

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

STATE OF KANSAS,

Plaintiff,

v.

LEON BURDINE,

Defendant.

Case No. 22-3158-JWL-JPO

MEMORANDUM AND ORDER

This matter is before the court on a notice of removal filed by the defendant in a pending criminal action in the District Court of Saline County, Kansas. The notice identifies the case number as 22-CR-498.

Under 28 U.S.C. § 1443, a state criminal defendant may remove the state criminal case to a federal district court if the defendant “is denied or cannot enforce...a right under any law providing for the equal civil rights of citizens of the United States.” 28 U.S.C. § 1443(1). A criminal defendant qualifies for removal under that provision by meeting a two-pronged test: “First, the petitioner must show that the right upon which the petitioner relies arises under a federal law ‘providing for specific civil rights stated in terms of racial equality.’ Second, the petitioner must show that he has been denied or cannot enforce that right in the state courts.” *Alabama v. Conley*, 245 F.3d 1292, 1295 (11th Cir. 2001)(quoting *Georgia v. Rachel*, 384 U.S. 780, 792 (1966)). In addition, the removal of state court civil or criminal actions to federal court is permissible where the action is against a federal officer, 28 U.S.C. § 1442, or a member of the armed forces. 28 U.S.C. § 1442a.

The present notice of removal does not meet these tests. Neither Mr. Burdine’s receipt of benefits from the Social Security Administration nor his bare assertions concerning a lack of

probable cause for his arrest, a bill of attainder, and double jeopardy provide a persuasive ground for removal. Having considered the notice and attachments, the court concludes that summary remand of the criminal prosecution against Mr. Burdine to the state court is warranted.

THE COURT THEREFORE ORDERS that this matter is remanded to the District Court of Saline County, Kansas.

THE COURT FURTHER ORDERS that the motion for leave to proceed in forma pauperis (Doc. 2) is denied.

IT IS SO ORDERED.

Dated: August 4, 2022

/s/ John W. Lungstrum
JOHN W. LUNGSTRUM
UNITED STATES DISTRICT JUDGE