

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

APR 29 2025

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

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff - Appellee,

v.

DINA SARKISOVA,

Defendant - Appellant.

No. 25-522

D.C. No.

3:25-cv-00072-JES-SBC

Southern District of California,
San Diego

ORDER

Before: TASHIMA, OWENS, and DESAI, Circuit Judges.

After considering the response to the court's February 13, 2025 order, we deny the motion to proceed in forma pauperis (Docket Entry No. 4) and dismiss this appeal as frivolous. *See* 28 U.S.C. § 1915(a), (e)(2).

All other pending motions are denied as moot.

No further filings will be entertained in this closed case.

DISMISSED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

v.

DINA D. SARKISOVA,

Defendant.

Case No.: 25-cv-72-JES-SBC

ORDER:

**(1) REMANDING CASE FOR LACK
OF SUBJECT MATTER
JURISDICTION; and**

**(2) DENYING MOTION TO
PROCEED IN FORMA PAUPERIS
AS MOOT**

[ECF No. 2]

On May 3, 2023, the People of the State of California filed a criminal complaint against Defendant Dina D. Sarkisova in the Superior Court of California for the County of San Diego, North County Division. ECF No. 1-2. On January 13, 2025, Defendant filed a Notice of Removal to this federal court. ECF No. 1.

Federal courts are courts of limited jurisdiction. *Gunn v. Minton*, 568 U.S. 251, 256 (2013). A federal court is constitutionally required to raise issues of federal subject matter jurisdiction, sua sponte if necessary, and must satisfy itself of jurisdiction before proceeding to the merits of a case. *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006);

1 *Ruhrgas AG v. Marathon Oil Co.*, 625 U.S. 574, 577 (1999). The removal statute provides
2 that “[i]f at any time before final judgment it appears that the district court lacks subject
3 matter jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c). In a removed case,
4 since Defendant is the party seeking to invoke the jurisdiction of this court, Defendant
5 bears the burden to establish federal subject matter jurisdiction. *Thompson v. McCombe*,
6 99 F.3d 352, 353 (9th Cir. 1996).

7 Criminal state court actions are removable to federal court only under limited
8 circumstances set out in 28 U.S.C. §§ 1442, 1442a, and 1443. *California v. Smith*, No. 24-
9 CV-1629-WQH-JLB, 2024 WL 4227050, at *1 (S.D. Cal. Sept. 18, 2024). In her removal
10 notice, Defendant claims subject matter jurisdiction under § 1443, arguing that her
11 constitutional rights are being violated, in particular her Due Process and Sixth Amendment
12 rights. ECF No. 1 ¶¶ 1-2.

13 Section 1443 permits criminal prosecutions commenced in state court to be removed
14 to federal court in two limited circumstances. First, § 1443(1) permits removal where
15 Defendant is “denied or cannot enforce in the courts of such State a right under any law
16 providing for the equal civil rights of citizens of the United States or of all persons within
17 the jurisdiction thereof.” 28 U.S.C. § 1443(1). To remove under this provision, a defendant
18 must first show that he (1) “asserts, as a defense to the prosecution, rights that are given to
19 [him] by explicit statutory enactment protecting equal racial civil rights,” and then,
20 importantly, he must also show that (2) “the state courts will not enforce that right.”
21 *Hankins v. Bryant*, No. 23cv0064 JAH-BGS, 2023 WL 2254918, at *1 (S.D. Cal. Feb. 27,
22 2023) (quoting *California v. Sandoval*, 434 F.2d 635, 636 (9th Cir. 1970)); see *Johnson v.*
23 *Mississippi*, 421 U.S. 213, 219 (1975). As to the latter part, “that allegation must be
24 supported by reference to a state statute or a constitutional provision that purports to
25 command the state courts to ignore the federal rights.” *Hankins*, 2023 WL 2254918, at *1.

26 Here, Defendant only alleges certain broad constitutional rights being violated, not
27 based on any “statutory enactment protecting equal racial civil rights.” See *Sandoval*, 434
28 F.2d at 636 (broad protections of the First and Fourteenth Amendments do not fall within

1 the coverage of 1443). Thus, Defendant fails to meet the first part of the showing required.
2 Further, Defendant also fails to point to any enactment of a California statute or
3 constitutional provision that commands the state court to ignore those federal equal racial
4 civil rights. Thus, Defendant does not successfully show jurisdiction under § 1443(1).

5 Second, § 1443(2) permits removal “[f]or any act under color of authority derived
6 from any law providing for equal rights, or for refusing to do any act on the ground that it
7 would be inconsistent with such law.” 28 U.S.C. § 1443(2). This removal provision “is
8 available only to federal officers and to persons assisting such officers in the performance
9 of their official duties,’ and to state officers.” *McCullough v. Evans*, 600 F. App’x 577, 578
10 (9th Cir. 2015) (quoting *City of Greenwood v. Peacock*, 384 U.S. 808, 815, 824 n.22
11 (1966)). Nothing in Defendant’s notice of removal supports jurisdiction under this
12 provision either.

13 Thus, having failed to meet her burden to establish that this Court has federal court
14 subject matter jurisdiction over the case, it is hereby **ORDERED** that the action is
15 **REMANDED** pursuant to 28 U.S.C. § 1447(c) for lack of subject matter jurisdiction, to
16 the Superior Court of California for the County of San Diego, North County Division,
17 where the case was originally filed. Defendant’s concurrently filed motion to proceed in
18 forma pauperis (ECF No. 2) is **DENIED AS MOOT**.

19 **IT IS SO ORDERED.**

20 Dated: January 15, 2025

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22 Honorable James E. Simmons Jr.
23 United States District Judge
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Southern District of California,
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ORDER

It appears that this appeal may be frivolous. If the appeal is frivolous, the court will deny permission to proceed in forma pauperis and dismiss the appeal. *See* 28 U.S.C. § 1915(e)(2).

Within 35 days, appellant must:

- (1) file a statement explaining why the appeal is not frivolous, OR
- (2) file a motion to voluntarily dismiss the appeal, *see* Fed. R. App. P. 42(b).

If appellant files a statement explaining why the appeal is not frivolous, or any other response other than a motion to dismiss, the court will determine whether the appeal is frivolous. If it is frivolous, the appeal will be dismissed. If it is not frivolous, the appeal will proceed.

Briefing is stayed.

If appellant does not respond to this order, the court may dismiss this appeal without further notice.

The clerk will serve on appellant: (1) a form motion to voluntarily dismiss the appeal, and (2) a form statement that the appeal should go forward.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT