18-8376



IN THE

SUPREME COURT

OF THE

UNITED STATES OF AMERICA

IN RE: DEE DEIDRE FARMER,

Petitioner,

ON WRIT OF CERTIORARI TO THE
DISTRICT OF COLUMBIA UNITED STATES COURT OF APPEALS

# PETITION FOR WRIT OF CERTIORARI

Dee Deidre Farmer
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P.O. Box 1600
Butner, North Carolina 27509

Pro' se

ORIGINAL



Dated: February 3, 2019

## QUESTIONS PRESENTED

When a prisoner initiates a civil action in a federal district court should that court deem the prisoner a resident of the state in which she/he resided prior to confinement or the state of his/her place of confinement?

When a prisoner brings a civil action in a federal district court asserting Bivens-type claims does that court have jurisdiction to transfer those Bivens claims to another judicial district when those claims could not have been originally brought in that district since none of the named defendants reside or work in that district and none of the events and omissions giving rise to the action are situated in that district?

## LIST OF PARTIES AND CORPORATE DISCLOSURE STATEMENT

Petitioner Dee Deidre Farmer (hereinafter "Pet. FARMER") was the petitioner in the United States Court of Appeals for the District of Columbia and the plaintiff in the United States District Court for the District of Columbia.

Respondent is the United States of America on behalf of employees of the United States Department of Justice's (DOJ) agency the Federal Bureau of Prisons (BOP).

No corporation is involved or have an interest in this case.

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APPENDIX

## OPINIONS BELOW

On September 7, 2018 the United States Court of Appeals denied Petitioner Farmer's petition for rehearing and rehearing en banc. A copy is included at Appendix A

On March 14, 2018 the United States Court of Appeals denied Pet. FARMER's petition for a writ of mandamus. A copy is attached at Appendix B.

On October 21, 2016 the United States District Court for the District of Columbia entered a Memorandum and Transfer Order transferring Pet. FARMER's claims to the United States District Court for the Eastern District of North Carolina. A copy is attached at Appendix C.

## JURISDICTIONAL STATEMENT

A timely petition for rehearing and rehearing en banc was denied by the United States Court of Appeals for the District of Columbia on the following date: September 7, 2018 and a copy of that denial is located at Appendix A.

The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254 and any other known or unknown statutory provision which grants this Court authority to review the appellate court's denial of Pet. FARMER's petition for a writ of mandamus.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourteenth Amendment right to citizenship of U.S. and citizen of the State of residence.

Eighth Amendment deliberate indifference clause

28 U.S.C. 1331

28 U.S.C. 1391(b)

28 U.S.C. 1406(a)

## STATEMENT OF THE CASE

Petitioner Dee Deidre Farmer (hereinafter "Pet. FARMER") initiated a Civil Action (hereinafter "The Action") in the United States District Court for the District of Columbia claiming, among other things, that the acts and omission of federal prison officials, who work and reside in the District of Columbia, the State of New York, and the State of West Virginia constituted deliberate indifference to her serious medical, psychiatric, and safety needs, in violation of the Eighth Amendment to the U.S., Constitution. Specifically, Pet. FARMER asserted, among other things, that she had been sexually assaulted while unconscious due to federal prison officials over medicating her with psychotropic's. She further asserted that in response to being made aware of the sexual assault prison officials discontinued all of her prescribed psychiatric medication leaving her in a psychotic state of chronic suicide ideation resulting in her stopping all prescribed medications, including those for her diagnosed terminal illness of Acquired Immunodeficiency Syndrome (AIDS). Finally, she asserts that prison officials then ordered her transferred to a medical facility in North Carolina, where she was presumed to expire in the near future (March 2017). It was there at the medical facility that Pet. FARMER initiated The Action. The district court issued a Memorandum and Transfer Order directing The Action be transferred to the Eastern District of North Carolina, where Pet. FARMER was/is confined. Pet. FARMER then filed a petition for writ of mandamus in the United States Court of Appeals seeking to have the district court's transfer order reversed on the facts that none of the named defendants reside or work in North Carolina, none of the events or omissions occurred in North Carolina, and she is not a resident of North Carolina. The appellate court denied mandamus relief and denied the petition for rehearing and rehearing en banc. Thus, Pet. FARMER files this petition for a writ of certiorari asking this

Court resolve a split among the federal appellate courts with regard to federal venue jurisdiction of prisoners' lawsuits.

Note: Hereinafter, unless otherwise stated, the United States Court of Appeals for the District of Columbia will be referred to as the "DC COURT" and the United States District Court for the Eastern District of North Carolina will be referred to as the "NC COURT".

## REASONS FOR GRANTING WRIT

Pet. FARMER asks this Court to resolve a split among the circuits with regard to federal; venue of civil actions brought by prisoners.

