

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

STATE OF GEORGIA

Case Number: 23SC188947

v.

DONALD JOHN TRUMP *et al.*

Defendants.

**DEFENDANT SHAFER'S MOTION TO STAY PROCEEDINGS**  
**OR FOR EXTENSION OF TIME TO**  
**FILE PRETRIAL MOTIONS**

Defendant David Shafer respectfully moves this Court to stay this action or, in the alternative, to extend the time in which Defendant may file any pretrial demurrers or motions until 30 days after the United States District Court for the Northern District of Georgia (U.S. District Court) issues a final order remanding the action in adjudicating the last of the notices or petitions for removal seeking to remove this action.<sup>1</sup> Mr. Shafer has filed a Notice of Removal of State Court Action to Federal Court and Request for Habeas Corpus or Equitable Relief (Notice of Removal) in the U.S. District Court, which sets forth at length facts and authorities demonstrating that Mr. Shafer possesses immunity pursuant to the Supremacy Clause of the Constitution of the United States, and that jurisdiction over alleged offenses relating to the meeting and casting of ballots by

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<sup>1</sup> Mr. Shafer shows that this Motion to Stay Proceedings or for Extension of Time to File Pretrial Motions is made necessary by the prosecution's initiation of this criminal proceeding against Mr. Shafer, the procedural requirements of the Georgia Code and Georgia Uniform Superior Court Rules, and the deadlines imposed by the Court, and that, in filing this Motion to Stay Proceedings or for Extension of Time to File Pretrial Motions, Mr. Shafer in no way or degree waives any request or right to remove this proceeding to the United States District Court for the Northern District of Georgia. *See Yusefzadeh v. Nelson, Mullins, Riley & Scarborough, LLP*, 365 F.3d 1244, 1246 (11th Cir. 2004) (quoting Charles A. Wright, et al., *14B Federal Practice & Procedure* § 3721 (2003)).

presidential electors under the U.S. Constitution and the Electoral Count Act, 3 U.S.C. §§ 1 *et seq.* (ECA), should be held to lie exclusively in federal court. *See* Defendant Shafer's Notice of Filing of Notice of Removal in the United States District Court for the Northern District of Georgia (Notice of Filing), Exhibit 1. Furthermore, other defendants have filed notices or petitions in the U.S. District Court to remove this action, and Defendant Shafer expects additional notices or petitions for removal to be filed.

When an action is removed to federal court pursuant to Section 1442(a)(1), the entire action is removed, including all defendants and all charges. *See Arango v. Guzman Travel Advisors Corp.*, 621 F.2d 1371, 1376 (5th Cir. 1980) (when a federal officer exercises his prerogative under 28 U.S.C. § 1442(a)(1) to remove an action "commenced against him in state court, the entire case against all defendants, federal and non-federal, is removed to federal court regardless of the wishes of his co-defendants"). Additionally, if the case is removed to federal court, the entry of any judgment of conviction against any defendant is *barred as a matter of law*. *See* 28 U.S.C. § 1455(b)(3). Further, should the District Court order remand of the case, such order is *subject to immediate appeal* to the United States Court of Appeals for the Eleventh Circuit. *See* 28 U.S.C. § 1447(d). Thus, continuation of proceedings in this Court while that process is pending runs a substantial risk of unnecessary and inefficient duplication of efforts and expenditure of resources for both defendants and this Court.

Mr. Shafer respectfully submits that the defendants' filing of notices or petitions for removal in the U.S. District Court, along with considerations of due process, fundamental fairness and professionalism, supports staying these proceedings or extending the time in which to file any pretrial motions until 30 days after the U.S. District Court issues any ruling on Defendant's Notice of Removal. The Honorable Steve C. Jones,

United States District Judge, to whom the removal matters have been assigned, has demonstrated that he is and intends to decide these matters promptly, and allowing resolution of this jurisdictional process before engaging in significant substantive litigation in the state court serves judicial economy and does not prejudice any party.

