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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 ROBERT CUEVAS,) Case No.: 1:12-cv-01667-AWI-JLT
12)
13 Petitioner,) FINDINGS AND RECOMMENDATIONS TO
14) GRANT RESPONDENT’S MOTION TO DISMISS
15 v.) PETITION FOR WRIT OF HABEAS CORPUS AS
16) MOOT (Doc. 20)
17)
18) ORDER REQUIRING OBJECTIONS TO BE
19) FILED WITHIN TWENTY-ONE DAYS
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29 Petitioner is a state prisoner proceeding in propria persona with a petition for writ of habeas
30 corpus pursuant to 28 U.S.C. § 2254.

31 **PROCEDURAL HISTORY**

32 The instant petition was filed on October 11, 2012. (Doc. 1). The petition contends that
33 Respondent violated Petitioner’s due process rights by validating him as a member of the Northern
34 Structure prison gang, and, as a result, that Petitioner was wrongfully confined to the Security Housing
35 Unit of his state prison. (Doc. 1).

36 Before the matter could be decided on the merits, however, Respondent filed the instant motion
37 to dismiss, contending that the petition was now moot because Petitioner had been released on parole,
38 thus eliminating any case or controversy regarding his gang validation or his SHU confinement. (Doc.
39 20). Petitioner has not filed an opposition to the motion to dismiss. However, on June 26, 2013,

1 Petitioner filed a notice of change of address to Crescent City, California. (Doc. 18). On December
2 24, 2014, Petitioner filed a second notice of a change of address, this time to San Jose, California.
3 (Doc. 19).

4 DISCUSSION

5 A. Procedural Grounds for Motion to Dismiss

6 As mentioned, Respondent has filed a Motion to Dismiss the petition as moot. Rule 4 of the
7 Rules Governing Section 2254 Cases allows a district court to dismiss a petition if it “plainly appears
8 from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in
9 the district court” Rule 4 of the Rules Governing Section 2254 Cases.

10 The Ninth Circuit has allowed Respondent’s to file a Motion to Dismiss in lieu of an Answer if
11 the motion attacks the pleadings for failing to exhaust state remedies or being in violation of the state’s
12 procedural rules. See, e.g., O’Bremski v. Maass, 915 F.2d 418, 420 (9th Cir. 1990) (using Rule 4 to
13 evaluate motion to dismiss petition for failure to exhaust state remedies); White v. Lewis, 874 F.2d
14 599, 602-03 (9th Cir. 1989) (using Rule 4 as procedural grounds to review motion to dismiss for state
15 procedural default); Hillery v. Pulley, 533 F.Supp. 1189, 1194 & n.12 (E.D. Cal. 1982) (same). Thus,
16 a Respondent can file a Motion to Dismiss after the court orders a response, and the Court should use
17 Rule 4 standards to review the motion. See Hillery, 533 F. Supp. at 1194 & n. 12.

18 In this case, Respondent's Motion to Dismiss is based on his contention that the petition and its
19 claims are not moot. Because Respondent's Motion to Dismiss is similar in procedural standing to a
20 Motion to Dismiss for failure to exhaust state remedies or for state procedural default and Respondent
21 has not yet filed a formal Answer, the Court will review Respondent’s Motion to Dismiss pursuant to
22 its authority under Rule 4.

23 B. Mootness.

24 The case or controversy requirement of Article III of the Federal Constitution deprives the
25 Court of jurisdiction to hear moot cases. Iron Arrow Honor Soc’y v. Heckler, 464 U.S. 67, 70 104
26 S.Ct. 373, 374-75 (1983); N.A.A.C.P., Western Region v. City of Richmond, 743 F.2d 1346, 1352
27 (9th Cir. 1984). A case becomes moot if the “the issues presented are no longer ‘live’ or the parties
28 lack a legally cognizable interest in the outcome.” Murphy v. Hunt, 455 U.S. 478, 481 (1982). The

1 Federal Court is “without power to decide questions that cannot affect the rights of the litigants before
2 them.” North Carolina v. Rice, 404 U.S. 244, 246 (1971) *per curiam*, quoting Aetna Life Ins. Co. v.
3 Hayworth, 300 U.S. 227, 240-241 (1937).

4 Here, the instant petition does not make any express request for relief. However, given the
5 nature of the claims, i.e., that Petitioner is not challenging the fact or duration of his confinement, but
6 rather certain conditions of his confinement, he is impliedly requesting that the gang validation be
7 reversed and that he be removed from the SHU to another area of the prison. In the motion to dismiss,
8 Respondent alleges that Petitioner has been released on parole. Respondent, however, has submitted
9 no declaration or other documentation to substantiate this claim. Nevertheless, the Court takes judicial
10 notice of its own docket, which contains two changes of address from Petitioner, both of which appear
11 to be non-institutional settings. Moreover, the Court has accessed the “prisoner locator” feature at the
12 website of the California Department of Corrections and Rehabilitation and determined that its
13 database no longer contains any reference to an inmate with Petitioner’s inmate number. Additionally,
14 Petitioner has not responded in any way to this motion to dismiss, further indicating that the issues he
15 raised in the petition are no longer relevant. Accordingly, the evidence presently before the Court
16 supports Respondent’s allegation that Petitioner has been released on parole. Because there is case or
17 controversy regarding either Petitioner’s gang validation or his present status in the SHU, and because
18 this Court can provide no further relief to Petitioner, the petition is now moot. Hence, Respondent’s
19 motion to dismiss should be granted.

20 RECOMMENDATION

21 Accordingly, the Court RECOMMENDS as follows:

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

25 This Findings and Recommendations is submitted to the United States District Judge assigned
26 to this case, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local Rules
27 of Practice for the United States District Court, Eastern District of California. **Within 21 days** after
28 being served with a copy, any party may file written objections with the Court and serve a copy on all

1 parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and
2 Recommendations.” Replies to the objections shall be served and filed **within 10 court days** (plus
3 three days if served by mail) after service of the objections. The Court will then review the Magistrate
4 Judge’s ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are advised that failure to file
5 objections within the specified time may waive the right to appeal the District Court’s order. Martinez
6 v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

7
8 IT IS SO ORDERED.

9 Dated: **March 18, 2015**

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE