

PEARSON, J.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

PHILLIP DOUGLAS JACOBS,	)	
	)	CASE NO. 4:19CV0557
Petitioner,	)	
	)	JUDGE BENITA Y. PEARSON
v.	)	
	)	
STATE OF OHIO, <i>et al.</i> ,	)	<b><u>MEMORANDUM OF OPINION</u></b>
	)	<b><u>AND ORDER</u></b>
Respondents.	)	[Resolving ECF Nos. <a href="#">14</a> and <a href="#">15</a> ]

Pending are *Pro Se* Petitioner’s Motions to Alter or Amend Judgment ([ECF No. 14](#)) and for Notice to be Taken of Supporting Case Law and Authorities ([ECF No. 15](#)). For the reasons stated below, the motions are denied.

This case was previously transferred from the United States District Court for the Southern District of Ohio. *See* Order ([ECF No. 2](#)). Petitioner Phillip Douglas Jacobs a/k/a Bismillah is a state inmate incarcerated at the Marion Correctional Institution. He filed a “Complaint for Declaratory Judgment Order and Petition for Writ of Prohibition” ([ECF No. 1-1](#)) under 28 U.S.C. §§ [2201](#) and [1651](#) to challenge his sentences and continued incarceration. Petitioner is no stranger to this federal court, having filed nine (9) habeas petitions under [28](#)

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[U.S.C. § 2254](#) seeking relief from his current convictions and sentences,<sup>1</sup> and at least eight (8) civil rights cases<sup>2</sup> that earned him the designation of a restricted filer under the three strikes provision of [28 U.S.C. § 1915\(g\)](#). [Bismillah v. Mohr, No. 3:16CV1374 \(N.D. Ohio Sept. 24, 2018\)](#) (Helmick, J.). The Declaratory Judgment Act and the All Writs Act, from which the Writ of Prohibition is derived, do not create an independent basis for federal subject matter jurisdiction. [Heydon v. MediaOne of Southeast Mich., Inc., 327 F.3d 466, 470 \(6th Cir. 2003\)](#) (citing [Skelly Oil Co. v. Phillips Petroleum Co., 339 U.S. 667, 671-72 \(1950\)](#)); [State of Mich. v. City of Allen Park, 954 F.2d 1201, 1216 \(6th Cir. 1992\)](#). The Court previously determined

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<sup>1</sup> See [Jacobs v. Dallman, No. 4:92CV1104 \(N.D. Ohio July 14, 1992\)](#) (White, C.J.) (denied on the merits); [Jacobs v. Russell, No. 4:94CV1910 \(N.D. Ohio May 20, 1997\)](#) (Wells, J.) (dismissed without prejudice for failure to exhaust, and eventually transferred to the Circuit as a successive petition); [Jacobs v. Morgan, No. 1:01CV2224 \(N.D. Ohio Aug. 8, 2003\)](#) (Gaughan, J.) (denied on the merits); [Jacobs v. Morgan, No. 1:04CV2488 \(N.D. Ohio Jan. 31, 2005\)](#) (O'Malley, J.) (transferred to the Circuit as successive); [Jacobs v. Hudson, No. 1:06CV0595 \(N.D. Ohio May 3, 2006\)](#) (O'Malley, J.) (transferred to the Circuit as successive); [Jacobs v. Hudson, No. 1:06CV2852 \(N.D. Ohio Jan. 25, 2007\)](#) (O'Malley, J.) (transferred to the Circuit as successive); [Jacobs v. Warden Marion Corr. Inst., No. 4:13CV1306 \(N.D. Ohio Dec. 10, 2013\)](#) (Oliver, C.J.) (transferred to the Circuit as successive); [Jacobs v. Bunting, No. 4:16CV2223 \(N.D. Ohio Oct. 6, 2016\)](#) (Carr, J.) (transferred to the Circuit as successive); [Jacobs v. Wainwright, No. 4:18CV0280 \(N.D. Ohio Feb. 26, 2018\)](#) (Oliver, J.) (transferred to the Circuit as successive).

<sup>2</sup> See [Jacobs v. Youngstown, No. 4:90CV0082 \(N.D. Ohio March 30, 1990\)](#) (Bell, J.); [Jacobs v. Lane, No. 3:02CV7512 \(N.D. Ohio Dec. 15, 2003\)](#) (Katz, J.) (dismissed under [28 U.S.C. § 1915\(e\)](#)); [Jacobs v. Wilkinson, No. 3:03CV7028 \(N.D. Ohio April 21, 2003\)](#) (Carr, J.) (dismissed under [§ 1915\(e\)](#)); [Jacobs v. Hall, No. 3:08CV1262 \(N.D. Ohio Oct. 3, 2008\)](#) (Katz, J.) (dismissed under [§ 1915\(e\)](#)); [Jacobs v. Mohr, No. 3:11CV2294 \(N.D. Ohio Jan. 5, 2012\)](#) (Carr, J.) (three strikes under [§ 1915\(g\)](#)); [Bismillah v. Mohr, No. 3:16CV1374 \(N.D. Ohio Sept. 24, 2018\)](#) (Helmick, J.) (three strikes under [§ 1915\(g\)](#)); [Jacobs v. Mohr, No. 3:16CV1908 \(N.D. Ohio June 28, 2018\)](#) (Helmick, J.) (three strikes under [§ 1915\(g\)](#)); [Bismillah v. Bureau of Med. Serv., No. 3:18CV2741 \(N.D. Ohio Dec. 19, 2018\)](#) (Zouhary, J.) (three strikes under [§ 1915\(g\)](#)).

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Petitioner could not use them to avoid the procedural bars of a successive habeas petition or the three-strikes rule of [28 U.S.C. § 1915\(g\)](#). Memorandum of Opinion and Order ([ECF No. 12](#)) at PageID #154-55.

Petitioner has now filed this Motion to Alter or Amend Judgment incredibly claiming that he commenced the above-entitled action seeking a Writ of Prohibition and the District Court for the Southern District of Ohio recharacterized it as a Complaint for Writ of Prohibition. [ECF No. 14 at PageID #: 157](#). He contends the appropriate statute under which to consider his Petition is [28 U.S.C. § 2241](#). Petitioner argues the successive petition restrictions of the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) do not apply to [§ 2241](#) Petitions.

A court may grant a [Fed. R. Civ. P. 59\(e\)](#) motion to alter or amend judgment only if there was “(1) a clear error of law; (2) newly discovered evidence; (3) an intervening change in controlling law; or (4) a need to prevent manifest injustice.” [GenCorp, Inc. v. Am. Int’l Underwriters](#), 178 F.3d 804, 834 (6th Cir. 1999). A [Rule 59\(e\)](#) motion is not an opportunity to re-argue a case, [Sault Ste. Marie Tribe of Chippewa Indians v. Engler](#), 146 F.3d 367, 374 (6th Cir. 1998), nor is it a proper vehicle to “raise arguments which could, and should, have been made before judgment issued.” *Id.* It is an extraordinary remedy and is seldom granted “because it contradicts notions of finality and repose.” [Mitchell v. Citizens Bank, No. 3:10-00569, 2011 WL 247421, at \\*1 \(M.D. Tenn. Jan. 26, 2011\)](#). The moving party must “set

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forth facts or law of a strongly convincing nature to induce the Court to reverse its prior decision.” [McDaniel v. Am. Gen. Fin. Servs., No. 04-2667 B, 2007 WL 2084277, at \\*2 \(W.D. Tenn. July 17, 2007\)](#).

Petitioner does not present a basis for relief under [Rule 59\(e\)](#). He does not cite to an error of law in the Court’s opinion, newly discovered evidence, or an intervening change in controlling law. First, his attempt to change this action into a Petition under [28 U.S.C. § 2241](#) is not appropriate in a [Rule 59\(e\)](#) motion as it presents a new legal theory upon which to base his action. Second, it is not useful in avoiding dismissal. If Petitioner is a state prisoner challenging a state conviction or sentence, his habeas corpus petition is governed by [28 U.S.C. § 2254](#) regardless of the statutory label he gives it and it is subject to the restrictions imposed by AEDPA, including those pertaining to successive petitions. [Rittenberry v. Morgan, 468 F.3d 331, 337-38 \(6th Cir. 2006\)](#); *see also* [Greene v. Tennessee Dep’t of Corr., 265 F.3d 369, 371 \(6th Cir. 2001\)](#) (when a state prisoner seeks habeas relief, but does not challenge a state court conviction or sentence, the requirements of [§ 2254](#) apply no matter what statutory label is used because the detention arises from a state court process). This Petitioner should already know from one of his recent prior cases that “a petitioner cannot invoke [§ 2241](#) to do an end-run around the bar against successive habeas petitions.” [Jacobs v. Ohio Adult Parole Authority, No. 4:16CV2223, 2018 WL 286208 \(N.D. Ohio Jan. 2, 2018\)](#) (Carr, J.).

Accordingly, Petitioner’s Motions to Alter or Amend Judgment ([ECF No. 14](#)) and for Notice to be Taken of Supporting Case Law and Authorities ([ECF No. 15](#)) are denied. The Court

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certifies pursuant to [28 U.S.C. § 1915\(a\)\(3\)](#) that an appeal from this decision could not be taken in good faith.

IT IS SO ORDERED.

December 13, 2019  
Date

/s/ Benita Y. Pearson  
Benita Y. Pearson  
United States District Judge