

## **APPENDIX**

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App. 1

**APPENDIX A**

United States District Court  
District of New Mexico  
Office of the Clerk  
Document Summary Page

Date: March 05, 2019 01:50 PM MST

To: Jason Brian Braun Case: Braun v. U.S.  
Department of the Interior et al

From: Office of the Clerk, District of New Mexico

CM/ECF Support Number: (505) 348-2075

CM/ECF Support Email: [cmecf@nmcourt.fed.us](mailto:cmecf@nmcourt.fed.us)

Comments: Case#1:18-cv-00221-KK-KBM

Document#63 Filed:03/05/2019

Job: ced1d940-7f18-41ff-ab44-238a51ae553c

ORDER by Magistrate Judge Karen B. Molzen  
granting [61] Plaintiff's Motion to File Plaintiff's  
Notice of Change to Contact Information Under Seal  
with Exhibit #1. [THIS IS A TEXT-ONLY ENTRY.  
NO DOCUMENTS ARE ATTACHED.] (am)

App. 2

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App. 3

**APPENDIX B**

United States District Court  
District of New Mexico  
Office of the Clerk  
Document Summary Page

Date: March 05, 2019 01:40 PM MST

To: Jason Brian Braun

Case: Braun v. U.S. Department of the Interior et al

From: Office of the Clerk, District of New Mexico

CM/ECF Support Number: (505) 348-2075

CM/ECF Support Email: [cmecf@nmcourt, fed us](mailto:cmecf@nmcourt.fed.us)

Comments: Case#1:18-cv-00221-KK-KBM

Document#62 Filed:03/05/2019

Job: falf2482-6dd0-4848-bb46-9225841b1363

ORDER by Magistrate Judge Karen B. Molzen  
finding as moot (57] Plaintiff's Joint Unopposed  
Motion with Defense Counsel to Stay of Proceedings,  
given the Court's [56] Order Granting Motion to  
Stay. [THIS IS A TEXT-ONLY ENTRY. NO  
DOCUMENTS ATTACHED.) (am)

App. 4

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App. 5

**APPENDIX C**

**UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

**No. 18-5120**

**September Term, 2018**

**1:16-cv-02457-TJK**

**Filed On: December 28, 2018**

In re: Jason Brian Braun,  
Petitioner

**BEFORE:** Griffith, Pillard, and Katsas, Circuit  
Judges

**ORDER**

Upon consideration of the petition for writ of mandamus, which includes a request for a status conference; the motion to be heard and for additional time to submit documentation; the motions for leave to submit documents under seal; and petitioner's notice filed on May 14, 2018, it is

**ORDERED** that the request for a status conference be denied. It is

**FURTHER ORDERED** that the mandamus petition be dismissed for lack of jurisdiction. The physical or electronic transfer of the case file to a permissible forum deprives this court of jurisdiction to review the transfer. See *in re Asemani*, 455 F.3d 296, 299-301 (D.C. Cir. 2006); *Starnes v. McGuire*,

512 F.2d 924 (D.C. Cir. 1974) (en banc). Petitioner has not demonstrated that the District of New Mexico was an impermissible transferee forum, and the transfer of his case to that district on March 7, 2018, therefore deprives this court of jurisdiction over the mandamus petition. In addition, if the mandamus petition were construed as a notice of appeal and a motion for summary reversal with respect to petitioner's claims against the EEOC, *we* would deny the motion and summarily affirm that aspect of the district court's order. "Congress has not authorized, either expressly or impliedly, a cause of action against the EEOC for the EEOC's alleged negligence or other malfeasance in processing an employment discrimination charge." *Smith v. Casellas*, 119 F.3d 33, 34 (D.C. Cir. 1997). Thus, the district court correctly dismissed Braun's claims against the EEOC. It is

**FURTHER ORDERED** that the motion to be heard and for additional time to submit documentation be dismissed as moot. It is

**FURTHER ORDERED** that the motions for leave to submit documents under seal be denied without prejudice to renewal after the notice of appeal has been entered.

App. 7

**UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

**No. 18-5120**

**September Term, 2018**

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

**Per Curiam**

App. 8

**APPENDIX D**

**UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

**No. 18-5120**

**September Term, 2018**

**1:16-CV-02457-TJK**

**Filed On: September 27, 2018**

In re: Jason Brian Braun,

Petitioner

**ORDER**

Upon consideration of the court's September 18, 2018 order dismissing this case for failure to pay the appellate docketing fee, the petition for a writ of mandamus, the motion for hearing and to be allowed time to submit a report of investigation, the motions for leave to submit exhibits under seal and the lodged exhibits, and it appearing that petitioner paid the docketing fee on July 18, 2018, it is

**ORDERED**, on the court's own motion, that this case be reopened. It is

**FURTHER ORDERED** that the petition for writ of mandamus and the motions be **referred** to a panel of the court for disposition.

