

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

FILED

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CLERK OF DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

GRASSROOTS LEADERSHIP, INC.,  
Plaintiff,

BY 

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-vs-

Case No. A-15-CA-945-SS

TEXAS DEPARTMENT OF FAMILY AND  
PROTECTIVE SERVICES, CHRIS TRAYLOR,  
and TREVOR WOODRUFF,  
Defendants.

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**ORDER**

BE IT REMEMBERED on the 30th day of October 2015, the Court held a hearing in the above-styled cause on Defendant Texas Department of Family and Protective Services (DFPS)'s Notice of Removal [#1], Plaintiff Grassroots Leadership, Inc. (Grassroots)'s Opposed Motion to Remand to State Court and Request for Expedited Consideration and Attorney Fees [#5], DFPS's Amended Notice of Removal [#6], Grassroots's Supplement to its Opposed Motion For Remand and Expedited Consideration [#7], and DFPS's Response [#10] thereto. All parties appeared by and through counsel. Having reviewed the documents, the governing law, the testimony at the hearing, and the file as a whole, the Court now enters the following opinion and orders.

**Background**

This suit involves an agency's alleged failure to follow proper notice-and-comment procedures. In March of 2007, DFPS exempted private companies operating immigrant family detention facilities for the federal government from state licensure requirements. In July of 2015, the Central District of California held the federal government is bound by a 1997 settlement agreement

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which requires, among other things, that minors be detained in non-secured, state-licensed facilities. *See Flores v. Johnson*, CV 85-4544 DMG (C.D. Cal. July 24, 2015). Following this ruling, DFPS enacted an emergency rule to license private companies operating immigrant family detention facilities near Dilley and Karnes City, Texas. 40 TEX. ADMIN. CODE § 748.7 (2015) (Tex. Dep’t of Family and Protective Serv., Minimum Standards for General Residential Operations). This rule became effective on September 2, 2015. *Id.*

On September 20, 2015, Grassroots filed this lawsuit in state court, seeking declaratory and injunctive relief under Texas Government Code § 2001.038 and Texas Civil Practice and Remedies Code §§ 37.009 and 65.011. Notice Removal [#1] Ex. 1 (Orig. Pet.) ¶¶ 7, 8, 16. Grassroots argues DFPS erroneously relied on its emergency rulemaking authority to bypass public notice and comment when in fact there was no “imminent peril to the public health, safety, or welfare” justifying the rule’s emergency adoption. *See* TEX. GOV’T CODE § 2001.034.

On October 12, 2015, the parties entered into an agreement under Rule 11 of the Texas Rules of Civil Procedure prohibiting DFPS from issuing licenses to immigrant family detention facilities until after October 23, 2015. Mot. Remand [#5] Ex. 1 at 1. The hearing on Grassroots’s application for a temporary injunction was also set for October 23, 2015. *Id.* Ex. 2 at 1. On October 22nd—the day before the parties’ Rule 11 Agreement expired—DFPS removed this case on the alleged basis of federal question jurisdiction. *See* Notice Removal [#1]. Grassroots now moves to remand the case to state court. *See* Mot. Remand [#5].

## Analysis

### I. Legal Standard

“[T]he burden of establishing federal jurisdiction is placed upon the party seeking removal.” *Willy v. Coastal Corp.*, 855 F.2d 1160, 1164 (5th Cir. 1988). Moreover, because removal jurisdiction

raises significant federalism concerns, courts must strictly construe removal jurisdiction. *Id.* District courts have federal question jurisdiction over “all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331.

## **II. Application**

DFPS alleges federal question jurisdiction exists based on the *Flores* case, where a federal district court in California held federal detention facilities housing minor detainees with their mothers must be state-licensed. As best the Court can tell from DFPS’s muddled arguments, DFPS asserts Grassroots’s state-law claim depends on the Court’s interpretation of *Flores* in order to establish there was no imminent peril justifying DFPS’s emergency rulemaking. According to DFPS, then, Grassroots’s complaint confers jurisdiction because *Flores* constitutes a substantial, disputed issue of federal law. *See Grable & Sons Metal Prods., Inc. v. Darue Eng’g & Mfg.*, 545 U.S. 308, 314 (2005). However, the outcome of the *Flores* case has no effect on a court’s determination of whether a state agency promulgated a state regulation in violation of a state statute. Accordingly, DFPS has failed to show Grassroots’s claim arises under federal law.

Finally, in defending against Grassroots’s motion for attorney’s fees, DFPS maintains the timing of its removal—one day before Grassroots’s temporary injunction application was to be heard in state court—was objectively reasonable, because it believed participating in further state court proceedings would waive its right to remove. Although the Court grants Grassroots’s motion to remand, it DENIES Grassroots’s request for attorney’s fees because DFPS had objectively reasonable grounds to believe removal was proper.

## **Conclusion**

In this suit, Grassroots is not seeking an interpretation of federal law nor are the remedies it seeks available under federal law. Indeed, Grassroots indicated as much in its complaint, stating

“[n]o federal law is at issue in any part of this lawsuit, which exclusively concerns whether a Texas agency has respected Texas statutes in adopting a Texas regulation.” Orig. Pet. ¶ 9. Given Grassroots’s exclusive reliance on state law, DFPS has failed to carry its burden in establishing federal question jurisdiction. *See Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987) (“The [well-pleaded complaint] rule makes the plaintiff the master of the claim; he or she may avoid federal jurisdiction by exclusive reliance on state law.”).

Accordingly,

IT IS ORDERED that Plaintiff Grassroots’s Opposed Motion to Remand to State Court and Request for Expedited Consideration and Attorney Fees [#5] is GRANTED in part and DENIED in part;

IT IS FURTHER ORDERED that this case is REMANDED to the 353rd Judicial District Court of Travis County, Texas, where it originated as Cause Number D-1-GN-15-004336;

IT IS FINALLY ORDERED that the Clerk of Court shall provide the Travis County District Court with a certified copy of this order.

SIGNED this the 2<sup>nd</sup> day of November 2015.

  
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SAM SPARKS  
UNITED STATES DISTRICT JUDGE