

FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MAY 17 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 18-55216

Plaintiff-Appellee,

D.C. No. 2:18-cr-00063-MWF-1
Central District of California,
Los Angeles

v.

JEREMIAH W. BALIK,

ORDER

Defendant-Appellant.

Before: SILVERMAN, BEA, and WATFORD, Circuit Judges.

The district court certified that this appeal is not taken in good faith and revoked appellant's in forma pauperis status. *See* 28 U.S.C. § 1915(a). On February 26, 2018, the court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Upon a review of the record and response to the order to show cause, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry Nos. 3 and 6) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

All other pending motions are denied as moot.

DISMISSED.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES – GENERAL

JS-3

Case No. CR 18-63 MWF

Date: February 12, 2018

Present: The Honorable: MICHAEL W. FITZGERALD, United States District JudgeInterpreter Not Applicable

<u>Rita Sanchez</u> <i>Deputy Clerk</i>	<u>Not Reported</u> <i>Court Reporter / Recorder</i>	<u>Not Assigned</u> <i>Assistant U.S. Attorney</i>
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<u>U.S.A. v. Defendant(s)</u>	<u>Present</u> <u>Cust</u> <u>Bond</u>	<u>Attorneys for Defendants:</u>	<u>Present</u> <u>App</u> <u>Ret</u>
1) Jeremiah W. Balik	Not	1) Pro Se	Not

Proceedings: (IN CHAMBERS) COURT ORDER

Petitioner filed a Notice of Removal under 28 U.S.C. §§ 1443 and 1455 in an attempt to remove the criminal action brought against him in Santa Barbara Superior Court to this Federal District Court. (Notice of Removal at 1).

This Court has a *sua sponte* obligation to confirm that it has subject matter jurisdiction. *Nevada v. Bank of Am. Corp.*, 672 F.3d 661, 673 (9th Cir. 2012) (“[I]t is well established that ‘a court may raise the question of subject matter jurisdiction, *sua sponte*, at any time during the pendency of the action’” (quoting *Snell v. Cleveland, Inc.*, 316 F.3d 822, 826 (9th Cir. 2002))).

Under § 1443, a defendant in a criminal prosecution brought in state court may remove the action to federal court where the action is pending “(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof; (2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.” 28 U.S.C § 1443.

Plaintiff claims that his criminal case should be removed to federal court on the basis that his prosecution in state court violates his rights under the Fourth and Sixth Amendments. (Notice of Removal at 3). However, removal under § 1443 is only available “to protect a limited category of rights, especially defined in terms of racial equality.” *State of Ga. v. Rachel*, 384 U.S. 780, 791 (1966). Accordingly, the Supreme Court has held that “broad contentions under the First Amendment and the Due Process Clause of the Fourteenth Amendment cannot

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support a valid claim for removal under § 1443, because the guarantees of those clauses are phrased in terms of general application available to all persons or citizens, rather than in the specific language of racial equality that § 1443 demands.” *Id.* at 792.

Courts have applied a two-part test to determine if removal is appropriate under § 1443. First, the defendant must assert, “(1) as a defense to the prosecution, rights that are given to the petitioners by explicit statutory enactment protecting equal racial civil rights, and (2) that such rights cannot be enforced because of a state statute or constitutional provision that purports to command the state courts to ignore the federal rights.” *El v. L.A. Police Dep’t*, No. CV 16-7013-JAK (PLAx), 2016 WL 5419402, at *2 (C.D. Cal. Sept. 27, 2016) (citing to *Patel v. Del Taco*, 446 F.3d 996, 998-99 (9th Cir. 2006)). As to the first prong, Defendant does not claim a defense to the prosecution that “aris[es] from statutory enactments protecting equal racial civil rights.” *Id.* And second, “he has pointed to no formal expression of state law that prohibits him from enforcing such civil rights in state court.” *Id.* (internal citations and quotations omitted).

Thus, because Defendant here makes broad contentions under constitutional provisions phrased in terms of general application, he does not supply a sufficient basis for removal under § 1443. Section 1443 “applies only to rights that are granted in terms of equality and not to the whole gamut of constitutional rights.” *Rachel*, 384 U.S. at 792 (citation omitted).

Accordingly, the Court **REMANDS** the action to the Superior Court of the State of California for the County of Santa Barbara.

IT IS SO ORDERED.

**Additional material
from this filing is
available in the
Clerk's Office.**