UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

STATE OF MICHIGAN,

Plaintiff,

v.

AMY FACCHINELLO,

Defendant.
_____/

CASE No. 1:23-CV-959

HON. ROBERT J. JONKER

OPINION AND ORDER

INTRODUCTION

The matter is before the Court on Defendant Amy Facchinello's Notice of Removal of State Court Action to Federal Court. (ECF No. 1). Defendant seeks to remove a state criminal proceeding from Ingham County District Court to this Court under the federal officer removal statute, 28 U.S.C. § 1442(a)(1). After careful review of all matters of record, the Court concludes that Defendant has not demonstrated she meets the requirements of the statutory provision and REMANDS the matter back to the Ingham County District Court.

BACKGROUND

In August 2020, Defendant Facchinello was nominated as a presidential elector in the State of Michigan for the Republican presidential nominee in the 2020 presidential election. (ECF No. 1, PageID.3). The general election was held on November 3, 2020. On November 23, 2020, Michigan certified that the Democratic presidential nominee won Michigan's presidential election. (*Id.*).

Litigation ensued, and on December 14, 2020, Defendant, and all the other Republican-nominated presidential electors,[1] met at the Lansing State Capitol to cast what Defendant calls an "alternate slate" of presidential elector ballots in favor of the Republican presidential nominee. (*Id.* at PageID.4-5). Ultimately the votes of Michigan's Democratic-nominated presidential electors' votes were counted, and nothing from the "alternate slate" was.

On July 18, 2023, the State of Michigan charged each of the Republican-nominated presidential electors, including Defendant Facchinello, with eight crimes. Defendant is charged with conspiracy to commit forgery (Count 1); two counts of forgery (Counts 2 and 3); conspiracy to commit uttering and publishing (Count 4); uttering and publishing (Count 5); conspiracy to commit election law forgery (Count 6); and two counts of election law forgery (Counts 7 and 8). (ECF No. 1-1).

On September 11, 2023, Defendant Facchinello filed the Notice of Removal of State Court Action to Federal Court. (ECF No. 1). Defendant's Notice invokes the removal statute at 28 U.S.C. § 1455, and specifically federal officer jurisdiction under 28 U.S.C. § 1442(a)(1). The Court entered a briefing order on September 15, 2023, and the State of Michigan (ECF No. 6) and Defendant Facchinello (ECF No. 7) have both responded.

[1] Defendant Facchinello refers to herself and the other signatories of the documents at issue in this case as "contingent Presidential Electors." (ECF No. 1, PageID.13). The State of Michigan's brief refers to these individuals as "elector candidates" (ECF No. 6, PageID.268), though elsewhere the State has referred to them as "false electors." *See, e.g.*, Michigan Department of Attorney General, Michigan Attorney General Dana Nessel Charges 16 'False Electors' with Election Law and Forgery Felonies (July 18, 2023), https://www.michigan.gov/ag/news/press-releases/2023/07/18/michigan-attorney-general-dana-nessel-charges-16-false-electors. The Court will use the term "Republican-nominated presidential electors" to describe Defendant and the other individuals that attended the December 14, 2020, meeting, a term that has been used by another court to refer to other individuals charged with violating Georgia's election law for engaging in similar conduct. *See* Order, *Georgia v. Shafer*, No. 1:23-cv-3720 (Dkt. 27, Pg. 3) (N.D. Ga. Sept. 29, 2023).

LEGAL STANDARDS

"Under our federal system, '[i]t goes without saying that preventing and dealing with crime is much more the business of the States than it is of the Federal Government.'" *Arizona v. Manypenny*, 451 U.S. 232, 243 (1981) (quoting *Patterson v. New York*, 432 U.S. 197, 201 (1977)). Thus, there is a "strong judicial policy against federal interference with state criminal proceedings." *Id.* (quoting *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 600 (1975)). In certain limited circumstances, however, a federal court may hear a criminal case originally brought in State court. The statute governing the procedure for removal of criminal prosecutions, 28 U.S.C. § 1455, sets out the procedural requirements for an exception to the "strong judicial policy."

