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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF OREGON**  
**EUGENE DIVISION**

**STATE OF OREGON**

**6:23-CR-00330-MC**

**vs.**

**SAMUEL TROY LANDIS,**

**STATE'S RESPONSE TO  
DEFENDANT'S NOTICE  
OF REMOVAL OF STATE  
CRIMINAL PROSECUTION  
PURSUANT TO 28 U.S.C. § 1442(a)(1)**

**Defendant.**

While conducting surveillance in Salem, Oregon, in which no exigent or emergency circumstances were present, defendant ran a clearly marked stop sign and killed a cyclist as she entered the intersection. Following his indictment in state court for Criminally Negligent Homicide in Marion County, Oregon, defendant subsequently filed to remove the case to federal court in an effort to assert an immunity defense as a federal agent. However, there is no federal defense available to defendant. No casual connection exists to support that defendant's grossly negligent actions in a non-exigent circumstance were necessary to fulfill his federal law

enforcement duties. No federal question is at issue and no federal interest is served by removal. Defendant's motion should be denied.

## **I. Factual Background**

Defendant is a Special Agent employed by the United States Drug Enforcement Agency (DEA). On March 28, 2023, defendant was part of an undercover team in Salem, Oregon, comprised of federal agents and local law enforcement officers assigned to conduct surveillance of a target suspected of distributing fentanyl in the area. There were no plans to arrest the individual that day, or to immediately intervene to disrupt the transportation of drugs. Rather the objective was to gain additional information about the target to advance the overall drug trafficking investigation.

During the surveillance, defendant was traveling alone in an unmarked vehicle, and never activated any emergency lights or sirens. Video footage from a resident Ring camera shows defendant's vehicle traveling on Leslie Street and failing to stop at a clearly marked stop sign at the High Street intersection. As he ran the stop sign, his vehicle collided with a cyclist in the intersection who had the right of way on High Street, resulting in the death of the cyclist. Defendant's understanding at the time of the collision is that there was no urgency for him to get to a different location and that there were multiple other law enforcement members who had visual contact of the target. He admitted to observing the stop sign and stated he believed that he slowed down enough to safely enter the intersection.

## **II. Procedural History**

The Marion County District Attorney convened a Grand Jury, which returned an indictment against defendant for Criminally Negligent Homicide on August 31, 2023, and a warrant was issued for defendant's arrest. Defendant turned himself in on the warrant on

September 6, 2023, and signed a release agreement to appear in Marion County Circuit Court on September 20, 2023. On September 20, 2023, defendant was arraigned on the indictment in Marion County Circuit Court. On October 16, 2023, defendant Filed a Notice of Removal seeking removal of the state criminal prosecution to federal court. ECF 1.

### **III. Legal Standard**

A defendant desiring to remove any criminal prosecution from a State court shall file a notice of removal in the district court containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon defendant. 28 U.S.C. § 1445(a).

Requirements of filing a notice are outlined in 28 U.S.C. § 1445(b):

1. A notice of removal of a criminal prosecution shall be filed not later than 30 days after the arraignment in the State court, or at any time before trial, whichever is earlier, except that for good cause shown the United States district court may enter an order granting the defendant or defendants leave to file the notice at a later time.
2. A notice of removal of a criminal prosecution shall include all grounds for such removal. A failure to state grounds that exist at the time of the filing of the notice shall constitute a waiver of such grounds, and a second notice may be filed only on grounds not existing at the time of the original notice. For good cause shown, the United States district court may grant relief from the limitations of this paragraph.
3. The filing of a notice of removal of a criminal prosecution shall not prevent the State court in which such prosecution is pending from proceeding further, except that a judgment of conviction shall not be entered unless the prosecution is first remanded.
4. The United States district court in which such notice is filed shall examine the notice promptly. If it clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted, the court shall make an order for summary remand.
5. If the United States district court does not order the summary remand of such prosecution, it shall order an evidentiary hearing to be held promptly and, after such hearing, shall make such disposition of the prosecution as justice shall require. If the United States district court determines that removal shall be permitted, it shall so notify the State court in which prosecution is pending, which shall proceed no further.