In this case, the appellate court erred in finding that it lacked jurisdiction to review the district court's transfer because the clerk of the district court had already electronically transferred and because Pet. FARMER failed to show that the district court's transfer of this case to another judicial district was impermissible.

The single case cited by the appellate court does not support its finding that it lacked jurisdiction to review the district court's transfer order and its finding is directly contradictive of clearly established law, including the interpretations of applicable federal venue statues by this Court. Further, she asks this Court to review the grounds upon which the appellate court held that it lacked jurisdiction, including that its holding is inconsistent with clearly established law from throughout the federal judiciary interpreting the applicable venue statutes.

Pet. FARMER respectfully asks this Court to review the appellate court's decision that the district court did not err in ordering the transfer of The Action. Thus, providing guidance to the federal courts as to the proper law as to federal venue jurisdiction in determining prisoner cases.

A. THE COURT OF APPEALS ERRED IN AFFIRMING THE DISTRICT COURT'S HOLDING THAT A PRISONER IS A RESIDENT OF THE STATE IN WHICH SHE IS CONFINED RATHER THAN THE STATE WHERE SHE RESIDED PRIOR TO CONFINEMENT

The Court of Appeals holding, which was applied in this case, virtually stands alone in its venue purposes. See e.g. Starnes v. McGuire, 312 F.2d 915 (D.C. Cor. 1974)(en bamc) Pope, 590 F.2d 620 (D.C. Cir. 1978)

Pope. 590 F.2d 620 (D.C. Cir. 1978)(for venue purposes a prisoner resides at his place of incarceration). Unfortunately, none of the Court of Appeals opinions concluding that a prisoner resides at his/her place on confinement for venue purposes provides a foundation, in law of fact, to support such a conclusion. also see Jones v. United States, 820F.Supp.2d 58 (D.D.C. 2011) Because the Court of Appeals, in this case, has not published for its repeated conclusory determinations that a prisoner resides at his/her place of confinement for venue purposes, and virtually all other federal courts (save one) that has reviewed this issue in-depth have found that under controlling legal principles a prisoner does not, contrary to the Court of Appeals rulings, reside at the prisoner's place of confinement for venue purposes. Pet. FARMER respectfully asks this Court to grant this petition for a writ of certiorari to provide some type of foundation as to applying federal venue statutes to determine the residence of a prisoner.

It appears that only a single federal district court, which is located in the District of Virginia, which is in the judicial district of the Fourth Circuit, has followed the legal precedent from the Court of Appeals that a prisoner's residence is assumed to be where that prisoner is confined for venue purposes. Roger v. Federal Bureau of Prisons, 2011 U.S.Dist.LEXIS 122878 (E.D. Va. 201 (distinguishing a prisoner\s "domicile" and "residence" and concluding for purposes of venue under the Freedom of Information Act and Privacy Act, the prisoner resides where he she is confined) It should be noted, however, while the Court of Appeals for the Fourth Circuit has yet to rule on this issue

Other than the conflicting noted decision by the district court in Virginia, Roger v. Federal Bureau of Prisons, supra, there is a complete absence of support for the Court of Appeals decision that a prisoner's place of confinement is her residence for federal venue purposes.

Starting with the First Circuit, in Hall v. Curran, 599 F.3d 70, 72 (1st Cir. 2010), that court addressed this issue and opined that under the venue statutes a prisoner "does not change residence to the prison simply because she is incarcerated there." Id. The district court's within the First Circuit has opined the same. Albreu v. United States. 796 F.Supp. 50 (D.RI. 1992)(for purposes of venue a prisoner's place of confinement id not where she/he resides); Pontea v. Masterrer, 2016 U.S.Dist.LEXIS 178012 (D.NH. 1012^) (prisoner's residence does not change to her/his place of confinement).

Though, in the Second Circuit, it was acknowledge that there was a trend of allowing inmate's to establish domicile for purposes of venue, see Housand v. Heiman, 594 F.2d 925-26, n.5 (2nd Cir. 1979), that court has long held that for venue purposes a prisoner resides at his/her last residence prior to incarceration. see Kahane v. Carlson, 527 F.2d 492 (2nd Cir. 1995) (affirmed ruling of New York federal district court that prisoner "whose legal residence prior to incarceration was ... New York for venue purposes [that prisoner] resides in New York, and not where he is incarcerated"); Muntaqlm Coombe, 449 F.3d 371 (2nd Cir. 2006) ("residence is critical since it is neither gained or lost as a consequence of incarceration"); also see Santamaria v. Holder, 2012 U.S.Dist.LEXIS 22082 (S.D.NY 2012), and Gasaway v. Bureau of Prisons, 2012 U.S.Dist.LEXIS 68538 (N.D.NY 2012) (holding that federal

prisoner's claims pursuant to the Federal Tort Claims Act (FTCA) were proper in New York because it was prisoner's pre-incarceration place of residence).

