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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ELBERT LEE VAUGHT IV,  
  
Petitioner,  
  
v.  
  
KATHLEEN ALLISON, Secretary,  
  
Respondent.

Case No.: 21cv408-CAB-AGS

**ORDER ADOPTING REPORT AND  
RECOMMENDATION [Doc. No. 26],  
DENYING AS MOOT MOTION FOR  
RELEASE [Doc. No. 17] AND  
DISMISSING PETITION [Doc. No. 1]  
WITHOUT PREJUDICE**

On March 5, 2021, Petitioner Elbert Lee Vaught IV (“Petitioner”), a state prisoner proceeding pro se and in forma pauperis, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, [Doc. No. 1.] On November 8, 2021, Respondent filed an answer to the petition and lodged the state court record. [Doc. Nos. 14, 15.] On November 22, 2021, Petitioner filed a traverse [Doc. No. 16] and a motion for release from custody [Doc. No. 17].

On August 5, 2022, Petitioner filed a notice of change of address indicating that he had been released from custody. [Doc. No. 21.] On August 9, 2022, Magistrate Judge Andrew G. Schopler requested further briefing on whether there is still an Article III case or controversy given that Petitioner has been released from custody. [Doc. No. 22.] On August 18, 2022, Respondent filed further briefing. [Doc. Nos. 23 and 24.]

1 On August 25, 2022, Magistrate Judge Schopler issued a Report and  
2 Recommendation (“Report”), recommending that the Court dismiss the Petition without  
3 prejudice and deny as moot the motion for release. [Doc. No. 26.] The Report also  
4 ordered that any objections were to be filed by September 10, 2022. [Doc. No. 26.] To  
5 date, no objection has been filed, nor has there been a request for additional time in which  
6 to file an objection.

7 A district court’s duties concerning a magistrate judge’s report and  
8 recommendation and a respondent’s objections thereto are set forth in Rule 72(b) of the  
9 Federal rules of Civil Procedure and 28 U.S.C. § 636(b)(1). When no objections are  
10 filed, the district court is not required to review the magistrate judge’s report and  
11 recommendation. The Court reviews de novo those portions of the Report and  
12 Recommendation to which objections are made. 28 U.S.C. § 636(b)(1). The Court may  
13 “accept, reject, or modify, in whole or in part, the findings or recommendations made by  
14 the magistrate judge.” *Id.* However, “[t]he statute makes it clear that the district judge  
15 must review the magistrate judge's findings and recommendations de novo if objection is  
16 made, but not otherwise.” *United States v. Reyna–Tapia*, 328 F.3d 1114, 1121 (9th  
17 Cir.2003) (*en banc*) (*emphasis in original*). “Neither the Constitution nor the statute  
18 requires a district judge to review, de novo, findings and recommendations that the  
19 parties themselves accept as correct.” *Id.*

20 Here, neither party has timely filed objections to the Report. Having reviewed it,  
21 the Court finds that it is thorough, well-reasoned, and contains no clear error.  
22 Accordingly, the Court **HEREBY ADOPTS** Magistrate Judge Schopler’s Report and  
23 Recommendation [Doc. No. 26] in its entirety. For the reasons stated in the Report,  
24 which is incorporated herein by reference, the Court **DENIES AS MOOT** the motion for  
25 release [Doc. No. 17] and **DISMISSES** the Petition [Doc. No. 1] **WITHOUT**  
26 **PREJUDICE**.

1           Moreover, because the Court does not believe that reasonable jurists would find the  
2 Court's assessment of the constitutional claims debatable or wrong it **DECLINES** to  
3 issue a Certificate of Appealability. See *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

4           **IT IS SO ORDERED.**

5 Dated: September 16, 2022



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Hon. Cathy Ann Bencivengo  
United States District Judge

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