

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

NEILUS COOK,

Plaintiff,

v.

KURT G. BECKER,

Defendant.

Case No. 1:14-CV-132-BLW

ORDER OF REMAND

INTRODUCTION

The Court has before it a Petition for Removal filed by *pro se* plaintiff Cook. The United States Magistrate Judge has recommended that the Petition be denied and the case be remanded to the state court. The Court agrees and will order this case remanded for the reasons set forth below.

ANALYSIS

Citing 28 U.S.C. § 1443, Cook's petition purports to remove a criminal proceeding from the Third Judicial District of the State of Idaho to this Court. In support of his petition, Cook claims an agent of the Idaho Department of Fish and Game, acting without a warrant, seized some \$2,000 worth of elk meat from Cook's residence.

Following the allegedly unlawful seizure, the Adams County Prosecutor filed a criminal case against Cook. A magistrate judge in Idaho's Third Judicial District, which includes Adams County, overruled all of Cook's objections, arraigned him, and scheduled a trial.

Cook seeks to remove the case because, he argues, it implicates the “fruit of the poisonous tree” and other, unspecified constitutional doctrines. The governing statute, 28 U.S.C. § 1443(1), entitles Cook to removal only if he shows (1) that the right upon which he relies is “a right under any law providing for . . . equal civil rights” stated in terms of racial equality; and (2) that he is “denied or cannot enforce” that right in the state court, because of a specific state statute or state constitutional provision mandating that it be ignored. *City of Greenwood, Miss. v. Peacock*, 384 U.S. 808, 826 (1966).¹ He has failed to satisfy those requirements. There is nothing in Cook’s Petition for Removal alleging that he is being treated unequally due to his race or that a state statute or constitutional provision is preventing him from receiving equal treatment due to his race. Accordingly, this matter will be remanded to state court, and the pending motions to quash a warrant and for habeas corpus will be denied.

ORDER

In accordance with the Memorandum Decision set forth above,

NOW THEREFORE IT IS HEREBY ORDERED, that the Petition for Removal (docket no. 1) is DENIED, and that this action be remanded to the Third Judicial District of the State of Idaho, Adams County.

IT IS FURTHER ORDERED, that the Clerk take all steps necessary to effectuate that remand.

¹ The other subsection – § 1443(2) – may be used only by federal officers and persons assisting them in performing their duties under federal civil rights laws, and thus is not available to Cook. *See City of Greenwood, supra*.

IT IS FURTHER ORDERED, that the motion for habeas corpus (docket no. 4) and the motion to quash warrant (docket no. 5) are DENIED.



DATED: July 28, 2014

B. Lynn Winmill

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Chief Judge
United States District Court