Under 28 U.S.C. § 1455, a defendant who desires to remove a criminal prosecution from State court must file a notice of removal "containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant . . . in such action." 28 U.S.C. § 1455(a). "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 . . . leave to file the notice at a later time." *Id.* at § 1455(b)(1). The filing of a notice of removal of a state criminal case does "not prevent the State court in which such prosecution is pending from proceeding further." *Id.* at § 1455(b)(3). The United States district court in which the notice of removal is filed must examine the notice promptly. *Id.* at § 1455(b)(4). "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." *Id.*

Defendant Facchinello appears to have complied with all the procedural requirements Section 1455 establishes. But even so, that section "provides only a procedural mechanism for

removing a criminal case from state court and remanding the case back to state court; it does not provide any substantive grounds for removing criminal cases to federal court." *Noble v. Wayne County Prosecutor's Office*, No. 14-11033, 2014 WL 1515788, at *1 (E.D. Mich. Apr. 18, 2014). Accordingly, a defendant seeking to remove a criminal matter must identify another provision affording a substantive right to removal. *See Kruebbe v. Beevers*, 692 F. App'x 173, 176 (5th Cir. 2017). The removing party bears the burden of demonstrating he or she meets the requirements of a provision providing for removal. *See New York v. Trump*, No. 23 CIV. 3773 (AKH), 2023 WL 4614689, at *5 (S.D.N.Y. July 19, 2023) (citing *United Food & Comm. Workers Union v. CenterMark Props. Meriden Square, Inc.*, 30 F.3d 298, 301 (2d Cir. 1994); *Ehrenspeck v. Spear, Leeds & Kellogg*, 389 F. Supp. 2d 485, 488 (S.D.N.Y. 2005)).

In this case, Defendant Facchinello identifies the federal officer removal statute, 28 U.S.C.§ 1442(a)(1), as providing the basis for removal. The statute states:

> (a) 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.

Id.

Accordingly, to avail herself of the federal officer removal statute, Defendant Facchinello must establish either that she was a federal officer or acted under a federal officer. The "acting under" prong requires a showing of three elements: 1) Defendant acted under a federal officer; 2)

those actions were performed under color of federal office, and 3) the existence of a colorable federal defense. *Id.*; *Mays v. City of Flint*, 871 F.3d 437, 442 (6th Cir. 2017).[2] Defendant claims that she was a federal officer because of "her service as a Presidential Elector nominee acting under the authority of the Constitution and the Electoral Count Act ("ECA"), 3 U.S.C. §, *et seq.*, and at the direction of the President and other federal officers" (ECF No. 1, PageID.2) and thus may properly remove the state action to this Court.

DISCUSSION

The Court concludes that Defendant Facchinello has not met her burden of demonstrating federal officer jurisdiction applies to this action. Defendant Facchinello was not a federal officer when she acted as a Republican-nominated presidential elector, and she did not act under a federal officer when taking part in the events that allegedly violated Michigan criminal law.

A. Defendant Facchinello Was Not Acting as a Federal Officer Herself

Defendant Facchinello first claims that she was acting as a federal officer herself as a Republican-nominated presidential elector. But presidential electors themselves are not federal officers. Moreover, Defendant Facchinello never became an actual presidential elector anyway.

[2] It is unclear whether a defendant must be a current federal officer or acting under a current officer at the time of removal to successfully invoke the federal officer removal statute. At least one court has concluded, albeit with scant analysis, that a defendant need not be a current federal officer. *New York v. Trump*, No. 23 CIV. 3773 (AKH), 2023 WL 4614689, at *5 (S.D.N.Y. July 19, 2023). But one circuit court of appeals appears to believe it is at least an open question. *See* Order of the Court, *Georgia v. Meadows*, No. 23-12958 (11th Cir. Sept. 12, 2023) (Doc. 7-1) (ordering briefing on whether Section 1442(a)(1) permits former federal officers to remove state actions to federal court). The history of the statute suggests that the intent was to prevent State interference in ongoing federal operations, a concern that is diminished when a defendant is no longer an agent of the federal government. Nevertheless, the Court assumes, without deciding, that Defendant Facchinello may seek removal of this action from State court even though she is not, and does not claim to be, a current federal officer.

