

1 *v. Continental Bank Corp.*, 494 U.S. 472, 477 (1990) (internal quotation marks omitted). A
2 petition for writ of habeas corpus becomes moot when it no longer presents a case or controversy.
3 *Wilson v. Terhune*, 319 F.3d 477, 479 (9th Cir. 2003). When a federal court cannot redress a
4 party's actual injury with a favorable judicial decision, the case is moot and must be dismissed.
5 *Spencer v. Kemna*, 523 U.S. 1, 7 (1998). "Mootness is jurisdictional." *Burnett v. Lampert*, 432
6 F.3d 996, 1000-01 (9th Cir. 2005).

7 Respondent reports that Petitioner was extradited on February 14, 2017, to face pending
8 murder charges in Mexico. Doc. 18 at 4. Because the habeas petition can no longer provide
9 relief from the extradition order, it is now moot. *See Lindstrom v. Graber*, 203 F.3d 470, 474 (7th
10 Cir. 2000); *Qassim v. Bush*, 466 F.3d 1073, 1075 (D.C. Cir. 2006). When, as a result of
11 intervening events, a court cannot provide effectual relief in favor of the petitioner, the Court
12 should dismiss the proceeding as moot. *Calderon v. Moore*, 518 U.S. 149, 150 (1996).

13 **III. Certificate of Appealability**

14 A petitioner seeking a writ of habeas corpus has no absolute entitlement to appeal a
15 district court's denial of his petition, but may only appeal in certain circumstances. *Miller-El v.*
16 *Cockrell*, 537 U.S. 322, 335-36 (2003). The controlling statute in determining whether to issue a
17 certificate of appealability is 28 U.S.C. § 2253, which provides:

18 (a) In a habeas corpus proceeding or a proceeding under section 2255
19 before a district judge, the final order shall be subject to review, on appeal, by
20 the court of appeals for the circuit in which the proceeding is held.

21 (b) There shall be no right of appeal from a final order in a proceeding
22 to test the validity of a warrant to remove to another district or place for
23 commitment or trial a person charged with a criminal offense against the
24 United States, or to test the validity of such person's detention pending
25 removal proceedings.

26 (c) (1) Unless a circuit justice or judge issues a certificate of
27 appealability, an appeal may not be taken to the court of appeals from—

28 (A) the final order in a habeas corpus proceeding in which the
detention complained of arises out of process issued by a State court; or

(B) the final order in a proceeding under section 2255.

1 (2) A certificate of appealability may issue under paragraph (1)
2 only if the applicant has made a substantial showing of the denial of a
3 constitutional right.

4 (3) The certificate of appealability under paragraph (1) shall
5 indicate which specific issues or issues satisfy the showing required by
6 paragraph (2).

7 If a court denies a habeas petition, the court may only issue a certificate of appealability
8 "if jurists of reason could disagree with the district court's resolution of his constitutional claims
9 or that jurists could conclude the issues presented are adequate to deserve encouragement to
10 proceed further." *Miller-El*, 537 U.S. at 327; *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).
11 Although the petitioner is not required to prove the merits of his case, he must demonstrate
12 "something more than the absence of frivolity or the existence of mere good faith on his . . .
13 part." *Miller-El*, 537 U.S. at 338.

14 Reasonable jurists would not find the Court's determination that it must dismiss the habeas
15 petition as moot to be debatable or wrong, or conclude that the issues presented required further
16 adjudication. Accordingly, the Court declines to issue a certificate of appealability.

17 **IV. Conclusion and Recommendation**

18 The undersigned recommends that the Court dismiss the petition for writ of habeas corpus
19 and decline to issue a certificate of appealability.

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

IT IS SO ORDERED.

Dated: March 7, 2017

/s/ Sheila K. Oberlo
UNITED STATES MAGISTRATE JUDGE