Removal of criminal proceedings for a federal officer from state to federal court is guided by 28 U.S.C. § 1442(a)(1) which states in relevant part that a civil action or criminal prosecution that is commenced in a State court and that is against or directed to any of the following may be removed by them to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) The United States or any agency thereof or any officer (or any person acting under that officer) of the United States or of any agency thereof, in an official or individual capacity, for or relating to any act under color of such office or on account of any right, title or authority claimed under any Act of Congress for the apprehension or punishment of criminals or the collection of the revenue.

The Supreme Court outlined the test for federal officer removal in *Mesa v. California*, 489 U.S.121 (1989). The test specifies that the officer must have acted “under color of office” when the incident occurred. *Id.* at 123; *Willingham v. Morgan*, 395 U.S. 402, 406 (1969). In order to test if the officer was acting “under color of office,” there must be a causal connection between the charged conduct and the asserted official authority. *Mesa*, 489 U.S. 123; *Willingham*, 395 U.S. at 409. In addition, removal must be predicated on the averment of a federal defense. *Mesa*, 489 U.S. at 127-129 (citing *Tennessee v. Davis*, 100 U.S. 257, 271(1880)). The “federal officer removal statute [requires] the averment of a [specific] federal defense.” *Mesa*, 489 U.S. at 133. The Supreme Court has interpreted the removal statute to “cover all cases where federal officers can raise a colorable defense arising out of their duty to enforce federal law.” *Willingham*, 395 U.S. at 406-407.

#### **IV. Discussion**

Defendant seeks removal pursuant to 28 U.S.C. § 1442(a) and must therefore demonstrate a colorable claim of federal immunity or other federal defense. *See People of State of Cal. v. Mesa*, 813 F.2d 960, 967 (9th Cir. 1987). In *Mesa*, the Court understood the “under

color of office” requirement to mean removal is appropriate when a “federal officer is prosecuted for the manner in which he had performed his federal duties.” 489 U.S. at 125. In addition to there being a plausible federal defense there must also be a "causal connection" between the charged conduct and the asserted federal authority. *Willingham v. Morgan*, 395 U.S. 402, 409 (1969). In other words, there must be some sort of "federal question" at issue.

The Southern District of California in the Ninth Circuit analyzed the removal requirement in 2012 and found that cases interpreting § 1442 recognize that a defendant’s assertion of an exigency is necessary to meet the pleading requirement to remove a prosecution based on a traffic violation in state court. *See California v. Dotson*, No. 11-cv-2932-AJB (ECF 11). Attached as Exhibit A.

The court in *Dotson* highlighted *North Carolina v. Cisneros*, 947 F.2d 1135 (4th Cir.1991), where the Fourth Circuit examined the proper standard to apply in cases involving on-duty traffic accidents of federal officers invoking federal immunity. The court stated:

[T]o establish ... a federal immunity defense—hence federal removal jurisdiction—growing out of an on-duty vehicular traffic accident, a federal officer must show that the accident resulted from an exigency or emergency related to his federal duties which dictated or constrained the way in which he was required to, or could, carry out those duties. Thus, the necessity to exceed a speed limit in order to capture a fleeing felon, or to execute a raid, or the necessity to use a known defective vehicle to complete emergency snow clearing are examples of facts supporting an immunity defense, hence federal jurisdiction, in this type situation. But facts which do not reveal any such legitimately constraining duty-related emergency or exigency as the cause of state law violation do not suffice to establish a federal defense, hence a basis for removal jurisdiction. *Id.* at 1139.

