

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

February 16, 2011

Lyle W. Cayce
Clerk

No. 10-20510
Summary Calendar

JAMAL EADEH,

Plaintiff-Appellant

v.

THE STATE OF TEXAS,

Defendant-Appellee

Appeals from the United States District Court
for the Southern District of Texas
USDC No. 4:10-MC-274

Before DENNIS, CLEMENT, and ELROD, Circuit Judges.

PER CURIAM:*

Jamal Eadeh, Texas prisoner # 755713, was convicted in Texas state court for capital murder and was sentenced to life imprisonment. He now appeals from the district court's denial of his motion for leave to file an out-of-time notice of removal under 28 U.S.C. § 1446(c)(1). The district court certified that Eadeh's appeal was not taken in good faith and therefore denied his motion for leave to proceed in forma pauperis (IFP) on appeal. We are now presented with Eadeh's

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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request to proceed IFP on appeal and challenge to the district court's certification decision. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1992).

While Eadeh argues that he showed good cause for the untimeliness of his notice of removal, *see* 28 U.S.C. § 1446(c)(1), "removal under 28 U.S.C. § 1442(a) must be predicated upon averment of a federal defense," *see Mesa v. California*, 489 U.S. 121, 129, 139 (1989), and Eadeh has only claimed that his criminal proceeding was removable because he was framed for the offense of conviction due to his activities as an undercover informant for various federal law enforcement agencies. Accordingly, his instant appeal lacks arguable merit and is dismissed as frivolous. *See* 5TH CIR. R. 42.2; *Baugh*, 117 F.3d at 202 n.24; *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983).

IFP MOTION DENIED; APPEAL DISMISSED.