

# CHAPMAN V. BUREAU OF PRISONS: STOPPING THE VENUE MERRY-GO-ROUND

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## I. INTRODUCTION

The Federal Bureau of Prisons (BOP) is in a unique position to frustrate the federal venue statute.<sup>3</sup> In contrast to most state departments of corrections, the BOP bears the unilateral power to transfer prisoners in its custody to prisons across federal judicial districts. At times, the agency exercises this power over prisoners involved in active litigation against the BOP itself. In many of these instances, once the BOP has moved the prisoner-plaintiff outside the judicial district in which the plaintiff brought his<sup>4</sup> claim, the BOP seeks to transfer the claim to the prisoner's "new" venue. Increasingly, prisoners' rights advocates are witnessing efforts by the BOP to secure judicial sanctioning of this conduct.

This practice is problematic and should be resisted so that the BOP is not permitted to situate federal prisoners on a "venue merry-go-round" and virtually evade judicial review of claims challenging the agency's conduct. In one such case, *Chapman v. Bureau of Prisons*, the BOP attempted to do just that—evade judicial review of its conduct—by moving the plaintiff from a prison in Colorado to one in Indiana.<sup>5</sup> The agency then sought transfer, pursuant to 28 U.S.C. § 1404(a), of the plaintiff's Eighth Amendment claim against it from the District of Colorado, the venue in which the plaintiff brought the claim, to the Southern District of Indiana, the venue to which the agency moved the plaintiff.<sup>6</sup> The transferee court declined to sanction the practice, citing the plain language of Section 1404 and the statute's purpose.<sup>7</sup> Courts facing similar questions should reach the same conclusion.

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3. See 28 U.S.C. §§ 1391, 1404 (2012).

4. We use the male pronoun here because the overwhelming majority of federal prisoners are male. See *Inmate Gender*, FED. BUREAU OF PRISONS, [https://www.bop.gov/about/statistics/statistics\\_inmate\\_gender.jsp](https://www.bop.gov/about/statistics/statistics_inmate_gender.jsp) (last updated Aug. 26, 2017) (showing a federal-prison population that is 93.2% male and 6.8% female).

5. Soon before this article's publication, the Honorable Leonie M. Brinkema of the Eastern District of Virginia granted Mr. Chapman's § 2255 petition and ordered his release from BOP custody. He is now home with his family.

6. The authors of this article are counsel of record for the plaintiff, Seifullah Chapman.

7. *Chapman v. Fed. Bureau of Prisons*, 235 F. Supp. 3d 1066, 1070 (S.D. Ind. 2017).

## II. OVERVIEW OF VENUE AND CHANGE OF VENUE STATUTES.

The American concept of venue in civil cases—in particular, the idea that venue should lie in a forum convenient to the parties—is a remnant from the development of English reforms to civil adjudications.<sup>8</sup> In the early English system, the broad reaches of personal jurisdiction required individuals to travel “from the furthest reaches of England” to Westminster to defend themselves in court.<sup>9</sup> Largely viewed as unfair and unjust, the British Parliament enacted reforms<sup>10</sup> that allowed fact-finding trials to be held locally to mitigate “hardship to the parties, witnesses, and jurors whose attendance was necessary.”<sup>11</sup>

Viewed largely as a means to “avoid hardship to the litigants and enhance the accessibility of the civil justice system,”<sup>12</sup> these parliamentary reforms influenced the founders’ development of the federal court system<sup>13</sup> and the American concept of venue.<sup>14</sup> These conceptions grew from concerns about protecting individual defendants from being sued in an inconvenient forum and resulted in a series of incredibly restrictive venue statutes wherein a plaintiff filing suit in federal court could lay venue only in the “judicial district where any defendant resides.”<sup>15</sup> The modern federal venue statute, 28 U.S.C. § 1391, is informed, however, by not only these individual defendant-protective historical impulses but also a respect for the plaintiff’s choice of forum and principles of judicial management that allow for the most efficient and effective adjudication of federal lawsuits.<sup>16</sup>

Under modern venue rules, venue may lie (1) in the judicial district where any defendant resides so long as all defendants reside in the same district, (2) in the judicial district where the events “giving rise to the claim” or “a substantial part of the property” at issue is situated, and (3) where any defendant is subject to personal jurisdiction if there is no dis-

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8. Peter L. Markowitz & Lindsay C. Nash, *Constitutional Venue*, 66 FLA. L. REV. 1153, 1162 (2014) (describing a 1285 act of Parliament that “brought civil adjudication close to litigants’ homes by authorizing justices to conduct hearings of fact-finding, in cases of general jurisdiction, in the home counties of the litigants”).

