

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

NOEL COVARRUBIA,

Petitioner,

vs.

Civil Action 2:13-cv-816  
Judge Graham  
Magistrate Judge King

STATE OF OHIO,

Respondent.

REPORT AND RECOMMENDATION

Petitioner has filed a petition for a writ of error *coram nobis*, *Petition for a Writ of Error Coram Nobis*, Doc. No. 1, in which Petitioner appears to challenge the constitutionality of his 1997 state court conviction on charges of assault and criminal mischief based on his guilty plea. Petitioner, a citizen of Venezuela, specifically alleges that his 1997 guilty plea was not knowing and voluntary and that his defense counsel did not render effective assistance of counsel because Petitioner was not advised that his conviction could subject him to deportation.

Petitioner's claim is based on *Padilla v. Kentucky*, 559 U.S. 356 (2010), in which the United States Supreme Court held that the failure of a defense attorney to inform an alien of the immigration consequences flowing from a guilty plea may rise to the level of ineffective assistance of counsel. However, the Supreme Court recently held that *Padilla* does not apply retroactively to convictions entered prior to March 31, 2010. *Chaidez v. United States*, -- U.S. --,

133 S. Ct. 1103, 1105 (2013). Petitioner, whose conviction became final prior to *Padilla*, therefore cannot benefit from its holding. See *Teague v. Lane*, 489 U.S. 288 (1989).

It is therefore **RECOMMENDED** that this action be dismissed.

If any party seeks review by the District Judge of this *Report and Recommendation*, that party may, within fourteen (14) days, file and serve on all parties objections to the *Report and Recommendation*, specifically designating this *Report and Recommendation*, and the part thereof in question, as well as the basis for objection thereto. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Response to objections must be filed within fourteen (14) days after being served with a copy thereof. Fed. R. Civ. P. 72(b).

The parties are specifically advised that failure to object to the *Report and Recommendation* will result in a waiver of the right to *de novo* review by the District Judge and of the right to appeal the decision of the District Court adopting the *Report and Recommendation*. See *Thomas v. Arn*, 474 U.S. 140 (1985); *Smith v. Detroit Fed'n of Teachers, Local 231 etc.*, 829 F.2d 1370 (6th Cir. 1987); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

s/Norah McCann King  
Norah M<sup>c</sup>Cann King  
United States Magistrate Judge

October 21, 2013  
(Date)