

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

ASHLEY B. WOMACK,

Plaintiff,

v.

RUSTIN P. WRIGHT,

Defendant.

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CIVIL ACTION NO. 4:18-CV-0567-ALM-
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**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

The above-referenced case was referred to the undersigned United States Magistrate Judge for pre-trial purposes in accordance with 28 U.S.C. § 636. Having considered the Notice of Removal, and all other relevant pleadings, the Court *sua sponte* recommends that the above-referenced cause be remanded to the Sixth Judicial District Court of Lamar County.

BACKGROUND

On August 9, 2018, Defendant Rustin Wright removed the instant case from the Sixth Judicial District Court of Lamar County, Texas to this Court. The removed proceeding is a family law matter between two Texas parties involving child custody/possession. Specifically, on May 17, 2013, Ashley Brooke Womack (“Womack”) filed a Motion for Enforcement, a Motion to Modify, and a Temporary Restraining Order against Defendant Rustin Wright, in the Sixth Judicial District Court, Lamar County, Texas [Dkt. 1]. On August 2, 2018, and August 6, 2018, respectively, the state court entered certain orders related to A.G.F.W.¹: (1) an Order for Issuance of Writ of Attachment, ordering any sheriff or constable in Texas “to take the body of A.G.F.W.,

¹ The Court uses this pseudonym to refer to the minor child of Ashley Womack and Rustin Wright.

a child, and to deliver the child safely into the possession of Ashley Brooke Womack,” and setting a hearing to determine the right of possession of A.G.F.W. [Dkt. 1 at 38]; (2) a Temporary Restraining Order, restraining Wright from “[d]isturbing the peace of the child,” “[w]ithdrawing the child from enrollment in the school or day-care facility where the child is presently enrolled;” and “hiding or secreting the child from [Womack],” amongst other prohibitions [Dkt. 1 at 39-41]; and (3) an Order Setting Hearing on Writ of Habeas Corpus for Child, ordering the clerk of the court to “immediately issue a writ of habeas corpus directed to [Wright], commanding [Wright] to produce and have before this Court on August 9, 2018 at 1:30 p.m. A.G.F.W., a child, and to appear for a hearing to determine whether the child should be returned to [Womack]” [Dkt. 1 at 42].

On August 9, 2018, the date mandated by the state court for Wright to produce the child, Wright filed a “Notice of Petition; and Verified Petition for Warrant of Removal” (“Notice of Removal”), purporting to remove the state court action to the United States District Court for the Eastern District of Texas, Sherman Division [Dkt. 1]. Wright asserts he has removed this action under:

28 U.S.C. §§ 1443 and 1446(b) [constitutional challenge to state statutes under special Section 1443 civil rights removal], as well as 28 U.S.C. §§ 1331, 1343, and 1367 [standard federal questions, and federal supplemental jurisdiction over intertwined state law claims], further pursuant to the Federal Consumer Credit Protection Act, 15 USC §§ 1601, et seq., and yet also again, as further independent jurisdiction under the False Claims Act, 31 USC § 3729, et seq.

[Dkt. 1 at 1 (emphasis omitted)].

In addition to his “Notice of Petition; and, Verified Petition for Warrant of Removal,” Wright has filed numerous other pleadings or notices, including: (1) Notice of Constitutional Questions to Texas State Statutory Schemes [Dkt. 4]; (2) Notice of Constitutional Questions to Federal Statute 28 USC 1443 [Dkt. 5]; (3) Notice of Constitutional Question to EDTX Local Rule

CV-81 [Dkt. 6]; (4) Notice of Special Pro Se Litigant Rights [Dkt. 7]; (5) Notice of Pre-Emptive Constitutional Challenge to the Unlawful Discrimination of Separate Racial Classes via *Georgia v. Rachel* [Dkt. 10]; (6) Memorandum of Law Clarifying Established Federal Jurisdiction [Dkt. 11]; (7) Notice Distinguishing Between the Two Basic Types of Removal; and, Motion for Issuance of Preliminary Relief in the Alternatives [Dkt. 12]; and (8) Request for Judicial Notice, or in the Alternative, Motion for Required Hearing on the Same Issues [Dkt. 13].²

