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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
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10 PEDRO RODRIGUEZ,
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Petitioner,
v.
OFFICER FISHER, Warden,
Respondent.

Case No.: 21cv1443-MMA-LL

ORDER:

**(1) VACATING COURT'S
OCTOBER 25, 2021 ORDER**

**(2) ISSUING BRIEFING
SCHEDULE ON MOTION TO
DISMISS**

On October 28, 2021, Respondent filed a Motion to Dismiss Petitioner's petition for writ of habeas corpus. ECF No. 20. Additionally, Respondent requests that the Court vacate its October 25, 2021 order instructing Respondent to contact the San Diego County Jail regarding Petitioner's access to his legal materials and provide a response to Petitioner's request for access. Id. at 4–5. Respondent states that he has no control over Petitioner and his ability to access legal materials because the San Diego County Sheriff, and not Respondent, has control over Petitioner who is now housed in the San Diego County Jail. Id.

The Court finds it appropriate to **GRANT** Respondent's motion to vacate the October 25, 2021 Court order [ECF No. 19] because Respondent has no control over

1 Petitioner's ability to access legal materials in the San Diego County Jail. To alleviate
2 Petitioner's legal access issues, the Court **ORDERS** the following:

3 1. Petitioner shall file his opposition or non-opposition to Respondent's Motion
4 to Dismiss on or before **January 6, 2022**. Petitioner shall address Respondent's arguments
5 that (1) Petitioner has not shown how success on his claim for parole consideration would
6 *necessarily* lead to his immediate or earlier release from confinement, rather than merely a
7 consideration of such relief; and (2) Petitioner's claims are moot because he is no longer
8 in CDCR custody and he has not shown that he will be returned to CDCR custody.

9 2. The Court **DIRECTS** the Clerk's Office to attach to the copy of this order
10 which will be mailed to Petitioner the following: (1) a copy of Petitioner's petition
11 [ECF No. 1] and (2) a copy of Respondent's Motion to Dismiss [ECF No. 20].

12 3. Unless the Court orders otherwise, Respondent must not file a reply to
13 Petitioner's opposition to the Motion to Dismiss.

14 **IT IS SO ORDERED.**

15 Dated: November 15, 2021

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18 Honorable Linda Lopez
19 United States Magistrate Judge
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