App. 10

**APPENDIX E**

**UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

**No.18-5120**

**September Term, 2018**

**1:16-cv-02457-TJK**

**Filed On: September 18, 2018**

In re: Jason Brian Braun,  
Petitioner

**ORDER**

By order filed May 22, 2018, petitioner was directed to pay the \$500 filing fee to the court by July 23, 2018. To date, the fee remains to be paid. Upon consideration of the foregoing, the motion for hearing and to be allowed time to submit a report of investigation, and the motions for leave to submit exhibits under seal and the lodged exhibits, it is

**ORDERED** that this case be dismissed for lack of prosecution. See D.C. Cir. Rule 38. It is

**FURTHER ORDERED** that the remaining motions be dismissed as moot. No mandate shall issue,

App. 14

**APPENDIX F**

**United States District Court  
District of New Mexico  
Office of the Clerk  
Document Summary Page**

Date: May 23, 2018 12:20 PM MDT

To: Jason Brian Braun

Case: Braun v. U.S. Department of the Interior et al

From: Office of the Clerk, District of New Mexico

CM/ECF Support Number: (505) 348-2075

CM/ECF Support Email: [cmecf@nmcourt.fed.us](mailto:cmecf@nmcourt.fed.us)

Comments: Case#1 :18-cv-00221-KK-KBM

Document#52 Filed:05/23/2018

Job: 2e121723-fe21-4e4f-8359-f76193df6e56

ORDER by Magistrate Judge Karen B. Molzen  
granting [51] Unopposed Motion to Stay this action  
pending the resolution of proceedings in the District  
of Columbia Circuit Court of Appeals. [THIS IS A  
TEXT-ONLY ENTRY. THEREARE NO  
DOCUMENTS ATTACHED.] (KBM)

App. 15

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App. 16

**APPENDIX G**

**United States District Court  
District of New Mexico  
Office of the Clerk  
Document Summary Page**

Date: March 07, 2018 01:30 PM MST

To: Jason Brian Braun Case: Braun v. U.S.  
Department of the Interior et al

From: Office of the Clerk, District of New Mexico

CM/ECF Support Number: (505) 348-2075

CM/ECF Support Email: cmecf@nmcourt.fed.us

Comments: Case#1:18-cv-00221-KK-KBM  
Document#47 Filed:03/07/2018

Job: 14fedae7-71ea-4c3c-bc3d-7afce832e64a

PLEASE TAKE NOTICE that this case has been randomly assigned to United States Magistrate Judge Kirtan Khalsa to conduct dispositive proceedings in this matter, including motions and trial. Appeal from a judgment entered by a Magistrate Judge will beto the United States Court of Appeals for the Tenth Circuit. It is the responsibility of the case filer to serve a copy of this Notice upon all parties with the summons and complaint. Consent is strictly voluntary, and a party



is free to withhold consent without adverse consequences. Should a party choose to consent, notice should be made no later than 21 days after entry of the Order setting the Rule 16 Initial Scheduling Conference. For e-filers, visit our Web site at [www.nmd.uscourts.gov](http://www.nmd.uscourts.gov) for more information and instructions. [THIS IS A TEXT-ONLY ENTRY. THERE ARE NO DOCUMENTS ATTACHED.] (iam)

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App. 18

**APPENDIX H**

**United States District Court  
District of New Mexico  
Office of the Clerk  
Document Summary Page**

Date: March 07, 2018 01:25 PM MST

To: Jason Brian Braun

Case: Braun v. U.S. Department of the Interior et al

From: Office of the Clerk, District of New Mexico

CM/ECF Support Number: (505) 348-2075

CM/ECF Support Email: [cmecf@nmcourt.fed.us](mailto:cmecf@nmcourt.fed.us)

Comments: Case#1:18-CV-00221-KK-KBM

Document#-Filed:03/07/2018

Job: 8821f7f5-8fcf-45c2-9d3a-9cc2d5f0d53b

U.S. Magistrate Judge Kirtan Khalsa and U.S.  
Magistrate Judge Karen B. Molzen assigned. (iam)

App.

10

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App. 20

## APPENDIX I

District of Columbia live database-Display Receipt  
Page 1 of 2

**This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended. \*\*\*NOTE TO PUBLIC ACCESS USERS\*\*\* Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

**U.S. District Court**

**District of Columbia**

### **Notice of Electronic Filing**

The following transaction was entered on 2/27/2018  
at 4:04 PM EDT and filed on 2/27/2018

**Case Name:** BRAUN v, U.S. DEPARTMENT OF  
THE INTERIOR et al

**Case Number:** 1:16-cv-02457-TJK

**Filer: WARNING: CASE CLOSED on 02/13/2018**

**Document Number: No document attached**

**Docket Text:**

**MINUTE ORDER denying Plaintiffs (44) Motion for Reconsideration and [45] Motion for Hearing. Plaintiff has requested reconsideration of the Court's [43] Memorandum Opinion and Order dismissing his claims against EEOC and transferring the case to the District of New Mexico, and a hearing on the motion. At the hearing, Plaintiff intends to introduce *new evidence* of hardship if he must litigate his case in New Mexico, even though he had ample opportunity to file such evidence in opposition to the motion to transfer. Plaintiff also wishes to address certain unspecified "merit based issues that have gone unchecked." Plaintiff does not suggest how those issues warrant reconsideration or why he cannot present them in a brief, as opposed to at a hearing. The Court concludes that Plaintiff's motion, on its face, fails to meet the standard for reconsideration, which is warranted only "as justice requires" and not by "arguments previously raised and rejected by the court" or "arguments that should have been raised previously with the court." *Said v. Nat'l R.R. Passenger Corp.*, 191 F. Supp. 3d 55, 56-57 (D.D.C. 2016). The Court also finds in its discretion that a hearing is not warranted. See LCvR 7(f). Accordingly, it is hereby ORDERED that Plaintiff's motions are DENIED WITHOUT PREJUDICE. The Court notes that this case**

App. 22

**was terminated on this Court's docket on February 13, 2018. The Clerk's Office shall send a copy of this Minute Order to Plaintiff at his address of record by first-class mail. Signed by Judge Timothy J. Kelly on 2/27/2018. (Ictjk2)**

**1:16-cv-02457-TJK Notice has been electronically mailed to:**

Marsha Wellknown Yee    marsha.yee@usdoj.gov,  
CaseView.ECF@usdoj.gov, marshawyee@gmail.com