## **I. BACKGROUND**

On August 14, 2023, the District Attorney for Fulton County/the Atlanta Judicial Circuit obtained an Indictment against Donald Trump, the former President of the United States, Mark Meadows, the former White House Chief of Staff, and 17 other individuals, including Mr. Shafer, who was acting as a United States presidential elector (Presidential Elector) at the time of the allegations in the Indictment.<sup>2</sup> *See* Indictment. The Indictment commences by referring to the United States presidential election on November 3, 2020. *Id.* at 14. The prosecution charges Mr. Shafer in relation to the meeting of the contingent Presidential Electors, the casting of their ballots and the certification of their votes. *Id.* at 40-42. It alleges purported unlawful conduct by Mr. Shafer for actions relating to the organizing of the meeting of the contingent Presidential Electors, *id.* at 37, 38, 39; for reserving a room for the meeting, *id.* at 35; and for allegedly holding himself out as a duly-elected and qualified United States Presidential Elector with the intent to mislead the President of the United States Senate, the Archivist of the United

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<sup>2</sup> Mr. Shafer was elected as a Presidential Elector Nominee on March 4, 2020. *See* Notice of Filing, Exhibit 1, p. 3. By operation of law, once President Trump filed his election challenge to the Georgia presidential election on Dec. 4, 2020, both sets of Georgia Presidential Electors became “contingent” Presidential Electors by operation of law, as the validity of each presidential slate became (1) contingent on the final outcome of the judicial challenge, if one were entered by December 8, 2020, the “safe harbor” date under the Electoral Count Act, (“ECA”) or (2) if no final adjudication were issued on or before December 8, 2020, contingent upon Congress’ adjudication of the two competing presidential elector slates on January 6, 2021. *Id.* at 47.

States and the Chief Judge of the U.S. District Court, *id.* at 40, 76. The Indictment charges as criminal in violation of State law alleged solicitation of the Vice President of the United States and officials of the United States Department of Justice, *id.* at 18, 45, 46, 50, 62, 63; and alleged strategies to disrupt and delay the joint session of the Congress of the United States on January 6, 2021, in Washington, D.C., *id.* at 17, 24, 38, 48, 49, 57, 58, 62, 63.

On August 21, 2023, Mr. Shafer filed his Notice of Removal in the U.S. District Court, setting forth grounds upon which this action should be removed to the U.S. District Court. *See* Notice of Filing, Exhibit A. Mr. Shafer shows that he was an officer of the United States or a person acting under officers of the United States in acting as a Presidential Elector for the purposes of the federal removal provision at 28 U.S.C. § 1442(a)(1). Mr. Shafer further shows that exclusive jurisdiction over the offenses relating to the United States presidential election on November 3, 2020, the electoral vote, and/or the joint session of the Congress of the United States on January 6, 2021, lies exclusively in federal court. A violation of a duty by an election officer “is an offence against the United States, for which the offender is justly amenable to that government.” *Ex parte Siebold*, 100 U.S. 371, 388 (1879), *abrogation on other grounds recognized by Jones v. Hendrix*, 143 S. Ct. 1857 (2023). And Mr. Shafer is not alone in seeking to remove this proceeding to federal court. Several other defendants to this action have also petitioned to remove this action to the U.S. District Court. Based upon the facts and authorities set forth herein, in the interest of justice and guaranteeing Mr. Shafer a fair trial, the Court should stay this action and should grant Mr. Shafer an extension of time in which to file any motions until 30 days after the U.S. District Court issues a final order after any appeal upon defendants’ notices or petitions for removal.

### **III. ARGUMENT**

The Court should stay this action until 30 days following any order by the U.S. District Court finally remanding this action after it rules upon all of the defendants' notices or petitions for removal, or, at a minimum, extend the deadlines for any pretrial motions during this period. Mr. Shafer and other defendants have filed notices or petitions for removal in the U.S. District Court, seeking to remove this action to federal court. Pursuant to federal law, the prosecution in State court may proceed unless stayed, but this Court is prevented from entering any judgment of conviction against any of the defendants unless and until the case is remanded. *See* 28 U.S.C. § 1455(b)(2). If the case is successfully removed to federal court, this Court may proceed no further with the prosecution. *See* 28 U.S.C. § 1455(b)(5).

“The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance.”

