

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

COMMONWEALTH

v.

KARIM MAYFIELD

Criminal Action No. 06-270

OPINION

Pollak, J.

July 25, 2006

Proceeding *pro se*, Karim Mayfield has filed a “Petition for Removal to United States District Court” of “certain criminal proceedings in the Court of Common Pleas of Delaware County” (Pennsylvania), namely, “the prosecution at 1318-04.” The petitioner “claims entitlement to the protection of the United States District Court upon several grounds, including that petitioner is an American Indian a blood member of the Cherokee nation.” The petition describes the case sought to be removed as a “criminal prosecution initiated by a DEA [agent] in conjunction with other state and federal agents, handed off to state prosecution at 1318-04.” The petition alleges that federal agents have violated rights secured to him by various provisions of the United States Constitution and by “various treaties between the said indian nation and the United States Government.” In particular, petitioner Mayfield alleges that federal agents have been responsible for the seizure and opening of certain packages in contravention of the Fourth Amendment.

One of the defining ingredients of the sovereignty of the several states is that each state has the prerogative, and the corresponding responsibility, of enforcing its own laws, criminal and civil, in its own courts, subject, of course, to the supervening mandates of federal constitutional, statutory and treaty law which state courts are bound by the Constitution to respect and, as applicable, to implement as the governing framework within which state law is enforced. This means that each state administers its own criminal laws; federal judicial oversight is confined to (a) the discretionary appellate authority of the Supreme Court of the United States to review, on certiorari, final judgments in criminal cases, and (b) the narrowly circumscribed collateral review of final criminal judgments via federal habeas corpus. In consequence, state criminal prosecutions that have not resulted in final judgments are, as a general matter, not removable from state courts to federal courts. There are, to be sure, certain very limited exceptions to this rule. Under 28 U.S.C. § 1442, a state criminal prosecution of an official of the federal government – whether of the executive branch, or of Congress, or of the federal courts – can be removed from a state court to a federal district court when the prosecution arises out of actions taken by the defendant federal official in the course of the official’s duty. In the same way, 28 U.S.C. § 1443 provides for removal to a federal district court of a state-court criminal prosecution of a member of the armed forces involving actions performed as a matter of military obligation. Further, 28 U.S.C. § 1443(2) authorizes the removal to a federal district court of a state-court criminal

prosecution of one who is charged with conduct taken under “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.” It is apparent that each of these statutory removal provisions relates to relatively infrequent situations in which a person is charged with a crime under state law for action taken to carry out a duty, or to exercise an authority or entitlement, deriving from federal law. What Karim Mayfield has alleged in the petition for removal does not fall within any of these statutory removal provisions.

There is one other statutory removal provision which may, at first glance, appear to come closer to petitioner Mayfield’s situation. Section 1443(1) of Title 28 provides for removal from state court to federal court of a criminal prosecution “against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal rights of citizens of the United States, or of all persons within the jurisdiction thereof.” Bearing in mind that the petitioner has claimed an entitlement to federal protection as a member of the Cherokee Nation, and is alleging infringement of an array of constitutional and treaty provisions, petitioner may be thought to be invoking a law or laws “providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof.” However, removal is authorized only when the person who is a criminal defendant in a state court “is denied or cannot enforce in the courts of such State” the federal law or laws protective of “equal civil rights” which the defendant seeks to invoke. And petitioner Mayfield’s case does not appear to present

such a circumstance. The courts of every state, including Pennsylvania, are bound by the Constitution to respect and enforce the “equal civil rights” of all persons within the state’s jurisdiction. I take judicial notice that the courts of Pennsylvania are, in fact, in the business of vindicating those rights every day, subject to the discretionary appellate authority of the Supreme Court of the United States to which reference has been made. Petitioner has not alleged, and there is no extrinsic evidence of, any inadequacy in the Pennsylvania judicial institutions and procedures to which petitioner has access and pursuant to which claims of right arising under federal law can be asserted. Accordingly, removal pursuant to § 1443(1) is not authorized .

For the foregoing reasons, Karim Mayfield’s petition for removal must be denied. In an order accompanying this opinion, the Clerk of this court will be directed to enter an order denying the petition and remanding this case to the Court of Common Pleas of Delaware County.

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ORDER

July 25, 2006

For the reasons given in the accompanying opinion, it is hereby ORDERED that defendant's "Petition for Removal to United States District Court" (Docket # 1) is DENIED. This case is REMANDED to the Court of Common Pleas of Delaware County. The Clerk of court is directed to transfer this case to said court.

BY THE COURT:

/s/ Louis H. Pollak

Pollak, J.