

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

**‘O’ JS-6**

Case No. 2:18-cv-00245-CAS (JPRx) Date May 3, 2018

Title OSCAR MORENO V. STATE OF CALIFORNIA

Present: The Honorable CHRISTINA A. SNYDER

Catherine Jeang

Not Present

N/A

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

**Proceedings:** (IN CHAMBERS) – ORDER REMANDING CASE TO STATE COURT

On November 30, 2017, the Tulare County Child Welfare Services (“CWS”) filed a juvenile dependency petition pursuant to Cal. Welf. & Inst. Code § 300 behalf of Kaylie, Daniel, and Rebecca Moreno in the Juvenile Division of the Tulare County Superior Court. Dkt. 1-1 at 14. The petition alleges that (1) Oscar Moreno (“Moreno”), the grandfather and adoptive parent, willfully or negligently failed to provide adequate food, shelter, and clothing; and (2) children are at substantial risk of being sexually abused. The petition and attached detention report indicate that CWS removed the children from Moreno’s custody on November 28, 2017. *Id.* at 16–17, 19.

On January 10, 2018, Moreno, appearing *pro se* and requesting to proceed *in forma pauperis*, filed a notice of removal. *Id.* at 1. Moreno asserted that this Court has federal question jurisdiction on the grounds that (1) CWS violated his and/or the minors’ rights to be free from involuntary servitude under the Thirteenth Amendment to the United States Constitution; and (2) CWS kidnapped the minors in violation of Nevada law. Notice of Removal at 3.

On April 10, 2018, the Court ordered Moreno to show cause why this case should not be remanded for lack of subject matter jurisdiction. Dkt. 15 (“OSC”). On April 25, 2018, Moreno filed a response to the OSC, asserting that the Court has federal question pursuant to 42 U.S.C. § 1983, the Fourth and Fourteenth Amendments to the United States Constitution, and several federal criminal statutes. Dkt. 17.

“Clearly, state juvenile dependency proceedings do not arise under the Constitution, laws, or treaties of the United States.” *Dema v. Arizona*, No. CV-08-0900-PHX-LOA, 2008 WL 2437939, at \*4 (D. Ariz. June 13, 2008). To the extent Moreno

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relies on the cited federal statutes and constitutional amendments as a defense or seeks to assert counterclaims, such a defense or counterclaim does not give rise to federal question jurisdiction. See Cal. Equity Mgmt. Grp., Inc. v. Jiminez, No. 13–cv–1222 JSC, 2013 WL 1748051, at \*1 (N.D. Cal. April 23, 2013) (“[A] defendant cannot create federal subject matter jurisdiction by adding claims or raising defenses.”); OP Dev., Inc. v. Pascal, No. 1:11–cv–01363 LJO GSA, 2011 WL 3687636, at \*2 (E.D. Cal. Aug. 23, 2011) (“Defendant’s attempt at creating federal subject matter jurisdiction by adding claims or defenses to a notice of removal will not succeed.”).

In accordance with the foregoing, the Court *sua sponte* **REMANDS** this action to the Tulare County Superior Court.

IT IS SO ORDERED.

Initials of Preparer 00 : 00  
CMJ