

NOTE: This order is nonprecedential.

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

ARTURO S. LOPEZ,
Petitioner

v.

DEPARTMENT OF THE AIR FORCE,
Respondent

2024-2029

Petition for review of the Merit Systems Protection Board in No. DA-0752-18-0107-I-1.

ON MOTION

Before REYNA, LINN, and STOLL, *Circuit Judges*.

PER CURIAM.

O R D E R

Arturo S. Lopez petitions this court to review the final decision of the Merit Systems Protection Board affirming his removal and rejecting his affirmative defense of retaliation for prior equal employment opportunity activity alleging discrimination based on national origin. Responding to this court's show cause order, Mr. Lopez

moves unopposed to transfer to the United States District Court for the Western District of Texas, ECF No. 8.

Because the district court is the appropriate forum for judicial review of Board decisions involving agency actions appealable to the Board and alleged to be based on certain types of discrimination as well as retaliation, 5 U.S.C. § 7703(b)(2); *Perry v. Merit Sys. Prot. Bd.*, 582 U.S. 420 (2017); *Diggs v. Dep't of Hous. & Urb. Dev.*, 670 F.3d 1353, 1357 (Fed. Cir. 2011) (holding that the affirmative defense of retaliation for prior EEO activity “falls outside [of the court’s] jurisdictional reach”), we transfer to the Western District of Texas. *See* 28 U.S.C. § 1631.

Accordingly,

IT IS ORDERED THAT:

The motion is granted. The matter and all case filings are transferred to the United States District Court for the Western District of Texas pursuant to 28 U.S.C. § 1631.

FOR THE COURT



Jarrett B. Perlow
Clerk of Court

November 18, 2024
Date