9. *Id.*

10. Statute of Westminster the Second, 1285, 13 Edw. 1, ch. 30.

11. ALEXANDER MARTIN, CIVIL PROCEDURE AT COMMON LAW § 362 at 307 (1905).

12. Markowitz, *supra* note 8, at 1162.

13. A. Benjamin Spencer, *Nationwide Personal Jurisdiction for Our Federal Courts*, 87 DENV. U.L. REV. 325, 326 (2010).

14. Markowitz, *supra* note 8, at 1164-67.

15. 28 U.S.C. § 1391(b) (1964), amended by Pub. L. No. 89-714, 80 Stat. 1111 (amended 1966); see also Antony L. Ryan, *Principles of Forum Selection*, 103 W. VA. L. REV. 167, 170-71 (2000) (tracing the development of federal venue statute).

16. Ryan, *supra* note 15, at 170-71. While most federal courts generally recognize that a plaintiff’s choice of forum is to be granted some weight in modern considerations of venue, the amount of deference that choice should receive is subject to disagreement amongst the federal courts. *Id.* at 176-77.

trict where the action could otherwise be brought.<sup>17</sup> Thus, the modern venue statute largely grants plaintiffs the ability to select the most convenient venue for them.<sup>18</sup> But, since 1948, a plaintiff's choice of forum can be overridden if a defendant successfully moves to transfer a case under the transfer statute, 28 U.S.C. § 1404.<sup>19</sup>

The transfer statute allows a federal district court to “transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented.”<sup>20</sup> In enacting the transfer statute, Congress intended “to improve the efficient change of courtrooms when either the public or the defendant demands a more convenient forum.”<sup>21</sup> The Supreme Court has generally allowed the lower federal courts the discretion to decide when the transfer statute is properly invoked, largely declining to formulate specific rules governing transfers of federal cases pursuant to 28 U.S.C. § 1404.<sup>22</sup> The sole limitation that the Supreme Court has placed on transfers relies on the text of the statute itself: federal courts do not have discretion to transfer a case to a forum where it could not have been brought by the plaintiff when the plaintiff initiated suit.<sup>23</sup> It is this limitation, in addition to the discretionary, policy-oriented considerations, upon which we successfully relied in *Chapman* to avoid transfer of venue.

### III. THE FEDERAL BUREAU OF PRISONS: TRANSFERRING PRISONERS, TRANSFERRING CLAIMS.

Unlike state departments of corrections,<sup>24</sup> the BOP bears the unilateral power to move prisoners from one federal judicial district to another on the other side of the country. The BOP operates over 140 prisons of differing security levels across the country and confines more than 155,000 people.<sup>25</sup> For varying reasons, the BOP may move a prisoner

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17. 28 U.S.C. § 1391(b) (Supp. V 1993), *amended by* Pub. L. No. 104-34, 109 Stat. 293 (amended 1995).

18. Ryan, *supra* note 15, at 170.

19. 28 U.S.C. § 1404 (1948); *see also* David E. Steinberg, *The Motion to Transfer and the Interests of Justice*, 66 NOTRE DAME L. REV. 443, 451 (1990) (confirming that Congress first authorized the transfer statute in 1948).

20. 28 U.S.C. § 1404 (1948).

21. Jeremy Jay Butler, *Venue Transfer When A Court Lacks Personal Jurisdiction: Where are Courts Going with 28 U.S.C. § 1631?*, 40 VAL. U.L. REV. 789, 789–90 (2006).

22. Steinberg, *supra* note 19, at 462.

23. *Hoffman v. Blaski*, 363 U.S. 335, 344 (1960). *See also* Steinberg, *supra* note 19, at 462.

24. While state departments of corrections may move prisoners from their jurisdiction to another state's jurisdiction, doing so requires the cooperation of the receiving state through an interstate corrections compact. *See* Hadar Aviram, *The Inmate Export Business and Other Financial Adventures: Correctional Policies for Time of Austerity*, 11 HASTINGS RACE & POVERTY L.J. 111, 144 (2014).