**1:16-cv-02457-TJK Notice will be delivered by other means to::**

[https://ecf.dcd.circdc.dcn/cgi-bin/DisplayReceipt.pl?561548678241082-L\\_1\\_0-1](https://ecf.dcd.circdc.dcn/cgi-bin/DisplayReceipt.pl?561548678241082-L_1_0-1)

District of Columbia live database-Display Receipt  
Page 2 of 2

**JASON BRIAN BRAUN**

7331 Yountville Drive

Unit 402

Gainesville, VA 20155

[https://ecf.dcd.circdc.dcn/cgi-bin/DisplayReceipt.pl?561548678241082-L\\_1\\_0-1](https://ecf.dcd.circdc.dcn/cgi-bin/DisplayReceipt.pl?561548678241082-L_1_0-1)  
2/27/2018

**APPENDIX J**

Case 1:16-cv-02457-TJK Document 43

Filed 02/13/18

Page 1 of 11

**UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF COLUMBIA**

JASON BRIAN BRAUN,  
*Plaintiff,*

v. Civil Action No. 16-2457 (TJK)

U.S. DEPARTMENT OF THE INTERIOR  
*et al.,*  
*Defendants.*

**MEMORANDUM OPINION AND ORDER**

Plaintiff Jason Brian Braun, proceeding *pro se*, is a former employee of the Department of the Interior ("DOI") who was based in Albuquerque, New Mexico. After his employment ended in 2010, Braun brought administrative claims that he had been subject to employment related misconduct, including discrimination based on disability. Those claims were heard by an administrative judge, who granted summary judgment for the agency. DOI adopted the administrative judge's decision. Braun subsequently appealed to the Equal Employment Opportunity Commission (the "EEOC"), which affirmed the dismissal. Braun has brought suit against DOI, the Secretary of the Interior,<sup>1</sup> and the EEOC, alleging misconduct in his employment and the post-employment administrative proceedings.

Defendants have moved to dismiss Braun's claims against the EEOC for failure to state a claim. They also ask the Court either to dismiss the claims against DOI and the Secretary of the Interior for improper venue, or to transfer them to the District of New Mexico. See ECF No. 17.

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<sup>1</sup> It appears that Braun has sued former Secretary Sally Jewell in her official capacity. Defendants have requested that the current Secretary of the Interior, Ryan Zinke, be substituted for former Secretary Jewell pursuant to Federal Rule of Civil Procedure 25(d). The Court agrees that this request is proper and will grant it.



For reasons set forth below, the motion will be granted. Braun's claims against the EEOC will be dismissed with prejudice. In addition, the Court agrees that this District is not a proper venue for Braun's remaining claims against DOI and the Secretary of the Interior. Therefore, the case end will be transferred to the District of New Mexico.

### **I. Background**

Braun's Complaint appears to assert claims against DOI and the Secretary of the Interior under various federal statutes and regulations, including: Title VII of the Civil Rights Act of 1964 ("Title VII"); the Rehabilitation Act of 1973 ("Rehabilitation Act"), and specifically 29 U.S.C. § 791; the Civil Service Reform Act of 1978 ("CSRA"), specifically 5 U.S.C. §§ 2301(6) and 2302; 5 U.S.C. § 2108; 5 U.S.C. § 3330;<sup>2</sup> 5 U.S.C. § 7203; the Americans with Disabilities Act of 1990; criminal statutes dealing with false statements (18 U.S.C. § 1001), perjury (18 U.S.C. § 1621), and improper disclosure of confidential information (18 U.S.C. § 1905); two executive orders, Executive Order 12,674 and Executive Order 13,518; and 5 C.F.R. § 2635.100(11) and (13). See ECF No. 1 ("Compl.") at 3.

Braun also asserts claims against the EEOC for violations of its procedures (namely, EEOC Management Directive 110, the EEOC Judges' Handbook, and 29 C.F.R. § 1614.109(a) and (g)); violations of Federal Rule of Civil Procedure 7(b)(1)(A)-(C); and for criminally

obstructing an agency proceeding, 18 U.S.C. § 1505.  
See Compl. at 3.

Braun alleges that he is a veteran with disabilities arising from his military service. *See id.* at 4-5. In December 2009, DOI posted a job announcement for an Audiovisual Specialist in Albuquerque. *Id.* at 4. Braun claims that the job posting was fraudulent because it inaccurately

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<sup>2</sup> It is possible that Braun intended to invoke 5 U.S.C. § 3330a, a section of the Veterans Employment Opportunities Act of 1998.

described the position. *Id.* According to Braun, once he arrived at his new job, he was improperly trained in his unexpected new duties and “set[] up” to fail. *Id.* at 5. He further alleges that DOI made no effort to accommodate his disabilities and that he was subjected to harassment and a hostile work environment, which included being berated in front of other employees. *See id.* at 4-6. He alleges he was terminated on November 23, 2010. *Id.* at 6.

After his employment ended, Braun sought administrative relief for this alleged misconduct.<sup>3</sup> Braun's claims were heard by an administrative judge, who granted summary judgment in favor of DOI on April 14, 2014. *See Transfer Mot.* at 77. On May 5, 2014, DOI adopted the administrative judge's decision and determined that no discrimination had occurred. *See id.* at 70. Braun subsequently appealed to the EEOC, which affirmed the DOI's order on July 13, 2016. *See id.* at 21-25. The EEOC denied reconsideration on September 20, 2016. *See id.* at 9-11.