Compare *City of Norfolk v. McFarland*, 143 F. Supp. 587 (E.D. Va. 1956) (removal required where investigator is hustling to pick up fellow officer before conducting raid), with *State v. Ivory*, 906 F. 2d 999, 1002 (4th Cir. 1990) (no basis for removal where military convoy driver made an illegal turn into cross-traffic, causing an accident; no proffer of immunity, and

“he has not alleged anything in the conduct of his federal responsibilities which justified his violation of these laws”) and *State of Florida v. Huston, D.C.*, 283 F. 687 (no removal where officer’s allegedly reckless driving occurs while officer returning to headquarters without any necessity for excess speed).

From a review of these and similar cases, the court in *Dotson* found that the removal provision has been interpreted to authorize removal in traffic matters as long as there is some meaningful connection between the driving and a law enforcement urgency. *See California v. Dotson*, No. 11-cv-2932-AJB (ECF 11). Ex. A.

Defendant is not being prosecuted for carrying out his federal duties, rather, he is being prosecuted for driving his vehicle in a grossly negligent manner that resulted in the death of an individual. Defendant does not assert that his actions and the resulting collision occurred as a result of his response to an exigent circumstance. To the contrary, defendant has made clear that no urgency or exigent circumstances existed at the time he ran the stop sign. There is no meaningful connection between defendant’s federal duties and his conduct of running a stop sign and killing a cyclist.

Defendant solely asserts that since he was conducting surveillance as part of his official duties, there is a “colorable” federal defense available to him. Defendant cannot simply say that because the criminal acts were carried out under color of office, a colorable federal defense applies. Without articulating a reasonable basis that would authorize the violation of traffic laws to fulfill his federal law enforcement responsibilities, defendant has failed on the face of his notice to demonstrate that there is a plausible colorable defense available to him that would authorize removal of the state case to federal court. Given defendant’s failure on the face of the

notice, the court should reject the removal petition on the papers and remand to state court without need for a hearing.

**V. Conclusion**

Based upon the foregoing, no causal connection exists between defendant's charged conduct and any exigency related to his federal duties which dictated the way in which he was required to carry out those duties. Therefore, no federal immunity or defense exists. Accordingly, the Court should deny defendant's motion to remove the state case to federal court and order a summary remand to state court.

DATED: November 15, 2023.

Respectfully submitted,

*/s/ Ashley R. Cadotte*  
ASHLEY R. CADOTTE, OSB #122926  
Deputy District Attorney

*/s/ David R. Wilson*  
David R. Wilson, OSB #075610  
Deputy District Attorney

**CERTIFICATE OF SERVICE**

I hereby certify that on November 15, 2023, a true and correct copy of the foregoing **State's Response to Defendant's Notice of Removal of State Criminal Prosecution Pursuant to 28 U.S.C. § 1442(a)(1)** has been filed with the Court's CM/ECF filing system and that the foregoing will be served via email on:

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*Attorneys for Defendant*

This 15<sup>th</sup> day of November, 2023.

*/s/ Ashley R. Cadotte*  
Ashley R. Cadotte, OSB #122926  
Deputy District Attorney



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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,	)	Civil No. 11-cv-2932 AJB (NLS)
	)	
Plaintiff,	)	<b>ORDER GRANTING DEFENDANT’S</b>
v.	)	<b>MOTION OF REMOVAL OF STATE</b>
	)	<b>CRIMINAL PROSECUTION</b>
COLE JOSEPH DOTSON,	)	<b>PURSUANT TO 28 U.S.C. § 1442(a)(1)</b>
	)	
Defendant.	)	
_____	)	

Defendant, Cole Joseph Dotson, filed a motion, [Doc. No. 1], for removal of a state criminal prosecution pursuant to 28 U.S.C. § 1442(a)(1). The Plaintiff filed an opposition, [Doc. No. 4], and the Defendant filed a reply, [Doc. No. 7.] The Court finds this motion appropriate for submission on the papers without oral arguments pursuant to Civil Local Rule 7.1.d.1, however, the hearing set for February 17, 2012 at 1:30 p.m. before Judge Battaglia will go forward to address other matters in the case. Based upon the parties moving papers and for the reasons set forth below, the Defendant’s motion for removal is hereby **GRANTED**.