It should also be noted that the New York Jurisprudence, 49 N.Y. Jur. 3d sec. 36 (2002) also defines a prisoner residence as follows:

> "a prison is not a place of residence; it is a place of confinement and a person cannot go there as a prisoner and gain residence. The freedom of choice to come and go at one's whim or pleasure are bona fide elements of determining residence and are not present in a prison setting>"

Id.

In the Third Circuit in the case of Keys v. U.S. Department of Justice, 2008 U.S.App.LEXIS 16820 (3rd Cir. 2008), which is an exceptional case since it reports a concession by the federal government that a federal prisoner does not reside at his place of confinement but rather in the state where he resided prior to incarceration. In Keys, the Third Circuit explained:

> "prisoners, however, generally are not deemed to be residence of not of the place of incarceration but of the place of domicile immediately before their incarceration"

Fcl

Turning again to the Fourth Circuit, as noted above, the Court of Appeals for the Fourth Circuit has not addressed this issue; however, most of the lower court's in that circuit, save the one noted above, has held that a prisoner's residence is not the place of his/her confinement. See e.g., Harris v. Lappin, 2008 U.S.Dist.LEXIS 76573 (N.D.WV 2008)(prisoner's place of incarceration is not his/her place of residence for the purpose of venue); Rhine v. United States, 2012 U.S.Dist.LEXIS 189385 (N.D.WV 2012)(an inmate is domiciled in the state where he/she lived and intended to stay before his/her incarceration, even if he/she is currently incarcerated elsewhere); and Lindsey v. 2006 U.S.Dist.LEXIS 50116 N.D.WV 2006)("the weight of authority has found that a prisoner's place of incarceration is not his place of residence for purposes of venue").

The Fifth Circuit's decision, in Ellmgburg v. Connett, 451 F.2d 249 (5th Cir. 1972) seems to have been the impetus for most of the authority relating to this issue, and has been cited over and over to affirm, that a prisoner's place of confinement is not where the prisoner resides for purposes of venue, but rather it is where the prisoner resided pre-incarceration that determines proper venue. Id.

The Circuit Court for the Sixth Circuit, has addressed this issue. For example, in Stifel v. Hopkins, 477 F.2d 1116 (6th Cir. 1973)(establishes factors for determining a prisoner's residence for venue purposes); Steve v. Peitier,

2007 U.S.Dist.LEXIS 42530 (D.kY 2018)(under Stifel factors al prisoner must establish pre-incarceration residence, which is where the prisoner resides for venue purposes); and Shaffer v. Tepper, 127 F.Supp 892 (E.D.Ky 1955)("involuntary incarceration in the Kentucky Penitentiary brought about no change in [prisoner's] domicile or residence; the [prisoner's] citizenship remains the same as it was prior to [the prisoner's] imprisonment")

Turning to the Seventh Circuit, in Holmes v. U.S. Board of Parole, 541 F.2d 1245 7th Cir. 1976), it was stated: "[w]e see no reason for purposes of venue ... to ascribe Holmes [a federal prisoner] the residence of his district of incarceration rather than the district of his domicile").

The Eighth Circuit and the Ninth Circuit has also ruled that a prisoner's place of confinement does not become the prisoner's residence for venue purposes. For the Eighth Circuit see, Brimer v. Levi, 555 F.2d 656, 57-58 (8th Cir. 1977); Jones v. Hadican, 552 F.2d 249 (8th Cir. 1977)("a prisoner's incarceration in a different state does not acquire a new domicile, instead he retains the domicile he had prior to his incarceration"). For the Ninth Circuit see, Cohen v. United States, 297 F.2d 760 (9th Cir. 1962)("one does not change his residence by virtue of being incarcerated there"), and McDaniels v. Federal Bureau of Prisons, 2018 U.S.Dist. 54911 (N.D.Ca 2018)(holding that federal prisoner's place of confinement is not where he resides for venue purposes).

The Tenth Circuit and the Eleventh Circuit has also followed this path. For the Tenth Circuit see, Smith v.

Cummings, 445 F.3d 1264 (10th Cir. 2006)("to establish domicile in a particular state a person must be physically in the state, and intend to remain there. Once domicile is established, however, the person may depart without necessarily changing his domicile. To effect a change in domicile two things are in indisputable: first, residence in a new domicile, and second the intention to remain there indefinitely"); also see, Turner v. Kelley, 411 F.Supp. 1332 (D.Kan. 1976)("residence involves some choice, and like domicile, and presence elsewhere ... constraint has no effect upon it") and Bailey v. United States, 1992 U.S.Dist.LEXIS 17307 (D.Kan 1992)("for venue purposes his [the prisoner's] ... last place of residence prior to incarceration" is where the he resides). For the Eleventh Circuit see, Urban Industries, Inc. of Kentucky v. Thevis, 670 F.2d 981-986 (11th Cir. 1982)("litigant's pre-incarceration domicile remains as a matter of law"), and Hoffman v. Jones, 2017 U.S.Dist.LEXIS 48104 (N.D.Fl 2017)(transfer is proper because the Northern District of Florida appears to "have no relationship to the litigation at issue beyond the fact of Plaintiff's current incarceration here . . . which is not a relevant factor").