*Jhun v. Imagine Castle, LLC*, 358 Ga. App. 627, 631 (2021) (quoting *Austin v. Nagareddy*, 344 Ga. App. 636, 638 (2018)). The Georgia Court of Appeals has also found that removal of a civil action automatically stays proceedings in State court. *See* 28 U.S.C. § 1446(d); *DB50 2007-1 Tr. v. Dixon*, 314 Ga. App. 195 (2012) (quoting *Cavanagh v. Cavanagh*, 119 R.I. 479 (1977)). If even one federal claim is present, the entire action is subject to removal regardless of the existence of any alleged non-removable claims. *See Nadler v. Mann*, 951 F.2d 301, 305 n. 9 (11th Cir. 1992); *Georgia v. Heinze*, 637 F. Supp.3d 1316, 1325-1326, n. 8 (N.D. Ga. 2022) (denying the Fulton County District Attorney's motion to remand State criminal proceeding against federal task force officers).

The same policies that underlie the automatic stay of State court proceedings in civil removal mitigate in favor of this Court exercising its discretion to stay these criminal proceedings while the removal process is resolved. *See Parker v. State*, 277 Ga. App. 155, 157 (2006) (trial courts have inherent powers to manage the conduct of proceedings before them when such action is appropriate to the orderly progress of the trial and the fair administration of justice); *Lowe v. State*, 141 Ga. App. 433, 435–36 (1977) (“It is a well-recognized principle of our law that the judges of . . . (our) courts are invested with a wide discretion in the management of the business before them, and this discretion will not be controlled unless it is shown to have been manifestly abused.”) (internal citations omitted). The fact that the defendants have filed notices or petitions for removal means that this entire case may imminently be removed in its entirety to the federal forum, and, in the meantime, no final judgment may be entered in this case unless it is remanded from the U.S. District Court. *See* 28 U.S.C. § 1455(b)(2). Staying this action would save the Court, counsel, and the parties time and effort in the event that this action is removed to federal court. If no stay or extension is entered, Mr. Shafer and his counsel may be compelled to proceed with time and labor-intensive preparation of numerous pretrial demurrers and motions, only for the U.S. District Court to assert its jurisdiction over the matter.

No party will be prejudiced by the requested brief stay. Although the prosecution has moved the Court for the entry of a scheduling order setting any demurrers and claims by the defendants as due by what would be no later than September 18, 2023; and for the parties to serve discovery by September 29, 2023, *see* Motion for Entry of Pretrial Scheduling Order, 8/16/2023; the prosecution has no valid interest in pushing the defendants to trial: the interest in a speedy trial belongs to the defendant and the public.

*See Weis v. State*, 287 Ga. 46, 51 (2010) (noting “the public’s interest—including the interest of crime victims—in the resolution of criminal cases without unnecessary delay...”) (quoting *Barker v. Wingo*, 407 U.S. 514, 519, 527 (1972); citing *Zedner v. United States*, 547 U.S. 489 (2006)). This Court’s and Mr. Shafer’s interests in a brief delay until the U.S. District Court makes a decision on potential removal of this action outweighs any asserted interest of the prosecution in subjecting Mr. Shafer to an accelerated trial schedule.

The purpose of Section 1442 is “to ensure a federal forum in any case where a federal official is entitled to raise a defense arising out of his official duties.” *Arizona v. Manypenny*, 451 U.S. 232, 241 (1981). “A federal forum in such cases is important since state court actions against federal agencies and officers often involve complex federal issues and federal-state conflicts.” H.R. Rep. 104-798, 19 (1996). As set forth at length in Mr. Shafer’s Notice of Removal, Mr. Shafer possesses federal defenses to the prosecution’s charges in this action and to the prosecution’s authority to bring the indictment itself. Staying this action will permit the U.S. District Court to determine whether Mr. Shafer is entitled to a federal forum.

“Trial judges and prosecutors have the responsibility to see that the defendant receives a fair trial.” *Dean v. State*, 247 Ga. 724, 725 (1981) (citing *Fitzgerald v. Estelle*, 505 F.2d 1334 (5th Cir. 1975); *Fleming v. State*, 246 Ga. 90, 91 n. 3 (1980)). Forcing Mr. Shafer to proceed with his defense to this prosecution and preparation for trial when Mr. Shafer has petitioned pursuant to law to have the case removed to and potentially heard by a federal court would violate Mr. Shafer’s rights to due process and a fair trial. The Court should resist and reject any efforts by the prosecution to push this case forward while multiple petitions to remove this case are pending in federal court.