25. *Our Locations*, FEDERAL BUREAU OF PRISONS, <https://www.bop.gov/locations/list.jsp> (last visited July 14, 2018); *About Our Facilities*, FEDERAL BUREAU OF PRISONS, <https://www.bop.gov/about/facilities> (last visited July 14, 2018).

from one prison to another at any time.<sup>26</sup> In *Chapman*, the BOP moved the plaintiff from the United States Penitentiary in Florence, Colorado, to the United States Penitentiary in Terre Haute, Indiana, in November 2015.<sup>27</sup> The transfer came more than twenty-one months after the plaintiff initiated his lawsuit against the BOP, in which he claimed the agency was violating the Eighth Amendment by exhibiting historical institutional indifference to his serious medical needs.<sup>28</sup> As relief for his underlying claim, the plaintiff sought an injunction requiring the BOP to provide him adequate medical care to treat his Type 1 diabetes.<sup>29</sup>

After transferring the plaintiff, the BOP moved to transfer his claims along with him.<sup>30</sup> Whether to transfer a claim or case to a different venue is within the district court's discretion and should be decided on an "individualized, case-by-case consideration of convenience and fairness."<sup>31</sup> To transfer a claim in a situation like this, defendant BOP needed to make two showings: it needed to establish that the plaintiff could have brought the action in the proposed transferee district<sup>32</sup> and it needed to "demonstrate that considerations of convenience and the interest of justice weigh in favor of transfer to that district."<sup>33</sup> With regard to the second showing, a court considering a transfer motion must balance a number of case-specific factors, including but not limited to,

the plaintiff's choice of forum; the accessibility of witnesses and other sources of proof, including the availability of compulsory process to insure attendance of witnesses; the cost of making the necessary proof; questions as to the enforceability of a judgment if one is obtained; relative advantages and obstacles to a fair trial; difficulties that may arise from congested dockets; the possibility of the existence of questions arising in the area of conflict of laws; the advantage of having a local court determine questions of local law; and all other considerations of a practical nature that make a trial easy, expeditious and economical.<sup>34</sup>

Ultimately, "a district court considering a § 1404(a) motion . . . would weigh the relevant factors and decide whether, on balance, a trans-

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26. See generally FEDERAL BUREAU OF PRISON, PROGRAM STATEMENT P5100.08 (Sep. 12, 2006).

27. *Chapman v. Fed. Bureau of Prisons*, 235 F. Supp. 3d 1066, 1067–68 (S.D. Ind. 2017).

28. *Id.* at 1067.

29. *Id.* at 1068.

30. *Id.*

31. *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988) (quoting *Van Dusen v. Barrack*, 376 U.S. 612, 622 (1964)).

32. *FMC Corp. v. U.S. E.P.A.*, 557 F. Supp. 2d 105, 109 (D.D.C. 2008) (citing *Van Dusen*, 376 U.S. at 622; *Trout Unlimited v. Dep't of Agric.*, 944 F. Supp. 13, 16 (D.D.C. 1996)).

33. *Id.*

34. *Chrysler Credit Corp. v. Country Chrysler, Inc.*, 928 F.2d 1509, 1516 (10th Cir. 1991) (citing *Tex. Gulf Sulphur Co. v. Ritter*, 371 F.2d 145, 147 (10th Cir. 1967)); see also *Stewart Org., Inc.*, 487 U.S. at 29.

fer would serve ‘the convenience of parties and witnesses’ and otherwise promote ‘the interest of justice.’”<sup>35</sup>

In *Chapman*, the BOP made a blanket assertion that Mr. Chapman’s claim could have been brought in the Southern District of Indiana<sup>36</sup> and then rested their argument on the balance of factors to be considered as outlined above. Specifically, the BOP rested its arguments on four main assumptions: (1) it would be more convenient to access the witnesses and other sources of proof in Indiana;<sup>37</sup> (2) the District of Colorado had no ability to enforce a judgment against the agency when said judgment had to be carried out by individuals in Indiana;<sup>38</sup> (3) the BOP would be prejudiced by the action proceeding in Colorado;<sup>39</sup> and (4) continuing to litigate in Colorado would lead to confusion over choice of law and deprive the local federal court in Indiana from determining “questions of local law.”<sup>40</sup>