**Background**

***I. Factual Background***

Defendant Dotson is a Special Agent/Criminal Investigator employed by the Department of Homeland Security, specifically within the United States Immigration and Customs Enforcement. [Doc. No. 1, at 1.] He has held this position since October 28, 2007. *Id.* On December 29, 2009, Special Agent Dotson was assigned to the Office of Investigations, Proactive Narcotics Group in El Centro,

1 California where he was directed to report to the Calexico Port of Entry. *Id.* at 2. He was assigned to a  
2 team of undercover agents to follow and conduct surveillance of a suspected methamphetamine  
3 smuggler who was believed to be importing approximately 1½ pounds of methamphetamine. *Id.*  
4 Special Agent Dotson followed the suspected smuggler in an unmarked law enforcement vehicle on a  
5 parallel route as he crossed the Mexican border into America. Special Agent Dotson’s unmarked  
6 vehicle was properly equipped with working emergency lights and sirens, but neither was activated at  
7 the time of the collision. The collision occurred in a rural area at the intersection of Bowker and Heber  
8 roads. It was a clear night and Special Agent Dotson was driving at speeds often exceeding 100 miles  
9 per hour. Special Agent Dotson ran a clearly marked stop sign and collided with another vehicle as it  
10 entered the intersection. Both vehicles were totaled and both ended up in a nearby ditch. As a result of  
11 the collision, three occupants of the other vehicle died and two children were injured. Special Agent  
12 Dotson’s suffered moderate injuries. *Id.*

13 ***II. Procedural History***

14 The District Attorney for Imperial County convened a grand jury, which declined to return an  
15 indictment against Special Agent Dotson. [Doc. No. 1, at 1.] The Imperial County District Attorney  
16 filed a complaint charging Special Agent Dotson with three counts of Vehicular Manslaughter. *Id.* at 4.  
17 After the October 25 and 26, 2011 preliminary hearing, an Information was filed (case number  
18 JCF27072) charging Special Agent Dotson with three felony counts of Vehicular Manslaughter, in  
19 violation of California Penal Code § 192(c)(1), and with penalty enhancements for personal infliction of  
20 great bodily injury pursuant to Cal. P.C. §§ 12022.7(a) and (d). *Id.* On December, 16, 2011, Special  
21 Agent Dotson filed a Notice of Removal pursuant 28 U.S.C. § 1442(a)(1) seeking removal of the state  
22 criminal prosecution to federal court. [Doc. No. 1, at 1.]

23 **Legal Standard**

24 Removal of criminal proceedings from state to federal court is guided by 28 U.S.C. § 1442(a)(1)  
25 which states in relevant part that a civil action or criminal prosecution that is commenced in a State  
26 court and that is against or directed to any of the following may be removed by them to the district court  
27 of the United States for the district and division embracing the place wherein it is pending:

- 28 (1) The United States or any agency thereof or any officer (or any person acting under that officer) of the United States or of any agency thereof, in

1 an official or individual capacity, for or relating to any act under color of  
2 such office or on account of any right, title or authority claimed under any  
3 Act of Congress for the apprehension or punishment of criminals or the  
4 collection of the revenue.

5 In *Mesa v. California* the Supreme Court outlined a test for federal officer removal. 489 U.S.  
6 121 (1989). The test specifies that the officer must have acted “under color of office” when the incident  
7 occurred. *Id.* at 123; *Willingham v. Morgan*, 395 U.S. 402, 406 (1969). In order to test if the officer  
8 was acting “under color of office,” there must be a causal connection between the charged conduct and  
9 the asserted official authority. *Mesa*, 489 U.S. 123; *Willingham*, 395 U.S. at 409. In addition, removal  
10 must be predicated on the averment of a federal defense. *Mesa*, 489 U.S. at 127-129 (citing *Tennessee*  
11 *v. Davis*, 100 U.S. 257, 271(1880)). The “federal officer removal statute [requires] the averment of a  
12 [specific] federal defense.” *Mesa*, 489 U.S. at 133. The Supreme Court has interpreted the removal  
13 statute to “cover all cases where federal officers can raise a colorable defense arising out of their duty to  
14 enforce federal law.” *Willingham*, 395 U.S. at 406-407.

