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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 State of Arizona, *et al.*,

10 Plaintiff,

11 v.

12 Mark Meadows,

13 Defendant.  
14

No. CV-24-02063-PHX-JJT

**ORDER**

15 At issue is Mark Meadows’s Notice of Removal (Doc. 1, Notice of Removal), to  
16 which the State of Arizona has filed a Response and request to remand (Doc. 7, Response),  
17 and in support of which Mr. Meadows filed a Reply (Doc. 8, Reply). The Court also has  
18 considered Mr. Meadows’s Bench Memorandum Regarding Evidentiary Standard for  
19 Removal Hearing (Doc. 9) and the state’s Response thereto (Doc. 19). On September 5,  
20 2024, pursuant to 28 U.S.C. § 1455(b)(5), the Court held an evidentiary hearing. (Doc. 13.)  
21 For the reasons set forth below in detail, the Court finds that Mr. Meadows fails to present  
22 good cause for his untimely filing of his Notice of Removal, and that in any event, an  
23 evaluation on the merits yields that he fails to demonstrate that the conduct charged in the  
24 state’s prosecution relates to his former color of office as Chief of Staff to the President.  
25 The Court therefore will remand this matter to the state court.

26 **I. Background**

27 On April 23, 2024, an Arizona grand jury indicted eighteen individuals on nine  
28 felony counts pertaining to an alleged attempt to illegally overturn the results of the 2020

1 presidential election conducted in Arizona. The State contends that, following the election,  
2 the eighteen charged individuals participated in an organized “scheme” to “prevent the  
3 lawful transfer of the presidency.” (Doc. 1-1 at 110–67, Indictment at 13.) According to  
4 the State, the actions undertaken by the charged individuals pursuant to this scheme  
5 included the commission of various state-law felonies, including one count of conspiracy,  
6 one count of fraudulent schemes and artifices, one count of fraudulent schemes and  
7 practices, and six counts of forgery. The individuals charged by the State include the eleven  
8 individuals who acted as so-called “fake electors” (corresponding to the eleven votes  
9 allotted to Arizona in the electoral college), as well as seven individuals who allegedly  
10 orchestrated and supported the scheme behind the scenes. (Indictment at 17–21.) Among  
11 these behind-the-scenes indictees is Mark Meadows, who served as President Trump’s  
12 Chief of Staff from 2020–2021 and at all times relevant to this case. In particular, the State  
13 alleges that Mr. Meadows “worked with members of the Trump Campaign to coordinate  
14 and implement the false Republican electors’ votes in Arizona” and “was involved in the  
15 many efforts to keep [Trump] in power despite his defeat at the polls.” (Indictment at 21.)

16 Following his indictment and subsequent arraignment, Mr. Meadows removed the  
17 state criminal prosecution to federal court pursuant to 28 U.S.C. §§ 1442, 1455. Because  
18 the Court did not deem summary remand appropriate, the Court scheduled an evidentiary  
19 hearing as required by § 1455(b)(5). Prior to the evidentiary hearing, the State filed a  
20 Response opposing jurisdiction and requesting remand to state court. Mr. Meadows filed a  
21 Reply, but he also filed a “bench memorandum” on the eve of the evidentiary hearing, to  
22 which the State lacked sufficient time to respond in kind. In the interest of fairness, the  
23 Court permitted the State to file a supplemental bench memorandum of its own following  
24 the evidentiary hearing. Having read the briefs and considered the issues, the Court now  
25 addresses the propriety of removal in this case.

## 26 **II. Discussion**

27 The well-pleaded complaint rule typically precludes removal of cases in which  
28 federal jurisdiction exists only by virtue of a federal defense. *See Jefferson County v. Acker*,

1 527 U.S. 423, 430–31 (1999). However, Congress has enacted a limited exception to the  
2 general rule. “Under the federal officer removal statute, suits against federal officers may  
3 be removed despite the nonfederal cast of the complaint; the federal-question element is  
4 met if the defense depends on federal law.” *Id.* The federal officer removal statute is  
5 codified at § 1442(a)(1), and it provides in relevant part:

6  
7 (a) A civil action or criminal prosecution that is commenced in a State court  
8 and that is against or directed to any of the following may be removed by  
9 them to the district court of the United States for the district and division  
10 embracing the place wherein it is pending:

11 (1) The United States or any agency thereof or any officer (or any  
12 person acting under that officer) of the United States or of any agency  
13 thereof, in an official or individual capacity, for or relating to any act  
14 under color of such office . . . .

