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6 UNITED STATES DISTRICT COURT
7 FOR THE EASTERN DISTRICT OF CALIFORNIA
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9 JOSE ANGEL PEREZ,

10 Petitioner,

11 v.

12 ANDRE MATEVOUSIAN,

13 Respondent.
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Case No. 1:17-cv-01075-JDP

FINDINGS AND RECOMMENDATIONS
TO GRANT RESPONDENT’S MOTION TO
DISMISS

ECF No. 15

OBJECTIONS, IF ANY, DUE IN 14 DAYS

ORDER DIRECTING CLERK OF COURT
TO ASSIGN DISTRICT JUDGE

16 Petitioner Jose Angel Perez is proceeding without counsel on a petition for a writ of
17 habeas corpus under 28 U.S.C. § 2241 alleging that he is innocent of a 1994 conviction for
18 possession of a firearm during a drug trafficking under 18 U.S.C. § 924(c). ECF No. 1.
19 Respondent has filed a motion to dismiss contending that the petition is moot because the U.S.
20 District Court for the Eastern District of North Carolina recently amended its April 11, 1994
21 judgment to reflect that the § 924(c) conviction had been vacated. *See* ECF No. 15; *see also*
22 ECF No. 15-1 at 17 (Amended Judgment dated March 21, 2018).

23 We agree that the relief requested in the petition—that petitioner’s § 924(c) conviction
24 in 1994 be vacated—was granted when the U.S. District Court for the Eastern District of North
25 Carolina amended its judgment on March 21, 2018 to vacate the conviction. Accordingly,
26 there is no longer a case or controversy, and this case is moot.¹ *See Wilson v. Terhune*, 319
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28 ¹ When petitioner’s deadline for responding to the motion to dismiss expired, the court issued

1 F.3d 477, 479 (9th Cir. 2003) (a case becomes moot when it no longer presents a case or
2 controversy under Article III, § 2, of the Constitution).

3 For these reasons:

- 4 1. The clerk of the court is directed to randomly assign a district judge to this case;
- 5 2. It is recommended that:
 - 6 a. respondent's motion to dismiss, ECF No. 15, be granted;
 - 7 b. the petition for writ of habeas corpus, ECF No. 1, be denied as moot; and
 - 8 c. the clerk be directed to close this case.

9 These findings and recommendations will be submitted to the U.S. district judge
10 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen
11 (14) days of service of these findings and recommendations, plaintiff may file written
12 objections with the court. If plaintiff files such objections, he should do so in a document
13 captioned "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is
14 advised that failure to file objections within the specified time may result in the waiver of rights
15 on appeal. *See Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing *Baxter v.*
16 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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18 IT IS SO ORDERED.

19 Dated: October 11, 2018

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21 UNITED STATES MAGISTRATE JUDGE

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26 an order permitting petitioner another opportunity to file a response and warned that
27 "petitioner's failure to respond may result in the dismissal of this case." ECF No. 17.
28 Petitioner failed to respond. Under Local Rule 230(1), a party's failure to file a response to a
motion may be deemed a waiver of any opposition to the granting of the motion.