Braun was dissatisfied with the EEOC's handling of the case, and wrote several letters expressing his dissatisfaction to representatives in Congress. *See id.* at 27-55. In particular, Braun complained that the administrative judge had failed to rule on his motions, tampered with evidence, and obstructed justice. *See, e.g., id.* at 48. At one point, Braun reported his concerns to Federal Bureau of Investigation, which, according to Braun, failed to take them seriously. *See id.* at 51-52. Braun makes

similar allegations in the Complaint, including that the administrative judge and the EEOC ignored his arguments, improperly limited his discovery requests, obstructed and slow-walked his case, and gave the unwavering impression to the Plaintiff that

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<sup>3</sup> While the Complaint does not describe these administrative proceedings in detail, Braun has filed documents related to these proceedings in connection with another motion. See ECF No. 2 ("Transfer Mot."). All citations to that motion and its attachments will use the page numbers generated by ECF.

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Filed 02/13/18 Page 4 of 11

they were protecting the US Department of the Interior by its [sic] lack of action, lack of ethics and attitude." Compl. at 7-8.

Defendants have moved to dismiss the claims against the EEOC for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). See ECF No. 17. Defendants also argue that venue is improper with respect to the remaining claims against DOI and the Secretary of the Interior, and that these claims should either be dismissed or transferred to the District of New Mexico pursuant to Federal Rule of Civil Procedure 12(b)(3) and 28 U.S.C. § 1406(a). See ECF No. 17. Defendants have submitted a declaration from a DOI employee stating that Braun was employed in New Mexico and that his Official Personnel Folder was "located" in Herndon, Virginia, until 2011, when it was sent to the National Archives in Valmeyer, Illinois. See ECF No. 17-1 ("Carruthers Decl.").

The Court also ordered the parties to make a supplemental submission on whether venue would be proper in the Eastern District of Virginia. In their submission, Defendants argue that venue cannot lie in the Eastern District of Virginia. They further assert that at least two important witnesses are located in the District of New Mexico, and urge the Court to transfer the action there. See ECF No. 37 at 1-2. Braun has filed two responses to the Court's order. In the first, Braun states that his preference is to continue litigating the case in this Court, but that the Eastern District of Virginia would also be a

convenient venue for him. See ECF No. 38 at 4-6. In the second, Braun provides additional reasons why the Eastern District of Virginia would be a proper forum. ECF No. 42. Specifically, Braun argues that records relating to his employment were located in Virginia when he brought his administrative claims, which, he asserts, means that venue is proper there under 42 U.S.C. § 2000e-5(1)(3). See ECF No. 42 at 3-4.

## II. Legal Standard

A motion to dismiss under Rule 12(b)(6) "tests whether a plaintiff has properly stated a claim." *BEG Invs., LLC v. Alberti*, 85 F. Supp. 3d 13, 24 (D.D.C. 2015). "A court considering such a motion presumes that the complaint's factual allegations are true and construes them liberally in the plaintiff's favor." *Id.* Nonetheless, the complaint must set forth enough facts to "state a claim to relief that is plausible on its face." *Id.* (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). "[A]lthough a pro se complaint must be construed liberally, the complaint must still present a claim on which the Court can grant relief." *Untalasco v. Lockheed Martin Corp.*, 249 F. Supp. 3d 318, 322 (D.D.C. 2017) (quoting *Budik v. Dartmouth-Hitchcock Med. Ctr.*, 937 F. Supp. 2d 5, 11 (D.D.C. 2013)).

If venue is improper, the court must either dismiss the action or, "if it be in the interest of justice, transfer such case to any district ... in which it could have been brought." 28 U.S.C. § 1406(a). While "the defendant must present facts that will defeat the plaintiff's assertion of venue" to prevail on a Rule 12(b)(3) motion, "the burden remains on the plaintiff to establish that venue is proper." *Slaby v. Holder*, 901 F. Supp. 2d 129, 132 (D.D.C. 2012) (quoting *Wilson v. Obama*, 770 F. Supp. 2d 188, 190 (D.D.C. 2011)). Even though *pro se* plaintiffs' pleadings must be liberally construed, the Court "cannot relieve [them] of this burden merely because they are acting without the benefit of counsel." *King v. Caliber Home Loans, Inc.*, 210 F. Supp. 3d

130, 134 (D.D.C. 2016). "In reviewing such a motion, the Court 'accepts the plaintiff's well pled factual allegations regarding venue as true, draws all reasonable inferences from those allegations in the plaintiff's favor and resolves any factual conflicts in the plaintiff's favor.'" *Slaby*, 901 F. Supp. 2d at 132 (quoting *Wilson*, 770 F. Supp. 2d at 190). "The Court, however, need not accept the plaintiff's legal conclusions as true, and may consider material outside the



pleadings, including undisputed facts evidenced in the record, to determine whether it has jurisdiction in the case." *Id.* (quoting *Ebron v. Dep't of Army*, 766 F. Supp. 2d 54, 57 (D.D.C. 2011)).

### III. Analysis

The Court will first analyze Defendants' motion to dismiss the claims against the EEOC under Rule 12(b)(6), and then turn to their motion to dismiss or transfer the remaining claims against DOI and the Secretary of the Interior under Rule 12(b)(3) and 28 U.S.C. § 1406(a).

#### A. Claims Against the EEOC

As Defendants correctly argue, "Congress has not authorized, either expressly or impliedly, a cause of action against the EEOC for the EEOC's alleged negligence or other malfeasance in processing an employment discrimination charge." *Smith v. Casellas*, 119 F.3d 33, 34 (D.C. Cir. 1997) (per curiam). This "analysis is equally applicable to allegations of improper handling of a complaint by the EEO office of a federal agency, which provides a function analogous to the EEOC." *Koch v. White*, 967 F. Supp. 2d 326, 336 (D.D.C. 2013). Rather, if a federal employee believes that his administrative employment-discrimination claim was mishandled, his remedy is to file an employment-discrimination suit against the relevant agency in federal district court. *See id.* All of Braun's claims against the EEOC are based on allegations of misconduct by the

administrative judge and the EEOC in handling Braun's discrimination claims. See Compl. at 7-8. Braun therefore does not assert a valid cause of action against the EEOC, and so those claims must be dismissed.

