IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS DIVISION

DARREN BAILEY,

Plaintiff,

v.

GOVERNOR JB PRITZKER, in his official capacity,

Defendant.

No. 3:20-cv-00474-GCS

Magistrate Judge Gilbert C. Sison

GOVERNOR'S SUR-REPLY TO BAILEY'S REPLY

Bailey's reply, like his many filings since removal (ECF 7, 8, 9, 16, 18, 25, 27), still does not confront the primary basis for removal here—the plain text of 28 U.S.C. § 1343(a)(3), which grants federal courts "original jurisdiction of *any civil action authorized by law* . . . [t]o redress the deprivation, under color of any State law… of any right, privilege or immunity secured by the Constitution of the United States." 28 U.S.C. § 1343(a)(3) (emphasis added). Instead, Bailey continues to maintain, without citing authority, that the Court should evaluate its jurisdiction solely under the standard set by § 1331. (ECF 25 ("Reply") at 2, 3, 7–8, 9–10.) But § 1331 is not at issue here.

And rather than unequivocally disclaim and remove his allegations pertaining to rights secured by the U.S. Constitution (ECF 24 at 5 n.2), Bailey doubles down by stating: "Does Plaintiff claim [the Governor has] restrict[ed] his ability to travel, ability to associate with others, and practice his faith? He absolutely does . . . ." (Reply at 4.) This admission, coupled with the plain language of § 1343(a)(3), should end the inquiry.

Bailey's reply points to dicta in *Myles v. U.S.*, 416 F.3d 551 (7th Cir. 2005), to argue that § 1343(a)(3) was impliedly repealed through the removal of the amount-in-controversy

requirement from § 1331. (Reply at 2, 7–8, 9–10.) That argument ignores binding Supreme Court precedent rejecting repeals by implication. (ECF 24 at 20.)[1] Bailey also ignores that after *Myles*, the Seventh Circuit has accepted the ongoing vitality of § 1343(a)(3). *See, e.g., Canen v. Chapman*, 847 F.3d 407, 409 n.1 (7th Cir. 2017).

Bailey then insists that "the only plausible explanation" for the outcome in *Spaulding v. Mingo Bd. Of Educ.*, 897 F. Supp. 284 (S.D.W. Va. 1995), is that the court "found 'embedded' federal claims that conferred jurisdiction," an approach Bailey asserts was invalidated in *Grable v. Darue*, 545 U.S. 308 (2005). (Reply at 9.) Bailey is wrong for two reasons. First, the "explanation" for *Spaulding* is in the *Spaulding* opinion itself, not in a strawman created by Bailey: federal "original jurisdiction [exists] pursuant to 28 U.S.C. 1343(a)(3)" where a party has "alleged a deprivation under color of state laws, statutes, and regulations of rights secured under the Constitution of the United States," whether or not that party brings claims that arise under federal law. 897 F. Supp. at 289.

Second, Bailey misdescribes the ruling in *Grable*. (Reply at 9.) *Grable* focused on the meaning of a specific phrase in 28 U.S.C. § 1331: "arising under the Constitution, laws, or treaties of the United States," 545 U.S. at 312, and then addressed when a court may accept jurisdiction of state-law claims under § 1331. *Grable* does not mention § 1343(a)(3). Thus, *Grable* does not affect *Spaulding*'s analysis or the scope of jurisdiction under § 1343(a)(3). As discussed in the Governor's opposition to remand, § 1343(a)(3) is not limited to claims "arising

[1] Bailey's implied repeal argument fails for another reason: § 1343(a)(3) was enacted before § 1331. (ECF 24 at 8.) When Congress enacted § 1343(a)(3) it could not have known that "federal question" jurisdiction would ever be authorized with or without an amount in controversy requirement. The creation of federal question jurisdiction with an amount-in-controversy requirement, and the subsequent elimination of that requirement, thus did not affect the scope of § 1343(a)(3), which is plainly not "subsumed" into § 1331. (Reply at 8.) Section 1343(a)(3) is an independent jurisdictional grant that stands on its own, unrelated to § 1331.

under" federal law. Because Congress has shown that it can limit jurisdiction using "arising under" language when it wishes to, Congress' decision to extend § 1343(a)(3) to "any civil action authorized by law" must be respected. (ECF 24 at 7–10.)[2]

Finally, Bailey tries to evade the decision in *Rodriguez v. Comas*, 888 F.2d 899 (1st Cir. 1989), by claiming that there "the plaintiff specifically stated a cause of action under [§] 1983." (Reply at 10.) Bailey misreads the case. While one plaintiff, Jose Rodriguez, asserted a § 1983 claim, the portion of the ruling cited by the Governor concerns state-law claims for "emotional distress" brought by his wife, *Irma* Rodriguez. *Rodriguez*, 888 F.2d at 903. The Court ruled that the trial court properly exercised jurisdiction over Irma's state-law emotional distress claims because § 1343(a)(3) is "a broadly worded jurisdictional grant," and "is open-ended—applying to any person and over *any civil action*." *Id.* at 906 (emphasis added). Thus, *Rodriguez* shows that § 1343(a)(3) means exactly what it says—it is an independent basis for federal jurisdiction that is apart from, and can apply to a broader range of claims than, § 1331.

As he has freely admitted, and despite his attempts to evade federal jurisdiction through artful pleading, Bailey seeks redress for alleged constitutional deprivations under color of state law. Based on the plain text of § 1343(a)(3) the Court has jurisdiction of this case. Bailey's motion to remand should be denied.

Dated: June 15, 2020

Respectfully Submitted,

KWAME RAOUL
Attorney General of Illinois

/s/ Thomas J. Verticchio

[2] Bailey's reliance on *Merrell Dow v. Thompson*, 478 U.S. 804 (1986), and *Caterpillar v. Williams*, 482 U.S. 386 (1987), is similarly misplaced. (Reply at 3.) Both cases concern § 1331 "arising under" jurisdiction; neither decision mentions § 1343(a)(3).

R. Douglas Rees #6201825
Christopher G. Wells #6304265
Darren Kinkead #6304847
Isaac Freilich Jones #6323915
Office of the Illinois Attorney General
100 West Randolph Street
Chicago, Illinois 60601

Thomas J. Verticchio #6190501
Assistant Chief Deputy Attorney General
Office of the Illinois Attorney General
100 West Randolph Street, 11th Floor
Chicago, Illinois 60601
(312) 814-3000
tverticchio@atg.state.il.us

Laura K. Bautista #6289023
Office of the Illinois Attorney General
500 South Second Street
Springfield, Illinois 62701

CERTIFICATE OF SERVICE

The undersigned certifies that on June 15, 2020, he caused a true and correct copy of the foregoing to be served by electronic filing in the CM/ECF system on the following:

Steven M. Wallace
SILVER LAKE GROUP, LTD. – GLEN CARBON
6 Ginger Creek Village Drive
Glen Carbon, IL 62034
Tel.: 618-692-5275
Fax: (888) 519-6101
steve@silverlakelaw.com

By: */s/ Thomas J. Verticchio*