IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT
DALLAS DIVISION

KURNICUS HAYES,	§	
	§	
Plaintiff	§	
	§	
v.	§	CIVIL ACTION NO. 3:18-cv-1300
	§	
STATE OF TEXAS, et. al.,	§	
	§	
Defendants	§	

STATE OF TEXAS' AMENDED MOTION FOR REMAND[1]

TO THE HONORABLE RENE TOLIVER:

COMES NOW, the State of Texas[2] ("State"), Movant, and files this Motion to Remand. In support thereof, the State would respectfully show the Court the following:

I. PROCEDURAL HISTORY

On or about May 9, 2018, Kurnicus Hayes ("Hayes") received a reminder notice from the Office of the Attorney General about a state court enforcement hearing

[1] The State files this amended motion for remand solely for the purposes of correcting the Certificate of Conference. There have been other changes made to the substance of the motion.

[2] Hayes incorrectly identifies "Kendra S. Hood" as a party in the litigation. Doc. 3 at ¶6. Hayes is in error, as can be readily determined by looking at the Docket Sheet of the state court proceeding he is attempting to remove. Doc. 3, Ex. A (identifying parties in the state court proceeding as "Hayes, Kurnicus," "Hayes, Alecia Renae," and "Attorney General State of Texas"). At no point is Kendra S. Hood a party in the state court litigation, and accordingly, she is not properly before this Court. In the event that Hayes actually intended Kendra S. Hood to be considered a party in the removal effort, the State moves this Court to remand the matter to state court, where it properly was brought.

regarding his child support on May 23, 2018. Doc. 3, Ex. C. The child support was ordered by the state court judge. Doc. 3 at ¶ 13 ("Within the instant Dallas County proceedings… ordering amounts of child support against me"). On or about January 31, 2018, Hayes first received notice of the hearing when a state court judge issued an order setting the hearing for May 23, 2018. *See* doc. 3, Ex. B. This hearing arose in the state court case entitled "*In the Interest of J.I.H. and J.N.H., Minor Children*" in the 302nd District Court in Dallas County, Texas. Doc. 3, Ex. B.

Hayes seeks to remove this action for enforcement of a state court child support order to federal court pursuant to 28 U.S.C. § 1443. Doc. 3. at ¶1. The State respectfully requests that the Court review and rule upon this motion immediately—or, in the alternative, that the Court set this motion for hearing as soon as possible—given the importance of collecting and preserving the amount of child support owed by Hayes.

II. MOTION TO REMAND

Remand to state court is appropriate because the statute on which Hayes bases his attempt to remove does not apply to his case, and because this Court lacks subject matter jurisdiction over the state court litigation.

A. Removal under 28 U.S.C. § 1443 is Not Authorized in this Litigation

As noted above, Defendant Hayes removed this case pursuant to the civil rights removal statute, 28 U.S.C. § 1443. Doc. 3 at ¶ 18 ("This is a removal under 28 USC§ 1443"); doc. 15 at 1 ("These matters have now been filed in emergency removal under 28 USC § 1443). That statute authorizes the removal of a civil rights action pending

in state court, even if the action would not otherwise be removable under the federal court's original jurisdiction. Section 1443 allows removal of any pending civil actions:

> (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 the 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. Hayes has not alleged that he is a "federal officer or agent," so he can only seek to predicate removal on the first subsection.[3]

1. Subsection 1 Requires Rights Stated in Terms of Racial Equality

Under § 1443(1), the vindication of "federal rights is left to the state courts except in the rare situations where it can be clearly predicted by reason of the operation of a pervasive and explicit state or federal law that those rights will inevitably be denied by the very act of bringing the defendant to trial in the state court." *Smith v. Winter*, 717 F.2d 191, 194 (5th Cir.1983) (citing *Peacock*, 384 U.S. at 828). Section 1443(1) "has consistently been construed narrowly to require strict satisfaction of both the 'civil rights' element and the 'enforcement' element intrinsic within it." *Winter*, 717 F.2d at 194.

Under 28 U.S.C. § 1443(1), a defendant must satisfy a two-pronged test to remove an action. *Georgia v. Rachel*, 384 U.S. 780 (1966). The *Rachel* test mandates

[3] The second subsection of § 1443 "confers a privilege of removal <u>only</u> upon federal officers or agents and those authorized to act with or for them in affirmatively executing duties under any federal law providing for equal civil rights." *City of Greenwood, Miss. v. Peacock*, 384 U.S. 808, 824 (1966) (emphasis added).

that to gain removal to federal court under 28 U.S.C. § 1443(1), Hayes must show both that (1) the right allegedly denied him arises under a federal law providing for specific rights stated in terms of racial equality; and (2) Hayes is denied or cannot enforce the specified federal rights in the state courts due to some formal expression of state law. *Texas v. Gulf Water Benefaction Co.*, 679 F.2d 85, 86 (5th Cir. 1982) (citing *Johnson v. Mississippi*, 421 U.S. 213, 219 (1975)).