**B. Claims Against DOI and the Secretary of the Interior**

Defendants assert that the only claims properly pleaded by Braun arise under the Rehabilitation Act<sup>4</sup>. They argue that those claims are subject to the venue provisions of 42 U.S.C. § 2000e-5(1)(3), pursuant to which venue is not proper in this District. The Court agrees that venue is not proper here, and will grant Defendants' request to transfer the case—including Braun's remaining Rehabilitation Act claims against DOI and the Secretary of the Interior, as well as any non-Rehabilitation Act claims against those Defendants—to the District of New Mexico.

**1. Braun's Rehabilitation Act Claims**

Rehabilitation Act claims are governed by Title VII's venue provision, 42 U.S.C. § 2000e-5(1)(3). *See, e.g., Slaby*, 901 F. Supp. 2d at 132. Under that provision, Title VII and Rehabilitation Act claims: may be brought [i] in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, [ii] in the judicial district in which the employment records relevant to such practice are maintained and administered, or (iii) in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought [iv] within the judicial district in which the respondent has his principal office.

42 U.S.C. § 2000e-5(f)(3). Venue is proper under the fourth, residual prong of the statute “[o]nly if the defendant is not found within any of [the first three] districts.” *Herbert v. Sebelius*, 925 F. Supp. 2d 13, 18 (D.D.C. 2013).

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<sup>4</sup> Defendants suggest in a footnote that Braun's non-Rehabilitation Act claims should be dismissed for failure to exhaust administrative remedies. See ECF No. 17 at 3 n.2. However, Defendants have not moved to dismiss on that ground.

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Filed 02/13/18 Page 8 of 11

Braun argues that venue can and should lie in this District because his EEOC appeal was processed here, and because it would be a burden on him to litigate the case in New Mexico when he resides in Virginia. See ECF No. 23 at 4-5. Under the statute, the only possible relevance of these arguments is that certain records related to Braun's employment may have found their way to the District of Columbia in the course of the EEOC proceedings. However, "[c]ourts in this district have "rejected the argument that the location where plaintiff's EEO complaints were initiated and processed provides a basis for venue under prong (two) of § 2000e-5(f)(3)."" *Herbert*, 925 F. Supp. 2d at 21 (second alteration in original) (quoting *Ellis Smith v. Sec'y of Army*, 793 F. Supp. 2d 173, 176 (D.D.C. 2011)).

Braun also suggests that venue is proper in this District under prong four of the statute because DOI's principal office is located here. See ECF No. 23 at 5. But that prong does not apply to this case. Under the plain language of § 2000e-5(1)(3), venue under the first and third prongs is proper in the District of New Mexico, the place where Braun was employed during the alleged misconduct. And because DOI can be found in New Mexico, it is plain that the fourth, residual prong of the statute does not apply. Therefore, Braun's arguments are unavailing, and the Court agrees with Defendants that venue does not lie in this District.

Given that venue is improper here, the Court must consider whether and where to transfer the case. "Generally, the 'interest of justice instructs courts to transfer cases to the appropriate judicial district, rather than dismiss them.'" *James v. Booz-Allen & Hamilton, Inc.*, 227 F. Supp. 2d 16, 20 (D.D.C. 2002). Given that Defendants have presented no argument for why dismissal would be preferable, see ECF No. 17 at 6, the Court concludes that transfer to a proper venue is the more appropriate path forward.

As discussed above, it is clear that venue is proper in the District of New Mexico under prongs one and three of the statute. Less clear is venue under prong two, which is proper in the "judicial district in which the employment records relevant to such practice are maintained and administered." Prong two could potentially support venue in one of two additional jurisdictions.

The first possibility is the Southern District of Illinois, where the relevant employment records are now archived. See Carruthers Decl. But courts in this District have disagreed on whether venue would be proper there. One court has held that, when a plaintiff's records were moved to storage after her employment, they were not "maintained and administered" at the storage location for purposes of the statute. See *Saran v. Harvey*, No. 04-cv-1847 (JDB), 2005 WL 1106347, at \*4 (D.D.C. May 9, 2005). Other courts, however, have disagreed, reasoning that the statute speaks in the present tense and holding on that basis that the place where the records were archived provided a venue under prong two. See, e.g., *Jyachosky v. Winter*, No. 04-cv-01733(HHK), 2006 WL 1805607, at \*3 n.2 (D.D.C. June 29, 2006). Ultimately, however, the Court does not need to decide that issue, because neither party has expressed an interest in litigating this case in the Southern District of Illinois.

The other potential venue under prong two is the Eastern District of Virginia, where the records

were previously located during Braun's employment. See Carruthers Decl. But in light of the facts as they stood when Braun filed suit, it is doubtful whether venue lies there. The statute authorizes venue where the relevant records are maintained and administered," but Braun's records are not presently there, and have not been at any time during this lawsuit. *Saran* could be read as implicitly blessing venue there, since the court in that case declined to recognize venue in the district to which the records had been sent for archival purposes. However, the court did not reach the issue because the records in that case had been located in Germany



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(outside any judicial district) during the plaintiff's employment. See 2005 WL 1106347, at \*4. In the end, neither party has brought to the Court's attention a case that squarely supports venue in the Eastern District of Virginia on the facts here.

