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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARIANO TORRES-SAINZ,
Petitioner,

v.

MICHAEL L. BENOVA,
Respondent.

Case No. 1:13-cv-00896-LJO-SKO HC

**FINDINGS AND RECOMMENDATION
THAT THE COURT DISMISS THE
PETITION AS MOOT**

Petitioner, a federal prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241, contended that his due process rights were violated when his disciplinary hearing was conducted by a Disciplinary Hearing Officer ("DHO") employed by the contract (non-Bureau of Prisons) institution in which he was confined. Following this Court's denial of the petition and entry of judgment for Respondent on July 14, 2015, Petitioner appealed to the U.S. Court of Appeals for the Ninth Circuit.

In April 2016, while the appeal was pending, the disciplinary charges were reheard by a Disciplinary Hearing Officer (DHO) employed by the Bureau of Prisons. The DHO found insufficient evidence to support the charges and expunged the incident report. Petitioner's lost good conduct time was restored.

On March 15, 2017, the Ninth Circuit remanded the case to this Court to permit Respondent to supplement the record and to allow the District Court to determine whether to retain jurisdiction. The mandate was entered May 18, 2017. Thereafter, Respondent moved to dismiss the case as

1 moot. Petitioner did not file opposition to the motion.

2 Having reviewed the documentation submitted by Respondent in support of the motion,
3 including the declaration of Richard Deveraux, Disciplinary Hearing Officer, Federal Bureau of
4 Prisons, Western Regional Office, Stockton, California, and documentation of the expungement of
5 the disciplinary incident, the undersigned finds Respondent's motion to be supported by evidence
6 establishing resolution of the underlying disciplinary action. Accordingly, the undersigned
7 RECOMMENDS that the petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 be
8 dismissed as moot.

9 These Findings and Recommendations will be submitted to the United States District Judge
10 assigned to the case, pursuant to the provisions of 28 U.S.C § 636(b)(1). Within **thirty (30) days**
11 after being served with these Findings and Recommendations, either party may file written
12 objections with the Court. The document should be captioned "Objections to Magistrate Judge's
13 Findings and Recommendations." Replies to the objections, if any, shall be served and filed within
14 **fourteen (14) days** after service of the objections. The parties are advised that failure to file
15 objections within the specified time may constitute waiver of the right to appeal the District Court's
16 order. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 ((9th Cir. 2014) (citing *Baxter v. Sullivan*, 923
17 F.2d 1391, 1394 (9th Cir. 1991)).

18 IT IS SO ORDERED.

19 Dated: June 28, 2017

20 /s/ Sheila K. Oberto
21 UNITED STATES MAGISTRATE JUDGE