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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT LINDSAY CHENEY, JR.,  
Plaintiff,  
v.  
PEOPLE OF THE STATE OF CALIFORNIA,  
Defendant.

No. 2:16-cv-1003 AC P

ORDER AND FINDINGS AND RECOMMENDATIONS

Plaintiff, proceeding pro se, has filed a notice of removal of a state criminal prosecution from Butte County Superior Court. ECF No. 1. He also seeks leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. ECF No. 2. Plaintiff’s application to proceed in forma pauperis makes the necessary showing that he is unable to afford the cost of suit and will be granted.

Plaintiff is attempting to remove Butte County Superior Court Case No. CM037146, a state criminal proceeding, to federal court. ECF No. 1 at 17. However, it is clear from both the contents of the petition and an attached exhibit that Carl Hans Andersen, not plaintiff, is the defendant in that case. Id. at 2-3, 22-28. Shortly after filing his notice of removal, plaintiff filed additional documents that indicate he may instead be attempting to remove Butte County Superior Court Case No. SCR96290, in which he is the defendant. ECF Nos. 4, 5, 6. For the reasons set forth below, this court lacks jurisdiction and remand is appropriate regardless of which case plaintiff is attempting to remove.

1 I. Case No. CM037146

2 If plaintiff is attempting to remove a case in which he is not the defendant, then he lacks  
3 standing. The Article III case or controversy requirement limits federal courts' subject matter  
4 jurisdiction by requiring that plaintiffs have standing. Valley Forge Christian Coll. v. Ams.  
5 United for Separation of Church and State, Inc., 454 U.S. 464, 471 (1982). To have Article III  
6 standing, a plaintiff must plead and prove that he has suffered sufficient injury to satisfy the "case  
7 or controversy" requirement of Article III of the United States Constitution. Clapper v. Amnesty  
8 Int'l USA, 568 U.S. 398, 408 (2013) (quoting Raines v. Byrd, 521 U.S. 811, 818 (1997)). To  
9 satisfy Article III standing, a plaintiff must therefore allege: (1) injury-in-fact that is concrete and  
10 particularized, as well as actual or imminent; (2) that the injury is fairly traceable to the  
11 challenged action of the defendant; and (3) that the injury is redressable by a favorable ruling.  
12 Monsanto Co. v. Geertson Seed Farms, 561 U.S. 139, 149 (2010) (citation omitted); Lujan v.  
13 Defenders of Wildlife, 504 U.S. 555, 560-61 (1992). "The party invoking federal jurisdiction  
14 bears the burden of establishing these elements . . . with the manner and degree of evidence  
15 required at the successive stages of the litigation." Lujan, 504 U.S. at 561 (citations omitted).

16 Since plaintiff is not the defendant in the state court case, he has no injury traceable to the  
17 proceedings or redressable by a favorable ruling. Plaintiff therefore has no standing to pursue  
18 relief related to the proceedings in Case No. CM037146. Furthermore, although plaintiff does not  
19 appear to be attempting to do so, to the extent his intention is to proceed in a representative  
20 capacity for Mr. Andersen, "a non-lawyer 'has no authority to appear as an attorney for others  
21 than himself.'" Johns v. County of San Diego, 114 F.3d 874, 877 (9th Cir. 1997) (quoting C.E.  
22 Pope Equity Tr. v. United States, 818 F.2d 696, 697 (9th Cir. 1987)).

23 II. Case No. SCR96290

24 If plaintiff is attempting to remove a criminal proceeding in which he is the defendant, he  
25 fails to establish that his case qualifies for removal.

26 Section 1443 gives a right of removal to, among others, certain  
27 petitioners who claim federally secured rights as a defense to a state  
28 prosecution. The Supreme Court, however, has given section 1443  
a restrictive interpretation. In two related cases in 1966, Georgia v.  
Rachel, 384 U.S. 780, 86 S. Ct. 1783, 16 L. Ed. 2d 925, and

1            Greenwood v. Peacock, 384 U.S. 808, 86 S. Ct. 1800, 16 L. Ed. 2d  
2            944, the Court set out the narrow parameters of this right. All  
3            petitions for removal must satisfy two criteria: First, the petitioners  
4            must assert, as a defense to the prosecution, rights that are given to  
5            them by explicit statutory enactment protecting equal racial civil  
6            rights. (Georgia v. Rachel, supra at 788-792, 86 S. Ct. 1788-1790;  
7            Greenwood v. Peacock, supra at 824-827, 86 S. Ct. at 1810-1812.)  
8            Second, petitioners must assert that the state courts will not enforce  
9            that right, and that allegation must be supported by reference to a  
10           state statute or a constitutional provision that purports to command  
11           the state courts to ignore the federal rights. Bad experiences with  
12           the particular court in question will not suffice. (Georgia v. Rachel,  
13           supra at 794-804, 86 S. Ct. at 1791-1797; Greenwood v. Peacock,  
14           supra at 827-828, 86 S. Ct. at 1812-1813.)

