

NOTE: This order is nonprecedential.

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

RUDOLPH MARTINEZ, JR.,
Petitioner

v.

DEPARTMENT OF THE ARMY,
Respondent

2024-1866

Petition for review of the Merit Systems Protection Board in No. DE-0752-22-0095-I-1.

ON MOTION

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

PER CURIAM.

O R D E R

In response to this court's July 18, 2024 order, the Department of the Army argues for transfer. Rudolph Martinez, Jr. moves at ECF No. 15 for leave to file his response out of time, asserting that this court has jurisdiction.

The Merit Systems Protection Board affirmed Mr. Martinez's removal, rejecting his affirmative defense of

disability discrimination. Mr. Martinez petitions this court for review, and his filings indicate that he wishes to continue to pursue his discrimination claim.

We transfer this case. 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), which involve an allegation of an action appealable to the Board and an allegation that a basis for the action was covered discrimination, 5 U.S.C. § 7702. *Perry v. Merit Sys. Prot. Bd.*, 582 U.S. 420, 437 (2017). Here, Mr. Martinez continues to pursue the allegation he made before the Board that his removal was the result of covered discrimination, so jurisdiction to review the Board’s decision lies in district court. We agree with the Army that transfer to the United States District Court for the District of Colorado, where the employment action appears to have occurred, is appropriate. *See* 28 U.S.C. § 1631.

Accordingly,

IT IS ORDERED THAT:

ECF No. 15 is granted, and this matter and all case filings are transferred to the United States District Court for the District of Colorado pursuant to 28 U.S.C. § 1631.

FOR THE COURT



Jarrett B. Perlow
Clerk of Court

September 17, 2024

Date