IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WILLIAM C. TUTTLE Plaintiff, v. S.M.R. JEWELL, Secretary, United States Department of the Interior; KEVIN WASHBURN, Assistant Secretary –Indian Affairs, United States Department of the Interior; and UNITED STATES DEPARTMENT OF THE INTERIOR Defendants.	Civil Action No. 1:13-cv-00365-RMC

DEFENDANTS' REPLY
IN SUPPORT OF MOTION TO TRANSFER VENUE

Plaintiff challenges the Interior Board of Indian Appeals' ("IBIA") decision affirming the termination of a business lease between Plaintiff and the Colorado River Indian Tribes ("the Tribe"). Plaintiff is a resident of California, the Tribe is located on tribal lands in California and Arizona, and the land affected by the lease is in California. The case has no factual nexus to this district and it should be transferred to the United States District Court for the Central District of California.

Plaintiff does not dispute that he could have brought this action in the Central District of California. Accordingly, the Court must undertake an "individualized, case-by-case consideration of convenience and fairness" to determine whether it may transfer venue "[f]or the convenience of parties . . . in the interest of justice." 28 U.S.C. § 1404(a). In undertaking this analysis, the Court is required to evaluate six private interest factors and three public interest factors. *See Huang v. Napolitano*, 721 F. Supp. 2d 46, 50 (D.D.C. 2010). "[I]f the balance of

private and public interests weighs in favor of transfer," the Court may transfer venue to the Central District of California. *See id.* (citing *Greater Yellowstone Coal. v. Bosworth*, 180 F. Supp.2d 124, 127 (D.D.C. 2001)).

Here, four private interest factors - the minimal deference that should be afforded Plaintiff's choice of forum in light of the case's substantial ties to Defendants' chosen forum, the fact that Plaintiff's claims arose elsewhere, and the convenience of the parties - weigh in favor of transfer to the Central District of California. Two public interest factors – the local interest in deciding local controversies at home, and the relative congestion of the transferor and transferee courts – also favor transfer. The three remaining interest factors - convenience of witnesses, ease of access to sources of proof, and the respective courts' relative familiarity with governing laws - are neutral and do not factor into the venue analysis. None of the private or public interest factors weigh in favor of maintaining venue in the District of Columbia. Accordingly, the balance of the public and private interest factors here tips decisively in favor of transferring venue to the Central District of California.

ARGUMENT

In his Opposition to Defendant's Motion to Transfer Venue, ECF No. 6, ("Pl.'s Opp'n"), Plaintiff raises a few limited arguments concerning only certain of the interest factors the Court is required to consider. Defendants previously fully addressed the effect of each of the public and private interest factors in their Memorandum in Support of Motion to Transfer Venue, ECF No. 4-1, ("Defs.' Mem.), and they incorporate those arguments by reference here, but also respond to the points raised in Plaintiff's Opposition.

A. Plaintiff's Chosen Forum is Not Entitled to Deference

Plaintiff argues first that the fact that he deliberately chose to bring this lawsuit in the District of Columbia should alone be decisive because "a plaintiff's choice of forum should generally control and 'should rarely [be] disturb[ed]." *See* Pl.'s Opp'n 1 (quoting *Paradyne Corp. v. Dep't of Justice*, 647 F. Supp. 1228, 1231 (D.D.C. 1986)). In relying on the language from *Paradyne Corporation*, however, Plaintiff omits the remainder of the Court's statement there, which provides that the general presumption applies "*unless* the balance is strongly in favor of the defendant." *Id.* (emphasis added) (citing *Coal. on Sensible Transp., Inc. v. Dole*, 631 F. Supp. 1382, 1387 (D.D.C. 1986)). *See also Turner & Newall, PLC v. Canadian Universal Ins. Co.*, 652 F. Supp. 1308, 1310 (D.D.C. 1987) ("Legal presumptions thus will not go very far in helping plaintiffs keep this lawsuit in this forum, if the relevant factors under section 1404(a) point to a different forum."). "While ordinarily the plaintiff's choice of forum is entitled to deference, several decisions in this Circuit suggest that it is not entitled to any great weight where 'the activities [forming the basis of the suit] have little, if any, connection with the chosen forum."' *Nichols v. U.S. Bureau of Prisons*, 895 F. Supp. 6, 8 (D.D. C. 1995) (quoting *Armco Steel Co. v. CSX Corp.*, 790 F. Supp. 311, 323 (D.D.C. 1991)). In particular, a plaintiff's choice of forum is given less deference, where, as here, "that choice is not plaintiff's home forum," *Pueblo v. Nat'l Indian Gaming Comm'n*, 731 F. Supp. 2d 36, 42 (D.D.C. 2010) (citing *Shawnee Tribe v. United States*, 298 F. Supp. 2d 21, 24 (D.D.C 2002)), and a plaintiff's choice is also accorded '"diminished consideration where . . . that forum has no meaningful ties to the controversy and no particular interest in the parties or subject matter."' *Nichols*, 895 F. Supp. at 8 (quoting *Islamic Republic of Iran v. Boeing Co.*, 477 F. Supp. 142, 144 (D.D.C. 1979)).