In the instant case, the DC COURT lacked the power to transfer Petitioner Farmer's claims to the NC COURT because the only possible connection between Petitioner Farmer's claims and the NC COURT is that Petitioner Farmer is confined there, which is not a relevant factor. Petitioner Farmer's presence in the NC COURT's district is a result of her

"involuntary commitment" there. She has never been a resident of that court's judicial district; and certainly, she has no intentions of remaining there. If Petitioner Farmer is to be deemed a resident of each state she was/is incarcerated she would be or would have been a resident of Pennsylvania, Missouri, Oklahoma, Maryland, Colorado, Georgia, Virginia, West Virginia, New York, Wisconsin, and Indiana. This is nonsensical at best.

In this country, hundreds of thousands of prisoners are transferred from one prison to another each day. In fact, whi le a prisoner maybe being transferred to another prison he/she may spend days, weeks or months at one or more prisons along the way. Which of these prisons shall be deemed the prisoner's residence? Shall it be that each time the prisoner enters a different prison he/she changes his/her legal residence? Likewise if a prisoner is incarcerated at a federal transit center shall that center become his/her residence; though he/she is not going to stay there? If a federal prisoner arrives today at a federal prison and tomorrow he becomes acutely ill and requires hospitalization, thus necessitating his/her transfer to a federal prison medical center, shall the prisoner be deemed a resident of the prison he arrived at the day before or the prison medical center where he arrived the following day?

As the prison population, in this country, has passed one million this is a critical issue that needs to be addressed with sound factual and legal analysis.

"There is a split of authority regarding whether an inmate resides at his place of incarceration or at his domicile prior to incarceration." Brown v. Federal Bureau of Prisons, 183488 (D.Co. 2012) The split of authority comes from this Court and one district court against all the other appellate and district courts for the federal judiciary. This conflict of authority is an acceptable reason for seeking review in the United States Supreme Court; however, such

In closing, Petitioner Farmer urges this Court to grant her a writ of certiorari to review the judgment of the DC COURT.

The Complaints filed by Petitioner Farmer in this case asserts, amongst other things, that the defendants are "officers" and "employees" of an "tangency" of the United States (i.e. the Bureau) and that the claims against those defendants are for acts and omissions taken in their "official capacity" (as well as individual) while acting "under color of legal authority". Moreover, in her Complaints, Petitioner Farmer asserts that at least three of the named defendants reside in the District of Columbia. Based on these allegations, which must be taken as true at this stage, Petitioner Farmer did not bring her action in a "wrong" or "improper" judicial district. In other words, Petitioner Farmer satisfied the venue requirements of 28

U.S.C. 1391(e) by asserting, in her Complaints, that the defendants are "officers" and "employees" of the Bureau, an "agency of the United States", the defendants were "acting under legal authority", and at least some of the defendants "reside" in the District of Columbia.

Since 28 U.S.C. 1406(a) allows only for the dismissal or transfer, if in the interest of justice, of an action brought in a "wrong" or "improper" judicial district the DC COURT was without power to transfer this case, pursuant to that statute, because Petitioner Farmer's claims against the named defendants, in their official capacity as officers and employees of an agency of the United States, could have been brought in any judicial district in which any of the defendants reside, including the District of Columbia. Thus, Petitioner Farmer having alleged that at least three of the named defendants reside in the judicial district of the DC COURT it is unimaginable that it could be concluded that Petitioner Farmer brought her action in a "wrong" or "improper" district; thus, under 28 U.S.C. 1406(a) the DC COURT lacked the power to order the transfer of this action pursuant to that statute -- since it authorizes transfer only if the action is has been brought in a "wrong" or "improper" judicial district. also see, In Re: Mason, 2003 U.S.App.LEXIS 11734 (D.C. Cir. 2003)(discussing the application of 28 U.S.C. 1391(e)).

