

FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MAR 16 2022

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

UNITED STATES OF AMERICA,

No. 21-56178

Plaintiff-Appellee,

D.C. No. 2:21-cr-00434-MWF
Central District of California,
Los Angeles

v.

ONOFRE TOMMY SERRANO,

ORDER

Defendant-Appellant.

Before: TASHIMA, FRIEDLAND, and BADE, Circuit Judges.

Upon a review of the record and the response to the court's November 17, 2021 order, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 8), *see* 28 U.S.C. § 1915(a), and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Appellant's alternative request for relief by way of a petition for writ of mandamus (Docket Entry No. 16) is denied because appellant has not demonstrated that this case warrants the intervention of this court by means of the extraordinary remedy of mandamus. *See Bauman v. U.S. Dist. Court*, 557 F.2d 650 (9th Cir. 1977).

All other pending motions are denied as moot.

No further filings will be entertained in this closed case.

DISMISSED in part; DENIED in part.

App A-17

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JS-3

CRIMINAL MINUTES – GENERAL

Case No. CR 21-434 MWF

Date: September 28, 2021

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>	
<u>U.S.A. v. Defendant(s)</u> 1) Onofre T. Serrano	<u>Present</u> <u>Cust</u> <u>Bond</u> Not	<u>Attorneys for Defendant(s):</u> 1) Pro Se	<u>Present</u> <u>App</u> <u>Ret</u> Not

Proceedings: **(IN CHAMBERS) ORDER REMANDING ACTION TO LOS ANGELES COUNTY SUPERIOR COURT**

On September 16, 2021, Defendant Onofre T. Serrano filed a Notice of Removal (“NoR”) attempting to remove a criminal action brought against him in the Los Angeles County Superior Court. (NoR at 1 (Docket No. 1)). Specifically, Serrano seeks removal of an Information brought against him on August 16, 2021, for violations of California Penal Code §§ 664 and 187(a) (attempted murder) and 245(a)(1) (assault). (*Id.*, Ex. A). In the NoR, Defendant asserts federal subject matter jurisdiction pursuant to 28 U.S.C. §§ 1441, 1443 and 1446.

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))). Here, Defendant’s jurisdictional allegations are substantively defective.

Removal of criminal cases is available only to a small class of defendants or under unique circumstances in which the state courts are deemed unable or unwilling to enforce a defendant’s civil rights. 28 U.S.C. §§ 1442–43. In particular, federal officers who are being prosecuted for acts done in furtherance of their official duties may remove a criminal case. *See* 28 U.S.C. § 1442. Members of the armed forces of the United States may remove prosecutions when certain claims or defenses are present. *See* 28 U.S.C. § 1442(a).

Further, a defendant may remove a state criminal prosecution to federal court where the action is pending

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES – GENERAL

Third, 28 U.S.C. § 1446 governs procedure for removal of *civil* actions and is accordingly not a basis for removal of the action.

Accordingly, the Court **REMANDS** the action to the Los Angeles County Superior Court.

IT IS SO ORDERED.