Plaintiff contends that his choice of forum is entitled to deference based on his characterizations of the connection between this action and the District of Columbia as "not attenuated" and "substantial." Pl.'s Opp'n 2. In support of these assertions, Plaintiff cites the fact that the District of Columbia is host to the Department of the Interior and the residence of its officials, and he seemingly argues that the fact that both his counsel and Defendants' counsel are located here increases the significance of the connection between his lawsuit and this district. Plaintiff's argument that these facts establish a "substantial" connection to this district is not well founded, however.

Defendants admit that Secretary Jewell and Assistant Secretary Washburn reside in the District of Columbia and that the Department of the Interior is headquartered here. *See* Defs.' Mem. 8; Defs.' Answer to Pl.'s Compl. ¶¶ 3, 4, 5. As explained in Defendants' prior memorandum, however, this is insufficient to create a substantial connection to this forum. *See* Defs.' Mem. 6-8. This case involves administrative proceedings affirming a decision to terminate a business lease between a California resident and a Tribe in California and Arizona. The lease affects real property in California. None of the decisions concerning termination of the lease were made in the District of Columbia,[1] and thus, this district has no meaningful connection to the subject matter of the litigation. In cases like this, where plaintiffs have sued federal officials in the District of Columbia for administrative decisions whose actual impacts are elsewhere, this Court has repeatedly cautioned that '"mere involvement . . . on the part of federal agencies, or some federal officials who are located in Washington D.C. is not determinative." *Lab. Corp. of Am. Holdings v. N.L.R.B.*, Civ. No. 13-276 (RBW), 2013 WL 1810636, at *2

[1] The initial decision to terminate the lease was made by the Superintendent of the Colorado River Agency of the BIA in Arizona. The decision initially affirming the termination was made by the BIA's Acting Western Regional Director, who was also located in Arizona. The final decision affirming the termination was made by the IBIA in Arlington, Virginia.

(D.D.C. Apr. 4, 2013) (quoting *Fed. Hous. Fin. Agency v. First Tenn. Bank Nat'l Ass'n*, 856 F. Supp. 2d 186, 192 (D.D.C. 2012); *Stockbridge-Munsee Cmty. v. United States*, 593 F. Supp. 2d 44, 47 (D.D.C. 2009) (quoting *Shawnee Tribe v. United States*, 298 F. Supp. 2d 21, 26 (D.D.C. 2002)). Moreover, this Circuit has cautioned that '"[c]ourts in this circuit must examine challenges to venue very carefully to guard against the danger that a plaintiff might manufacture venue in the District of Columbia, [and][,] [b]y naming high government officials as defendants, . . . bring a suit here that should properly be brought elsewhere."' *Joyner v. District of Columbia*, 267 F. Supp. 2d 15, 21 (D.D.C. 2003) (quoting *Cameron v. Thornburgh*, 983 F.2d 253, 256 (D.C. Cir. 1993)).