In, In Re: Sturdivant, 2009 U.S.App.LEXIS 5773 (D.C. Cir. 2009) this Court addressed the issue of whether an inmate, who had filed an action in the DC COURT, against federal prison officials in both their official and individual

B. THE COURT OF APPEALS ERRED IN AFFIRMING THE ORDER TRANSFERRING PRISONER CLAIMS BECAUSE THOSE CLAIMS COULD NOT HAVE BEEN BROUGHT IN THE TRANSFEREE COURT SINCE NONE OF THE NAMED DEFENDANTS RESIDE OR WORK IN THE TRANSFEREE COURT'S DISTRICT AND NONE OF THE EVENTS OR OMISSIONS ARE SITUATED THERE

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This Court needs to look no further than the proper venue for Petitioner Farmer's Bivens claims to affirm that the DC COURT lacked power to transfer this action to the NC COURT since it is not a judicial district in which those Bivens claims "could have been brought." As noted above, 28 U.S.C. 1406(a) not only restricts a district courts power to transfer an action to another judicial district only when venue is "wrong" or "improper" but it also restricts the district courts power to transfer an action to only another judicial district if that action "could have been originally brought" there. The Supreme Court explained this concept of law by stating:

> "a district court may transfer any civil action to any other district or division where it might have been brought. The principles whether under the statute a civil action could ne transferred with the consent of the defendant in which as an original ,atter the plaintiff could not have sued the defendant because, for instance, venue cannot properly be laid in that district or the defendant was not amendable to process there."

(quoting Hoffman v. Balaski, 363 U.S. 335 (1960).

In that case [Balaski] the Supreme Could held that even if the defendant consents, a district court cannot transfer a civil action to any other district in which it "could not have been brought" as an original matter. Id.

Likewise, in Van Dussen v. Barrack, 376 U.S. 612 (1969), the United States Supreme Court stated:

> "the words, where it might have been brought, must be construed with reference to the federal laws delaminating the district in which an action may be brought . . . ."

Id. at 624

Here, the federal law delimiting proper venue for Bivens claims is 28 U.S.C. 1391(b). In Dastmalchian v. Department of Justice, 34 F.Supp.3d 173 (D.D.C. 2014) the DC COURT stated:

> "venue for a Bivens claims is governed by the general venue statute 28 U.S.C. 1391(b)"

Id.

also see, Barber v. Simpson, 1996 U.S.App.LEXIS 21755 (8th Cir. 1996) (Bivens action is one against a federal official in his personal [individual] capacity governed by 28 U.S.C. 1391(b); reviewing legislative history of 28 U.S.C. 1391(b)).

That statute (28 U.S.C. 1391(b)) confers that in a civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought where any defendant resides, if all defendants reside in the same state, a judicial district in which the events or omissions giving rise to the subject of the action is situated, or if there is no district in which the action may otherwise be brought as provided in this section (28 U.S.C. 1391(b)), any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to the action. see ATL Marine Constr. Co. v. United States States District Court, supra. (citing 28 U.S.C. 1391(b)).

Thus, Bivens claims can only "be brought" in a judicial district in which the court can exercise personal jurisdiction over the defendants. See e.g., Farrell v. Piedmont Aviation, Inc. 411 F.2d 822 (2nd Cir. 1969)(transferee court lacked personal jurisdiction) The venue statute, 28 U.S.C. 1391(b), "ensure[s] that so long as a federal court has personal jurisdiction over the defendant, venue will . . . lie somewhere." (quoting ATL Marine Constr. Co. v. United States District Court, supra); Dastmalchan v. United States Department of Justice, 2015 U.S.App.LEXIS 8916 (D.C. Cir. 2015)(finding that the district court's transfer of Bivens claims to the Central District of California was permissible only because all the actions and omissions took place there); Barber v. Simpson, supra. (whether Barber's Bivens claims is proper in the Western District of Missouri is determined by reference to 28 U.S.C. 1391(b)); Harvey v. Turnbo, 1994 U.S.App.LEXIS 43055 (5th Cir. 1994)(28 U.S.C. 1391(b) is the

venue statute for Bivens claims).

Thus, the law makes clear that in order for venue to be properly laid (for Bivens claims) in any judicial district that district must be able to exercise personal jurisdiction over the defendants. ATL Marine Constr. Co. v. United States District Court, supra. A district court has personal jurisdiction over a defendant if his/her acts and omissions giving rise to the cause of action is situated in that court's judicial district or if the defendant resides within that court's judicial district. (28 U.S.C. 1391(b)) It is therefore, that venue for Bivens claims is properly laid if those claims are brought in a judicial district in which the acts and omissions of the defendant giving rise to the subject of the action occurred, or where the defendant resides. Logically, a district court cannot transfer Bivens claims to another district that neither any of the events or omissions giving rise to the cause of action is situated and none of the defendants resides. See e.g., Ludson v. Kibble, 307 F.Supp 11 (S.D.NY 1969)(transferor court cannot transfer case to a district in which it could not have been brought); Scott v. United States, 1995 U.S.App.LEXIS 11864 (4th Cir. 1995)(venue for Bivens claims is proper in the judicial district in which a substantial part of the events or omissions giving rise to the claims occurred); McDaniels v. United States, 2018 U.S.Dist.LEXIS 90563 (E.D.Ky 2018)(Bivens claims transferred to the judicial district for the Eastern District of Kentucky, where federal prisoner is confined, by the United States District Court for the DIstrict of Columbia, held impermissible as to Bivens claims for events or omissions

occurring in, and alleged committed by prison officials residing in, Florida); Davis v. United States Sentencing Commission, 716 F.3d 660 (D.C. Cir. 2013)(district court had authority to take-up inmates Bivens claims);