In his Notice of Removal, Wright asserts that he “does not, in any way, request and/or seek this honorable federal Court to alter, amend, or change, whatsoever, any aspect(s) of divorce, child custody, or any other type of familial and/or domestic matters that are properly reserved for within the state court system, yet however all the torts and civil wrongdoing are fully actionable herein” [Dkt. 1 at 3].³ Wright argues that he “has been outrageously harassed by the same local county courts and the related court administration systems, also repeatedly violating [his] most basic due process rights, by willfully, knowingly and intentionally conspiring in various commissions of criminal acts and behaviors, all shockingly done in an intentional conspiracy to aid and abet grand scale larceny” [Dkt. 1 at 12]. Wright avers that he has “three (3) independent causes of action for direct removal under civil rights Section 1443:”

(1) “false deprivation of parent-child relationship without (any) due process (whatsoever);” (2) “the additional constitutional infirmity of failing to use the clear and convincing evidentiary standard in all matters allegedly pertaining to any action prospecting to impact the custody of any one or more minor children;” and (3) “the equally-as-clear constitutional violations regarding the manifestly express Title IV-D conflicts of interest of state judicial officers precluding their involvements”

² Wright also filed a Notice of Pending Amendment of Petition into Complaint, on August 9, 2018, wherein he averred that “[p]ursuant to the time allotted as of right under F.R.Cv.P. Rule 15(a)(1), this Petitioner shall, indeed, be promptly supplementing the limited Counts filed under time emergency within the instant Petition, to include other applicable serious Counts, along with formal named Defendants” [Dkt. 9 at 1]. The Court entered its Order and Advisory on August 10, 2018, ordering the parties to replead as necessary to comply with the Federal Rules of Civil Procedure and the Court’s Local Rules within thirty days [Dkt. 15]. To date, no amendment to Wright’s pleadings has been filed.

³ Although Wright identifies or labels himself as “Petitioner” in the caption of his Notice of Petition; and, Verified Petition for Warrant of Removal, he is the Defendant/Respondent in the state court action and is treated as such herein.

[Dkt. 1 at 25].

In addition, Wright asserts as “COUNTS I THROUGH X” that he was “unconstitutionally reclassified . . . as an utterly fictitious and so-called ‘noncustodial’ parent,” defrauded by the state court, discriminated against on the basis of his gender, and denied equal protection and equal privileges and immunities [Dkt. 1 at 27-30]. Wright further lists that he is entitled to relief under the First Amendment, Fourth Amendment, Fifth Amendment, Fourteenth Amendment, and 42 U.S.C. §§ 1981, 1983, 1985, 1986, 2000b-2 [Dkt. 1 at 29]. Wright avers that he is entitled to civil damages, punitive damages, and a declaratory judgment that the underlying state court proceedings were void for: (1) “lack of pre-deprivation due process;” (2) “that [Wright] was never lawfully reclassified as a ‘noncustodial’ parent;” and (3) “that the State of Texas failed to first properly allege and adjudicate serious parental unfitness as a legal prerequisite to any such reclassification of [his] own parent-child relationship” [Dkt. 1 at 30]. Averring that he is entitled to civil and punitive damages as a result, Wright also lists as “COUNTS XI THROUGH XVII – STATE LAW CLAIMS UNDER 28 USC § 1367:” (1) “replevin of all monies taken falsely and/or fraudulently, via ostensible orders for child support, and due to frivolous litigation;” (2) “fraud and wanton conduct;” (3) infliction of emotional distress;” (4) malicious prosecution; (5) gross negligence; (6) abuse of process; and (7) “potential threats of false arrest and wrongful imprisonment” [Dkt. 1 at 30-31].

