further C	Criminal Activity, which resulted in forty days'
26	disallowance of good conduct time, sixty days d	isciplinary segregation, one year's loss of visits, one
27	year's loss of telephone, one year's loss of emai	l, and a recommendation for a disciplinary transfer.
28	(Doc. 12, Ex. 1).	

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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 Petitioner is serving a life sentence upon which the loss of credits has no effect, the Court lacks subject 3 matter jurisdiction over the petition. (Doc. 12). On November 16, 2011, Petitioner filed his 4 opposition. (Doc. 13). On November 17, 2011, Petitioner filed an addendum to his opposition. (Doc. 5

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

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

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

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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 <i>requested by Petitioner</i> 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. ¹	
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	$\frac{1}{1}$ 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. The Supreme Court's decisions in <u>Nelson v. Campbell</u> , 541 U.S. 637, 124 S.Ct. 2117, 158 L.Ed.2d 924 (2004) and <u>Preiser</u>	
26	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 in "conditions of confinement" cases where the claims asserted lie "at the core of habeas." Id. Here, Petitioner's loss of	
27	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,	
28	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).	

1	Replies to the objections shall be served and filed within ten (10) <u>court</u> days (plus three days if
2	served by mail) after service of the objections. The Court will then review the Magistrate Judge's
3	ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are advised that failure to file objections
4	within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst,
5	951 F.2d 1153 (9th Cir. 1991).
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8	IT IS SO ORDERED.
9	Dated: May 10, 2012 /s/ Jennifer L. Thurston
10	UNITED STATES MAGISTRATE JUDGE
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