Considering these arguments, the Colorado district court concluded that the interests of justice would be best served by transferring the case to Indiana, but upon reconsideration, the District of Indiana sent the case back to Colorado just over a month later.<sup>41</sup> As an initial matter, the Indiana district court determined that Mr. Chapman could not have brought his case in Indiana when he initially filed his complaint, and, therefore, transfer was improper under the plain language of 28 U.S.C. § 1404(a).<sup>42</sup> But, the court went on to conclude that even if the transfer was procedurally proper under the statute’s language, moving Mr. Chapman’s claim from Colorado to Indiana did not serve the interests of justice.<sup>43</sup>

#### IV. COURTS SHOULD EXERCISE DISCRETION CAREFULLY WHEN ASSESSING WHETHER TO TRANSFER A PRISONER-PLAINTIFF’S CLAIM PURSUANT TO § 1404.

The *Chapman* court was not the first district court faced with whether to permit the BOP to transfer a prisoner’s claim to another district. Notwithstanding the plain language of § 1404 (which should be a sufficient basis for most courts to decline the BOP’s efforts to transfer a prisoner-plaintiff’s claim after the prisoner’s physical transfer), some

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35. *Atl. Marine Constr. Co., Inc. v. U.S. Dist. Court for W. Dist. of Tex.*, 571 U.S. 49, 62–63 (2013) (quoting 28 U.S.C. § 1404(a)).

36. Motion to Sever and Transfer Plaintiff’s Eighth Amendment Official-Capacity Claim for Injunctive Relief *Chapman v. Fed. Bureau of Prisons*, 15-cv-00279-WYD-KLM (D. Colo. Sep. 30, 2016), ECF No. 168 at 2.

37. *Id.* at 10–13.

38. *Id.* at 13.

39. To support this argument, the BOP rested largely on arguments that overwhelmingly overlapped with arguments related to the location of witnesses and evidence. *Id.* at 8–9, 13.

40. Because Mr. Chapman raised questions of constitutional law in his complaint, this argument continues to befuddle the authors. *Id.* at 14.

41. *Chapman v. Fed. Bureau of Prisons*, 235 F. Supp. 3d 1066, 1068 (S.D. Ind. 2017).

42. *Id.* at 1069.

43. *Id.* at 1069–70.

courts have evaluated those discretionary factors on a case-by-case basis for convenience and fairness.<sup>44</sup> In doing so, these courts have concluded the prisoner-plaintiff's choice of forum should be afforded significant weight due to the unique position of the plaintiff with respect to the BOP.

The District Court for the District of Columbia, for example, recognized the practical and unjust consequences of failing to give a federal prisoner the deference to which his choice of forum is entitled.<sup>45</sup> In *Shakur v. Federal Bureau of Prisons*, the prisoner-plaintiff brought a conditions-of-confinement claim in the District of Columbia for injunctive relief against defendants at various BOP institutions.<sup>46</sup> The BOP sought to transfer the claims to the Northern District of Virginia where the plaintiff was imprisoned.<sup>47</sup> The court, however, noted the BOP had transferred the plaintiff four times in three years<sup>48</sup> and recognized the deleterious effects of the BOP's argument that the plaintiff's claim should be transferred to his then-current district of imprisonment:

The implication of Defendants' argument is that *Starnes* effectively created a *per se* rule requiring transfer of a prisoner's case to the site of incarceration. If one accepts Defendants' argument—and if Plaintiff continues to be moved as frequently as he has been moved in the past—then this case might never be heard.<sup>49</sup>

In an analogous situation, the District of Connecticut refused to transfer a conditions-of-confinement claim for injunctive relief brought by a class of prisoners convicted and sentenced in Connecticut and in the custody of the Connecticut Department of Corrections.<sup>50</sup> In *Joslyn v. Armstrong*, the defendant, the Commissioner of the Connecticut Department of Corrections, moved to transfer the case to the Western District of Virginia on the ground that the prisoner-class members were actually imprisoned in Virginia pursuant to an interstate corrections compact between Connecticut and Virginia.<sup>51</sup> Similar to the BOP's argument in *Chapman*, the defendant sought to justify the transfer, in part, because the class members were confined in Virginia. The court, however, granted "significant deference to the plaintiffs' chosen forum" because the transfer of prisoners was "routine" under the interstate compact and, in

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44. See, e.g., *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988) (quoting *Van Dusen v. Barrack*, 376 U.S. 612, 622 (1964)).