“[I]t is the duty of a prosecuting attorney to see that justice is done and nothing more. That duty should not be forgotten in an excess of zeal or the eager quest for victory in his case. The people of the state desire merely to ascertain beyond a reasonable doubt that the accused is guilty of the crime charged, and do not countenance any unfairness upon the part of their representatives in court.”

*McIver v. State*, 314 Ga. 109, 153 (2022) (quoting *Carr v. State*, 267 Ga. 701, 712 (1997)); citing *Smith v. State*, 288 Ga. 348, 355-356 (2010)).

Moreover, any stay imposed pending the U.S. District Court’s determination of the defendants’ notices or petitions for removal would be relatively short. Section 1455, which governs the procedure for federal removal of criminal prosecutions, requires that a federal court “promptly” examine a notice of removal and to make an order for summary remand if it clearly appears on the face of the notice and any exhibits that removal should not be permitted. *See* 28 U.S.C. § 1455(b)(4). If the federal court does not order summary remand, it must order an evidentiary hearing to be promptly held. *See* 28 U.S.C. § 1455(b)(5). Indeed, U.S. District Judge Jones has already held an evidentiary hearing on the notice or petition for removal filed by co-defendant Mark Meadows and has scheduled evidentiary hearings on September 18, 2023, and September 20, 2023, on the notices or petitions for removal filed by co-defendants Jeffrey Clark, Cathy Latham, Shawn Still and Mr. Shafer. As noted, the U.S. District Court is aware of, and complying with, these timing mandates.

In the absence of a stay, this Court should grant Mr. Shafer an extension of the time in which he may file any motions until and including 30 days following any final order by the U.S. District Court remanding the action after the determination of all of the defendants’ notices or petitions for removal. Georgia law provides that “[a]ll pretrial motions, including demurrers and special pleas, shall be filed within ten days after the



date of arraignment, unless the time for filing is extended by the court.” O.C.G.A. § 17-7-110; *see also* Ga. Unif. Super. Ct. R. 31. A motion for extension of time is entrusted to the sound discretion of the trial judge. *See Quinn v. State*, 234 Ga. App. 360, 361 (1998) (citing *Slaughter v. State*, 172 Ga. App. 578 (1984)).

The length of any extension of time in which to file any demurrers or motions would be reasonable given the U.S. District Court’s duty to promptly determine the defendants’ notices or petitions for removal. It is well within the Court’s discretion to grant necessary extensions of time in which to file any demurrers or motions, especially in complex cases involving Georgia RICO charges. *See, e.g., Hill v. State*, 315 Ga. App. 833, 838 (2012) (trial court granted the defendant, who was charged with Georgia Racketeer Influenced and Corrupt Organizations Act violations and false swearing, seven months from the date of arraignment to file additional motions); *Dalton v. State*, 263 Ga. 138, 138 (1993), *disapproved of by Rice v. State*, 264 Ga. 846 (1995) (defendant charged with malice murder, felony murder and armed robbery granted 120 days in which to file additional motions). For these reasons, in the absence of a stay, the Court should grant Mr. Shafer an extension of time in which to file any motions or demurrers until 30 days after the U.S. District Court’s final determination of the last of the defendants’ notices or petitions for removal.

### **III. CONCLUSION**

Defendant David Shafer respectfully requests that the Court grant his Motion to Stay Proceedings or for Extension of Time to File Pretrial Motions and stay this action or extend the time in which Defendant may file any pretrial demurrers or motions until 30 days after the United States District Court for the Northern District of Georgia issues any

final order remanding the action in adjudicating the last of the notices or petitions for removal seeking to remove this action.

Respectfully submitted, this 5th day of September, 2023.

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**CERTIFICATE OF SERVICE**

Counsel for Mr. David J. Shafer shows that the foregoing document was this 5th day of September, 2023, served on the following individuals by depositing the document in the United States mail, postage prepaid; by statutory electronic service via Odyssey eFile Georgia and/or electronic mail to:

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