To begin, presidential electors are not federal officers. "A number of considerations, including the text of the Electors Clause, the Supreme Court's prior statements, in dicta, on presidential electors, and the general purpose of the federal officer statute (in the light of presidential electors' role), all support this conclusion." Order, *Georgia v. Shafer*, No. 1:23-cv-3720-SCJ (Dkt. 27, Pg. 12) (N.D. Ga. Sept. 29, 2023).

1. The Electors Clause

The Electors Clause of the United States Constitution states:

> Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

U.S. Const. art. II, § 1, cl. 2. The plain text indicates that electors are appointed by the States. Moreover, the clause expressly precludes a State from appointing a "Senator, or Representative, or Person holding an Office of Trust or Profit under the United States" as a presidential elector. *See* THE FEDERALIST NO. 68 (Alexander Hamilton) (noting that it was "peculiarly desirable to afford as little opportunity as possible to tumult and disorder" in presidential elections and that to guard against this the Constitution "excluded from eligibility . . . all those who from situation might be suspected of too great devotion to the President in office. No senator, representative, or other person holding a place of trust or profit under the United States, can be of the numbers of the electors."). Electors appointed by a State and constitutionally barred from "holding an office of trust or profit under the United States" cannot possibly be federal officers for purposes of federal officer removal.

2. Supreme Court Decisions

Statements from the Supreme Court, stemming from its decision in *Fitzgerald v. Green*, 134 U.S. 377, 379 (1890), support this conclusion. In *Green*, the Court stated:

> The only rights and duties, expressly vested by the constitution in the national government, with regard to the appointment or the votes of presidential electors, are by those provisions which authorize congress to determine the time of choosing the electors, and the day on which they shall give their votes, and which direct that the certificates of their votes shall be opened by the president of the senate in the presence of the two houses of congress, and the votes shall then be counted. Const. art. 2, § 1; Amend. art. 12. The sole function of the presidential electors is to cast, certify, and transmit the vote of the state for president and vice-president of the nation. *Although the electors are appointed and act under and pursuant to the constitution of the United States, they are no more officers or agents of the United States than are the members of the state legislatures when acting as electors of federal senators, or the people of the states when acting as electors of representatives in congress*.

Id. (emphasis added). The Court reiterated the point in *Ray v. Blair*, 343 U.S. 214, 224 (1952): "The presidential electors exercise a federal function in balloting for President and Vice-President but they are not federal officers or agents any more than the state elector who votes for congressmen."

Defendant Facchinello says these statements are simply dicta and urges the Court to disregard them and rely instead on a broad interpretation of the federal function presidential electors perform, but these contentions are unavailing. It is true that the statements in *Green*, *Blair*, and others discussed in the briefing do not concern federal officer removal by presidential electors. But that is no reason to disregard the observations that are directly on point here. To the contrary, "[l]ower courts are 'obligated to follow Supreme Court dicta, particularly where there is not substantial reason for disregarding it, such as age or subsequent statements undermining its rationale.'" *American Civil Liberties Union of Kentucky v. McCreary Cnty., Ky.*, 607 F.3d 439,

447 (6th Cir. 2010) (quoting *United States v. Marlow*, 277 F.3d 581, 588 n.7 (6th Cir. 2002)). And here, Defendant Facchinello has not identified any reason to discount the Supreme Court's statements, especially where they are supported by the text of the Electors Clause. To be sure, presidential electors perform a federal function, but that in and of itself does not make someone a federal officer. The text of the Electors Clause, combined with the decisions from the Supreme Court, make clear that presidential electors are state, not federal, officers. As the Supreme Court observed in *Ray v. Blair*, even though electors perform a federal function, their authority derives from the States, not the federal government. *Blair*, 343 U.S. at 224-225. This is fatal to Defendant's arguments here.