Similarly, in McDaniels v. Federal Bureau of Prisons, 2018 U.S.Dist.LEXIS 54911 (N.D.Ca. 2018) the Court held in an action brought by a federal prisoner that the federal prisoner's claims should be brought as Bivens claims; however, it found that it lacked venue since "none of the claims ha[d] any connection to [its] jurisdiction. No [defendant] resided in th[at] [court's] district and none of the alleged wrongdoing occurred in [its] district." Id. Accordingly, the federal prisoner could not have brought his Bivens claims in that court's district.

Here, "none of the claims have any connection" to the NC COURT's jurisdiction. "No [defendant] resides in [that] district", and "none of the alleged wrongdoing occurred in [the NC COURT's] district". It is mind-boogying that it could be held by any federal court, including the Panel in this case, that Petitioner Farmer's Bivens claims could have somehow been brought in the NC COURT's judicial district. It is totally shocking that the Panel reached this conclusion.

In conclusion, because 28 U.S.C. 1406(a) restricts the DC COURT's authority to transfer Petitioner Farmer's claims to only another district "where [those claims] could have been brought", which is not the district of the NC COURT, the DC COURT lacked power to have transferred Petitioner Farmer's Bivens claims to the NC COURT. That court certainly cannot satisfy any of the provisions of the applicable venue statute, 28 U.S.C. 1391(b), for Petitioner Farmer's Bivens claims. The NC COURT would not have authority to exercise personal jurisdiction over the defendants, as mandated by 28 U.S.C. 1391(b), and it is therefore that Petitioner Farmer's Bivens claims could not have been brought there. ATL Marine Constr. Co. v. United States District Court, supra.

Almost four decades after the DC COURTS en banc decision in Starnes v. McGuire, supra, the United States Supreme Court, in ATL Marine Constr. Co. v. United States District Court, supra, reviewed a lower court's ruling relating to the application of 28 U.S.C. 1406(a), which is the same statute at issue here, and held:

> Section 1406(a) . . . allows dismissal [or transfer, if in the interest of justice] only when venue is "wrong" or "improper" ..."

Id.

This Court in ATL Marine Constr. Co. v. United States District Court, supra, went on to state: "whether venue is

"wrong" or "improper" depends exclusively on whether the court in which the case was brought satisfies the requirements of [applicable] federal venue laws..." Id.

In this case, the DC COURT only had the power to order a transfer, pursuant to 28 U.S.C. 1406(a), if in the interest of justice, Petitioner Farmer had brought her claims in a "wrong" or "improper" judicial district.

According to the directions of the Supreme Court, as noted above, to determine whether an action has been brought in a "wrong" or "improper" district depends exclusively on the applicable federal venue statutes.

Since Petitioner Farmer asserts claims against federal officials in their official (as well as individual) capacity one of the venue statutes applicable to this case is 28 U.S.C. 1391(e).

In Stafford v. Briggs, 444 U.S. 527 (1979), the United States Supreme Court explained the contours of 28 U.S.C. 1391(e) by stating:

> "the venue Act of 1962 (29 U.S.C. 1391(e) allowing civil action in which a defendant is an officer or employee of the United States, any agency thereof acting in his official capacity, under color of legal authority to brought in the judicial distract in which 1) a defendant in the action resides, 2) the cause of the action occurred, 3) any real property involved in the action is situated, or 4) the plaintiff resides if no real property is involved in view of the language of the Act as a whole, legislative history showing that Congress intended nothing more than to provide a nationwide venue statute for the convenience of individual plaintiffs in actions which are normally against individuals but are in reality against the government..."

Id.

The Complaints filed by Petitioner Farmer in this case asserts, amongst other things, that the defendants are "officers" and "employees" of an "agency" of the United States (i.e. the Bureau) and that the claims against those defendants are for acts and omissions taken in their "official capacity" (as well as individual) while acting "under color of legal authority". Moreover, in her Complaints, Petitioner Farmer asserts that at least three of the named defendants reside in the District of Columbia. Based on these allegations, which must be taken as true at this stage, Petitioner Farmer did not bring her action in a "wrong" or "improper" judicial district. In other words, Petitioner Farmer satisfied the venue requirements of 28 U.S.C. 1391(e) by asserting, in her Complaints, that the defendants are "officers" and "employees" of the Bureau, an "agency of the United States", the defendants were "acting under legal authority", and at least some of the defendants "reside" in the District of Columbia.

