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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

PEOPLE OF STATE OF CALIFORNIA,)	No. CV-F-10-673 OWW/GSA
)	
)	MEMORANDUM DECISION AND
)	ORDER DENYING PETITIONER'S
Plaintiff/)	PETITION FOR REMOVAL AND
Respondent,)	REMANDING ACTION TO STATE
)	COURT
vs.)	
)	
LAWRENCE CARDOZA,)	
)	
Defendant/)	
Petitioner.)	
)	
)	

On April 1, 2010, Petitioner Lawrence Cardoza, the defendant in the criminal action in the Kings County Superior Court, Nos. 07 CM 7118 and 09 CM 2771, filed a Petition for Removal of the criminal actions to this Court.

28 U.S.C. § 1443 provides in pertinent part that a criminal action may be removed by the defendant

(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

1 States, or of all persons within the
2 jurisdiction thereof;

3 (2) For any act under color of authority
4 derived from any law providing for equal
5 rights, or for refusing to do any act on the
6 ground that it would be inconsistent with
7 such law.

8 Pursuant to 28 U.S.C. § 1446(c) (1),

9 A notice of removal of a criminal prosecution
10 shall be filed not later than thirty days
11 after the arraignment in State Court, or at
12 any time before trial, whichever is earlier,
13 except that for good cause shown the United
14 States district court may enter an order
15 granting the defendant ... leave to file the
16 notice at a later time.

17 Petitioner asserts several grounds for removal:

18 1. My attempts and ability to exercise my
19 Sixth Amendment right to adequate legal
20 counsel have been nullified due to
21 ineffective assistance of counsel (Hugo
22 Gomez-Vidal) not being ready for the
23 precedinas [sic] on the Court Calendar and
24 telling blatant lies to the Court which
25 prejudiced the Court further hindering my
26 ability to move my case forward;

27 2. My attempts and ability to exercise my
28 Fourteenth Amendment right to adequate Due
29 Process and Equal Protection under the Laws
30 continue to be thwarted and nullified by the
31 deliberate acts of Correctional Staff
32 obstructing my efforts to develop an
33 advisarial [sic] defense through the
34 investigation of the Correctional Staff in
35 question;

36 3. My attempts and ability to exercise my
37 First and Fourteenth Amendment right to
38 petition the government for a redress of
39 grievances had been severly inhibited by teh
40 unprofessional conduct of the 'Trial Court'
41 Judge T. DeSantos in his continual and
42 blatant obstruction of my Motions before teh
43 Court. (Exhibit A Judicial Complaint)

1 Pitchess Motion

2 Defendant requested records of four
3 Correctional Officers but was only
4 provided two. The other two
5 Correctional Officer's [sic] who's
6 [sic] records were withheld were
7 the prymary [sic] subjects in
8 question but Judge De Santo's [sic]
9 ignored the request for continuance
10 to obtain these records.

11 Motion To Compell [sic]

12 Defendants [sic] Motion to Compell
13 [sic] was also mishandled in that
14 the material requested was never
15 provided. The evidence would have
16 exposed the extent to which
17 Correctional Officers beat the
18 Defendant.

19 Petitioner asserts upon information and belief:

20 I have come to understand that the element
21 which is the spawn of this abuse and
22 miscarriage of justice is racially motivated
23 and the exact type of egregious misconduct of
24 staff which Corcoran State Prison and Kings
25 County is known for. It has also come to my
26 attention that it is a common practice of
27 Correctional Staff at Corcoran State Prison
28 to set inmates up on false charges as a
29 diversionary tactic to hide the assaults
30 batteries and abuse [sic] that they
31 themselves inflict on the Inmate Population.

32 With respect to removal under Section 1443, the Ninth
33 Circuit explains in *People v. Sandoval*, 434 F.2d 635 (9th Cir.
34 1970), *cert. denied*, 402 U.S. 909 (1971):

35 The Supreme Court ... has given section 1443
36 a restrictive interpretation. In two related
37 cases in 1966, *Georgia v. Rachel*, 384 U.S.
38 780 ... and *Greenwood v. Peacock*, 384 U.S 808
39 ..., the Court set out the narrow parameters
40 of this right. All petitions for removal
41 must satisfy two criteria: First, the
42 petitioners must assert, as a defense to the

1 prosecution, rights that are given to them by
2 explicit statutory enactment protecting equal
3 racial civil rights ... Second, petitioners
4 must assert that the state courts will not
5 enforce that right, and that allegation must
6 be supported by reference to a state statute
7 or a constitutional provision that purports
8 to command the state courts to ignore federal
9 rights. Bad experiences with the particular
10 court in question will not suffice

11 Here, Petitioner fails to make the showing required by
12 *Sandoval*. Petitioner makes no reference to a state statute or
13 constitutional provision that commands the state court to ignore
14 federal rights. Consequently, this action is REMANDED to the
15 Kern County Superior Court pursuant to Section 1446(c)(4).

16 IT IS SO ORDERED.

17 Dated: April 30, 2010

18 /s/ Oliver W. Wanger
19 UNITED STATES DISTRICT JUDGE