

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,

v.

JEFFREY B. CLARK, ET AL.,

Defendants.

Case No.

23SC188947

**MOTION FOR EXTENSION OF DEADLINES FOR
DEMURRERS AND SPECIAL PLEAS AND OTHER
DEADLINES**

Comes Now Jeffrey Bossert Clark, one of the 19 named defendants in the above-entitled matter, and respectfully moves the Court to extend the deadline for filing demurrers and special pleas and other subsequent deadlines.¹

O.C.G.A. § 17-7-110 sets the deadline for demurrers and special pleas at “ten days after the date of arraignment, unless the time for filing is extended by the court.” In *Bighams v. State*, 296 Ga. 267, 270 (2) n.4 (2014) the Supreme Court held that the 10-day period begins to run from the date of waiver of arraignment. *See also Allen v. State*, 300 Ga. 500, 503 (2017). Mr. Clark filed a waiver of arraignment and not guilty plea on

¹ This filing is made reserving all of Mr. Clark’s rights, via special appearance, to contest the existence of the jurisdiction of this Court, including the State’s attempted assertion of personal jurisdiction over Mr. Clark. We are not lodging this document (1) because the grant of the requested extension herein would merely provide time for it the Northern District of Georgia to confirm that removal jurisdiction exists, making it unnecessary for this Court to reach the issue of personal jurisdiction, though it would remain a live issue in the Northern District of Georgia; and (2) because lodging may cause the Court not to reach this Motion, defeating its purpose.

September 1, 2023 in order to comply with the Court's Standing Case Management Order that waivers of arraignment be filed at least 48 hours before the scheduled arraignment, in view of the Labor Day holiday weekend preventing filing the same on Monday, September 4, 2023. Accordingly, absent modification by the Court, the deadline for Mr. Clark to file demurrers and special pleas currently stands at September 11, 2023.

Mr. Clark understands that this Court's Case Specific Scheduling Order ("CSSO"), which will be entered on or after September 6, 2023, the date set for arraignment, is likely to extend the deadline for demurrers and pleas out beyond the current deadline of September 11, 2023, along with other subsequent deadlines. Nevertheless, Mr. Clark files this Motion to seek a further extension in light of his pending Notice of Removal to federal court and related issues as set forth below.

The Indictment in this case was filed on August 14, 2023. Mr. Clark filed his Notice of Removal in the U.S. District Court for the Northern District of Georgia, Atlanta Division, Case No. 1:23-cv-3721-SCJ on August 21, 2023. Mr. Clark moved expeditiously in filing the Notice of Removal, 11 days before his waiver of arraignment, well before it would otherwise be due under the relevant federal statute, 28 U.S.C. 1455(b)(1), which fixes the removal deadline as "30 days *after* arraignment in the State court, or at any time before trial, whichever is earlier." (Emphasis added). In other words, Mr. Clark filed his notice of removal *41 days early*.

The removed case has been assigned to U.S. District Court Judge Steve C. Jones. As contemplated by 28 U.S.C. § 1455(b)(4), Judge Jones issued an order on August 24, 2023 declining to summarily remand the case, and, pursuant to 28 U.S.C. § 1455(b)(5), setting a hearing on the removal question for September 18, 2023.

Under 28 U.S.C. § 1447(d), there is a right of immediate appeal from a trial court's order remanding a federal officer removal. If Judge Jones rules against Mr. Clark and remands his case back to this Court, Mr. Clark will pursue his appellate rights until they are exhausted. If Judge Jones confirms removal, the case will no longer be pending in this Court. Whether the State might pursue an appeal of that decision will be up to them (though we reserve all of Mr. Clark's rights to contest such an appeal, on any ground), but what we can predict now is that such an appeal by the State appears likely. Thus, no matter how Judge Jones rules, there will likely be an appeal from his decision on whether to confirm removal jurisdiction over the case against Mr. Clark.

If Judge Jones confirms removal, the entire case against all defendants is removed. This flows from the plain text of the statute, under which the "civil action[s] or criminal prosecution[s]," 28 U.S.C. § 1442(a), are removed, and under decisions in the Eleventh Circuit and district courts in the Circuit. *See, e.g., Morgan v. Bill Vann Co.*, Civ. A. 11-0535-WS-B, 2011 WL 6056083 (S.D. Ala. Dec. 6, 2011) ("***If one aspect of this case is removable, then the entire case may be removed.*** *See Magnin [v. Teledyne Continental Motors]*, 91 F.3d [1424,] 1428 [(11th Cir. 1996)] ('If one question of Federal character exists, if there be a

