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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Larry A. Nichols,)
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Plaintiff,)
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v.)
)
Unknown Party, named as Warden,)
)
Defendant,)
_____)

CV 12-666 TUC DCB
ORDER

This matter was referred to Magistrate Judge Charles R. Pyle, on October 11, 2012. He issued a Report and Recommendation (R&R) on December 19, 2012, pursuant to Rules of Practice for the United States District Court, District of Arizona (Local Rules), Rule (Civil) 72.1(a). (Doc. 27: R&R.) Magistrate Judge Pyle recommends dismissing the case as moot because the Petitioner has been released from custody.

STANDARD OF REVIEW

The duties of the district court, when reviewing a R&R by a Magistrate Judge, are set forth in Rule 72 of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1). The district court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” Fed.R.Civ.P. 72(b), 28 U.S.C. § 636(b)(1). When the parties object to a Report and Recommendation (R&R), “[a] judge of the [district] court shall make a *de novo* determination of those portions of the [R&R] to which objection is made.” *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985) (quoting 28 U.S.C. § 636(b)(1)). When no objections are filed, the district court does not need to review the R&R *de novo*. *Wang v. Masaitis*, 416 F.3d 992, 1000 n. 13 (9th Cir.2005); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121-22 (9th Cir.2003) (*en banc*). To the extent that no objection has been made, arguments to the contrary have been

1 waived. *McCall v. Andrus*, 628 F.2d 1185, 1187 (9th Cir. 1980) (failure to object to Magistrate's
2 report waives right to do so on appeal); *see also*, Advisory Committee Notes to Fed. R. Civ. P.
3 72 (citing *Campbell v. United States Dist. Court*, 501 F.2d 196, 206 (9th Cir. 1974) (when no
4 timely objection is filed, the court need only satisfy itself that there is no clear error on the face
5 of the record in order to accept the recommendation).

6 The parties were sent copies of the R&R and instructed they had 14 days to file written
7 objections. 28 U.S.C. § 636(b), *see also*, Federal Rule of Criminal Procedure 72 (party objecting
8 to the recommended disposition has fourteen (14) days to file specific, written objections). The
9 Petitioner has not filed an objection to the recommendation. A review of the Court docket
10 reflects that the Petitioner has not provided a change of address since his release, and the R&R
11 was returned as undeliverable.

12 REPORT AND RECOMMENDATION

13 As noted by the Magistrate Judge, this Court is one of limited jurisdiction, which ends
14 where there is no case in controversy. In other words, federal courts have no jurisdiction to hear
15 a case that is moot. The function of the writ is to secure immediate release from illegal physical
16 custody, therefore, when a habeas petitioner has been released, the petition must be dismissed
17 as moot. (Doc. 11: R&R at 2-4.)

18 There being no objection, the Court finds the R&R to be thorough and well-reasoned,
19 without any clear error in law or fact. *See United States v. Remsing*, 874 F.2d 614, 617-618 (9th
20 Cir. 1989) (*United States v. Remsing*, 874 F.2d 614, 617-618 (9th Cir. 1989) (citing 28 U.S.C.
21 § 636(b)(1)(A) as providing for district court to reconsider matters delegated to magistrate judge
22 when there is clear error or recommendation is contrary to law). The Court accepts and adopts
23 the R&R as the opinion of the Court, pursuant to 28 U.S.C. § 636(b)(1). For the reasons stated
24 in the R&R, the Court grants the Respondent's Motion to Dismiss.

25 **Accordingly,**

26 **IT IS ORDERED** that the Report and Recommendation [Doc. # 11] is adopted as the
27 opinion of the Court.

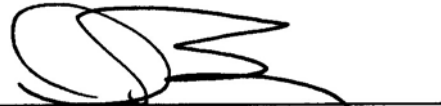
28 **IT IS FURTHER ORDERED** that the Motion to Dismiss [10] is GRANTED.

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IT IS FURTHER ORDERED that the Clerk of the Court shall dismiss the Petition (Doc. 1) and enter Judgment accordingly.

IT IS FURTHER ORDERED that Petitioner proceeds here *in forma pauperis* under 28 U.S.C. § 2241, and in the event the Petitioner files an appeal, the Court finds the appeal is not taken in good faith. 28 U.S.C. 1915(a)(3) and FRAP 24(a).

DATED this 12th day of February, 2013.



David C. Bury
United States District Judge