

No. 21-8161

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SUPREME COURT OF THE UNITED STATES

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

AHADI ABU-AL MUHAMMAD
AKA ONOFRE T. SERRANO — PETITIONER
(Your Name)

VS.

STATE OF CALIFORNIA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEAL FOR THE NINTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Ahadi Abu-Al Muhammad
AKA Onofre T. Serrano
(Your Name)

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(City, State, Zip Code)

BK # 6032688
(Phone Number)

QUESTION(S) PRESENTED

1. Does being denied equal civil rights on the basis of religion/color pursuant to 42 USC § 2000a(2) qualify for removal pursuant to 28 USC § 1443(1)?

2. Can a criminal state case be removed pursuant to 28 USC § 1443(1) where a petitioner only alleges a denial of a federal statute providing for equal civil rights as a federal defense?

3. Does 28 USC § 1443(1) mandate that petitioner reference a state statute or a constitutional provision that purports to command the state courts to ignore the federal rights?

4. Whether the court's supervisory power should be exercised in aid of its existing statutory jurisdiction with regard to state criminal prosecutions removed pursuant to 28 USC § 1443(1) for purposes of invoking a federal defense?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Petitioner certifies that he is not a publicly-held corporation or other publicly-held entity. Petitioner does not have any parent corporation.

RELATED CASES

CALIFORNIA v SERRANO, CASE NO: NA115520, Superior Court
USA v SERRANO, No CR21-434, Central District of California
USA v SERRANO No.: 21-56173, Ninth Circuit, Court of Appeals
USA v SERRANO No: 21-50233, Ninth Circuit, Court of Appeals

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,

☒ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was Shaban 13,1443 (3-16-22).

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Title 42, Section(s) 2000a(2) and 2000a-1, which provides:

(2) Equal Access. All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

42 USC § 2000a(2), Prohibition Against discrimination or segregation in places of public accommodations.

All persons shall be entitled to be free, at any establishment or place, from discrimination or segregation of any kind on the ground of race, color, religion, or national origin, if such discrimination or segregation is or purports to be required by any law, statute, ordinance, regulation, rule, or order of a state or any agency or political subdivision thereof.

42 USC § 2000a-1, Prohibition Against discrimination or segregation required by any law, statute, ordinance, regulation, rule or order of a State or State agency.

The federal statutes are enforced by Title 42, Section 1983 and/or Title 28, Sections 1331, 1441(a), 1443(c), 1446(a)-(b), 1447(d) 1651(a) and 1915(e)(2)(B)(i) which provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 USC § 1983

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 USC § 1331, Federal Question

(2) Generally. Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district court of the United States have original jurisdiction, may be removed by the defendant

or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

28 USC § 1441(a), Removal of Actions.

Any of the following civil actions or criminal prosecutions, commenced in a state court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it 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; ...

28 USC § 1443(1), Civil Rights cases

(2) General. A defendant or defendants desiring to remove any civil action from a state court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.

28 USC § 1446(a), Procedure for Removal of Civil Actions.

(b) Requirements; generally

(1) The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

28 USC § 1446(b)(1), Procedure for Removal of Civil Actions.

(d) An order remanding a case to the state court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the state court from which it was removed pursuant to section 1442 or 1443 of this title [28 U.S.C. § 1442 or 1443] shall be reviewable by appeal or otherwise.

28 USC § 1447(d), Procedure After Removal; Generally

(2) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

28 USC § 1651(2), Writs.

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that--

(B) the action or appeal--

(i) is frivolous or malicious;

28 USC § 1915(e)(2)(B)(i)

(b) Representations to the Court. By presenting to the court a pleading, written motion, or other paper--whether by signing, filing, submitting, or later advocating it--an attorney or unrepresented party certifies that the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

Federal Rules of Civil Procedure, 11(b)(2).

STATEMENT OF THE CASE

Petitioner's Notice of Removal pursuant to 28 USC § 1443(c) alleged that he is being denied a federal right (i.e., 42 USC § 2000a(2)) that provides for equal civil rights of US citizens with regard to a state criminal prosecution. It further alleged that the federal court has original jurisdiction pursuant to 28 USC § 1331 and on that basis removal is warranted pursuant to 28 USC §§ 1441(a), 1446(d).

Pursuant to the usual procedure, the petitioner sought removal to put on a federal defense.¹ The district court remanded the case back to the state court. The district court indicated that it lacked subject matter jurisdiction. Petitioner's "Statement that Appeal should go forward" described the reasons for subject matter jurisdiction and/or a good faith discussion for the extension, modification, reversal of existing law or for establishing new law, which was dismissed so as to affirm the remand for the reasons stated by the district court.