Indeed, the Fifth Circuit has recently reaffirmed the requirement that a removing party "allege that he was denied or unable to enforce rights under any law providing for equal civil rights stated in terms of racial equality." *Kruebbe v. Beevers*, No. 16-30469, 692 Fed. Appx. 173, 175-76 (5th Cir. 2017). In the absence of such specific allegations, "§ 1443(1) did not apply" to Kreubbe's case, and the case was remanded to state court. *Id*. at 176.

2. Hayes Does Not Satisfy the *Rachel* Test

Despite Hayes' actual, demonstrated knowledge of this requirement (Doc. 11), Hayes seeks removal under § 1443 without meeting the *Rachel* test. He just thinks that this Court should disregard the U.S. Supreme Court. Doc. 11.

In his Notice of Removal, Hayes argues that in the State Court, he has been "denied basic constitutional and due process" and "equal protection, equal privileges and immunities, and gender discrimination." Doc. 3 at ¶¶ 22, 88. Notably, Hayes does not identify any specific actions by the Court to him, or any actions performed by anyone to him which he suggests resulted in denial of his rights.

The broad constitutional claims raised by Hayes do not satisfy the first prong

of the *Rachel* test. *See State of Ga. v. Spencer*, 441 F.2d 397, 398 (5th Cir.1971) (due process); *Smith v. Winter*, 717 F.2d 191 (5th Cir.1983) (equal protection); *see also Alabama v. Huffaker*, No. 08–680, 2009 WL 197806, at *2 (S.D. Ala. Jan. 26, 2009) (pro se defendant alleging denial of equal protection and due process in a child support proceeding "failed to allege adequate grounds for removal pursuant to § 1443(1), because he cannot satisfy the first prong of the test").

Because Hayes does not meet the *Rachel* test for removal, this case should be remanded to state court. District Courts considering state court litigants who have recently attempted to remove child support or child custody proceedings to federal court[4] uniformly reach this conclusion. *See, e.g.*, *Sanders v. Wright*, No. 5:17-CV-131, 2017 WL 3599536 (E.D. Tex. Aug. 22, 2017); *Parris v. Parris*, No. 4:17-CV-504, 2017 WL 5184567 (E.D. Tex. Nov. 9, 2017); *Janosek v. Gonzalez*, No. 2:17-CV-111, 2017 WL 3474104 (S.D. Tex. Aug. 11, 2017); *Morrow v. McFarling, et al.*, No. 4:15-CV-747, 2017 WL 6452826 (E.D. Tex. Dec. 12, 2017); *McMullen v. Cain*, No. 1:17-CV-103, 2017

[4] These litigants are readily identifiable not only for the meritless removals under § 1443, but by the specific filings they make in attempting to do so. *Sanders v. Wright*, 2017 WL 3599536 at *5, n. 1 (noting "the eight separate 'Notices' are as follows: (1) Petitioner's Notice of Judicial Disqualifications (Dkt. No. 6); (2) Notice Distinguishing Between the Two Basic Types of Removal; and Motion for Issuance of Preliminary Relief in the Alternatives (Dkt. No. 7); (3) Notice of Special Pro Se Litigant Rights (Dkt. No. 8); (4) Notice of Pending Amendment of Petition into Complaint (Dkt. No. 9); (5) Notice of Pre-emptive Constitutional Challenge to the Unlawful Discrimination of Separate Racial Classes via *Georgia v. Rachel* (Dkt. No. 10); (6) Notice of Constitutional Question to EDTX Local Rule CV-81 (Dkt. No. 12); (7) Notice of Constitutional Questions to Texas State Statutory Schemes (Dkt. No. 13); and (8) Notice of Constitutional Questions to Federal Statute 28 U.S.C. § 1443 (Dkt. No. 14). Mr. Wright also filed a Memorandum of Law Clarifying Established Federal Jurisdiction, making clear his removal was filed pursuant to 28 U.S.C. § 1443 (Dkt. No. 5 at 5).")
Notably in this case, Hayes has filed all the "Notices" in *Wright*, other than that pertaining to a Local Rule of the Eastern District. Docs. 6, 7, 8, 9, 11, 12, 13, 14, and 15.

WL 4506814 (W.D. Tex. June 22, 2017) (currently on appeal to the Fifth Circuit in Cause No. 16-51446); *see also Jaros v. State of Texas*, No. 4:18-cv-00594 (S.D. Tex. Mar. 23, 2018) (docket no. 24 (order to remand)). The pleadings are so similar, that it is readily apparent that one author wrote a template for all of these removal filings, regardless of in which litigation they appear. This also explains the lack of any case specific facts in Hayes' pleading. Even his own "Affidavit of Widespread Corruption" does not identify any specific actions in his state court proceeding prior to removal, but only a broad, general attack on the family court system state wide. Doc. 9.