15 The Supreme Court has explained that, in order to successfully remove a case under  
16 § 1442(a)(1), a federal officer must (1) raise a colorable federal defense and (2) establish  
17 that the prosecution is for or relating to an act under color of office. *Acker*, 527 U.S. at 431.  
18 “To satisfy the latter requirement, the officer must show a nexus, a “causal connection”  
19 between the charged conduct and asserted official authority.” *Id.* (quoting *Willingham v.*  
20 *Morgan*, 395 U.S. 402, 409 (1969)).

21 In their briefing, both Mr. Meadows and the State urge the Court to adjudicate this  
22 case according to a three-prong test that would require Mr. Meadows to show (1) that he is  
23 a federal officer within the meaning of the statute, (2) that there exists a causal nexus  
24 between the charged conduct and Mr. Meadows’s official duties, and (3) that Mr. Meadows  
25 possesses a colorable federal defense. This three-prong test originates in caselaw  
26 addressing the propriety of removals by private persons acting under federal officers, in  
27 contrast to removals by federal officers themselves. The principal case relied upon by  
28 Mr. Meadows makes this clear. *See DeFiore v. SOC LLC*, 85 F.4th 546, 553 (9th Cir. 2023)  
(holding that “a removing *private entity* must show that ‘(a) it is a “person” within the  
meaning of the statute; (b) there is a causal nexus between its actions, taken pursuant to a

1 federal officer's directions, and plaintiff's claims; and (c) it can assert a "colorable federal  
2 defense." (emphasis added) (quoting *Goncalves ex rel. Goncalves v. Rady Childs. Hosp.*  
3 *San Diego*, 865 F.3d 1237, 1244 (9th Cir. 2017))). Although the distinction between the  
4 tests outlined for federal officers versus persons acting under such officers might seem  
5 slight, the difference can be material. For instance, the Ninth Circuit recently held that the  
6 "under color of such office" requirement is subsumed by the "acting under" and "causal  
7 connection" requirements and that satisfaction of the latter two criteria obviates the need  
8 to conduct a separate "under color" analysis. *See id.* at 558 n.7. Although it may be sensible  
9 to aggregate the "under color" requirement with the "acting under" requirement in cases  
10 involving removal by a private entity, it would be a mistake to do so here. First, there is no  
11 "acting under" analysis in a case where the removing defendant is himself a federal officer.  
12 And second, the Supreme Court's holding in *Acker* clearly treats the "under color" criterion  
13 as a standalone requirement, at least insofar as concerns cases in which the removing  
14 defendant is himself a federal officer, as was the case in *Acker*. *See* 527 U.S. at 431. *Acker*  
15 makes plain that, far from replacing the "under color" requirement, the requisite causal  
16 connection between the charged conduct and the asserted federal authority is the *means* by  
17 which a court is to assess whether a criminal prosecution is for or relating to an act under  
18 color of federal office. Therefore, with respect to cases in which the removing party is a  
19 federal officer and not a private entity, the Court does not read the Ninth Circuit's opinion  
20 in *Defiore* as rejecting the "under color" component of the analysis.

21         Nevertheless, the Court sees no issue with using the test urged by the parties here.  
22 Although the three-prong test finds its genesis in cases involving removals by private  
23 entities, the parties have sufficiently modified the test to comport with the circumstances  
24 presented in the case at bar. Despite citing to various Ninth Circuit cases that include an  
25 "acting under" component, the parties have omitted any mention of the "acting under"  
26 requirement. This is the same approach taken by the Eleventh Circuit in its recent opinion  
27 disposing of a case involving facts very similar to those here. Although it cited to a case  
28 from the private-entity context, the court excised the "arising under" language and held

1 that “[s]ection 1442(a)(1) provides a right of removal to federal court if a defendant proves  
2 that [1] he is a federal officer, [2] his conduct underlying the suit was performed under  
3 color of federal office, and [3] he has a ‘colorable’ federal defense.” *State v. Meadows*, 88  
4 F.4th 1331, 1338 (11th Cir. 2023) (citing *Caver v. Cent. Ala. Elec. Coop.*, 845 F.3d 1135,  
5 1142 (11th Cir. 2017)).

6 Therefore, in accord with the Eleventh Circuit’s opinion, the Court holds that the  
7 propriety of Mr. Meadows’s removal depends upon his satisfying the three-prong test urged  
8 by the parties. In addition to satisfying the substantive dictates of § 1442(a)(1),  
9 Mr. Meadows must also demonstrate compliance with the procedural requirements of  
10 § 1455, which provides in relevant part that “[a] notice of removal of a criminal prosecution  
11 shall be filed not later than 30 days after the arraignment in the State court, or at any time  
12 before trial, whichever is earlier, except that for good cause shown the United States district  
13 court may enter an order granting the defendant or defendants leave to file the notice at a  
14 later time,” § 1455(b)(1).

