

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT LOGAN	:	CIVIL ACTION
	:	
v.	:	
	:	
POLICE OFFICER ROBERT HARRIS	:	No. 02-1384
	:	
and	:	
	:	
POLICE OFFICER RAYMOND HEIM	:	

**ORDER – MEMORANDUM**

AND NOW, this 9<sup>th</sup> day of April, 2002, the notice of defendants Robert Harris and Raymond Heim petitioning for removal is denied for lack of subject matter jurisdiction. The action is dismissed without prejudice, and defendants are granted leave until April 26, 2002 within which to amend, if they can properly do so.

Removal is not authorized under either 28 U.S.C. § 1441<sup>1</sup> or 28 U.S.C. § 1443.<sup>2</sup> The removal notice does not set forth diversity of citizenship nor does the complaint invoke

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<sup>1</sup>“Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.” 28 U.S.C. § 1441(b).

<sup>2</sup>A civil action is removable “by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending: (1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof; (2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.” 28 U.S.C. § 1443.

a federal question.<sup>3</sup> Moreover, this action is not removable as a § 1443 “civil rights case.”<sup>4</sup>

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Edmund V. Ludwig, J.

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<sup>3</sup>The complaint alleges state claims -- “tort assault and battery,” “false imprisonment/arrest,” and “malicious prosecution.” Compl. at ¶¶ 11-16, 17-22, 23-29. For federal question jurisdiction, however, a “genuine and present controversy [involving federal law] . . . must be disclosed upon the face of the complaint, unaided by the answer or by the petition for removal.” 13B Charles Alan Wright, Arthur R. Miller, and Edward H. Cooper, *Federal Practice and Procedure* § 3562 (2d ed. 1994) (quoting *Gully v. First National Bank*, 299 U.S. 109, 113, 57 S.Ct. 96, 97-98, 81 L.Ed. 70 (1936)). Even where a complaint presenting a state-law cause of action explicitly implicates defenses involving federal law, this does not create federal question jurisdiction. *Franchise Tax Bd. v. Const. Laborers Vacation Trust*, 463 U.S. 1, 10, 103 S.Ct. 2840, 2846, 77 L.Ed.2d 420 (1983) (“a federal court does not have original jurisdiction over a case in which the complaint presents a state-law cause of action, but also asserts that federal law deprives the defendant of a defense he may raise . . . or that a federal defense the defendant may raise is not sufficient to defeat the claim . . .”).

<sup>4</sup> “[S]tatutes or constitutional provisions phrased in terms of general rights applicable to all citizens, rather than couched in the specific language of racial equality, will not provide a basis for removal under [§ 1443].” 14C Charles Alan Wright, Arthur R. Miller, and Edward H. Cooper, *Federal Practice and Procedure* § 3728 (2d ed. 1994) (citing *State of Georgia v. Rachel*, 384 U.S. 780, 792-93, 86 S.Ct. 1783, 1790-91, 16 L.Ed.2d 1925 (1966)); see *City of Greenwood, Mississippi v. Peacock*, 384 U.S. 808, 824, 86 S.Ct. 1800, 1810, 16 L.Ed. 2d 944 (1966) (removal under § 1443(2), like § 1443(1), requires a basis in “federal law providing for equal civil rights”).