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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

XI KONG,

Plaintiff,

v.

SECRETARY JEH JOHNSON, et al.,

Defendants.

Case No. 2:15-cv-01498-JCM-CWH

ORDER

Presently before the court is defendants' motion to dismiss the complaint as moot pursuant to FED. R. CIV. P. 12(b)(1) because there is no longer a present controversy upon which this court may grant relief. (Doc. # 5 at 2). Defendants represent that on August 26, 2015, USCIS issued a decision denying plaintiff's petition for a writ of mandamus regarding the instant matter. (*Id.* at 1–2). Plaintiff has not filed a response.

Also before the court is plaintiff's notice of voluntary dismissal pursuant to FED. R. CIV. P. 41(a)(1)(A)(i). (Doc. # 6). Plaintiff seeks dismissal of his case on the basis that the defendant has not served an answer or a motion for summary judgment. (*Id.* at 1).

FED. R. CIV. P. 41(a)(1)(A)(i) allows a plaintiff to voluntarily dismiss a claim without court order "by filing a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment."

Defendants have not filed an answer nor have they filed a motion for summary judgment. Therefore, dismissal under FED. R. CIV. P. 41(a)(1)(A)(i) is proper.

As plaintiff has voluntarily dismissed the present action, defendants' motion to dismiss is denied as moot.

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Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that this action, case number 2:15-cv-01498-JCM-CWH be, and the same hereby is, dismissed without prejudice.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendants motion to dismiss (doc. # 5) be, and the same hereby is, DENIED as moot.

IT IS FURTHER ORDERED that the clerk shall enter judgment accordingly and close the case.

DATED THIS 5<sup>th</sup> day of November, 2015.

  
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JAMES C. MAHAN  
UNITED STATES DISTRICT JUDGE