15 The State presents two main arguments. First, the State contends that Mr. Meadows  
16 filed his Notice of Removal after the thirty-day deadline contained in § 1455(b)(1) and that  
17 he has failed to show good cause that might permit the Court to excuse the untimeliness.  
18 Second, the State argues that Mr. Meadows has failed to meet the second criterion of the  
19 substantive three-prong test because the conduct alleged in the indictment does not pertain  
20 to Mr. Meadows’s role as President Trump’s former Chief of Staff. Thus, according to the  
21 State, there is no causal nexus between its prosecution and Mr. Meadows’s federal  
22 authority, thereby precluding a determination that this case is for or relating to any act taken  
23 under color of office. The Court addresses each argument in turn.<sup>1</sup>

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24 <sup>1</sup> The State also presents, without expanding upon, an argument that Mr. Meadows  
25 is not a federal officer within the meaning of § 1442(a)(1) and thus fails the first prong of  
26 the three-prong test. At various points throughout its Response, the State notes that the  
27 Eleventh Circuit recently held that § 1442(a)(1) applies only to *current* federal officers, not  
28 *former* officers, *see Meadows*, 88 F.4th at 1338–43. (Response at 8, 17.) Although the State  
expressly contemplates that the Court here might align with the Eleventh Circuit and hold  
that § 1442(a)(1) is inapplicable to Mr. Meadows as a former federal officer, the State does  
not actually present an analysis of why the Court ought to so find. Accordingly, although  
the Court does not deem the State to have waived its first-prong argument, the Court elects  
to resolve this case on the two issues that were substantially briefed, namely whether

1           **A.     Untimeliness**

2           The federal officer removal statute at issue provides in relevant part that

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4                     [a] notice of removal of a criminal prosecution shall be filed  
5                     not later than 30 days after the arraignment in the State court,  
6                     or at any time before trial, whichever is earlier, except that for  
7                     good cause shown the United States district court may enter an  
                      order granting the defendant [] leave to file the notice at a later  
                      time.

8           28 U.S.C. § 1455(b)(1). The parties do not dispute Mr. Meadows filed his Notice of  
9           Removal 48 days after the arraignment in Arizona state court and that the filing is thus  
10          untimely by 18 days under § 1455(b)(1). But Mr. Meadows argues he had good cause to  
11          file late, and in effect asks the Court to grant him leave *nunc pro tunc* for his late filing.  
12          Mr. Meadows offers three arguments in support of a finding of good cause: 1) he delayed  
13          filing the Notice in order to “pursue[] an effort to convince the State that it should not  
14          pursue the charges against [him]” (Notice of Removal at 8); 2) he delayed filing while  
15          awaiting the United States Supreme Court’s decision in *Trump v. United States*, 144 S. Ct.  
16          2312 (2024), which he asserts bears upon his immunity defense in this matter (Notice of  
17          Removal at 8); and 3) the Court should interpret the removal statute “broadly in favor of  
18          removal” (Reply at 9). These arguments fail to persuade the Court.

19          While attempting to resolve a matter by mutual assent of the parties to avoid court  
20          involvement is both laudable and sensible, parties universally face limitations periods and  
21          deadlines in bringing actions, and they do not simply forego meeting those congressional-  
22          or court-imposed deadlines to pursue settlement and then beg the mercy of the court if  
23          settlement fails to materialize. That is to say, it is a well-trodden path familiar to all counsel  
24          to pursue dual tracks in a representation, timely filing an action—or in this case, a notice  
25          of removal—to protect their clients’ interests<sup>2</sup> while they simultaneously pursue settlement.

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Mr. Meadows had good cause for his untimeliness under § 1455(b)(1) and whether the  
27          charged conduct relates to acts taken under color of office pursuant to § 1442(a)(1).

28          <sup>2</sup> Indeed, this is precisely what Mr. Meadows did in the Georgia removal matter  
                while represented by the same counsel. In that case, Mr. Meadows filed his notice of  
                removal just two days after arraignment.

1 Alternatively, parties can and do seek tolling agreements. Here Mr. Meadows did neither,  
2 despite one or both options being easily available. Mr. Meadows’s first purported reason  
3 for failing to timely file his Notice does not present good cause.