Wright’s pleadings thus purport to both remove the state court proceeding and recover under the above-enumerated causes of action.⁴ The Court must consider whether it has subject matter jurisdiction over the removed state court proceeding pursuant to 28 U.S.C. § 1443.

⁴ Removal jurisdiction is based on the existence of a claim lying within federal jurisdiction on the face of a plaintiff’s well-pleaded complaint. “There has never been a suggestion that a defendant could, by asserting an artful counterclaim, render a case removable in violation of the well-pleaded complaint rule.” *Tex. ex rel. Bd. of Regents of*

APPLICABLE LAW AND ANALYSIS

To support removal, Wright contends that:

This Court now has proper jurisdiction over this cause of action pursuant to, but not limited to, the following statutory authorities: 28 USC §§ 1443 and 1446(c) [constitutional challenge to state statutes under special civil rights removal], as well as 28 USC §§ 1331, 1343, and 1367 [federal question and federal supplemental jurisdiction over intertwined state law claims], and also pursuant to the Federal Consumer Credit Protection Act, 15 USC §§ 1601, et seq., and yet also again, as further independent jurisdiction under the False Claims Act, 31 USC § 3729, et seq. Moreover, this Court is an Article III court with the express authority to hear and adjudicate any questions arising under the Constitution, Laws, and Treaties of the United States, including but not limited to the Bill of Rights and the Eleventh Amendment, the original Thirteenth Amendment, and Fourteenth Amendment to the U.S. Constitution, the International Covenant on Civil and Political Rights, and the Universal Declaration of Human Rights, with Reservations.

[Dkt. 1 at 1-2].

“Courts construe removal statutes strictly against removal and in favor of remand.” *Cramer v. Logistics Co.*, No. EP-13-CV-333-KC, 2014 WL 652319, at *1 (W.D. Tex. Feb. 19, 2014) (citing *Willy v. Coastal Corp.*, 855 F.2d 1160, 1164 (5th Cir. 1988); *Brown v. Demco, Inc.*, 792 F.2d 478, 482 (5th Cir. 1986)). The jurisdiction of federal courts is limited. *See Howery v. Allstate Ins. Co.*, 243 F.3d 912, 916 (5th Cir. 2001). And any doubts regarding whether removal jurisdiction is proper should be resolved against federal jurisdiction. *Acuna v. Brown & Root, Inc.*, 200 F.3d 335, 339 (5th Cir. 2000). In an action that has been removed from state court, the

Univ. of Tex. Sys. v. Walker, 142 F.3d 813 n.2 (5th Cir. 1998); *Fed. Nat’l Mortg. Ass’n v. Morse*, No. 4:16-CV-396, 2016 WL 6871143, at *5 (E.D. Tex. Nov. 22, 2016) (Mazzant, J.) (citing *Stump v. Potts*, 322 F. App’x 379, 380 (5th Cir. 2009) (“The fact that [defendant] brought up possible federal question claims in [his] answer and counterclaim cannot be considered in determining the existence of removal jurisdiction. . . . It is not sufficient for the federal question to be raised in the answer or in the petition for removal”); *Irving Police Dept. v. Algoe*, No. 3:13-CV-1796-M BF, 2013 WL 3943291, at *2 (N.D. Tex. July 30, 2013) (“A federal question raised in a responsive pleading or in a notice for removal is insufficient to confer federal question jurisdiction.”). Wright may not create a basis for federal jurisdiction in his Notice of Removal; instead, any such basis for federal jurisdiction must be present in the underlying state court case. Thus, claims raised in Wright’s pleadings requesting removal—including, to the extent raised, claims pursuant to the Federal Consumer Credit Protection Act, 15 U.S.C. §§ 1601-169, the False Claims Act, 31 U.S.C. § 3729, or any other claim arising under the Court’s jurisdiction pursuant to 28 U.S.C. § 1331—cannot be considered in the Court’s determination of removal jurisdiction.