Therefore, in light of all of the above, the Court will transfer the case to the District of New Mexico. Although transfer there may be somewhat inconvenient for Braun, it is the only district in which venue clearly lies. Moreover, it is the only venue with a meaningful nexus to the facts of the case. The events related to Braun's employment allegedly took place there, and Defendants have proffered that at least two important witnesses are located there. Therefore, the Court finds that it is in the interest of justice to transfer the case to the District of New Mexico.

## **2. Braun's Non-Rehabilitation Act Claims**

Braun invokes a large number of other statutes and authorities to support his claims against DOI and the Secretary of the Interior. For many of these authorities, in particular the criminal statutes that Braun cites, it is doubtful that he has a valid cause of action. See, e.g., *Lee v. USAID*, 859 F.3d 74, 78 (D.C. Cir. 2017) (per curiam) (holding there is no private cause of action under 18 U.S.C. § 1001). For others, such as the CSRA, it appears that this Court may lack subject matter jurisdiction. See,

*e.g., Elgin v. Dep't of Treasury*, 567 U.S. 1, 23 (2012) (holding district courts generally lack jurisdiction under the CSRA). And Defendants suggest that all of these claims should be dismissed for failure to exhaust administrative remedies. See ECF No. 17 at 3 n.2. However, because Defendants have moved to dismiss these claims only for improper venue, the Court will not address those other possible grounds to dismiss. See, *e.g., Shay v. Sight & Sound Sys., Inc.*, 668 F. Supp. 2d 80, 82 (D.D.C. 2009) (holding that district courts may address motion to transfer for improper venue before jurisdictional issues).

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"[T]he authority in this Circuit indicates that when a plaintiff brings a Title VII action, which is covered by Title VII's restrictive venue provision, as well as an action governed by the general venue provision, the narrower venue provision of § 2000e-5(1)(3) controls." *Munoz v. England*, No. 05-cv-2472 (CKK), 2006 WL 3361509, at \*7 (D.D.C. Nov. 20, 2006); *see also Johnson v. Deloitte Servs., LLP*, 939 F. Supp. 2d 1, 6 (D.D.C. 2013) ("[E]ven when only some of the claims in the complaint arise under Title VII, courts regularly transfer the entire case if they find venue for the Title VII claims to be improper."). In other words, a plaintiff cannot make an end-run around the Title VII venue statute by piling additional causes of action on top of his Title VII claims. The same result obtains for Rehabilitation Act claims governed by Title VII's venue provision. *See Gardner v. Mabus*, 49 F. Supp. 3d 44, 47-48 (D.D.C. 2014) (transferring entire case when venue was improper for Title VII and Rehabilitation Act claims). Therefore, the entire case—including any other claims Braun has asserted against DOI and the Secretary of the Interior—will be transferred to the District of New Mexico.

#### **IV. Conclusion and Order**

For the reasons set forth above, it is hereby **ORDERED** that Defendants' Motion to Dismiss or Transfer is **GRANTED**. Braun's claims against the EEOC are **DISMISSED WITH PREJUDICE**, and the case (including all of Braun's remaining claims against DOI and the Secretary of the Interior) shall be **TRANSFERRED** to the U.S. District Court for the District of New Mexico. It is **FURTHER ORDERED** that Secretary of the Interior Ryan Zinke shall be substituted for Defendant Sally Jewell pursuant to Federal Rule of Civil Procedure 25(d).

**SO ORDERED.**

/s/ Timothy J. Kelly  
TIMOTHY J. KELLY  
United States District Judge

Date: February 13, 2018

**APPENDIX K**

District of Columbia live database-  
Display Receipt

Page 1 of 1

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**U.S. District Court**

**District of Columbia**

**Notice of Electronic Filing**

The following transaction was entered on 12/6/2017  
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**Case Name:** BRAUN v, U.S. DEPARTMENT OF  
THE INTERIOR et al

**Case Number:** 1:16-cv-02457-TJK

**Filer:**

**Document Number:** No document attached

**Docket Text:**

**MINUTE ORDER: 42 U.S.C. § 2000e-5(f)(3) provides that venue for Title VII claims is proper, among other places, "in the judicial district in which the employment records unlawful employment practice are maintained and administered." The declaration submitted by Defendants (ECF No. 17-1) states that Plaintiff's employment records were located in the Eastern District of Virginia during his employment, and subsequently sent to archives located in the Southern District of Illinois. In light of pro se Plaintiff's address in the Eastern District of Virginia, the parties are hereby ORDERED to make supplemental submissions addressing whether venue would be proper in the Eastern District of Virginia under this provision, and whether transfer is appropriate there for any reason under 28 U.S.C. 1404(a). Each party shall make its submission by December 15, 2017. Signed by Judge Timothy J. Kelly on 12/6/2017. (lctjk2)**

**1:16-cv-02457-TJK**

App. 47

**Notice has been electronically mailed to:**  
marsha.yee@usdoj.gov, CaseView.ECF@usdoj.gov,  
Marsha Wellknown Yee marshawyee@gmail.com

**1:16-cv-02457-TJK Notice will be delivered by  
other means to::**  
JASON BRIAN BRAUN  
7331 Yountville Drive  
Unit 402  
Gainesville, VA 20155

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**APPENDIX L**

**Activity in Case 1:16-cv-02457-RJL BRAUN v.  
U.S. DEPARTMENT OF THE INTERIOR et al  
Order on Motion for Extension of Time to File  
Response/Reply  
DCD\_ECF Notice to: DCD\_ECF Notice**

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**U.S. District Court**

**District of Columbia**

**Notice of Electronic Filing**

**The following transaction was entered on 3/27/2017  
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**Case Name: BRAUN v. U.S. DEPARTMENT OF  
THE INTERIOR et al**