4 Mr. Meadows’s second reason for missing the unambiguous deadline set forth in  
5 § 1455(b)(1) fares no better. He asserts he waited to file his Notice of Removal because he  
6 anticipated the Supreme Court’s ruling in *Trump* could bear on his immunity defense, and  
7 upon its issuance, he argues, it does so bear. But again, that was no reason to miss the  
8 deadline to file his Notice of Removal. Perhaps the Supreme Court’s holding in *Trump*  
9 does strengthen Mr. Meadow’s claim and perhaps it does not—that question will remain  
10 until it is taken up in the context of a possible motion to dismiss his case filed in the proper  
11 forum. But the ultimate success or failure of Mr. Meadows’s federal defense need not have  
12 been determined at the time he filed his Notice of Removal—he merely needed to be aware  
13 of its existence as colorable. And he was aware of its existence—he in fact contemplated  
14 raising immunity before the opinion in *Trump* issued.<sup>3</sup> While Mr. Meadows might well  
15 want to delay filing any *motion to dismiss* until he has had the opportunity to evaluate  
16 *Trump* for its potential impact on his argument of the immunity defense, the filing of that  
17 motion is—even now—still well in the future, and there was no need or reason to delay  
18 filing *the Notice itself*.

19 Mr. Meadows does not appear to argue that his late filing was the equivalent of a  
20 “second notice” of removal under § 1455(b)(2), nor could he. Although § 1455(b)(2)  
21 provides that a defendant may file a second notice of removal “on grounds not existing at  
22 the time of the original notice,” as the Court notes above, the proffered federal defense of  
23 immunity was already extant from the commencement of the state criminal matter. While  
24 Mr. Meadows believes *Trump* may strengthen his existing defense, it does not bring new  
25 grounds into existence as required for a subsequent notice filing. The text of § 1455(b)(2)  
26 also supports the Court’s conclusion that the publication of *Trump* does not constitute good

27 <sup>3</sup> In response to the Court’s direct question at the evidentiary hearing, counsel for  
28 Mr. Meadows acknowledged he was not arguing that, but for the issuance of the opinion  
in *Trump*, he would not have sought removal. (Doc. 20, Tr. 09/05/24 at 145:17-21.)

1 cause under § 1455(b)(1). If the Court were to countenance Mr. Meadows’s untimely filing  
2 of his Notice of Removal simply because he suspected that a subsequent opinion might  
3 strengthen his position, which is essentially what Mr. Meadows asks the Court to do here,  
4 the Court would impermissibly render the second-notice provision of § 1455(b)(2) a  
5 nullity. The existence of a filing deadline, in conjunction with an express statutory right to  
6 file a second notice of removal “only on grounds not existing at the time of the original  
7 notice,” indicates to the Court that Mr. Meadows’s voluntary delay in this case cannot  
8 constitute good cause under § 1455(b)(1). A contrary conclusion would relegate the  
9 second-notice provision of § 1455(b)(2) to the status of surplusage whenever a criminal  
10 defendant could plausibly claim that a pending case might bear upon his potential removal  
11 of the prosecution to federal court.

12 Finally, in his Reply, Mr. Meadows urges that despite his missing the filing deadline  
13 by 18 days, the Court should nonetheless “heed the ‘clear command from both Congress  
14 and the Supreme Court that when federal officers and their agents are seeking a federal  
15 forum, [courts] are to interpret section 1442 broadly in favor of removal.’” (Reply at 9  
16 (quoting *Durham v. Lockheed Martin Corp.*, 445 F.3d 1247, 1252 (9th Cir. 2006)).) And  
17 the Court follows that command. But the “broad interpretation” of § 1442 Mr. Meadows  
18 notes bears on evaluating the merits of the removal test. It does not mandate, or even  
19 counsel, courts to throw out the statute’s deadline as set forth in § 1455. In support of his  
20 argument, Mr. Meadows cites *Durham v. Lockheed Martin Corp.* That case proves the  
21 Court’s point. The Ninth Circuit in *Durham* held that the 30-day filing deadline for federal  
22 officer removal does not begin to run until the defendant in the state court matter receives  
23 disclosure or notice from which he can determine federal officer removability is available.  
24 445 F.3d at 1253. *Durham* does nothing to diminish the operation or effect of the statute’s  
25 30-day deadline, and it does not, as Mr. Meadows suggests, teach that where federal officer  
26 removal is available, in the name of broad interpretation courts simply should deem any  
27 such case as constituting good cause. To do so would negate the 30-day limit altogether,  
28



1 as every removal notice by a bona fide federal officer would upon filing—no matter its  
2 timing—constitute “good cause” for extension.

3 The Court concludes Mr. Meadows has not shown good cause for leave to untimely  
4 file his Notice. But even if good cause had existed, he has failed to demonstrate the offenses  
5 charged in the state’s prosecution relate to his former color of office as Chief of Staff to  
6 the President, as set forth immediately below.

