

UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

STATE OF RHODE ISLAND	:	
	:	
v.	:	CR No. 19-00009-JJM
	:	CR No. 19-00010-JJM
RAHIM CALDWELL	:	
	:	

**REPORT AND RECOMMENDATION**

Lincoln D. Almond, United States Magistrate Judge

On February 1, 2019, pro se Defendant Rahim Caldwell filed two identical documents entitled “Notice of Motion to Transfer from State Criminal Court to Federal Court.” (See ECF Doc. No. 1 in CR. Nos. 19-00009-JJM and 19-00010-JJM). The Notices purport to remove to this Court two criminal misdemeanors cases charged against him by the State of Rhode Island. Because the underlying matters are criminal, 28 U.S.C. § 1455(b)(4) requires the Court promptly to examine the notice and order summary remand if it “clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted.”<sup>1</sup>

Only under limited circumstances may a state criminal prosecution be removed to federal court. 28 U.S.C. §§ 1442, 1442a, 1443. Sections 1442 and 1442a permit removal of criminal prosecutions in limited circumstances for charges asserted against or directed to certain federal officers or agencies or members of the Armed Forces of the United States. 28 U.S.C. §§ 1442, 1442a. Section 1443 permits removal of criminal prosecutions implicating a prescribed, narrow

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<sup>1</sup> Because Defendant is pro se, the Court employs a liberal construction of his Notice. See Hughes v. Rowe, 449 U.S. 5, 9 (1980); Haines v. Kerner, 404 U.S. 519, 520-521 (1972); Instituto de Educacion Universal Corp. v. U.S. Dep’t of Educ., 209 F.3d 18, 23 (1<sup>st</sup> Cir. 2000). Nevertheless, it fails to state a claim.

range of civil rights. 28 U.S.C. § 1443. In seeking to remove a state criminal prosecution to federal court, the state-court defendant must set out in the removal notice “all grounds for such removal.” 28 U.S.C. §§ 1455(b)(1), (b)(2). If grounds or facts establishing grounds that existed at the time of the filing of the notice are omitted, they are deemed waived. 28 U.S.C. § 1455(b)(2).

In this instance, even liberally construed, the notice of removal does not cite any of the statutory grounds permitting removal of a criminal prosecution as provided for in 28 U.S.C. §§ 1442, 1442a, and 1443. With respect to § 1442, there is nothing in the notice that suggests that the underlying criminal prosecution was “commenced in a State court...against or directed to... [t]he United States or any agency thereof or any officer...of the United States or of any agency thereof[.]” 28 U.S.C. § 1442. Similarly, the notice does not allege that the state criminal prosecution was commenced “against a member of the armed forces of the United States.” 28 U.S.C. § 1442a. Finally, § 1443 permits removal only of a state criminal prosecution that was commenced “[a]gainst 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 U.S.C. § 1443(1). As interpreted by the Supreme Court in Johnson v. Mississippi, § 1443 requires that “the right allegedly denied the removal petitioner arises under a federal law ‘providing for specific civil rights stated in terms of racial equality;’” that the petitioner “is ‘denied or cannot enforce’ the specified federal rights ‘in the courts of (the) State;’” and that “the denial be manifest in a formal expression of state law, such as a state legislative or constitutional provision, rather than a denial first made manifest.” 421 U.S. 213, 219 (1975) (citing Georgia v. Rachel, 384 U.S. 780, 799-804 (1966)). The instant removal notice does not set out any of the Johnson prerequisites to § 1443 removal. Instead, the identical Notices allege only that Defendant intends to challenge the “not guilty filing” which he asserts is

a “social control tool” that denies him “due process, equal protection of the laws...and trial by jury.” (ECF Doc. No. 1 at p. 3). He states, “I intend on clearing my name, and want my trial by jury.” Id. The documents he submitted in connection with the Notices include his state court criminal dockets that indicate his cases in the Rhode Island Superior Court stem from his arrests on April 30, 2018 and May 10, 2018 by the Providence Police Department on charges of disorderly conduct. See ECF Doc. No. 1-1 at p. 55 in CR No. 19-00009; ECF Doc. No. 1-2 at p. 1 in CR No. 19-00010. Gleaning information from his pleadings and the Superior Court dockets, it appears that he entered a not guilty plea at his arraignments, and the subsequent disposition of the cases was a one-year “filing” in the state court pursuant to R.I. Gen. Laws § 12-10-12. That provision may apply to certain misdemeanors such as the ones for which Mr. Caldwell was arrested and requires, inter alia, that if Mr. Caldwell is of good behavior and keeps the peace for one year, all records relating to the criminal complaint against him would be expunged. Id. The crux of Mr. Caldwell’s removal notice appears to be his dissatisfaction with the “filing” of his criminal cases in state court. Nevertheless, as noted above, the facts described do not set forth a sufficient basis for removal of his cases to the federal court.

A secondary reason for remand is that the notice is untimely. Section 1455 requires that the notice must be filed the later of “30 days after the arraignment in the State court, or at any time before trial, whichever is earlier.” 28 U.S.C. § 1455(b)(1). The exhibits to the Notice reflect that arraignments in the underlying criminal cases were conducted on May 11, 2018. Thus, the latest he could have filed a Notice in this Court was June 10, 2018. As noted, he filed the present Notices on February 1, 2019, well past the thirty-day deadline.

Based on the foregoing and on my review of the Notices, I find that it clearly appears that there are no grounds permitting these criminal matters to be removed. Accordingly, I recommend that they be summarily remanded.

Any objection to this report and recommendation must be specific and must be served and filed with the Clerk of the Court within fourteen days after its service on the objecting party. See Fed. R. Crim. P. 59(b); DRI LR Cr 57.2(d). Failure to file specific objections in a timely manner constitutes waiver of the right to review by the district judge and the right to appeal the Court's decision. See United States v. Lugo Guerrero, 524 F.3d 5, 14 (1<sup>st</sup> Cir. 2008); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1<sup>st</sup> Cir. 1980).

/s/ Lincoln D. Almond  
LINCOLN D. ALMOND  
United States Magistrate Judge  
February 19, 2019