

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

MOHAMMAD ASSAN ALI,	:	Case No. 1:17-cv-162
	:	
Petitioner,	:	Judge Timothy S. Black
	:	Magistrate Judge Stephanie K. Bowman
vs.	:	
	:	
ATTORNEY GENERAL,	:	
	:	
Respondent.	:	

**DECISION AND ENTRY
ADOPTING THE REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE (Doc. 2)**

This case is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Stephanie K. Bowman. Pursuant to such reference, the Magistrate Judge reviewed the pleadings filed with this Court and, on April 10, 2017, submitted a Report and Recommendations. (Doc. 2). Petitioner filed objections to the Report and Recommendations on April 19, 2017, and supplemental objections on April 21, 2017. (Docs. 3, 4).¹

¹ The Court has reviewed Petitioner’s objections and finds them to be without merit. Petitioner is currently incarcerated and awaiting deportation as a result of a California state court conviction for domestic violence based on a plea agreement entered in 2009. (Doc. 1-1, at 2). In this action, Plaintiff asks this Court to set aside the California state court conviction via a writ of coram nobis and/or audita querela. As the Report and Recommendations thoroughly explained, this Court does not have jurisdiction to grant a writ of coram nobis. As for a writ of audita querela, the issue of whether the Court has jurisdiction to issue such a writ is not firmly decided. However, even were such a writ permissible in “the most extreme cases” as outlined by the vacated Sixth Circuit Court of Appeals holding in *Ejelonu v. Immigration & Naturalization*

As required by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has reviewed the comprehensive findings of the Magistrate Judge and considered *de novo* all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such Report and Recommendations should be and is hereby adopted in its entirety. Accordingly, **IT IS ORDERED** that:

- 1) Petitioner's amended petition for a writ of coram nobis and or audita querela (Doc. 1-1) is **DISMISSED WITHOUT PREJUDICE**;
- 2) Petitioner's motion for leave to proceed *in forma pauperis* is **DENIED AS MOOT**;
- 3) A certificate of appealability shall not issue with respect to any of the grounds for relief alleged in the petition because petitioner has not stated a "viable claim of the denial of a constitutional right," nor are the issues presented "adequate to deserve encouragement to proceed further." *See Slack v. McDaniel*, 529 U.S. 473, 475 (2000) (citing *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)); *see also* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b);
- 4) The Court certifies that pursuant to 28 U.S.C. § 1915(a)(3), an appeal of this Order would not be taken in good faith and therefore Petitioner is denied leave to appeal *in forma pauperis*.

IT IS SO ORDERED.

Date: 5/11/17

s/ Timothy S. Black
Timothy S. Black
United States District Judge

Serv., 355 F.3d 539, 548-52 (6th Cir. 2004), the circumstances of this case certainly do not rise to that level. Petitioner's objections (Doc. 3) fail to rebut the sound analysis of the Report and Recommendations, and his supplemental objections (Doc. 4) make arguments that concern only his pending 28 U.S.C. § 2241 petition alleging indefinite detention pending deportation, which is before a different court. *See Ali v. Lynch*, Case No. 1:16-cv-1182 (S.D. Ohio Dec. 30, 2016).