All of these litigants have been uniformly unsuccessful because they, like Hayes, do not satisfy the first prong of the *Rachel* test, which is mandatory for removal in this case.

B. Hayes' Removal is Barred by the Domestic Relations Exception to a Federal Court's Jurisdiction

This Court, under the Domestic Relations Exception to federal jurisdiction, is not the appropriate forum to address Hayes' claims. *See Elk Grove Unified School Dist. v. Newdow,* 124 S.Ct. 2301, 2309 (2004) ("So strong is our deference to state law in this area that we have recognized a 'domestic relations exception' that 'divests the federal courts of power to issue divorce, alimony, and child custody decrees.'" (citing *Ankenbrandt v. Richards*, 504 U.S. 689, 703 (1992))). A litigant may not circumvent the Domestic Relations Exception and seek federal resolution of a state court domestic matter by filing a complaint in the "lower federal courts 'cast in the form of civil rights suits.'" *Hale v. Harney*, 786 F.2d 688, 690-91 (5th Cir. 1986) (internal citations omitted). In fact, a plaintiff may not seek a reversal in federal court of *any*

state court judgment simply by casting his complaint in the form of a civil rights action. *See Reed v. Terrell, et al.*, 759 F.2d 472, 473 (5th Cir. 1985); *see also Hagerty v. Succession of Clement*, 749 F.2d 217, 220 (5th Cir. 1984). "When 'constitutional claims presented [in federal court] are inextricably intertwined with the state court's grant or denial of relief,' the federal court should not entertain the claims." *Eitel v. Holland*, 798 F.2d 815, 818 (5th Cir. 1986) (quoting *Hale*, 786 F.2d at 691) (internal citations omitted).

As noted *supra*, Hayes in this case is clearly seeking to have this Court review and reverse decisions made in state court child support proceedings by complaining about the state court "ordering amounts of child support against me" (Doc. 3 at ¶ 13), asking this Court to determine the validity of state court orders regarding child support (Doc. 3, ¶ 14, "there has never been any valid authority by any court to order me to pay 'child support' "), and attacking the amount of child support ordered. Doc. 3, ¶ 64. As a matter of law, this Court should abstain from entertaining Hayes' claims, and remand this matter to state court.

C. This Court's Exercise of Jurisdiction is Barred by the *Rooker-Feldman* Doctrine, or in the alternative, the *Younger* doctrine

Hayes seems to attack the previous state court orders, while simultaneously attempting to preclude current litigation based on those orders, which he suggests are not valid. In either case, this Court may not exercise jurisdiction over this case as a matter of law, and should remand it to state court.

1. The *Rooker-Feldman* Doctrine

The *Rooker-Feldman* doctrine [5] bars a federal court from entertaining collateral attacks on state court judgments. *United States v. Shepard*, 23 F.3d 923, 924 (5th Cir. 1994). "If the district court is confronted with issues that are 'inextricably intertwined' with a state judgment, the court is 'in essence being called upon to review the state-court decision,' and the originality of the district court's jurisdiction precludes such a review." *Id.* (citing *Feldman*, 460 U.S. at 482).

Although he does not identify the specific state court proceedings, it is apparent from Hayes' pleadings that his claims arise directly from judicial decisions in state court proceedings. Hayes explicitly complains about the "Dallas County proceedings" "ordering amounts of child support against me." Doc. 3 at ¶ 13. Plaintiff clearly attacks the validity of state court orders regarding child support and the amount of child support ordered. Doc. 3 at ¶¶ 14 ("there has never been any valid authority by any court to order me to pay 'child support'"), 64.

It is obvious that Hayes is asking this Court to review the state court decisions. At a minimum, this litigation is "inextricably intertwined" with the state court actions. Accordingly, pursuant to the *Rooker-Feldman* doctrine, this court lacks jurisdiction to consider Hayes' collateral or direct attack on state court decisions and judgments. *Shepard*, 23 F.3d at 924.

---

[5] *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415 (1923) (the jurisdiction of the District Court "is strictly original"); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476 & 482 (1983) ("a United States District Court has no authority to review final judgments of a state court in judicial proceedings").

2. The *Younger* Abstention Doctrine

To the extent that Hayes is seeking to prevent the state court from exercising its authority in the enforcement of its orders, the Court would still be without jurisdiction under the *Younger* abstention doctrine. The Fifth Circuit has held that the *Younger* doctrine requires federal courts to abstain where: (1) the dispute involves an "ongoing state judicial proceeding," (2) an important state interest in the subject matter of the proceeding must be implicated, and (3) the state proceedings must afford an adequate opportunity to raise constitutional challenges. *Wightman v. Tex. Supreme Ct.*, 84 F.3d 188, 189 (5th Cir. 1996). In seeking to remove this matter to federal court, it is clear that there is an "ongoing state judicial proceeding."