Petitioner also sought ancillary jurisdiction pursuant to 28 USC § 1651 (2) due to the fact that a appellate court has no jurisdiction to review a remand order based on 28 USC § 1441 (2). The Court of Appeal also denied the petition.

1. "Section 203 then provides that, 'no person shall... (c) punish or attempt to punish any person for exercising or attempting to exercise any right or privilege secured 201 or 202'" (Georgia v Rachel 384 US 780, 793).

REASONS FOR GRANTING THE PETITION

A. CONFLICTS WITH DECISIONS OF THIS COURT

Petitioner contends that the Court of Appeals has decided an important Federal question in a way that conflicts with relevant decisions of this Court. Sup. Ct. Rule 10(c).

The holding of the Ninth Circuit's sanction of the lower court's decision to remand to the state court conflicts with relevant decisions of this Court. See Daniel v Paul 395 US 298; Georgia v Rachel, supra, 384 US 780; see also SHAARE Tefila Congregation v Cobb 481 US 615.

In order to state a claim pursuant to 42 USC § 2000a(2) a petitioner need not reference to any "law, statute, ordinance, regulation, rule or order of a state or any agency or political subdivision thereof" (42 USC § 2000a-1). See Daniel v Paul, supra, 395 US 298. Consequently, by proceeding under 42 USC § 2000a(2) providing for "equal civil rights" (28 USC § 1443(1)) petitioner satisfies the denial clause of "any law" pursuant to Section 1443(1).

The Georgia v Rachel, supra, opinion should be limited to 42 USC § 2000a-1 (Section 202 of the Civil Rights Act of 1964, Prohibition Against discrimination or segregation required by any law, statute, ordinance, regulation, rule or order of a State or State agency) with regard to removal. id., 384 US at 804-805. Title 42 USC § 2000a-1 requires non-discrimination in all establishments and places whether or not they are within the categories described in § 2000a(2) if segregation or

discrimination therein is required or purports to be required by any state law or ordinance. Robertson v Johnson 376 F2d 43, 45 (5th Cir.).

This case presents a fundamental question of the interpretation of this Court's decision in Georgia v Rachel, *supra*, where the Supreme Court approved removal of a state prosecution for criminal trespass, because the only conduct upon which the prosecution was based--refusing to desist from peacefully attempting to be served at a private restaurant open to the general public--was expressly authorized by the Civil Rights Act of 1964 and was immunized from state prosecution. Under such circumstances, the Court concluded, "[the] burden of having to defend the prosecutions is itself the denial of a right explicitly conferred by the Civil Rights Act of 1964" (*id.*, 334 US at pgs. 804-806).

The lower courts reasoning with regard to 28 USC § 1443(c) neglects as a grounds for removal with regard to equal racial civil rights being "denied," without more. Although cases are not authority for propositions not considered therein, this Court held in Georgia v Rachel, *supra*, that a party to removal must show both that the right upon which they rely is a "right under any law providing for... equal civil rights," and that they are "denied or cannot enforce" that right in the courts of the State. *id.* 334 US at pg. 783.

The question's importance is enhanced by the lack of guidance which affects the administration of justice and race relations.

B. REQUEST FOR EXERCISE OF SUPERVISORY POWER

Petitioner contends that the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power. Sup. Ct. rule 10 (2).

Federal courts must scrupulously confine federal jurisdiction from state jurisdiction so as to have due regard for the rightful independence of state governments. BREWER v Jim's Concrete of Brevard Inc., 533 US 691, 697. The general removal statute, 28 USC § 1441, provides that any civil action brought in a state court may be removed.

A federal court has original jurisdiction over claims pursuant to 42 USC § 2000a (2). Daniel v Paul, supra, 395 US 298; see CORR. SERVS. CORP. v Malesko 534 US 61. A party who seeks appeal from an unappealable order, may proceed under the All Writs Act, 28 USC § 1651 (2). Syngenta Crop. Prot., Inc., v Henson 537 US 28, 33 (The express terms of the All Writs Act confine a court to issuing process in aid of its existing statutory jurisdiction).

The understanding of "denied" equal access to a place of public accommodation on the basis of RACE [color², religion³ or

2. What standard of "white" is the judge to adopt? The clear white of a Scandinavian, or the swarthy olive or brown of a person from the south of Portugal? In re Dow 213 F 355 (D. SC.); In re Camille 6 F 256 (D. OR.) ("copper-colored natives of America"). The proportion

National origin"] pursuant to 42 USC § 2000a(2) was established in this Court's opinion in Daniel v. Paul, *supra*, 395 US 298 where a party's denial of admission to petitioner's class based on race violated the Act.

The lower court's reasoning that Petitioner's ground for removal pursuant to 28 USC §§ 1441(a), 1446(b) being either "inapposite"

2. (cont...) of colored blood necessary to constitute a colored person, as distinguished from a white person, is one upon which there is a difference of opinion. Plessy v. Ferguson 163 US 537, 552; see US v. Bhagat Singh Thind 261 US 204; Ozawa v. US 260 US 178.

3. Jews are not foreclosed from stating a cause of action under 42 USC § 1982 against other members of what today is considered to be part of the Caucasian race. Shaare Tefila Congregation v. Cobb, *supra*, 481 US 615, 619; see Bressler v. Am. Fed'n of Human Rights 44 Fed. Appx. 303, 309 n. 7 (10th Cir.); Shgeirat v. US Airways Group, Inc., 645 F. Supp. 765, 773, 789 (D. Minn.); Scottish Rite Cathedral Assn. of Los Angeles v. City of Los Angeles 156 Cal4th 108 (2d App.). Petitioner is Muslim.

4. By persons of African nativity or African descent presumably the statute means the Negro races of Africa or their descendants by intermixture with the races before defined as being the races constituting free white persons. The Negro races of Africa presumably referred to are those races from which the emancipated slaves in the United States (who were made citizens by the 14th Amendment to the United States Constitution)

or "NOT A BASIS FOR REMOVAL" since the statutes relates to federal subject-matter jurisdiction AND procedure for removal of "civil" actions eludes that this is not a civil matter.⁵

Petitioner seeks to raise a federal defense. See Mesa v California 439 US 121, 129 (It is enough that his acts or his presence at the place constitute the basis, though mistaken or false, of the state prosecution). Pursuant to the usual procedure, petitioner must remove the case from state to federal court. The Court should exercise its supervisory power to guide on the important question of federal subject matter jurisdiction.

4. (cont...) descend. Ex parte Shahid 205 F. 312, 315 (D. SC); see Scott v Sanford 60 US 393, 403-404 (The situation of this population was altogether unlike that of the Indian race). "White persons" within the meaning of the statute are members of the CAUCASIAN RACE, AS CAUCASIAN IS defined in the understanding of the mass of men. Morrison v California 291 US 82, 85.

5. Title 28 USC § 1446(b) indicates "removal of a civil action or proceeding" (Id.). The Court of Appeal initially opened the case AS A CRIMINAL appeal. (Case No.: 21-50233) and later terminated the appeal indicating it was "opened in error" and "case will be opened AS A Civil Appeal"

C. IMPORTANCE OF THE QUESTIONS PRESENTED

The questions presented is of great public importance. Title 28 USC §§ 1441, 1443 gives a right to removal to, among others, certain petitioners who claim Federally secured rights as a defense to a state prosecution.

Petitioner asserts "(1) that he had a federal statutory right to engage in the conduct which is the basis for the state prosecution and (2) that he has 'the further federal statutory right that no state should even attempt to prosecute [him] for [his] conduct'" (Greenwood v Peacock 384 US 808, 826; Georgia v Rachel, *supra*, 384 US 780, 804-805).

The lower court's reasoning that Petitioner "makes no showing whatsoever that he asserts, as a defense to his prosecution, any rights granted by federal statute to protect racial civil rights as required by 28 USC § 1443" is unconvincing. See Haines v Kerner 404 US 519 (The allegations of a pro se complaint are held to less stringent standards than formal pleadings drafted by lawyers); Boag v MacDougall 454 US 364.

A remand is not reviewable on appeal, but there is an exception if the suit was removed under 28 USC § 1443. 28 USC § 1447 (d). Here, the Ninth Circuit's decision (upholding the district court remand) indicating that the "appeal is frivolous" is flawed.

A baseless filing is one not warranted by existing law or a good faith argument for the extension, modification

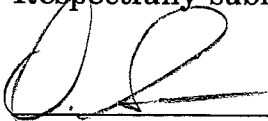
OR reversal of existing law or for establishing new law.
Fed. R. Civ. P., 11(b)(2); see CHRISTIANSBURG GARMENT CO. v EEOC
434 US 412, 421-422. Further, a complaint is frivolous if it
"lacks an arguable basis either in law or fact" (Neitzke v
Williams 490 US 319, 327); see also Denton v Hernandez
504 US 25, 33; Title 28 USC § 1915(e)(2)(B)(i).

In view of the large amount of litigation over race relations,
etc., guidance on the question is also of great importance to persons
because it affects their ability to receive fair decisions.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: SHANNON 29, 1993 [5-30-22]