15           People of the State of Cal. v. Sandoval, 434 F.2d 635, 636 (9th Cir. 1970). Evaluation of the  
16           notice of removal and subsequently filed documents show that plaintiff has failed to meet either  
17           criteria.

### 18           III.     Habeas Corpus

19           The court declines to interpret plaintiff's notice of removal as a petition for writ of habeas  
20           corpus, because it appears that (1) any potential claims are unexhausted and (2) final judgment  
21           may not yet have been entered. According to the Butte County Superior Court's docket, Case No.  
22           SCR96290 was initiated on December 11, 2013 and is still active.<sup>1</sup> A further search of the  
23           California Supreme Court's docket shows that the most recent case initiated by plaintiff was  
24           resolved over five years before the relevant case against plaintiff was initiated. Since it appears  
25           there may not be a final judgment and, even if there is, any claims would be unexhausted, if the  
26           court were to construe the notice of removal as a habeas petition, it would have to be denied. See  
27           28 U.S.C. § 2254(a), (b)(1) (petitioner must be "in custody pursuant to the judgment of a State  
28           court" and relief cannot be granted unless state court remedies have been exhausted).

### 29           IV.     Younger Abstention

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30           <sup>1</sup> The court "may take notice of proceedings in other courts, both within and without the federal  
31           judicial system, if those proceedings have a direct relation to matters at issue." United States ex  
32           rel. Robinson Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 1992)  
33           (citation and internal quotation marks omitted) (collecting cases); Fed. R. Evid. 201(b)(2) (court  
34           may take judicial notice of facts that are capable of accurate determination by sources whose  
35           accuracy cannot reasonably be questioned).

1           The court also declines to interpret plaintiff’s notice of removal as a civil rights action  
2 under 42 U.S.C. § 1983. As noted above, review of the docket for Case No. SCR96290 indicates  
3 that the case is still active. Under Younger v. Harris, 401 U.S. 37 (1971), federal courts may not  
4 interfere with a pending state criminal case. “Younger abstention is a jurisprudential doctrine  
5 rooted in overlapping principles of equity, comity, and federalism.” San Jose Silicon Valley  
6 Chamber of Commerce Political Action Comm. v. City of San Jose, 546 F.3d 1087, 1091-92 (9th  
7 Cir. 2008 (citations and footnote omitted). Younger abstention is required “if four requirements  
8 are met: (1) a state-initiated proceeding is ongoing; (2) the proceeding implicates important state  
9 interests; (3) the federal plaintiff is not barred from litigating federal constitutional issues in the  
10 state proceeding; and (4) the federal court action would enjoin the proceeding or have the  
11 practical effect of doing so, i.e., would interfere with the state proceeding in a way that Younger  
12 disapproves.” Id. at 1092 (citations omitted).

13           In the instant case, the court finds that all four requirements for exercising Younger  
14 abstention are met. The state-initiated criminal proceeding against plaintiff appear to still be  
15 ongoing; the proceeding implicates important state interests; plaintiff is not barred from raising  
16 federal constitutional challenges in the state criminal proceeding; and this court’s failure to  
17 abstain would directly interfere with the state proceeding. These factors demonstrate that were  
18 the court to consider the notice of removal as a civil complaint, it should abstain from considering  
19 plaintiff’s claims and dismiss them.

20           Accordingly, IT IS HEREBY ORDERED that:

- 21           1. Plaintiff’s motion to proceed in forma pauperis (ECF No. 2) is granted.
- 22           2. The Clerk of the Court shall randomly assign a United States District Judge to this  
23 action.

24           IT IS FURTHER RECOMMENDED that this case be remanded to the Butte County  
25 Superior Court.

26           These findings and recommendations are submitted to the United States District Judge  
27 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
28 after being served with these findings and recommendations, plaintiff may file written objections

1 with the court. Such a document should be captioned “Objections to Magistrate Judge’s Findings  
2 and Recommendations.” Plaintiff is advised that failure to file objections within the specified  
3 time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153  
4 (9th Cir. 1991).

5 DATED: June 21, 2018

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7 ALLISON CLAIRE  
8 UNITED STATES MAGISTRATE JUDGE  
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