removing party bears the burden of establishing federal jurisdiction. *De Aguilar v. Boeing Co.*, 47 F.3d 1404, 1408 (5th Cir. 1995).⁵

Although no motion to remand the state court proceeding has been filed herein, it does not negate that the Court “has an affirmative duty to raise [] issues regarding subject matter jurisdiction, *sua sponte*, whenever a problem with subject matter jurisdiction is perceived.” *Parks v. Champion*, No. 9:15-CV-00115-MHS, 2016 WL 3287653, at *2 (E.D. Tex. Mar. 21, 2016), *report and recommendation adopted*, No. 9:15-CV-00115-MHS, 2016 WL 3188825 (E.D. Tex. June 7, 2016) (citing *City of Sachse, Tex. v. Kan. City S. Ry. Co.*, 564 F. Supp. 2d 649, 653 (E.D. Tex. 2008) (Schell, J.); *Dominguez-Cota v. Cooper Tire & Rubber Co.*, 39 F.3d 650, 652 n.1 (5th Cir. 2005)); *Tex. Div., Sons of Confederate Veterans v. Vandergiff*, 759 F.3d 388, 392 (5th Cir. 2014) *rev’d on other grounds*, 135 S. Ct. 2236 (2015) (“Neither party has argued that this court lacks jurisdiction, but federal courts have a duty to consider their subject matter jurisdiction *sua sponte*.”)); *see also* Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”). As such, the Court considers whether removal of the state court action is/was proper herein. *See United States v. Hays*, 51 U.S. 737 (1995) (the Court is “under an independent obligation to examine [its] own jurisdiction.”); *see also Fitzgerald v. Seaboard Sys. R.R., Inc.*, 760 F.2d 1249, 1251 (11th Cir. 1985) (“A federal court not only has the power but also the obligation at any time to inquire into jurisdiction whenever the possibility that jurisdiction does not exist arises.”). The parties can never consent to federal subject matter jurisdiction, and lack of jurisdiction is a defense which cannot be waived. *Coury v. Prot*,

⁵ The Court is mindful that *pro se* pleadings are entitled to a liberal construction that includes all reasonable inferences which can be drawn from them. *See Haines v. Kerner*, 404 U.S. 519, 521 (1972); *Tassio v. Onemain Fin., Inc.*, No. 4:15-CV-00484, 2016 WL 410024, *1 (E.D. Tex. Feb. 3, 2016). However, even *pro se* litigants are still required to provide sufficient facts in support of their claims. *United States v. Pineda*, 988 F.2d 22, 23 (5th Cir. 1993).

85 F.3d 244, 248 (5th Cir. 1996); *Sanders v. Wright*, 734 F. App'x 303, 304 (5th Cir. 2018) (affirming district court's *sua sponte* remand of case on similar facts and pleadings).

Section 1443

Against such backdrop, the Court considers the basis for removal asserted by Wright. Wright argues that his removal of this family law proceeding is proper under 28 U.S.C. 1443 [Dkt. 12 at 8] (“Accept and retain this § 1443 removal package without any further ado regarding original pleadings of the instant state court case, i.e., to not bother ruling on this issue, just deem the same acceptable herein, and simply proceed forward with the substantive processes of this action.”). 28 U.S.C. § 1443 allows for a defendant to seek removal of any civil action or criminal prosecution brought in a state court that is:

- (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; or
- (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 (2) “confers a privilege of removal only 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). Wright has not alleged he is a federal officer or agent. Accordingly, any right to removal he may have must fall under § 1443(1).

In order to remove an action under 28 U.S.C. § 1443(1), litigants must show that both: (1) the rights allegedly denied to the litigant arise under a federal law “providing for specific civil rights stated in terms of racial equality;” and (2) the litigant has been “denied or cannot enforce”

the specific civil rights in state court. *Georgia v. Rachel*, 384 U.S. 780, 792-94 (1966). The Supreme Court has held that:

Under § 1443(1), the vindication of the defendant's 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.