#### 15 Discussion

16 Special Agent Dotson seeks removal pursuant to 28 U.S.C. § 1442(a) and must therefore  
17 demonstrate a colorable claim of federal immunity or other federal defense. *See People of State of Cal.*  
18 *v. Mesa*, 813 F.2d 960, 967 (9th Cir. 1987). To be "colorable," the federal defense does not need to be  
19 proven to a virtual certainty, because "§1442( a)( 1) does not require that a defense will be successful  
20 before removal is appropriate." *United States v. Todd*, 245 F.3d 691, 693 (8th Cir. 2001). Rather, to be  
21 colorable, all the defense needs to be is plausible. *Id.* In addition to there being a plausible federal  
22 defense there must also be a "causal connection" between the charged conduct and the asserted federal  
23 authority. *Willingham v. Morgan*, 395 U.S. 402, 409 (1969). In other words, there must be some sort of  
24 "federal question" at issue.

25 Special Agent Dotson argues that he has a federal immunity defense pursuant to 21 U.S.C. § 885  
26 which states, “No civil or criminal liability shall be imposed by virtue of this subchapter upon any duly  
27 authorized federal officer lawfully engaged in the enforcement of this subchapter. . . who shall be  
28 lawfully engaged in the enforcement of any law or municipal ordinance relating to controlled  
substances.” At the time of the accident Special Agent Dotson was on duty as an officer within a

1 component agency of the Department of Homeland Security. [Doc. No. 1, at 1.] He was engaging in an  
2 assignment to investigate several federal criminal offenses.<sup>1</sup> [Doc. No. 1, at 2.] In *Mesa*, the Court  
3 understood the “under color of office” requirement to mean removal is appropriate when a “federal  
4 officer is prosecuted for the manner in which he had performed his federal duties.” 489 U.S. at 125.

5 The Plaintiff argues that Special Agent Dotson is not being prosecuted for carrying out his  
6 federal duties, rather, he is being prosecuted for driving his vehicle in a grossly negligent manner that  
7 resulted in the death of three individuals. Notwithstanding Special Agent Dotson’s proffered immunity  
8 defense, the Plaintiff argues that there was no causal connection between the allegation of grossly  
9 negligent driving and the federal investigation Special Agent Dotson was conducting. *See* Doc. No. 4, at  
10 7. The Plaintiff contends that no federal interest is served by removal and therefore Special Agent  
11 Dorson's motion should be denied.

12 However, the Court notes that the state court prosecution arises out of actions Special Agent  
13 Dotson’s contends he was required to perform in the course of his law enforcement duties. Special  
14 Agent Dotson argues that his actions and the resulting accident occurred as a result of his response to an  
15 exigent circumstance, i.e. the need to assist his fellow agents in following and surveilling a potentially  
16 dangerous cross-border methamphetamine drug-trafficker. Cases interpreting § 1442 recognize that a  
17 defendant’s assertion of an exigency is sufficient to meet the liberal pleading requirement to remove a  
18 prosecution based on a traffic violation in state court.<sup>2</sup> Significantly, the court highlighted that an

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19  
20 <sup>1</sup> Importation of methamphetamine, 21 U.S.C. §§ 952 and 960; Possession with intent to  
21 distribute methamphetamine, 21 U.S.C. § 841; Laundering of monetary instruments, 18 U.S.C. §§ 1956  
22 and 1957; and Conspiracy to commit previous offenses listed, see 21 U.S.C. §§ 846 and 963; 18 U.S.C.  
§§ 1956 and 1957.