single such ingredient in the mass, it is sufficient. That element is decisive upon the subject of jurisdiction.) [(cleaned up)]. Thus, whether federal removal jurisdiction could have hinged on Morgan’s failure to warn claims, or his claims arising from Coast Guard service, are questions that simply need not be reached. The Court finds that *this entire action was properly removable* under the federal officer removal statute.”) (emphasis added). Older authority is to the same effect. See *IMFC Professional Servs. of Fla., Inc. v. Latin American Home Health, Inc.*, 676 F.2d 152, 158 (5th Cir. Unit B 1982) (“Section 1442(a)(1) authorizes removal of the entire case even though only one of its controversies might involve a federal officer or agency. *Fowler v. Southern Bell Tel. & Tel. Co.*, 343 F.2d 150, 152 (5th Cir. 1965).”). *IMFC Professional’s* continuing applicability was specifically reaffirmed and applied in *Maseda v. Honda Motor Co.*, 861 F.2d 1248, 1251 (11th Cir. 1988). See also *Georgia v. Heinze*, 637 F. Supp. 3d 1316, 1325 (N.D. Ga. 2022) (“It is well settled that if one claim cognizable under Section 1442 is present, the entire action is removed, regardless of the relationship between the Section 1442 claim and the non-removable claims.”).

The charges against Mr. Clark are a paradigmatic example of why Congress enacted the federal officer removal statute in the first place, and there is accordingly a substantial likelihood that Mr. Clark’s removal notice will be granted, thereby removing the entirety of *State v. Trump, et al.*

Federal officer removal is a method for implementing and safeguarding federal supremacy by giving the federal officer a federal forum in which to litigate his federal defenses. One of those applicable defenses here is federal immunity. Where applicable, and it is clearly applicable to Mr. Clark, it is an immunity not just from civil or criminal liability, but from suit and even from arrest.² “[W]e are of opinion that the governor [of the soldier’s home] was not subject to that [state] law, and the [state] court had no jurisdiction to hear or determine the criminal prosecution in question, because the act complained of was performed as part of the duty of the governor, as a federal officer, in and by virtue of valid federal authority, and in the performance of that duty he was not subject to the direction or control of the Legislature of Ohio.” *Ohio v. Thomas*, 173 U.S. 276, 283 (1899) (affirming habeas relief for federal officer arrested by the State of Ohio). *See also Watson v. Philip Morris Cos.*, 551 U.S. 142, 150 (2007) (cleaned up) (“basic purpose is to protect the Federal Government from the interference with its ‘operations’ that would ensue were a State able, for example, to ‘arres[t]’ and bring ‘to trial in a State cour[t] for an alleged offense against the law of the State,’ ‘officers and agents’ of the Government ‘acting ... within the scope of their authority.’”) (internal citations omitted). Mr. Clark’s right to such immunities has already been infringed by the charges brought against him

² On August 23, 2023, the Northern District of Georgia denied Mr. Clark’s *Emergency Motion to Confirm Applicability of Automatic Stay Under 28 U.S.C. § 1446(d) or Triggering of the Stay in 28 U.S.C. § 1455(b)(5) or Both — or in the Alternative for an Administrative Stay*. Mr. Clark thus surrendered to Fulton County on the final day demanded by District Attorney Willis. He did so preserving all of his defenses, including but not limited to the lack of personal jurisdiction, preserved by appearing specially only.

in the Indictment, and by all subsequent criminal law processes in this case, including the setting of bond, his surrender at the Fulton County Jail, and arraignment, which he has waived. Before principles of federal supremacy, immunity, and federal officer removal are further undermined by additional litigation in this Court, Mr. Clark respectfully asks the Court to extend the deadlines for filing demurrers and special pleas, and all subsequent deadlines, until 30 days *after* the final conclusion of any appeals from Judge Jones' forthcoming decision on removal of Mr. Clark's case. It will only be necessary to revisit scheduling in this case if the ultimate appellate decision on removal is to remand it. Whereas, if the case is removed, the case will not be in this Court and there will be nothing to schedule.

CONCLUSION

For the economy of the Court and the parties (the State and Mr. Clark), they should be permitted to conclude their litigation of removal (including any relevant appeals) before undertaking litigation of Mr. Clark's demurrers and special pleas and other subsequent proceedings in this Court.

Respectfully submitted, this 4th day of September 2023.

**CALDWELL, CARLSON, ELLIOTT &
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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of September 2023, I electronically filed the within and foregoing *Motion For Extension Of Deadlines For Demurrers And Special Pleas and Other Deadlines* with the Clerk of Court using the Court's eFile/GA system which will provide automatic notification to counsel of record for the State of Georgia:

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