

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

ABDELFATAH S. ELLAWENDY,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2024-1477

Petition for review of the Merit Systems Protection Board in No. SF-0752-18-0471-I-1.

Before LOURIE, DYK, and REYNA, *Circuit Judges*.

PER CURIAM.

O R D E R

In light of AbdelFatah S. Ellawendy's Statement Concerning Discrimination and the decision of the Merit Systems Protection Board, the court directed the parties to show cause why this case should not be transferred to a federal district court. The Board's response to that order urges the court to dismiss the petition, while Mr. Ellawendy urges this court to retain jurisdiction.

Federal district courts, not this court, have jurisdiction over "[c]ases of discrimination subject to the provisions of

[5 U.S.C.] § 7702,” 5 U.S.C. § 7703(b)(2)—i.e., where an employee has made a non-frivolous allegation regarding an action appealable to the Board and that the action was based, at least in part, on covered discrimination. *Perry v. Merit Sys. Prot. Bd.*, 582 U.S. 420, 432 (2017).

Here, Mr. Ellawendy alleged before the Board that his resignation was involuntary and the result of covered discrimination, so jurisdiction to review the Board’s decision would generally lie in district court. Although 28 U.S.C. § 1631 authorizes this court, when it lacks jurisdiction over the case, to transfer to an appropriate district court, we see no basis for doing so here at least because we understand Mr. Ellawendy has sought review of the Board’s decision in a pending case in the United States District Court for the Northern District of California. *See Ellawendy v. Wormuth*, No. 3:24-cv-00265-AGT (N.D. Cal. Jan. 16, 2024). We therefore dismiss this petition.

Accordingly,

IT IS ORDERED THAT:

- (1) The petition is dismissed.
- (2) All pending motions are denied.
- (3) Each party shall bear its own costs.

FOR THE COURT



Jarrett B. Perlow
Clerk of Court

May 20, 2024
Date