45. *Shakur v. Fed. Bureau of Prisons*, 950 F. Supp. 3, 4 (D.D.C. 1997).

46. *Id.* at 3.

47. *Id.* at 4.

48. *Id.* at 3.

49. *Id.* at 4.

50. See *Joslyn v. Armstrong*, No. 3:01-CR-198(CFD), 2001 WL 1464780, at \*1 (D. Conn. May 16, 2001).

51. *Id.*

fact, class members were transferred often between Connecticut and Virginia.<sup>52</sup>

In addition to giving the plaintiffs' choice of forum due deference, the *Joslyn* court recognized

Defendant's counsel and most of plaintiff's counsel are located in Connecticut; [] plaintiffs' counsel, who are litigating this case *pro bono*, would not be able to pursue this case in the Western District of Virginia because of increased costs; [] the plaintiffs may not be able to retain alternate counsel given their indigent status; [] the plaintiffs have alleged ongoing harms, which must be addressed without the delay that a transfer to Virginia would create; [] the [interstate corrections compact] requires Virginia and Connecticut to cooperate, thereby reducing any risk that non-party witnesses would be unavailable for trial in Connecticut; [] even if witnesses were unavailable, they could be deposed or testify by video; [] all documentary evidence will have to be produced to plaintiffs' counsel in Connecticut during discovery, regardless of where the case is tried; [] and there is no evidence that a trial in Connecticut would otherwise be any more or less convenient than a trial in Virginia.<sup>53</sup>

The *Chapman* court reached a similar conclusion. After the court found the BOP had "failed to satisfy the threshold requirement of § 1404(a)—that the action being transferred could have been brought in the transferee district," it held a transfer "is not in the interests of justice."<sup>54</sup> The court deferred to the plaintiff's choice of forum and his articulation of the claim against the BOP:

While the BOP represented to the District of Colorado [when seeking transfer] that Chapman's injunctive relief claim now relates to his treatment at [USP-Terre Haute], the implication that it *solely* relates to events in this district is incorrect. Chapman has consistently framed his claim against the BOP as seeking injunctive relief that will control his medical care regardless of which federal institution he is in. He cannot demonstrate that such system-wide relief is necessary solely by demonstrating that the treatment he is currently receiving fails to pass constitutional muster; rather, he must show that he has received inadequate care and either is continuing to receive inadequate care or is likely to receive inadequate care in the future due to a system-wide policy or failure by the BOP. That means his treatment at [USP-Terre Haute] is relevant, but his treatment at [USP-Administrative Maximum] and other facilities is as well.<sup>55</sup>

Because the plaintiff's treatment while confined in Colorado and in Indiana was relevant to proving his claim against the BOP, and for rea-

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52. *Id.* at \*4.

53. *Id.*

54. *Chapman v. Fed. Bureau of Prisons*, 235 F. Supp. 3d 1066, 1069 (S.D. Ind. 2017).

55. *Id.* at 1069–70.

sons similar to those the *Joslyn* court articulated, the court concluded transferring the claim to Indiana “is not only unfair to Chapman, but also is contrary to the interests of justice as that term is used in § 1404(a).”<sup>56</sup>

#### V. CONCLUSION

The BOP is one of the only parties to federal litigation with the power to move plaintiffs outside of the judicial districts in which they bring claims and, thus, attempt to frustrate the federal statute. That is, the BOP moves prisoners from one prison to another and then seeks to transfer their active claims from one federal district to another. The consequences of this practice are significant; often, it risks leaving the prisoner-plaintiff in a district in which he does not have the means to continue to litigate his claim and, thus, permits the BOP to evade judicial review. For the reasons the court in *Chapman v. Bureau of Prisons* declined to entertain such efforts by the BOP, courts should resist these attempts and ensure the venue statutes are interpreted and enforced in a manner consistent with their plain language and intent.

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56. *Id.* at 1070; *see also id.* at 1070 n.3 (“The Court also notes that Chapman is being represented pro bono by faculty and students from the Civil Rights Clinic at the University of Denver Sturm College of Law and, unlike the District of Colorado, this district has no mechanism by which students may appear as counsel. While the convenience of counsel is not a relevant factor in the [§] 1404(a) analysis, the Court finds it relevant that the transfer would prohibit students currently representing Chapman from continuing to do so with regard to a portion of his case, thus disrupting his legal team to the detriment of his legal representation.”).