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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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Jesus Reyes,

No. CV-14-01866-PHX-DJH

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Petitioner,

ORDER

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v.

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Conrad Graber,

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Respondent.

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This matter is before the Court on Petitioner's Petition Under 28 U.S.C. § 2241 for a Writ of Habeas Corpus by a Person in Federal Custody (Doc. 1), and the Report and Recommendation ("R&R") issued on January 28, 2015, by United States Magistrate Judge James F. Metcalf (Doc. 13). Since the filing of his Petition, Petitioner has received the relief he sought therein, *i.e.*, he has been deemed eligible for early release consideration under 18 U.S.C. § 3621(e). Therefore, in its response to the Petition, the Respondent sought dismissal of the Petition due to lack of subject matter jurisdiction based upon mootness. Petitioner was allowed to file a reply, but he did not. *See R & R* (Doc. 13) at 3:2-4.

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Agreeing with the Respondent, Magistrate Judge Metcalf correctly found that this Petition is moot and hence subject matter jurisdiction is lacking. *See R & R* (Doc. 13) at 3:6 – 4:14. The Magistrate Judge therefore recommended dismissing the Petition without prejudice. (*Id.* at 4:27–5:1). The Magistrate Judge also correctly made no recommendation as to a Certificate of Appealability because "[t]his case arises under 28

1 U.S.C. § 2241, and does not attack a State court detention." (*Id.* at 4:22-23).

2 The parties have not filed any objections to the R&R and the time to do so has
3 expired. Absent any objections, the Court is not required to review the findings and
4 recommendations in the R&R. *See Thomas v. Arn*, 474 U.S. 140, 149 (1989) (The
5 relevant provision of the Federal Magistrates Act, 28 U.S.C. § 636(b)(1)(C), "does not on
6 its face require any review at all . . . of any issue that is not the subject of an objection.");
7 *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (same); Fed.R.Civ.P.
8 72(b)(3) ("The district judge must determine de novo any part of the magistrate judge's
9 disposition that has been properly objected to.").

10 Nonetheless, the Court has reviewed the R&R and agrees with its
11 recommendation. The Court will, therefore, accept the R&R, and dismiss the Petition as
12 moot and without prejudice. *See* 28 U.S.C. § 636(b)(1)(C) ("A judge of the court may
13 accept, reject, or modify, in whole or in part, the findings or recommendations made by
14 the magistrate judge."); Fed.R.Civ.P. 72(b)(3) (same).


15 Accordingly,

16 **IT IS ORDERED ACCEPTING AND ADOPTING** as an Order of this Court
17 Magistrate Judge Metcalf's R&R (Doc. 13);

18 **IT IS FURTHER ORDERED DISMISSING WITHOUT PREJUDICE** the
19 Petition Under 28 U.S.C. 2241 for a Writ of Habeas Corpus by a Person in Federal
20 Custody (Doc. 1);

21 **IT IS FINALLY ORDERED** that the Clerk of Court shall terminate this action
22 and enter judgment accordingly.

23 Dated this 19th day of February, 2015.

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26 
27 Honorable Diane J. Humetewa
28 United States District Judge