**Case Number: 1:16-cv-02457-RJL**



**Filer: Document Number:** No document attached

**Docket Text:**

**MINUTE ORDER** granting [19] plaintiff's nunc pro tunc Motion for Extension of Time to File Reply re [12] Motion to Compel. Plaintiff's reply, filed with the Court and with a request to file under seal, shall be deemed timely filed. **SO ORDERED.** Signed by Judge Richard J. Leon on 3/27/2017. (lcrjl3, )

**1:16-cv-02457-RJL Notice has been electronically mailed to:**

Marsha Wellknown Yee marsha.yee@usdoj.gov,  
CaseView.ECF@usdoj.gov, marshawyee@gmail.com

**1:16-cv-02457-RJL Notice will be delivered by other means to::**

**JASON BRIAN BRAUN**  
7331 Yountville Drive  
Unit 402  
Gainesville, VA 20155

**APPENDIX M**

**Activity in Case 1:16-cv-02457-RJL BRAUN v.  
U.S. DEPARTMENT OF THE INTERIOR et al  
Order on Motion for Extension of Time to  
DCD\_ECF Notice to: DCD\_ECF Notice**

02/08/2017 03:48 PM

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**U.S. District Court**

**District of Columbia**

**Notice of Electronic Filing**

The following transaction was entered on 2/8/2017 at 3:48 PM EDT and filed on 2/8/2017

**Case Name:** BRAUN v. U.S. DEPARTMENT OF THE INTERIOR et al

**Case Number:** 1:16-cv-02457-RJL

**Filer:**

**Document**            No document attached  
**Number:**

**Docket Text:**

**MINUTE ORDER granting [10] Motion for Extension of Time to File Response to Plaintiff's Complaint. It is hereby ORDERED that defendants have up to and including 3/20/2017 to respond to the Complaint in the above-captioned case. Signed by Judge Richard J. Leon on 2/8/2017. (lcrjl3, )**

**1:16-cv-02457-RJL Notice has been electronically mailed to:**

Marsha Wellknown Yee marsha.yee@usdoj.gov,  
CaseView.ECF@usdoj.gov, marshawyee@gmail.com

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7331 Yountville Drive  
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Gainesville, VA 20155

**APPENDIX N**

Case 1:16-CV-02457-RJL Document 16  
Filed 03/20/17 Page 1 of 6

**UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF COLUMBIA**

**JASON BRIAN BRAUN**  
**7331 Yountville Dr. Unit #402**  
**Gainesville, VA 20155,**  
**Plaintiff,**

**v. Civil Case No. 16-2457 (RJL)**

**U.S. DEPARTMENT OF THE  
INTERIOR, Office of the Secretary**  
**1849 C St. NW**  
**Washington, DC 20240**

**and**

**EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION, office of  
Federal Operations,**  
**131 M St. NE**  
**Washington, DC 20507,**  
**Defendants.**

**CASE MANAGEMENT ORDER**

**March 20, 2017**

This case has been assigned to the calendar of Judge Richard Leon. The plaintiff shall immediately serve this Order on all parties, including any new parties to the action. If this case came to the Court by a

Case 1:16-CV-02457-RJL Document 16  
03/20/17 Filed Page 2 of 6

**ORDERED** that within 30 days of all defendants answering the complaint or filing other motions under Rule 12(b) of the Federal Rules of Civil Procedure, or within 30 days of the issuance of this order if an answer or Rule 12(b) motion has already been filed, the parties shall confer pursuant to Federal Rule of Civil Procedure 26(f) and Local Civil Rule 16.3.<sup>1</sup> No later than fourteen days following that meeting, counsel shall submit: (1) their Joint Meet and Confer Statement addressing all topics listed in Local Civil Rule 16.3(c); and (2) a proposed scheduling order(s) in accordance with Rule 16.3(d). Counsel are also directed to include in their Joint Meet and Confer Statement a one-page statement of the facts of the case and the statutory basis for all causes of action and defenses. Once the Joint Meet and Confer Statement has been filed, the Court will schedule an initial status conference; and it is further

**ORDERED** that all counsel must familiarize themselves with the Federal Rules of Civil Procedure, particularly Federal Rules of Civil Procedure 16 and 26, and the Local Rules of the District of Columbia, "to secure the just, speedy, and inexpensive determination of [this] action," Fed. R. Civ. P. 1;<sup>2</sup> and it is further

**ORDERED** that parties comply with the following chambers practices and policies:

1. **Courtroom Proceedings:** All courtroom proceedings, unless otherwise indicated, will

be conducted in Courtroom 18 on the sixth floor of the E. Barrett Prettyman

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<sup>1</sup> The May 17, 2001 amendment to Local Civil Rule 16.3 sets forth additional categories of proceedings that are exempted from this Rule's meet and confer requirements. If counsel's proceeding is exempt from the local rule's requirements, counsel for both parties shall jointly prepare and submit a statement to the Court indicating whether they believe the matter will be resolved solely through the filing of dispositive motions and proposing a scheduling timeline for the filing of such motions to the Court. Counsel shall also indicate whether or not they believe an appearance before the Court will be necessary prior to resolution of the dispositive motions.

<sup>2</sup> The Local Civil Rules are available at "<http://www.ded.uscourts.gov>".

United States Courthouse, 333 Constitution Avenue, N.W., Washington, D.C. 20001. Non-courtroom conferences and meetings will be held in Judge Leon's chambers unless otherwise specified.