### 7 **B. Color of Office**

8 The parties dispute whether the conduct charged by the State relates to acts taken  
9 by Mr. Meadows under color of the office of Chief of Staff. A jurisdictional dispute of this  
10 nature can take one of two forms: a “facial” attack or a “factual” attack. *Leite v. Crane Co.*,  
11 749 F.3d 1117, 1121 (9th Cir. 2014). A facial attack by the plaintiff accepts the truth of the  
12 removing defendant’s factual assertions but maintains that they are insufficient to establish  
13 federal jurisdiction. *Id.* In contrast, a factual attack contests the validity of the defendant’s  
14 factual assertions undergirding the notice of removal. *Id.* The standards governing  
15 resolution of these two different forms of opposition to removal under § 1442(a)(1) are  
16 similar to the standards governing an ordinary objection to subject-matter jurisdiction  
17 brought under Federal Rule of Civil Procedure 12(b)(1). *Id.* “Under that framework, where  
18 the moving party does not contest the removal notice’s factual allegations but instead  
19 asserts that those allegations are facially insufficient to invoke federal jurisdiction, we  
20 accept the notice’s factual allegations as true and draw all reasonable inferences in favor of  
21 the remover.” *Defiore*, 85 F.4th at 552. When the plaintiff’s “motion to remand raises a  
22 factual challenge by contesting the truth of the remover’s factual allegations, usually by  
23 introducing evidence outside the pleadings, however, the remover must support her  
24 jurisdictional allegations with competent proof under the same evidentiary standard that  
25 governs in the summary judgment context.” *Id.* at 552–53 (cleaned up) (internal quotation  
26 marks omitted). Thus, in a factual dispute, “[t]he remover ‘bears the burden of proving by  
27 a preponderance of the evidence that each of the requirements for subject-matter  
28 jurisdiction has been met.’” *Id.* at 553 (quoting *Leite*, 749 F.3d at 1121). The district court

1 resolves such factual disputes from the bench, except when the dispute is intertwined with  
2 the merits of the case. *See id.*

3 At the evidentiary hearing, the Court asked both parties' counsel whether this case  
4 presents a facial or a factual dispute. The State answered that it has raised a factual dispute  
5 to Mr. Meadows's Notice of Removal, but Mr. Meadows disagreed and instead asserted  
6 that the disagreement here is facial in nature. The Court agrees with the State on this point.

7 In its indictment, the State alleges that Mr. Meadows communicated with several  
8 Republican operatives both inside and outside Arizona in furtherance of the "scheme" to  
9 overturn the results of the 2020 election. Mr. Meadows incorporates these facts in his  
10 Notice of Removal. Indeed, rather than make any additional or alternative factual assertions  
11 to support his invocation of federal jurisdiction, Mr. Meadows simply quotes the State's  
12 indictment verbatim. (Notice of Removal at 4–6.) In particular, Mr. Meadows quotes the  
13 State's allegations that: Mr. Meadows "confided" to a White House staff member that  
14 Trump had lost the election but that Mr. Meadows nevertheless wanted to continue  
15 "fighting the election results" in order to "pull this off" for Trump; that Mr. Meadows  
16 received texts from Kelli Ward (the chair of the Arizona Republican party and one of the  
17 alleged "fake electors") indicating that Ward felt that the Trump campaign's lawyers in  
18 Arizona were "afraid of being blackballed by the left" and were engaging in "a total cop  
19 out"; that Rudy Giuliani, Ward and others contacted Mr. Meadows regarding overtures  
20 they had made to the Maricopa County Board of Supervisors, including one such call from  
21 President Trump to Clint Hickman, the chairman of the board of supervisors; and that the  
22 Secretary of Energy, President Trump's son, an Arizona Congressional representative, and  
23 several others contacted Mr. Meadows with an "aggressive strategy" involving various  
24 Republican-controlled state legislatures rejecting their states' votes and instead opting to  
25 send their own slate of electors to the electoral college, to which Mr. Meadows responded  
26 "I love it." (Notice of Removal at 4–6.)