The case of *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995) does not change matters. Defendant Facchinello uses the case to analogize presidential electors to Members of Congress. There can be no doubt, Defendant Facchinello suggests, that Members of Congress are federal officers. *See Thornton*, 514 U.S. at 803 ("[E]ach Member of Congress is 'an officer of the union, deriving his powers and qualifications from the constitution, and neither created by, dependent upon, nor controllable by, the states.'") (quoting 1 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 627 (3d ed. 1858)). And like Members of Congress, she says, presidential electors are created by the United States Constitution, elected by the States, and serve a federal role under federal authority. Yet, as another court examining a similar contention observed, there are meaningful differences between Members of Congress and presidential electors, as *Thornton* itself recognized:

> Presidential electors, by design, are not compensated by the federal Treasury, but are paid pursuant to state law. *See* U.S. Const. art. II, § 1, cl. 2 ("[N]o Senator, Representative, or other Person holding a . . . *Profit under the United States*, shall be appointed an Elector") (emphasis added) . . . . Moreover, in contrast to the Constitution's express qualifications for congress members, *Thornton*

> acknowledged that the States maintain vast amounts of control over the qualifications of their presidential electors. *Id.* at 804 (quoting U.S. Const. art. II, § 1, cl. 2); *see also* The Federalist No. 51 (Alexander Hamilton) ("To have submitted it to the legislative discretion of the States, would have been improper . . . for the [] reason that it would have rendered too dependent on the State governments that branch of the federal government which out to be depended on the people alone."). Thus, *Thornton* does not support finding presidential electors are federal officers.

Order, *Georgia v. Shafer*, No. 1:23-cv-3720-SCJ (Dkt. 27, Pg. 17-18) (N.D. Ga. Sept. 29, 2023) (internal footnotes omitted).

For this reason, the Court concludes that presidential electors are State, not federal, officers.

3. Purpose of the Statute

Finally, Defendant Facchinello contends her prosecution fits within the purpose of the federal officer removal statute based on the claimed hostility of the State Attorney General. This Court disagrees and concludes that the purpose of the removal statute cuts against defendant here.

"The federal officer removal statute has had a long history." *Willingham v. Morgan*, 395 U.S. 402, 405 (1969) (citing H.M. HART & H. WECHSLER, THE FEDERAL COURTS AND THE FEDERAL SYSTEM 1147-1150 (1953)). "It was part of an attempt to enforce an embargo on trade with England over the opposition of the New Englant [sic] States, where the War of 1812 was quite unpopular. It allowed federal officials involved in the enforcement of the customs statute to remove to the federal courts any suit or prosecution commenced because of any act done 'under colour' of the statute." *Id.* "Obviously, the removal provision was an attempt to protect federal officers from interference by hostile state courts." *Id.* This is because the "Federal Government 'can act only through its officers and agents, and they must act within the States. If, when thus acting and within the scope of their authority, those officers can be arrested and brought to trial in a State court, for an alleged offense against the law of the State, yet warranted by the Federal

authority they possess, and if the general government is powerless to interfere at once for their protection,—if their protection must be left to the action of the State court,—the operations of the general government may at any time be arrested at the will of one of its members.'" *Id.* at 406 (quoting *Tennessee v. Davis*, 100 U.S. 257, 263 (1880)). *See also Watson v. Phillip Morris Companies, Inc.*, 551 U.S. 142, 147-151 (2007) (tracing the history and precedent of the federal officer removal statute). To implement this purpose, the federal removal statute is "broad enough 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 406–07.

Presidential electors do not implicate the concerns that federal officer removal was designed to protect. The Electors Clause, rather, is an "express delegation[] of power to the States to act with respect to federal elections." *Thornton*, 514 U.S. at 805. And "[b]ecause the electors receive their authority from the states, finding presidential electors are federal officers would frustrate the purpose of the federal officer removal statute." Order, *Georgia v. Shafer*, No. 1:23-cv-3720-SCJ (Dkt. 27, Pg. 19) (N.D. Ga. Sept. 29, 2023). To the extent defendant claims that she has defenses based on alleged hostility by State officials, the alleged hostility does not stem from the electors' duty to enforce any federal law or policy and does not implicate the purpose of the Electors Clause.[3]

B. Defendant Facchinello Did Not Act Under a Federal Officer

[3] Moreover, Defendant Facchinello never even became a presidential elector. She was, at most, a Republican-nominated presidential elector or (as she puts it) a "contingent elector." This makes her claim one step removed from what an actual presidential elector does. So even if an actual presidential elector could reasonably claim federal officer status, it would require an extension of that theory to embrace defendant's claim as "contingent elector." And as this Court has just ruled, even an actual presidential elector does not qualify as a federal officer for removal purposes.