Peacock, 384 U.S. at 828.

Before further discussing each of these prongs, the Court notes that in Wright's Notice of Pre-emptive Constitutional Challenge to the Unlawful Discrimination of Separate Racial Classes via *Georgia v. Rachel*, Wright asserts a "pre-emptive constitutional challenge" to the *Rachel* case [Dkt. 10]. Wright argues that "[t]he plain meaning of 28 U.S.C. § 1443 was changed by the Supreme Court in [*Rachel*], and "[a] fair and full reading of the statute itself does not give even the slightest hint that its availability to all United States citizens is limited as unconstitutionally misconstrued in [*Rachel*]" [Dkt. 10 at 2]. Wright's argument is without merit. 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." *Smith v. Winter*, 717 F.2d 191, 194 (5th Cir. 1983) ("Because the first prong. . . demands that the civil rights asserted arise under laws phrased specifically in terms of racial equality rather than in general terms of equality for all citizens comprehensively, broad first amendment or fourteenth amendment claims do not satisfy the test, nor do claims arising under non-racially oriented statutes such as 42 U.S.C. § 1983"). The Court thus turns back to consider each of the requisite prongs of § 1443(1) in connection with the state court proceedings.

Child Custody Proceedings

Wright has not established either prong of § 1443(1) in connection with the underlying state court proceedings. With respect to the first prong, the Court notes that “this test demands that the civil rights asserted arise under laws phrased specifically in terms of racial equality rather than in general terms of equality for all citizens comprehensively, [and therefore,] broad first amendment or fourteenth amendment claims do not satisfy the test, nor do claims arising under non-racially oriented statutes such as 42 U.S.C. § 1983.” *Smith v. Winter*, 717 F.2d 191, 194 (5th Cir. 1983). Removal under Section 1443 is thus very narrowly construed “to require strict satisfaction of both the ‘civil rights’ element and the ‘enforcement’ element intrinsic within it.” *JPMorgan Chase Bank, N.A. v. Innes*, 2013 WL 5972407, at *2 (W.D. Tex. 2013).

For this reason, a defendant’s claim that trying a suit in state court “will violate rights under constitutional or statutory provisions of general applicability or under statutes not protecting against racial discrimination will not suffice” for removal under Section 1443. *Cabello v. Texas*, 71 F. App’x 315, 316 (5th Cir. 2003) (per curiam) (quoting *Johnson*, 421 U.S. at 219); *see also Goetz v. Craig & Heallen LLP*, 2007 WL836916, at *1 (S.D. Tex. 2007) (complaints of general violations of due process rights by the state court fail to satisfy the applicable standard of racial equality under 28 U.S.C. § 1443). And, because a party removing pursuant to Section 1443 must establish that his civil rights were violated due to race, “conclusory allegations that state court officials conspired to deprive him of certain non-race-related civil rights, including freedom of association and due process of law” will not suffice for removal under Section 1443. *Muhammad*, 78 F. App’x at 943. Similarly, general statements about the denial of civil rights based on socioeconomic status, rather than race, are insufficient for removal under Section 1443. *Hibernia Nat’l Bank v. Robinson*, 67 F. App’x 241, *2 (5th Cir. 2003).

