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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

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11 CALVIN DEUAUGHN-HOBBY,
12 Petitioner,
13 v.
14 WILLIAM GORE, Warden,
15 Respondent.

Case No. 18-cv-1196-BAS-AGS

ORDER:

**(1) GRANTING MOTION TO DISMISS
PETITION
[ECF No. 14];**

**(2) DISMISSING PETITION
[ECF No. 1];**

AND

**(3) DENYING CERTIFICATE OF
APPEALABILITY**

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20 *Pro se* Petitioner Calvin Deuaughn-Hobby filed a Petition for a Writ of Habeas
21 Corpus pursuant to 28 U.S.C. § 2241 on June 5, 2018, seeking to challenge his extradition
22 from New York to California. (ECF No. 1.) Petitioner avers that his due process right to
23 a habeas corpus proceeding was violated because he “was never given a chance to file a
24 writ of habeas corpus in state court” in New York. (*Id.* at 3.) Petitioner indicates that he
25 requested a habeas proceeding “[o]n January 25, 2018 in Monroe County Court City of
26 Rochester state of New York,” but did not receive such a proceeding and was “delivered
27 up to the demanding state[.]” (*Id.* at 4, 5.) This Court instructed the California Attorney
28 General to show cause why the Petition should not be granted. (ECF No. 6.) The Attorney

1 General has moved to dismiss the Petition as moot given Petitioner’s extradition to
2 California. (ECF No. 14.) Petitioner has filed a letter with the Court, which the Court has
3 construed as a response to the motion to dismiss. (ECF No. 16.) For the reasons herein,
4 the Court grants the motion to dismiss, dismisses the Petition, and declines to issue a
5 certificate of appealability.

6 DISCUSSION

7 Petitioner seeks relief for the alleged violation of his due process rights caused by
8 New York’s extradition procedure. As is evident from the Petition, Petitioner was
9 extradited from New York to California and is no longer in New York state custody. (*See*
10 *generally* ECF No. 1.) As the Attorney General notes, Petitioner is currently in custody
11 pending trial for first degree murder and his bail for release from custody has been set at
12 some \$2 million. (ECF No. 14-1 Exs. A, B.) The Attorney General argues that the Petition
13 must therefore be dismissed as moot. The Court agrees that the Petition must be dismissed.

14 Pursuant to Article III, federal court jurisdiction extends only to actual cases or
15 controversies. *Iron Arrow Honor Society v. Heckler*, 464 U.S. 67, 70–71 (1983). The case
16 or controversy requirement prevents a federal court from deciding “questions that cannot
17 affect the rights of litigants in the case before them.” *Lewis v. Continental Bank Corp.*,
18 494 U.S. 472, 477 (1990) (internal quotation marks omitted). A petition for writ of habeas
19 corpus becomes moot when it no longer presents a case or controversy. *Wilson v. Terhune*,
20 319 F.3d 477, 479 (9th Cir. 2003). “Mootness is jurisdictional.” *Burnett v. Lampert*, 432
21 F.3d 996, 1000-01 (9th Cir. 2005). When a federal court cannot redress a party’s actual
22 injury with a favorable judicial decision, the case is moot and must be dismissed. *Spencer*
23 *v. Kemna*, 523 U.S. 1, 7 (1998).

24 Because Petitioner had already been extradited to California at the time he filed his
25 Petition, the Petition never presented a live controversy for this Court. “Once [a] fugitive
26 is returned to the demanding state, the right to challenge extradition becomes moot: the
27 fugitive is no longer being detained by the asylum state, and so, the legality of his or her
28 detention there is no longer at issue.” *Barton v. Norrod*, 106 F.3d 1289, 1298 (6th Cir.

1 1997); *Harden v. Pataki*, 320 F.3d 1289, 1298–99 (11th Cir. 2003) (holding that, while
2 habeas relief is mooted by the extradition, a civil rights action against the asylum state’s
3 officers who effected the extradition could proceed); *Perez v. Mims*, No. 1:16-cv-01935-
4 DAD-SKO HC, 2017 U.S. Dist. LEXIS 33406, at *2 (E.D. Cal. Mar. 7, 2017) (dismissing
5 habeas petition challenge to an order of extradition as moot when petitioner was extradited
6 to face murder charges in foreign jurisdiction); *Thurston v. State*, No. 13-cv-00256-
7 DKW/BMK, 2013 WL 2637827, at *3 (D. Haw. June 12, 2013) (dismissing as moot
8 challenge to extradition when petitioner had already been extradited to demanding state).
9 Therefore, Petitioner’s challenge to New York state extradition procedures must be
10 dismissed for lack of a justiciable controversy.


11 Although Petitioner contends that probable cause was lacking to support his
12 extradition to California (ECF No. 16), “invalid extradition” is not “a sufficient ground
13 upon which to grant habeas relief once the fugitive is present in the jurisdiction from which
14 he fled.” *Weilburg v. Shapiro*, 488 F.3d 1202, 1206 (9th Cir. 2007) (citing *Hudson v.*
15 *Moran*, 760 F.2d 1027, 1029 (9th Cir. 1985); *Siegel v. Edwards*, 566 F.2d 958, 960 (5th
16 Cir. 1978) (per curiam)). The record shows that Petitioner has been charged with crimes
17 in California and is being processed accordingly. If Petitioner wishes to challenge his
18 criminal charges or any convictions, he must do so first in the California state courts and
19 only after exhausting his state court remedies may he pursue federal habeas related to those
20 convictions. 28 U.S.C. § 2254; *see also Thurston*, 2013 WL 2637827, at *3.

21 CONCLUSION & ORDER

22 For the foregoing reasons, the Court **GRANTS** the motion to dismiss. (ECF No.
23 14.) The Court **DISMISSES WITH PREJUDICE** the Petition. The Court **DECLINES**
24 to issue a certificate of appealability because the Court does not find that reasonable jurists
25 would find the Court’s conclusion debatable or wrong. *See* 28 U.S.C. § 2253(c)(2); 28
26 U.S.C. § 2254, foll. Rule 11(a). The Clerk of the Court is instructed to close this case.

27 **IT IS SO ORDERED.**

28 **DATED: October 10, 2018**


Hon. Cynthia Bashant
United States District Judge