

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA**

ERIC SMITH,)	
)	
Plaintiff,)	
)	
vs.)	1:12-cv-159-TWP-MJD
)	
INDIANA DEPARTMENT OF)	
CORRECTION, et al.,)	
)	
Defendants.)	
)	

Entry Discussing Motion to Remand

I.

Removal of a state court action to federal court is permitted by 28 U.S.C. § 1441(a), which states in relevant part:

[A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

“The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. One such statute, the ubiquitous 42 U.S.C. § 1983, provides a basis for an action filed in a state court being removed pursuant to § 1441(a). *Matheson v. Progressive Speciality Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003) (“Any civil action may be removed to federal district court so long as original jurisdiction would lie in the court to which the case is removed”).

This action was removable to federal court based on the nature of the plaintiff's claim. The fact that the state courts have concurrent jurisdiction over the plaintiff's federal claims, *Colvin v. Bowen*, 399 N.E.2d 835, 839 (Ind. Ct. App.1980), is not a basis on which removal could be refused. Additionally, the plaintiff's view that the defendants removed the action for reasons to gain an advantage over him in this case does not render the removal improper. Accordingly, the plaintiff's objection to the removal and his motion to remand [10] is **denied**.

II.

The clerk shall change the Nature of Suit code from 440 to 555.

IT IS SO ORDERED.

Date: 03/05/2012



Hon. Tanya Walton Pratt, Judge
United States District Court
Southern District of Indiana

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