UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

EDUARDO MCLAUGHLIN Plaintiff, v. SENIOR CORRECTIONS OFFICER MARVIN MERRIEL, et al., Defendants.	Civil Action No. 10-03425 (JAP) **OPINION**

PISANO, District Judge.

This matter comes before the Court on Plaintiff's motion to remand the matter to state court based upon Plaintiff's allegation that the complaint does not assert any federal claims.

On a motion to remand, the removing party bears the burden of establishing the propriety of removal. *See Boyer v. Snap-On Tools Corp.*, 913 F.2d 108, 111 (3d Cir.1990). In addition, "removal statutes are to be strictly construed against removal and all doubts resolved in favor of remand." *Id.*

If a district court has original subject matter jurisdiction over a case, that case is removable to federal court without regard to the citizenship of the parties. 28 USCS § 1441. A district court has original federal question subject matter jurisdiction over claims "arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. Determining whether a civil action involves a federal question for purposes of remand involves examining whether the state-law claim necessarily raises a "stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of

federal and state judicial responsibilities." *Grable & Sons Metal Prods. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 314 (U.S. 2005). A disputed and substantial issue of federal law exists where a complaint expressly asserts a violation of the United States Constitution. *See Vitellaro v. Mayor and Township Council of the Township of Hanover*, 2009 WL5204771 (D.N.J.)).

Notwithstanding the complaint's disclaimer that Plaintiff is not stating a federal cause of action, Plaintiff in fact asserts claims under the Constitution of the United States throughout the complaint. The complaint alleges that "the actions of Defendants against Plaintiff … deprived Plaintiff of his rights, privileges and immunities under the laws and Constitution of the United States …" Compl. ¶ 53. In addition, the complaint states that "the conduct of the Defendants … violated Plaintiff's constitutional right … guaranteed by the Fourth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution …" Compl. ¶ 57. Such allegations are disputed and substantial federal issues and, therefore, removal to federal court was proper.

For the reasons above, Plaintiff's motion to remand is denied. An appropriate Order accompanies this Opinion.

/s/ JOEL A. PISANO
United States District Judge

Dated: September 10, 2010