Alternatively, Defendant Facchinello claims she was acting under a federal officer, and thus may properly invoke federal officer removal under the test set out in *Mays*. The Court disagrees. The first element of that test requires that the defendant "acted under a federal officer." *Mays*, 871 F.3d at 442. The Sixth Circuit has found several considerations assist courts in reviewing this element. First, "'the word 'under' must refer to what has been described as a relationship that involves 'acting in a certain capacity, considered in relation to one holding a superior position or office.'" *Id.* (quoting *Watson*, 551 U.S. at 151). Furthermore, "[t]he acting-under relationship 'typically involves subjection, guidance, or control.'" *Id.* (quoting *Watson*, 551 U.S. at 151) (internal quotation marks omitted). The relationship, moreover, must "assist[] the federal government in carrying out the government's own tasks." *Id.* In other words, "[s]imply complying with a regulation is insufficient, even if the regulatory scheme is 'highly detailed' and the defendant's 'activities are highly supervised and monitored.'" *Id.* (quoting *Watson*, 551 U.S. at 153). *See also Hudak v. Elmcroft of Sagamore Hills*, 58 F.4th 845, 858 (6th Cir. 2023) (articulating similar considerations).

Here, Defendant Facchinello has not met her burden of establishing that she was "acting under" a federal officer for purposes of the federal officer removal statute. Defendant Facchinello claims she was "acting under" federal officers because 1) she was acting "at the direction of the incumbent President [President Trump] and other federal officers" (ECF No. 1, PageID.16); and 2) she assisted the President of the Senate and Archivist in performing their duties under the Electoral Count Act ("ECA"), 3 U.S.C. § 1, *et seq.* (*Id.*).

Neither contention has merit because Defendant Facchinello was not assisting the federal government in carrying out the government's own tasks with the requisite subjection, guidance, or control. Defendant's first argument has little to do with the federal government at all, and instead

relates to actions of the presidential campaign. Defendant states "[a]ttorneys for the President specifically instructed Ms. Facchinello that the Republican electors' meeting and casting their ballots on December 14, 2020, was consistent with counsels' advice and was necessary to preserve the presidential election contest." (ECF No. 1, PageID.16). Maybe so, but "[p]rivate litigation is 'unofficial conduct' and falls outside of the ambit of the President's exercise of executive power." Order, *Georgia v. Shafer*, No. 1:23-cv-3720 (Dkt. 27, Pg. 24) (N.D. Ga. Sept. 29, 2023) (citing *Clinton v. Jones*. 520 U.S. 681, 701-05 (1997)). The arguments advanced by defendant do not demonstrate that the actions on December 14, 2020, were taken under federal officer directions. They may well have been taken under the advice or at the direction of lawyers working to re-elect President Trump, and if so the State court jury will be able to weigh that factor in deciding whether the State proves any necessary *mens rea* beyond a reasonable doubt. But that is a state law *mens rea* issue, not a question of implementing federal policy.

Defendant's reliance on the Electoral Count Act does not change matters. Even assuming defendant's actions were somehow conducted out of an effort to comply with various procedures set out in the Act, she does not demonstrate that her actions were subjected to, guided, or controlled by federal officers. "[T]he help or assistance necessary to bring a private person within the scope of the statute does *not* include simply *complying* with the law." *Watson*, 551 U.S. at 152. Yet this is all that defendant musters here. Congress, through the ECA and other statutes, can protect the electoral process, but presidential electors purporting to act under the ECA are simply complying with the law, and are doing so as state, not federal officers. Accordingly, the Court concludes that defendant has not demonstrated that she meets *Mays'* first element necessary to show she acted under a federal officer. As such, defendant cannot demonstrate she is entitled to federal officer removal, and the Court need not address the other two *Mays* elements.