23 <sup>2</sup> In *City of Norfolk, Virginia v. McFarland*, 143 F. Supp. 587 (E.D. Va. 1956), for example, a  
24 Treasury investigator sought to remove a traffic violation to federal court. The investigator had received  
25 a call from an informant indicating an illegal distillery was operating and its operators were preparing a  
26 liquor run. In response, the investigator drove his personal car to another officer’s home to pick him up  
27 to conduct a raid against the suspected distillers. En route, he was pulled over and cited for speeding.  
Addressing the prosecution’s objection to removal to federal court, the court found a sufficient causal  
28 connection between the officer’s driving and his federal law enforcement duties to require acceptance of  
§1442(a) removal. In so doing, the court noted “any suggestion that Congress did not intend to include  
misdemeanors relating to the operation of motor vehicles on the public highways is too broad to be  
applied universally in all cases.” *Id.* at 589.

Similarly, in *North Carolina v. Cisneros*, 947 F.2d 1135 (4th Cir.1991), the Fourth Circuit  
examined the proper standard to apply in cases involving on-duty traffic accidents of federal officers  
invoking federal immunity. The court stated:

1 exigency providing immunity is dependent on the facts, and the exigency is not limited to cases  
2 involving highspeed pursuit of a fleeing felon:

3 Nor can a distinction be properly drawn if, instead of being in actual  
4 pursuit, the officer is merely on the way to make an arrest, or merely  
5 seeking an offender with intent to arrest him when found. It seems to me  
6 that it is as much the officer's right, even if not as much his duty, to  
7 proceed on his way, or to proceed with his search, as it is to pursue when  
8 the offender is in sight and is fleeing.

9 *Id.* (quoting *Commonwealth of Virginia v. De Hart, C.C.*, 119 F. 626, 628).

10 From a review of these and similar cases, the Court concludes that the removal provision must be  
11 interpreted to authorize removal in traffic matters as long as there is some meaningful connection  
12 between the driving and a law enforcement urgency.<sup>3</sup> Here, Special Agent Dotson has articulated a  
13 reasonable basis authorizing the violation of traffic laws to fulfill his federal law enforcement  
14 responsibilities.<sup>4</sup> Based upon the foregoing, the Court finds that a causal connection exists between  
15 Special Agent Dotson's charged conduct and exigency related to his federal duties which dictated the  
16 way in which he was required to carry out those duties.

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19 [T]o establish ... a federal immunity defense—hence federal removal jurisdiction—  
20 growing out of an on-duty vehicular traffic accident, a federal officer must show that the  
21 accident resulted from an exigency or emergency related to his federal duties which  
22 dictated or constrained the way in which he was required to, or could, carry out those  
23 duties. Thus, the necessity to exceed a speed limit in order to capture a fleeing felon, or to  
24 execute a raid, or the necessity to use a known defective vehicle to complete emergency  
25 snow clearing are examples of facts supporting an immunity defense, hence federal  
26 jurisdiction, in this type situation. But facts which do not reveal any such legitimately  
27 constraining duty-related emergency or exigency as the cause of state law violation do  
28 not suffice to establish a federal defense, hence a basis for removal jurisdiction. *Id.* at  
1139

<sup>3</sup> Compare *City of Norfolk v. McFarland*, 143 F. Supp. 587 (E.D. Va. 1956) (removal required  
where investigator is hustling to pick up fellow officer before conducting raid), with *State v. Ivory*, 906  
F. 2d 999, 1002 (4th Cir. 1990) (no basis for removal where military convoy driver made an  
illegal turn into cross-traffic, causing an accident; no proffer of immunity, and “he has not alleged  
anything in the conduct of his federal responsibilities which justified his violation of these laws”) and  
*State of Florida v. Huston, D.C.*, 283 F. 687 (no removal where officer's allegedly reckless driving  
occurs while officer returning to headquarters without any necessity for excess speed).

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Conclusion

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For the reasons set forth above, the Court hereby **GRANTS** Defendant's motion to remove the state criminal case to federal court pursuant to 26 U.S.C § 1442(a)(1).

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IT IS SO ORDERED.

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DATED: February 16, 2012

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Hon. Anthony J. Battaglia  
U.S. District Judge

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