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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SAMUEL MERCADO ULLOA,
Petitioner,

v.

MICHAEL L. BENOVA,
Respondent.

Case No. 1:13-cv-00670 AWI MJS (HC)
**FINDINGS AND RECOMMENDATION TO
DISMISS PETITION FOR WRIT OF
HABEAS CORPUS**

Petitioner is a federal prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

On May 8, 2013, Petitioner filed the instant petition challenging the calculation of his accumulated good time credit. Respondent has responded to the petition. Petitioner has filed a traverse.

On April 21, 2014, Respondent filed a supplemental response and explained that Petitioner had been released from prison to immigration authorities on April 18, 2014, and therefore is no longer in custody of the Bureau of Prisons. Accordingly, on April 25, 2014, the Court issued an order to show cause why the petition should not be dismissed as moot. (Order, ECF No. 15.) Over thirty (30) days have passed, and Petitioner has not responded to the order to show cause. Furthermore, the order was returned as

1 undeliverable to Petitioner's last known address at Taft Correctional Institution.

2 **I. DISCUSSION**

3 The case or controversy requirement of Article III of the Federal Constitution
4 deprives the Court of jurisdiction to hear moot cases. Iron Arrow Honor Soc'y v. Heckler,
5 464 U.S. 67, 70 (1983); NAACP., Western Region v. City of Richmond, 743 F.2d 1346,
6 1352 (9th Cir. 1984). A case becomes moot if the "the issues presented are no longer
7 'live' or the parties lack a legally cognizable interest in the outcome." Murphy v. Hunt,
8 455 U.S. 478, 481 (1984). The Federal Court is "without power to decide questions that
9 cannot affect the rights of the litigants before them." North Carolina v. Rice, 404 U.S.
10 244, 246 (1971).

11 A petition for writ of habeas corpus becomes moot when it no longer presents a
12 case or controversy under Article III, § 2 of the Constitution. Wilson v. Terhune, 319 F.3d
13 477, 479 (9th Cir. 2003). A petition for writ of habeas corpus is moot where a petitioner's
14 claim for relief cannot be redressed by a favorable decision of the court issuing a writ of
15 habeas corpus. Burnett v. Lampert, 432 F.3d 996, 1000-01 (9th Cir. 2005) (quoting
16 Spencer v. Kemna, 523 U.S. 1, 7 (1998)). Mootness is jurisdictional. See Cole v. Oroville
17 Union High School District, 228 F.3d 1092, 1098-99 (9th Cir. 2000). Thus, a moot
18 petition must be dismissed because nothing remains before the Court to be remedied.
19 Spencer v. Kemna, 523 U.S. at 18.

20 A case becomes moot because of the absence of an actual case or controversy
21 where the petitioner no longer suffers or anticipates an injury traceable to the respondent
22 which is likely to be redressed by a judicial decision. Spencer v. Kemna, 523 U.S. at 11.
23 Although a habeas claim for credit on a sentence may be mooted by the petitioner's
24 release, it is also possible that the claim remains viable. For example, a habeas
25 challenge to a term of imprisonment is not mooted by a petitioner's release where the
26 petitioner remains on supervised release and there is a possibility that the petitioner
27 could receive a reduction in his term of supervised release. Reynolds v. Thomas, 603
28 F.3d 1144, 1148 (9th Cir. 2010). In Reynolds, it was held that a proceeding pursuant to

1 28 U.S.C. § 2241 challenging a decision of the BOP denying the petitioner's request for
2 credit towards his federal sentence for days spent in state custody was not moot where
3 the petitioner was released and remained on supervised release, and the BOP's internal,
4 favorable decision did not recalculate the petitioner's release date as the petitioner had
5 requested.

6 Here, the Court ordered Petitioner to show cause why the petition should not be
7 dismissed as moot. Petitioner has been released from custody, and did not respond to
8 the order to show cause to describe any collateral consequences that may exist from his
9 past custody. Accordingly, the Court recommends that the petition for writ of habeas
10 corpus be dismissed as moot.

11 **II. RECOMMENDATION**

12 Accordingly, the Court RECOMMENDS that this action be dismissed as moot.

13 This Findings and Recommendation is submitted to the assigned District Court
14 Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) for the United States
15 District Court, Eastern District of California. Within thirty (30) days after date of service of
16 the Findings and Recommendation, the parties may file written objections with the Court.
17 Such a document should be captioned "Objections to Magistrate Judge's Findings and
18 Recommendations." Replies to the objections shall be served and filed within fourteen
19 (14) days after service of the objections. The Court will then review the Magistrate
20 Judge's ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). Failure to file objections within the
21 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst,
22 951 F.2d 1153 (9th Cir. 1991).

23 IT IS SO ORDERED.

24
25 Dated: May 30, 2014

26 /s/ Michael J. Seng
27 UNITED STATES MAGISTRATE JUDGE
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