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28

1 In its Response and at the evidentiary hearing, the State introduced additional  
2 evidence relating to the prosecution that:<sup>4</sup> Mr. Meadows messaged an individual in Georgia  
3 instructing him to explain to a second individual how the Republican elector strategy was  
4 to unfold; that, after receiving complaints from Ward that their attorneys were freezing her  
5 out, Mr. Meadows responded that he “will push them,” which he promptly did; that  
6 Matt Schlapp (a lobbyist and chairman of the American Conservative Union) contacted  
7 Mr. Meadows requesting an allocation of campaign funding to Nevada, a leader on the  
8 ground, and twenty people to undertake the on-the-ground work, to which Mr. Meadows  
9 responded “[m]oney has been allocated for Nevada. Tell me what you need. Just spoke to  
10 Ronna [the chair of the Republican National Committee]”; that Mr. Meadows procured  
11 Governor Ducey’s phone number so that Giuliani could reach him “about the election  
12 results in Arizona”; that Mr. Meadows wrote to a senior Trump campaign official that  
13 “[w]e just need to have someone coordinating the electors for states”; that Mr. Meadows,  
14 in response to a text from Senator Mike Lee regarding the alleged fake-electors scheme,  
15 responded “I am working on that as of yesterday”; that Mr. Meadows, in response to a  
16 suggestion that Trump electors meet at state capitols to cast their votes, responded “[w]e  
17 are”; and that Mr. Meadows texted Congressman Jim Jordan regarding the plan to have  
18 Vice President Pence embrace the fake electors, “I have pushed for this. Not sure it is going  
19 to happen.” (Response at 13–14; Doc. 15.)

20 Not only has Mr. Meadows not disputed any of the foregoing facts, but he has  
21 necessarily relied upon them. Were it otherwise, Mr. Meadows’s Notice of Removal would  
22 not contain any factual allegations supporting federal jurisdiction. Mr. Meadows asserts  
23 that the State’s facts satisfy the jurisdictional requirements of § 1442(a)(1) because the

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25 <sup>4</sup> Mr. Meadows asserts that the State is impermissibly “sand-bag[ging]” him by  
26 introducing factual allegations outside the indictment in order to illuminate the nature of  
27 its prosecution. (Reply at 6.) Notably, however, Mr. Meadows does not dispute these  
28 factual allegations, nor does he offer contradictory factual allegations. In any event, parties  
in a jurisdictional dispute such as this are permitted to “introduce[] evidence outside the  
pleadings.” *See Defiore*, 85 F.4th at 552–53. Indeed, it would be odd for § 1455(b)(5) to  
require an evidentiary hearing—a hearing which Mr. Meadows expressly requested,  
(Notice of Removal at 3, 8–11)—if contemplation of evidence outside the indictment  
constituted sandbagging.

1 facts alleged by the State consist of, or at least relate to, acts taken under color of  
2 Mr. Meadows’s federal office. In other words, this is not a case in which opposing parties  
3 offer competing facts; rather, it is a case in which the parties offer competing  
4 *characterizations* of identical facts. Thus, for the limited purpose of this jurisdictional  
5 adjudication, the State and Mr. Meadows do not disagree as to *what* occurred, but instead  
6 disagree as to *whether* what occurred pertained to Mr. Meadows’s official duties as Chief  
7 of Staff. The dispute, therefore, turns upon the scope of a Chief of Staff’s official authority  
8 and whether the charged conduct arguably falls within that scope of authority. In the Ninth  
9 Circuit, “the scope and content of a [public employee’s] job responsibilities is a question  
10 of fact.” *Dahlia v. Rodriguez*, 735 F.3d 1060, 1073 n.12 (9th Cir. 2013) (en banc) (quoting  
11 *Posey v. Lake Pend Oreille Sch. Dist. No. 84*, 546 F.3d 1121, 1130 (9th Cir. 2008)) (noting  
12 the existence of a circuit split on the issue of whether the scope of official duties presents  
13 a question of fact or law).<sup>5</sup> Therefore, because the contours of a Chief of Staff’s “color of  
14 office” presents a question of fact, the Court concludes that the State’s opposition to  
15 removal jurisdiction in this case constitutes a factual attack. Accordingly, Mr. Meadows,  
16 as the removing party, bears the burden of proving by a preponderance of the evidence that  
17 each of the jurisdictional requirements have been met. *See Defiore*, 85 F.4th at 553.  
18 However, the Court’s placement of the burden of proof is immaterial because  
19 Mr. Meadows would not prevail under any standard.

20 Mr. Meadows frames the Chief of Staff’s role as essentially the gatekeeper who  
21 controls access to the President, the “filter for the President’s time and attention,” (Notice  
22 of Removal at 2), and the key official in charge of “facilitating communication to and from  
23 the President,” (Reply at 3–4). Although Mr. Meadows has adduced no evidence beyond  
24 his own say-so supporting his description of the Chief of Staff’s official authority, the State

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26 <sup>5</sup> In concluding that the scope and content of a public employee’s job responsibilities  
27 is a question of fact, *Dahlia* and related cases examined the issue in the context of § 1983  
28 First Amendment retaliation claims brought by public employees against their employers.  
*See* 735 F.3d at 1063, 1072. Although that scenario is distinct from the factual situation  
here, the Court finds the circumstances to be sufficiently analogous such that the holding  
in *Dahlia* is persuasive, particularly in light of the apparent dearth of positive law defining  
the role of a President’s Chief of Staff.