For all these reasons, then the Court concludes that defendant has not met her burden of demonstrating she meets the requirements of federal officer removal, and this action must be remanded for lack of jurisdiction.

C. Habeas and Equitable Relief

Defendant also contends that the Court "should assert its habeas or equitable jurisdiction to bar the State's prosecution[.]" (ECF No. 1, PageID.2). These arguments are not well developed, and subject to abstention under the doctrine of *Younger v. Harris*, 401 U.S. 37, 44-45 (1971).

Generally, federal courts should abstain from deciding a matter that would interfere with pending state proceedings involving important state matters unless extraordinary circumstances are present. *Id.* *Younger* generally permits a federal court to abstain from considering a plaintiff's claims where: (1) the state proceedings are ongoing; (2) the state proceedings implicate important state interests; and (3) the state proceedings afford an adequate opportunity to raise the federal questions. *Middlesex Cty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982). The three factors supporting *Younger* abstention are present in this case. First, the State proceedings are ongoing. Second, defendant's criminal proceedings involve important state interests. *See Younger*, 401 U.S. at 43 (recognizing that when the state proceeding is criminal in nature, the policy against federal interference is "particularly" strong); *see also Parker v. Turner*, 626 F.2d 1, 8 (6th Cir. 1980) ("*Younger* established a near-absolute restraint rule when there are pending state criminal proceedings."). Third, the State court proceedings provide an adequate opportunity for Defendant to raise any constitutional challenges. Abstention is appropriate "unless state law *clearly bars* the interposition of the constitutional claim." *Am. Family Prepaid Legal Corp. v. Columbus Bar Ass'n*, 498 F.3d 328, 332 (6th Cir. 2007) (quoting *Squire v. Coughlan*, 469

F.3d 551, 556 (6th Cir. 2006)). State law does not clearly bar the presentation of the defenses identified in Defendant's Notice.

Exceptions to the *Younger* abstention doctrine have been recognized in the following circumstances: (1) where "the state proceeding is motivated by a desire to harass or is conducted in bad faith," *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 611 (1975); (2) where "[a] challenged statute is flagrantly and patently violative of express constitutional prohibitions," *Moore v. Sims*, 442 U.S. 415, 424 (1979) (quoting *Huffman*, 420 U.S. at 611); and (3) where there is "an extraordinarily pressing need for immediate federal equitable relief." *Kugler v. Helfant,* 421 U.S. 117, 125 (1975). These exceptions have been interpreted narrowly. *Zalman v. Armstrong*, 802 F.2d 199, 205 (6th Cir. 1986). The Sixth Circuit has explained:

> [T]he Supreme court has applied the bad faith/harassment exception "to only one specific set of facts: where state officials initiate repeated prosecutions to harass an individual or deter his conduct, and where the officials have no intention of following through on these prosecutions." *Ken-N.K., Inc. v. Vernon Township*, 18 F. App'x 319, 324-25 n.2 (6th Cir. 2001) (citing Erwin Chemerinsky, Federal Jurisdiction § 13.4, at 806-08 3d ed. 1999)); *see also, e.g.*, *McNatt*[ ], 37 F.3d 629 [ ] (holding that the bad faith/harassment exception to *Younger* "is extremely narrow and applies only in cases of proven harassment or prosecutions undertaken without hope of obtaining valid convictions.").

Lloyd v. Doherty, No. 18-3552, 2018 WL 6584288, at *4 (6th Cir. Nov. 27, 2018).

The defense brief does not discuss *Younger* and thus defendant has failed even to address, much less to carry, her burden necessary for the extraordinary grant of habeas relief. Defendant states the Supremacy Clause should preclude state officials from prosecuting actions of those persons who act under federal authority to achieve the purposes of the national government. This is simply a repackaging of those arguments the Court has already considered and rejected.

Accordingly, the Court concludes that defendant has not established a basis for applying a narrow exception to *Younger*.

CONCLUSION

ACCORDINGLY, IT IS ORDERED that this case is **REMANDED** to the Ingham County District Court.

Dated: November 2, 2023

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE