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

BRIAN KEITH ALFORD, :
Petitioner,
v. : Case No. 3:16-cv-412
UNITED STATES OF AMERICA, : JUDGE WALTER H. RICE
Respondent. :

DECISION AND ENTRY ADOPTING UNITED STATES MAGISTRATE JUDGE'S REPORT AND RECOMMENDATIONS (DOC. #2) AND SUPPLEMENTAL REPORT AND RECOMMENDATIONS (DOC. #5); OVERRULING PETITIONER'S OBJECTIONS THERETO (DOCS. ##3, 6); DISMISSING WITH PREJUDICE PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 (DOC. #1); OVERRULING PETITIONER'S OBJECTIONS TO DENIAL OF MOTION TO AMEND (DOC. #9); JUDGMENT TO ENTER IN FAVOR OF RESPONDENT AND AGAINST PETITIONER; DENYING CERTIFICATE OF APPEALABILITY AND LEAVE TO APPEAL *IN FORMA PAUPERIS*; TERMINATION ENTRY

Based on the reasoning and citations of authority set forth by United States Magistrate Judge Michael R. Merz, in his Report and Recommendations, Doc. #2, and his Supplemental Report and Recommendations, Doc. #5, as well as upon a thorough *de novo* review of this Court's file and the applicable law, the Court ADOPTS said judicial filings in their entirety. Petitioner's Objections thereto, Docs. ##3 and 6, are OVERRULED.

Magistrate Judge Merz correctly found that, because Petitioner has repeatedly obtained decisions, under 28 U.S.C. § 2255, from this Court and the Sixth Circuit Court of Appeals, concerning the legality of his detention, the savings clause of § 2255 is inapplicable, and this Court lacks jurisdiction under 28 U.S.C. § 2241. Magistrate Judge Merz also correctly found that, because Petitioner is not currently in federal custody -- either in prison or on supervised release -- he cannot invoke federal habeas jurisdiction. *See Maleng v. Cook*, 490 U.S. 488, 490-91 (1989) (interpreting § 2241 to require the habeas petitioner to be "'in custody' *under the conviction or sentence under attack* at the time his petition is filed.") (emphasis added).

Accordingly, the Court DISMISSES WITH PREJUDICE the Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241. Doc. #1.

On November 29, 2016, Magistrate Judge Merz issued a Decision and Order Denying Petitioner's Motion for Leave to Amend the Petition. Doc. #8. Petitioner has filed Objections to that Decision and Order. Doc. #9. The Court OVERRULES those Objections. Because the Court lacks subject matter jurisdiction under 28 U.S.C. § 2241, any amendment to the Petition would be futile.

Given that the Court's decision herein would not be debatable among reasonable jurists, and because any appeal from this Court's decision would be objectively frivolous, Petitioner is denied a certificate of appealability, and is denied leave to appeal *in forma pauperis*.

Judgment will be entered in favor of Respondent and against Petitioner.

The captioned case is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

Date: December 13, 2016

WALTER H. RICE
UNITED STATES DISTRICT JUDGE