1 has not offered a competing construction. Therefore, the Court credits Mr. Meadows’s  
2 assertion regarding the Chief of Staff’s scope of office. However, this conclusion is  
3 unavailing to Mr. Meadows because his vision of the Chief of Staff’s color of office does  
4 not correspond to the facts of this case. In arguing that the charged conduct falls under  
5 color of his former federal office, Mr. Meadows contends that the State has done no more  
6 than allege that he “received (and occasionally responded to) messages from people who  
7 were trying to get ideas in front of President Trump or seeking to inform Mr. Meadows  
8 about the strategy and status of various legal efforts by the President’s campaign.” (Notice  
9 of Removal at 2.) Mr. Meadows asserts that “[t]he senders were seeking to get their  
10 message to the President through Mr. Meadows, to persuade the President’s closest senior  
11 advisor, or simply to keep Mr. Meadows apprised of what was happening.” (Notice of  
12 Removal at 7.) And, according to Mr. Meadows, “fielding that sort of incoming [sic] from  
13 people who want the President’s attention or to influence his decision-making is squarely  
14 within the Chief of Staff’s responsibilities.” (Notice of Removal at 7.) Thus,  
15 Mr. Meadows’s core contention, and the object of the State’s jurisdictional attack, is “that  
16 his charged conduct—essentially, facilitating communication to and from the President  
17 related to the 2020 Election—was within the scope of his official duties.” (Reply at 3–4.)

18 Mr. Meadows has not so much removed the State’s indictment as rewritten it.  
19 Contrary to Mr. Meadows’s assertions, the State has not indicted Mr. Meadows for merely  
20 facilitating communication to and from the President or for simply staying abreast of  
21 campaign goings-on. Instead, the State has indicted Mr. Meadows for allegedly  
22 *orchestrating* and *participating* in an illegal electioneering scheme. Few, if any, of the  
23 State’s factual allegations even resemble the secretarial duties that Mr. Meadows maintains  
24 are the subject of the indictment. None of the factual allegations at issue here mention  
25 management of the President’s time or facilitation of communication to and from the  
26 President, much less that any such time management or communication facilitation  
27 constitutes the charged conduct in this case. Similarly, contrary to Mr. Meadows’s  
28 reframing of the indictment, he is not being prosecuted for receiving text messages

1 intended to simply keep him “apprised of what was happening” with the Trump campaign.  
2 As already noted, the indictment has charged Mr. Meadows with “coordinat[ing] and  
3 implement[ing] the false Republican electors’ votes in Arizona,” not merely staying  
4 informed of the alleged scheme. (Indictment at 21.) To allow Mr. Meadows to  
5 recharacterize the State’s indictment at the level of generality that he seeks to do would be  
6 to vitiate both the federal officer removal statute and the Supreme Court precedent  
7 interpreting that statute, as *every* criminal prosecution of a federal officer will in some  
8 vague sense involve that officer’s staying “apprised of what is happening.” Federal  
9 jurisdiction cannot turn upon amorphous generalities that will be present in all instances.  
10 Moreover, regardless of the extent to which any individual factual allegation might  
11 tenuously relate to Mr. Meadows’s official duty to facilitate communication to and from  
12 the President, the Court agrees with the Eleventh Circuit’s conclusion that “an accused’s  
13 removal theory must accord with a claim—a *criminal charge*—brought against him.”  
14 *Meadows*, 88 F.4th at 1344. Therefore, it is the “heart of the indictment” that matters. *Id.*  
15 “To allow Meadows to remove the action if any single allegation in the indictment related  
16 to his official duties would run contrary to both the removal statute and precedent.” *Id.* at  
17 1345.

18 Thus, Mr. Meadows’s legal contention that Supreme Court caselaw requires this  
19 Court to “credit [Mr. Meadows’s] theory of the case” rings hollow. (*See* Reply at 4 (quoting  
20 *Acker*, 527 U.S. at 432).) The Court rejects removal here not because there is a problem  
21 with Mr. Meadows’s “theory of the case,” but instead because there is a fundamental  
22 misalignment between Mr. Meadows’s legal theory and the facts undergirding the State’s  
23 prosecution.<sup>6</sup> In past cases, the Supreme Court has upheld removal where “the federal  
24 officer’s ‘relationship to [the plaintiff] derived solely from their official duties.’” *See*  
25 *Osborn v. Haley*, 549 U.S. 225, 249 (2007) (quoting *Willingham v. Morgan*, 395 U.S. 402,

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26 <sup>6</sup> To be clear, in apparent contrast to his argument before the Eleventh Circuit, Mr.  
27 Meadows does not contend that the Chief of Staff bears any responsibility for the  
28 supervision of state elections. *Cf. Meadows*, 88 F.4th at 1346. The Court therefore does not  
address the Elections Clause, the Take Care clause, or any other source of potential state-  
election authority for federal officers.