With such principles in mind, consider in *Louisiana v. Wells*, 2015 WL 1276713 (M.D. La. Mar. 19, 2015), *aff'd*, 628 F. App'x 260 (5th Cir. 2015), Mr. Wells removed a family court matter brought by the State of Louisiana to obtain child support arrearages. *Id.* at *2. In his notice of removal, Mr. Wells “assert[ed] various claims against the State of Louisiana, including that it illegally obtained his banking information, denied him fair hearings, denied him administrative review, and denied him counsel.” *Id.* at *2. In the removed case, Mr. Wells filed a “court-issued ‘complaint’ form which he subtitled a ‘Notice of Removal’ but captioned as Kelvin Wells versus State of Louisiana.” *Id.* at *3. “Through this document, Mr. Wells argue[d] his Fourteenth Amendment rights [had] been violated because he [had] been ‘denied of due process, equal protection, counsel while his veteran benefits stolen, made to pay for counsel. . . denied fair hearings, administrative reviews, state compelled witnesses to commit perjury, rewarded witnesses for perjury and still has proceedings even though jurisdiction rest in federal co[urt].’” *Id.* The *Wells* court stated that “[t]hrough a process of elimination, it appear[ed] that Mr. Wells [was] asserting removal pursuant to the civil rights removal statute, 28 U.S.C. § 1443.” *Id.* at *4. The *Wells* court held Mr. Wells failed to satisfy § 1443(1)’s first prong because he did not demonstrate that his claims arose under a federal law “providing for specific civil rights stated in terms of racial equality.” *Id.* at * 5. The *Wells* court also found that Mr. Wells failed to satisfy the second prong, as he had not shown any Louisiana law or policy preventing him from raising his federal claims or rights under the Constitution in the family court proceeding. *Id.* Accordingly, the *Wells* court concluded Mr. Wells’s attempt to remove the state court action failed to meet the requirements for § 1443(1) jurisdiction and further, Mr. Wells failed to provide any basis for subject matter jurisdiction in federal court. *Id.* at *1, 5-6.

In this case, Wright fails to establish proper subject matter jurisdiction to remove the underlying family law case. Wright generally asserts alleged violations of his due process rights and equal protection rights, and also generally alleges gender discrimination, amongst other allegations. However, Wright fails to allege and/or has not demonstrated his claims arise under a federal law “providing for specific civil rights stated in terms of racial equality.” *See Rachel*, 384 U.S. at 792. Wright’s “broad constitutional claims [as alleged simply] do not satisfy the first prong of the *Rachel* test.” *Wells*, 2015 WL 1276713, at *5 (citing *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 “failed to allege adequate grounds for removal pursuant to § 1443(1), because he cannot satisfy the first prong of the test” with claims of denial of equal protection and due process in a child support proceeding); *Wright*, 734 F. App’x at 304 (affirming district court’s remand of a similar matter removed under § 1443 where “[r]ecognizing this is a child-custody action, Wright concedes none of his wide-ranging constitutional claims are based on racial inequality”); *Janosek v. Gonzalez*, 2:17-CV-111, 2017 WL 8944035, at *3 (S.D. Tex. May 19, 2017), *report and recommendation adopted*, 2:17-CV-111, 2017 WL 3474104 (S.D. Tex. Aug. 11, 2017) (Court remanded a divorce and custody action originally filed in Texas state court that was removed pursuant to § 1443 because “it does not appear Petitioner is raising any issues as to racial equality. Instead, Petitioner makes conclusory allegations that state court officials have conspired to deprive him of certain non-race-related civil rights, including due process of law, which are not adequate grounds for removal.”) (citing *Muhammad v. Muhammad*, 78 F. App’x 942, 943 (5th Cir. 2003) (“Marvin Muhammad removed this child custody and child support case from the Chancery Court of Jefferson County, Mississippi to the federal district court for the

Southern District of Mississippi pursuant to 28 U.S.C. § 1443. . . . Appellant’s removal petition makes conclusory allegations that state court officials conspired to deprive him of certain non-race-related civil rights, including freedom of association and due process of law. These are not adequate grounds for removal.”)). Wright has not satisfied the first prong for removal under Section 1443.

