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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MANUEL MACHADO ALVAREZ,  
Petitioner,  
v.  
WARDEN, San Quentin State Prison,  
Respondent.

No. 2:97-cv-1895 KJM KJN P

**DEATH PENALTY CASE**

FINDINGS AND RECOMMENDATIONS TO  
GRANT MOTION TO VACATE FINDINGS  
AND RECOMMENDATIONS AND TO  
DISMISS PETITION AS MOOT

FOURTEEN (14) DAY OBJECTION PERIOD

Petitioner was sentenced to death following a number of convictions in 1989 arising from a series of events occurring in Sacramento County in May 1987. On April 3, 2019, the undersigned issued Findings and Recommendations addressing the merits of the claims asserted in Petitioner’s petition for writ of habeas corpus. (ECF No. 364.) Following a number of unopposed requests for extension of time, Petitioner’s objections were to be filed no later than September 22, 2020. (ECF No. 374.) On August 3, 2020, Petitioner’s counsel filed a Motion to Vacate Findings and Recommendations and Dismiss Petition as Moot. (ECF No. 375.) On August 25, 2020, a Supplemental Exhibit in Support of Motion to Vacate Findings and Recommendations and Dismiss Petition as Moot was filed with the court. (ECF No. 376.) No response has been filed by Respondent.

1 As noted in the motion filed August 3, 2020, and as confirmed by the Supplemental  
2 Exhibit thereto, Petitioner Manuel Machado Alvarez died July 3, 2020, of complications of  
3 COVID-19.

4 As this court previously held:

5 Federal courts have jurisdiction to hear cases and controversies. U.S.  
6 CONST. art. III, § 2. An actual controversy must exist between the  
7 parties throughout all stages of the proceeding. Alvarez v. Smith,  
8 \_\_\_U.S.\_\_\_, 130 S. Ct. 576, 580 (2009). An action becomes moot  
9 when the issues “are no longer ‘live,’” i.e., when the “parties lack a  
10 legally cognizable interest in the outcome.” Powell v. McCormack,  
11 395 U.S. 486, 496 (1969). I[n] these habeas proceedings the relief  
12 sought, i.e., petitioner’s immediate release from custody, is unique to  
13 the petitioner himself and cannot be transferred. “In other words, the  
14 claims [are] extinguished upon [a] petitioner’s death and no party can  
15 be substituted for him.” Pennewell v. Carey, No. 2:06-cv-0598 JKS  
16 EFB, 2008 WL 1860166, at \* 1 (E.D. Cal. Apr. 23, 2008) (citing Fed.  
17 R. Civ. P. 25(a)). “Because petitioner’s death renders this case moot,  
18 the petition for writ of habeas corpus should be dismissed as moot.”  
19 Garceau v. Woodford, 399 F.3d 1101 (9th Cir. 2005). See also Dove  
20 v. United States, 423 U.S. 325 (1976) (dismissing a certiorari petition  
21 because petitioner had died); Griffey v. Lindsey, 349 F.3d 1157 (9th  
22 Cir. 2003) (dismissing a petition for writ of habeas corpus as moot  
23 because petitioner had died).

24 Germino v. Marshall, No. CIV S-08-3010, 2010 WL 5393907, at \*1 (E.D. Cal. Dec.  
25 21, 2010).

26 Here, because an actual controversy no longer exists as a result of Petitioner’s death, the  
27 petition for writ of habeas corpus is moot; Petitioner’s claims have been extinguished.

28 Accordingly, IT IS HEREBY RECOMMENDED that:

1. Petitioner’s motion (ECF No. 375) be granted;
2. The Findings and Recommendations dated April 3, 2019 (ECF No. 364) be vacated;  
and,
3. The action be dismissed as having been rendered moot by Petitioner’s death.

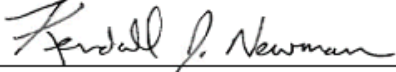
These findings and recommendations are submitted to the United States District Judge  
assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen (14)**  
**days** after being served with these findings and recommendations, any party may file written  
objections with the court and serve a copy on all parties. Such a document should be captioned  
“Objections to Magistrate Judge’s Findings and Recommendations.” The parties are advised that

1 failure to file objections within the specified time may waive the right to appeal the District  
2 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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4 Dated: September 10, 2020

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KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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