1 409 (1969)). Here, however, the State’s charged conduct is unrelated to Mr. Meadows’s  
 2 official duties. Although the Court credits Mr. Meadows’s theory that the Chief of Staff is  
 3 responsible for acting as the President’s gatekeeper, that conclusion does not create a causal  
 4 nexus between Mr. Meadows’s official authority and the charged conduct.<sup>7</sup> Therefore,  
 5 because the Court concludes that the conduct charged in the State’s prosecution does not  
 6 relate to Mr. Meadows’s color of former office, the Court must remand this case to state  
 7 court for want of subject-matter jurisdiction.

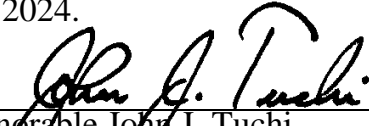
8 For the reasons set forth above,

9 **IT IS ORDERED** declining to assume jurisdiction over the State of Arizona’s  
 10 criminal prosecution of Mr. Meadows under 28 U.S.C. §§ 1442 and 1455.

11 **IT IS FURTHER ORDERED** discharging the Notice of Removal (Doc. 1) and  
 12 remanding this matter to the Superior Court of Arizona in and for Maricopa County.

13 **IT IS FURTHER ORDERED** directing the Clerk of Court to terminate this matter.

14 Dated this 16th day of September, 2024.

15   
 16 \_\_\_\_\_  
 17 Honorable John J. Tuchi  
 18 United States District Judge

19  
 20  
 21  
 22 <sup>7</sup> One minor contention in Mr. Meadows’s Reply is emblematic of this point. Mr.  
 23 Meadows asserts that Special Counsel Jack Smith alleged in a separate case that “Mr.  
 24 Meadows participated because, as ‘Chief of Staff, . . . [he] sometimes handled private and  
 25 Campaign-related logistics for [the President].’” (Reply at 5 (quoting Superseding  
 26 Indictment at 13 ¶ 33, *United States v. Trump*, (No. 23-cr-257 ECF No. 226)).) That  
 27 representation, made by way of artful alteration of the Special Counsel’s wording, is not  
 28 accurate. The Special Counsel did not allege that Mr. Meadows handled private or  
 campaign-related affairs *as Chief of Staff*. Instead, the Special Counsel simply noted that  
 “the Defendant [President Trump], his Chief of Staff—who sometimes handled private and  
 Campaign-related logistics for the Defendant—and private attorneys . . . called the  
 Secretary of State.” Superseding Indictment at 13 ¶ 33. In other words, the Special Counsel  
 merely alleged that Mr. Meadows, who happened to occupy the office of Chief of Staff,  
 undertook certain private actions. The Special Counsel did not insinuate that all actions  
 taken by Mr. Meadows during his tenure as Chief of Staff are *ipso facto* official actions  
 under color of office.

**DEBRA D. LUCAS**  
District Court Executive/Clerk of Court  
Sandra Day O'Connor U. S. Courthouse  
Suite 130  
401 West Washington Street, SPC 1  
Phoenix, Arizona 85003-2118

**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA  
OFFICE OF THE CLERK**

**LENORE BENOIT**  
Chief Deputy Clerk  
Evo A. Deconcini U.S. Courthouse  
405 W. Congress, Suite 1500  
Tucson, Arizona 85701-5010



September 16, 2024

Clerk's Office  
Maricopa County Superior Court  
175 W Madison St 12<sup>th</sup> Floor  
Phoenix, AZ 85003

**ATTN: Criminal File Counter**

**RE: REMAND TO MARICOPA COUNTY SUPERIOR COURT**

**District Court Case Number: CV-24-02063-PHX-JJT**

**Superior Court Case Numbers: CR-24-01285-PHX-JJT**

Dear Clerk of Court:

Enclosed is a certified copy of the Order entered in this Court on September 16, 2024, remanding the above case to Maricopa County Superior Court in the State of Arizona.

Sincerely,

Debra D. Lucas, DCE/Clerk of Court

s/E. Aragon  
\_\_\_\_\_  
Deputy Clerk

cc: All Counsel of Record

**PLEASE ACKNOWLEDGE RECEIPT OF THIS DOCUMENT AND RETURN IN THE ENVELOPE PROVIDED**

Received By: \_\_\_\_\_ Dated: \_\_\_\_\_