Since 28 U.S.C. 1406(a) allows only for the dismissal or transfer, if in the interest of justice, of an action brought in a "wrong" or "improper" judicial district the DC COURT was without power to transfer this case, pursuant to that statute, because Petitioner Farmer's claims against the

named defendants, in their official capacity as officers and employees of an agency of the United States, could have been brought in any judicial district in which any of the defendants reside, including the District of Columbia. Thus, Petitioner Farmer having alleged that at least three of the named defendants reside in the judicial district of the DC COURT it is unimaginable that it could be concluded that Petitioner Farmer brought her action in a "wrong" or "improper" district; thus, under 28 U.S.C. 1406(a) the DC COURT lacked the power to order the transfer of this action pursuant to that statute -- since it authorizes transfer only if the action is has been brought in a "wrong" or "improper" judicial district. also see, In Re: Mason, 2003 U.S.App.LEXIS 11734 (D.C. Cir. 2003)(discussing the application of 28 U.S.C. 1391(e)).

Petitioner Farmer respectfully ask that the DC COURT [illegible] decision be reversed and/or that the specific factual aid legal foundation for the DC COURT's findings that the lower court's transfer of this case to the NC COURT is permissible. Thus, allowing Petitioner Farmer an opportunity to seek further meaningful review.

It is well established law that 28 U.S.C. 1406(a) only authorizes the transfer of a case that has been brought in a "wrong" or "improper" judicial district and that such a transfer must be to another judicial district "where the case could have been brought". ATL Marine Constr. Co. v. United States District Court, 571 U.S. 49 (2013).

It was first developed by the the Second Circuit Court of Appeals, in Farrell v. Wyatt. 408 F.2d 662, 664 (2nd Cir. 1969) that when a transfer is not in accordance with the governing venue statutes the transferor court lacks power to order the transfer and therefore that the transferor court as well as its appellate court retains jurisdiction over the case. Pointedly, in Farrell, the court stated:

> "where the transfer is to a forum that is not permitted under section 140(6) a (i.e. a forum where the case could not have been brought it is possible to argue that the transfer court was without power to order the transfer and that therefore the transferor court never lost jurisdiction over the case"

Id. at 624.

The DC COURT acknowledged the holding in Farrell, en banc in Starnes v. McGuire, 512 F.2d 918, n.6 (D.C.Cir. 1974) ("where the transfer is to a forum that is not permitted ... the transferor court was without power to order the transfer and that therefore the transferor court never lost jurisdiction."); accord, Jack Winter, Inc. v. Koratron Company, Inc., 326 F.Supp 121 (N.D.Ca. 1971).

In this case, the DC COURT was without power to order the transfer, pursuant to 28 U.S.C. 1406(a), because first,

the Petitioner Farmer did not bring her claims in a "wrong" or "improper" judicial district, second the DC COURT was without power to transfer Petitioner Farmer's claims to the NC COURT since it is not in a judicial district in which those claims "could have been brought", third the DC COURT was without power to transfer Petitioner Farmer's claims to the NC COURT since the Petitioner Farmer's "involuntary confinement" within that court's district does not convert her into a resident of that district, and fourth the "electronic transfer" of a case

The Court in ATL Marine Constr. Co. v. United States District Court, supra, went on to state: "whether venue is "wrong" or "improper" depends exclusively on whether the court in which the case was brought satisfies the requirements of [applicable] federal venue laws..." Id.

In this case, the DC COURT only had the power to order a transfer, pursuant to 28 U.S.C. 1406(a), if in the interest of justice, Petitioner Farmer had brought her claims in a "wrong" or "improper" judicial district.

According to the directions of the Supreme Court, as noted above, to determine whether an action has been brought in a "wrong" or "improper" district depends exclusively on the applicable federal venue statutes.

Since Petitioner Farmer asserts claims against federal officials in their official (as well as individual) capacity one of the venue statutes applicable to this case is 28 U.S.C. 1391(e).

In Stafford v. Briggs, 444 U.S. 527 (1979), the United States Supreme Court explained the contours of 28 U.S.C. 1391(e) by stating:

> "[the] Venue Act of 1962, 28 U.S.C. 1391(e) allowing civil action in which a defendant is an officer or employee of the United States, or any agency thereof, acting in his official capacity or under color of legal authority to be brought in the judicial district in which a defendant in the action

Id. at 624

Here, the federal law delimiting proper venue for Bivens claims is 28 U.S.C. 1391(b). In Dastmalchian v. Department of Justice, 34 F.Supp.3d 173 (D.D.C. 2014) the DC COURT stated:

> "[V]enue for a Bivens claim is governed by the general venue statute 28 U.S.C. 1391(b)."