And as to § 1443(1)’s second prong, Wright has similarly failed to show any Texas law or policy “prevents him from raising his federal claims or rights under the Constitution, as either defenses or counterclaims,” in the state court proceedings. *Wells*, 2015 WL 1276713, at *5. Wright has also failed to demonstrate “how his civil rights, as they pertain to racial equality, would be denied in state court in the instant action that is in question.” *Id.* (citing *Paris v. GMAC Mortgage Corp.*, No. 06–01489, 2006 WL 3201312, at *2 (D. Colo. Nov. 1, 2006) (denying removal of eviction proceeding under 28 U.S.C. § 1443)). Wright has not demonstrated the State Court proceeding, which is subject to appellate review by other Texas courts, “will inevitably result in a violation of [Wright’s] rights under the Constitution.” *Wells*, 2015 WL 1276713, at *5; *Janosek*, 2017 WL 8944035, at *3 (S.D. Tex. May 19, 2017) (In removing his child custody proceedings, “Petitioner present[ed] no evidence that the state court proceeding, which is subject to appellate review by other Texas courts, will inevitably result in a violation of his rights under the Constitution. Therefore, the undersigned respectfully recommend[ed] there is no basis which this Court may exercise jurisdiction over the removed case.). Accordingly, Wright’s attempt to remove his divorce proceeding fails to meet the requirements for § 1443(1) jurisdiction.

To further buttress such conclusion, the Court notes that in *Huffaker*, a defendant argued he had been denied equal protection and due process of law in the state court civil action and that his fundamental rights as a parent had been impaired by a petition to modify the divorce decree

filed by his former wife in the state court action. *Huffaker*, 2009 WL 197806, at *1-2. The *Huffaker* court remanded the case and held that the “federal judiciary has traditionally abstained from deciding cases concerning domestic relations. As a result, federal courts generally dismiss cases involving divorce and alimony, child custody, visitation rights, establishment of paternity, child support, and enforcement of separation or divorce decrees still subject to state court modification.” *Id.* at *5 (quoting *Ingram v. Hayes*, 866 F.2d 368, 369 (11th Cir. 1988)). According to the *Huffaker* court, retaining jurisdiction required the court to consider the prior orders of the state court and “divorce and alimony, child custody....child support, and enforcement of separation or divorce decrees still subject to state court modification.” For the foregoing reasons, Wright fails to meet the requirements of § 1443 removal jurisdiction.

In addition, there is no diversity of citizenship between the Parties. Therefore, of the possible bases for jurisdiction set forth in Article III, section 2 of the United States Constitution, only federal question jurisdiction may be available on removal. 28 U.S.C. § 1441(a); 28 U.S.C. § 1331 (“The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”). Defendant’s removal stems from a state child custody proceeding, and Wright has failed to show that any claims therein arise under the Constitution, laws, or treaties of the United States [Dkt. 1 at 20-21].

The Court should remand Wright’s state court proceeding.⁶

⁶ Furthermore, to the extent argued applicable, the Court should decline to exercise its supplemental jurisdiction. 28 U.S.C. § 1367, provides that “district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution;” district courts may decline to exercise supplemental jurisdiction when the “district court has dismissed all claims over which it has original jurisdiction.” In the instant case, the Court should decline exercising supplemental jurisdiction over Wright’s state-law claims as there are no claims over which the Court has original jurisdiction.

CONCLUSION AND RECOMMENDATION

For the foregoing reasons, the Court *sua sponte* recommends that the above-captioned matter be **REMANDED** to the Sixth Judicial District Court, Lamar County, Texas.

Within fourteen (14) days after service of the magistrate judge's report, any party may serve and file written objections to the findings and recommendations of the magistrate judge. 28 U.S.C. § 636(b)(1)(C). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific.

Failure to file specific, written objections will bar the party from appealing the unobjected-to factual findings and legal conclusions of the magistrate judge that are accepted by the district court, except upon grounds of plain error, provided that the party has been served with notice that such consequences will result from a failure to object. *See Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc), *superseded by statute on other grounds*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

SIGNED this 30th day of November, 2018.



Christine A. Nowak
UNITED STATES MAGISTRATE JUDGE