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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Robert T. Graves,  
10 Petitioner,

No. CV-16-01304-PHX-JAT

**ORDER**

11 v.

12 Julie Roberts, et al.,  
13 Respondents.  
14

15 Pending before the Court is a Report and Recommendation (Doc. 12) from  
16 Magistrate Judge Duncan, recommending that this Court grant the Respondents' Motion  
17 to Dismiss (Doc. 11) the Petition in this case, without prejudice. Judge Duncan  
18 previously invited Petitioner to respond to the Motion to Dismiss, but Petitioner did not  
19 respond. Thus, Judge Duncan concluded and recommended that this Court find that  
20 Petitioner consented to the dismissal of his habeas petition, without prejudice, because he  
21 still has on-going state court proceedings. Neither party filed objections to the Report  
22 and Recommendation.

23 Based on the foregoing,<sup>1</sup>

24 **IT IS ORDERED** that the Report and Recommendation (Doc. 12) is accepted and  
25 adopted.  
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28 <sup>1</sup> See *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*)  
("statute makes it clear that the district judge must review the magistrate judge's findings  
and recommendations de novo *if objection is made*, but not otherwise" (emphasis in  
original)); see also *Schmidt v. Johnstone*, 263 F.Supp.2d 1219, 1226 (D. Ariz. 2003).

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**IT IS FURTHER ORDERED** that Respondents' Motion to Dismiss (Doc. 11) is granted; the Clerk of the Court shall enter judgment dismissing the Petition without prejudice.

**IT IS FINALLY ORDERED** that a certificate of appealability is denied for the reasons stated in the Report and Recommendation.

Dated this 19th day of October, 2016.