Id.

also see, Barber v. Simpson, 1996 U.S.App.LEXIS 21755 (8th Cir. 1996)(Bivens action is one against a federal official in his personal [individual] capacity governed by 28 U.S.C. 1391(b); reviewing legislative history of 28 U.S.C. 1391(b)).

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That statute (28 U.S.C. 1391(b)) confers that in a civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought where any defendant resides, if all defendants reside in the same state, a judicial district in which the events or omissions giving rise to the subject of the action is situated, or if there is no district in which the action may otherwise be brought as provided in this section (28 U.S.C. 1391(b)), any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to the action. see ATL Marine Constr. Co. v. United States States District Court, supra. (citing 28 U.S.C. 1391(b)).

Thus, Bivens claims can only "be brought" in a judicial district in which the court can exercise personal jurisdiction over the defendants. See e.g., Farrell v. Piedmont Aviation, Inc. 411 F.2d 822 (2nd Cir. 1969)(transferee court lacked personal jurisdiction) The venue statute, 28 U.S.C. 1391(b), "ensure[s] that so long as a federal court has personal jurisdiction over the defendant, venue will . . . lie somewhere." (quoting ATL Marine Constr. Co. v. United States District Court, supra); Dastmalchan v. United States Department of Justice, 2015 U.S.App.LEXIS 8916 (D.C. Cir. 2015)(finding that the district court's transfer of Bivens claims to the Central District of California was permissible only because all the actions and omissions took place there); Barber v. Simpson, supra. (whether Barber's Bivens claims is proper in the Western District of Missouri is determined by reference to 28 U.S.C. 1391(b)); Harvey v. Turnbo, 1994 U.S.App.LEXIS 43055 (5th Cir. 1994)(28 U.S.C. 1391(b) is the

venue statute for Bivens claims).

Thus, the law makes clear that in order for venue to be properly laid (for Bivens claims) in any judicial district that district must be able to exercise personal jurisdiction over the defendants. ATL Marine Constr. Co. v. United States District Court, supra. A district court has personal jurisdiction over a defendant if his/her acts and omissions giving rise to the cause of action is situated in that court's judicial district or if the defendant resides within that court's judicial district. (28 U.S.C. 1391(b)) It is therefore, that venue for Bivens claims is properly laid if those claims are brought in a judicial district in which the acts and omissions of the defendant giving rise to the subject of the action occurred, or where the defendant resides. Logically, a district court cannot transfer Bivens claims to another district that neither any of the events or omissions giving rise to the cause of action is situated and none of the defendants resides. See e.g., Ludson v. Kibble, 307 F.Supp 11 (S.D.NY 1969)(transferor court cannot transfer case to a district in which it could not have been brought); Scott v. United States, 1995 U.S.App.LEXIS 11864 (4th Cir. 1995)(venue for Bivens claims is proper in the judicial district in which a substantial part of the events or omissions giving rise to the claims occurred); McDaniels v. United States, 2018 U.S.Dist.LEXIS 90563 (E.D.Ky 2018)(Bivens claims transferred to the judicial district for the Eastern District of Kentucky, where federal prisoner is confined, by the United States District Court for the DIstrict of Columbia, held impermissible as to Bivens claims for events or omissions

occurring in, and alleged committed by prison officials residing in, Florida); Davis v. United States Sentencing Commission, 716 F.3d 660 (D.C. Cir. 2013)(district court had authority to take-up inmates Bivens claims);

Similarly, in McDaniels v. Federal Bureau of Prisons, 2018 U.S.Dist.LEXIS 54911 (N.D.Ca. 2018) the Court held in an action brought by a federal prisoner that the federal prisoner's claims should be brought as Bivens claims; however, it found that it lacked venue since "none of the claims ha[d] any connection to [its] jurisdiction. No [defendant] resided in th[at] [court's] district and none of the alleged wrongdoing occurred in [its] district." Id. Accordingly, the federal prisoner could not have brought his Bivens claims in that court's district.

Here, "none of the claims have any connection" to the NC COURT's jurisdiction. "No [defendant] resides in [that] district", and "none of the alleged wrongdoing occurred in [the NC COURT's] district". It is mind-boogying that it could be held by any federal court, including the Panel in this case, that Petitioner Farmer's Bivens claims could have somehow been brought in the NC COURT's judicial district. It is totally shocking that the Panel reached this conclusion.

## CONCLUSION

Pet. FARMER urges this Court to reverse and remand this case with instructions that for venue purposes a prisoner resides at his/her last state of residence prior to imprisonment, and that claims against federal officials in their individual capacity cannot be transferred to a judicial district that has no relationship to the case other than the prisoner is confined in that district.

Respectfully submitted,

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Dated: February 3, 2019