2. **Communications with Chambers:** Counsel shall not contact the Court or its chambers regarding non-emergency matters by telephone, facsimile, letter, or by any other means. Chambers may not provide legal advice or comment on the status of any pending motions. Counsel may contact the Courtroom Deputy Clerk regarding emergency scheduling matters.
3. **Proposed Orders:** All motions, whether filed through the Electronic Filing System (ECF) or otherwise, must be accompanied by a proposed order setting forth the relief or action sought. Under no circumstances shall the signature line appear alone on a page of the proposed order.
4. **Rescheduling Court Proceedings:** Requests for continuances of court proceedings are strongly discouraged because of the inconvenience they cause to the Court. If counsel seeks to change a previously scheduled hearing date, counsel is directed to submit a written motion at least four days prior to the proceeding. In the event of an emergency, the four-day rule will be waived but counsel must

still file a written motion in support of their request. The written motion must:

- a. demonstrate good cause for the continuance;
- b. state the opposing party's position on the continuance; and
- c. propose at least three alternative dates and times that would be convenient for all parties in the case. If counsel's suggested dates and times are not available on the Court's calendar, an alternative of the Court's choosing will be selected.



5. **Court Appearances by Counsel:** An attorney with authority to make scheduling decisions must appear on behalf of the parties at all court appearances. In addition, counsel must have their calendars and the calendars of any necessary co counsel available with them for possible scheduling of future events related to the case. In the event that counsel is not a member of the Bar of this Court and is located outside the District, local counsel<sup>3</sup> must be available to appear with the necessary authority to make scheduling decisions on behalf of all parties and counsel in the case.
6. **Motions for Extensions of Time to File Pleadings:** Motions for extension of time to file pleadings are strongly discouraged unless both parties consent. Counsel seeking an extension of time must file a written motion and a proposed order. Such a motion must include:
  - a. the number of previous extensions requested and granted to each party;
  - b. the specific ground(s) for the motion; a statement of the effect that the Court's granting of the motion will have on all other previously scheduled deadlines;
  - c. in cases where the motion seeks to extend the deadline for a dispositive motion, a suggested timeline for the

filing of the opposition<sup>4</sup> and reply; and

- d. pursuant to Local Civil Rule 7(m), the moving party shall include a statement of opposing counsel's position on the motion.

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<sup>3</sup> LCVR 83.2(c) requires that an attorney who is not a member of the Bar of this Court must obtain local counsel that is a member in good standing of this Court.

<sup>4</sup> The deadline for the opposition should be suggested only after consulting with opposing counsel.

Failure to comply with the Local Civil Rules or this Order may result in rejection of the request. The Court grants such motions only upon a showing of good cause, focusing on the diligence of the party seeking the continuance and any prejudice that may result if the Court denies the continuance.

7. **Pleadings:** Every pleading signed by an attorney shall, in conformity with Local Civil Rule 5.1(e), contain the name, address, telephone number, fax number, and bar identification number of the attorney and, where applicable, local counsel.
8. **Settlement and Alternative Dispute Resolution:** In order to reduce litigation expenses and delay, to eliminate the anxiety of trial and the risk of an unsatisfactory outcome, it is desirable that settlement occur as early as possible in the litigation process. The Court is available to assist the parties in pursuing settlement early in the process. However, the Court will not delay trial so that the parties may participate in settlement discussions on the eve of trial.

It shall be the norm for all cases to be referred for some form of alternative dispute resolution (ADR). Pursuant to Rule 16.3, the parties' Joint Meet and Confer Statement should address the potential benefit of ADR to their case, what steps should be taken to facilitate

ADR, and the point during litigation at which ADR would be most appropriate. In considering what form of alternative dispute resolution the parties think the case is most suited, counsel are reminded that their options include mediation (either with a private firm or a Magistrate Judge), arbitration, early neutral evaluation, summary jury trial, or any other form of

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<sup>5</sup> See *Jackson v. Finnegan, Henderson, Farabow, Garrett & Dunner*, 101 F.3d 145 (D.C. Cir. 1996).

alternative dispute resolution that can be tailored to the needs of their case. If the parties believe that the case is not a candidate for alternative dispute resolution, they should provide the Court with an explanation of their position.

9. **Stipulations of Dismissal:** Parties must submit a signed copy that includes a signature line for the Court. Under no circumstances shall the signature line appear alone on a page of the proposed order.

**SO ORDERED.**

      //s//      

**RICHARD J. LEON**  
**United States District Judge**

## APPENDIX O

42 U.S.C. 2000e-5(f)(3).

(3)

Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this subchapter. Such an action may be brought in any judicial district in the State... in the judicial district in which the employment records relevant to such practice are maintained and administered...but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

Local Civil Rule 7(n).

Motions Involving Judicial Review of  
Administrative Agency Actions

(1)

In cases involving the judicial review of administrative agency actions, unless otherwise ordered by the Court, the agency must file a certified list of the contents of the administrative record with the Court within 30 days following service of the answer to the complaint or simultaneously with the filing of a dispositive motion, whichever occurs first...

Guide To Judiciary Policy Vol. 2. Ch. 2

**(Canon 1)**

...so that the integrity and independence of the judiciary may be preserved..

**(Canon 2(A))**

Respect for Law.

A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary

**(Canon 3)**

A Judge Should Perform The Duties Of The Office Fairly, Impartially And Diligently

**(A)(4)**

A judge should accord to every person who has a legal interest in a proceeding, and that person's lawyer, the full right to be heard according to law.

Fed. Rules. Civ. Proced. Rule 7

Pleadings Allowed; Form of Motions and Other Papers

**(b)**

**MOTIONS AND OTHER PAPERS.**

**(1)**

*In General.* A request for a court order must be made by motion. The motion must:

(A) be in writing unless made during a hearing or trial;

(B) state with particularity the grounds for seeking the order; and

(C) state the relief sought.