As a matter of law, family and child custody issues are important state interests. *See Moore v. Simms*, 442 U.S. 415, 434 (1979) ("Family relations are a traditional area of state concern."); *see also Shipula v. Tex. Dep't. of Family Protective Servs.*, No. H–10–3688, 2011 WL 1882512, *9 (S.D.Tex. May 17, 2011) (citing *Crouch v. Crouch*, 566 F.2d 486, 487 (5th Cir.1978); *Jagiella v. Jagiella*, 647 F.2d 561, 564 (5th Cir.1981) ("[A]pplication of the *Younger* Abstention Doctrine to domestic relations cases is obvious and proper.")).

For the third prong of the test, to overcome the presumption in favor of abstention, Hayes must show that he had *no opportunity* to litigate the federal issue in state court. *DeSpain v. Johnston*, 731 F.2d 1171, 1178 (5th Cir. 1984). As a matter of law, "Texas law is apparently as accommodating as the federal forum. . . . [A]bstention is appropriate unless state law *clearly bars the interposition of the*

constitutional claims." *Moore*, 442 U.S. at 425-26 (emphasis added).

Finally, in implementing the *Younger* policy of non-interference, federal courts must focus upon the practical impact of any potential ruling. *See Ballard v. Wilson*, 856 F.2d 1568, 1570 (5th Cir.1988). Accordingly, the Fifth Circuit has stated that "we cannot ignore the fact that any injunction or declaratory judgment issued by a federal court would affect the course and outcome of the pending state proceedings." *Id*. at 1570. Hayes is plainly trying to prevent the state court from making rulings or performing the basic functions of the judiciary. Accordingly, this Court should abstain from considering Hayes' litigation and remand it to state court.

III. CONCLUSION

This Court should remand this litigation back to state court for the reasons presented hereinabove.

WHEREFORE, the State prays that Hayes take nothing, and that the State recovers all such other and further relief, special or general, at law or in equity, to which it is justly entitled, including but not limited to costs incurred herein.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

BRANTLEY STARR
Deputy First Assistant Attorney General

JAMES E. DAVIS
Deputy Attorney General for Civil Litigation

ANGELA V. COLMENERO
Chief, General Litigation Division

/s/ Natalee B. Marion
NATALEE B. MARION
Texas Bar No. 24075432
Assistant Attorney General
Office of the Attorney General
General Litigation Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 463-2120
(512) 320-0667 FAX
natalee.marion@oag.texas.gov

ATTORNEYS FOR THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS – FOR THE LIMITED SCOPE OF THE FEDERAL REMOVAL OF THIS LITIGATION

CERTIFICATE OF CONFERENCE

I certify that the office of the undersigned attempted to confer both via telephone and email with Mr. Hayes on **June 12, 2018**, regarding this Motion to Remand prior to filing this document. The undersigned has received no response from Mr. Hayes. Accordingly, the undersigned assumes Mr. Hayes is opposed to the Motion to Remand.

/s/ Natalee B. Marion
NATALEE B. MARION
Assistant Attorney General

CERTIFICATE OF SERVICE

I certify that a copy of the original *Motion to Remand* was served on **June 7, 2018**, upon the following individual by Certified Mail, Return Receipt Requested, regular mail, and via e-mail. I further certify that a copy of the *Amended Motion to Remand* was served on **June 14, 2018**, upon the following individual by Certified Mail, Return Receipt Requested, regular mail, and via e-mail:

Kurnicus Hayes *Pro Se Petitioner*
828 Luxor Court
Grand Prairie, TX 75052
Kuneek@msn.com

/s/ Natalee B. Marion
NATALEE B. MARION
Assistant Attorney General

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT
DALLAS DIVISION

KURNICUS HAYES,	§	
	§	
Plaintiff	§	
	§	
v.	§	CIVIL ACTION NO. 3:18-cv-1300
	§	
STATE OF TEXAS, et. al.,	§	
	§	
Defendants	§	

ORDER GRANTING STATE OF TEXAS'
AMENDED MOTION FOR REMAND

On this day came on to be considered the State of Texas' Amended Motion for Remand.

The Court having reviewed the motion, responses, and all argument of the parties enters the following order:

IT IS **ORDERED** that the State of Texas' Amended Motion for Remand is **GRANTED**.

IT IS FURTHER **ORDERED** that this case is remanded back to the 302nd Judicial District Court of Dallas County, Texas.

_____
HONORABLE RENEE H. TOLIVER
UNITED STATES MAGISTRATE JUDGE