Finally, contrary to Plaintiff's assertions, the fact that Plaintiff's counsel and Defendant's counsel are located in the District of Columbia does not create a connection to this district for purposes of the venue analysis. As set forth above, the operative facts in the controversy that is the subject of this lawsuit involve the lease, its termination, and the affirmance of the termination by the BIA's Western Regional Director, and then by the IBIA. The location of counsel whom the parties have selected to represent them is not an operative fact related to the controversy that is the subject of this lawsuit; rather it is merely a subsequent decision related to the litigation. Thus it does not create a connection – let alone a substantial connection – to this forum for purposes of determining the most appropriate venue**.**

B. The Convenience of the Parties is Best Served by a Transfer of Venue

Plaintiff states that he deliberately selected this Court as the forum for his lawsuit and he then argues that it is the more convenient venue because his counsel resides here. *See* Pl.'s Opp'n 2. Plaintiff contends that that if this action is transferred to California, he will be required to hire

local counsel, and possibly even to replace his current counsel, and that this will "certainly result in increased costs" and inconvenience to him. *Id*. at 2-3.

"Typically, the 'location of counsel carries little, if any, weight in an analysis under § 1404(a).'" *In re AT&T Access Charge Litig.*, No. Civ. A. 05-01360 (ESH), 2005 WL 3274561, at *4 (D.D.C. Nov. 16, 2005) (quoting *Armco Steel Co.,* 790 F. Supp. at 324). Moreover, this Court has also held that any inconvenience involved in having to engage local counsel '"is of minor, if any, importance'" in a transfer of venue analysis. *Montgomery v. STG Intern., Inc.*, 532 F. Supp. 2d 29, 34 (D.D.C. 2008) (quoting *Islamic Republic of Iran,* 477 F. Supp. at 143 (citations omitted); *Claasen v. Brown*, No. Civ. A. 94-1018 (GK),1996 WL 79490, at *6 (D.D.C. Feb. 16, 1996) (citations omitted) ("The fact that Plaintiff's lawyers . . . might experience inconvenience by having to travel or to retain local counsel, is of relatively minor importance when compared to the other considerations discussed and the fact that this case has absolutely no factual connection to the District of Columbia.").

Location of counsel can be a factor in analyzing the appropriateness of a proposed venue transfer only if it "bears directly on the cost of litigation." *In re AT&T Access Charge Litig.*, 2005 WL 3274561, at *4. Here, Plaintiff merely speculates that transfer will result in increased cost to him but he offers no showing that the costs associated with hiring an attorney "for the limited purpose of acting as local counsel," *Envtl. Def. v. U.S. Dep't of Transp.*, No. 06-2176 (GK), 2007 WL 1490478, at *6 (D.D.C. May 18, 2007), will significantly affect the cost of litigation or that he would be unable to absorb any such costs. The Central District of California's local rules provide for *pro hac vice* admission of out-of-state counsel. *See* C.D. Cal. L.R. 83-2.1.3. Plaintiff's counsel is part of a law firm with offices in several locations throughout the United States, including Nevada and Arizona, which are neighboring jurisdictions

to the Central District of California,[2] and Plaintiff's counsel has previously been admitted *pro hac vice* in another case in the Central District.[3] Thus, it seems that Plaintiff could possibly, without great difficulty or added expense, obtain the services of a local attorney to act as local counsel.

In any event, however, and most importantly, notwithstanding any inconvenience to Plaintiff that might result from a transfer of venue, here, other interest factors, particularly the localized nature of the controversy, militate in favor of transferring venue to the Central District of California. The controversy in this lawsuit involves and affects people, real property, and business interests, all of which are in or near California. Indeed, the land in issue and the Tribe that was a party to the lease are located in or in the immediate proximity of the Central District, thousands of miles from this jurisdiction. "[J]ustice requires that such localized controversies should be decided at home." *Citizens Advocates for Responsible Expansion, Inc. (I-Care) v. Dole*, 561 F. Supp. 1238, 1240 (D.D.C. 1983).

C. The Relative Congestion of the Transferor and Transferee Courts Weighs in Favor of Transfer.

Plaintiff also attempts to challenge the effect of one of the public interest factors - the relative congestion of the transferor and transferee courts – by questioning its applicability in this particular case. *See* Pl.'s Opp'n 4. Regardless of whether the average difference in the time required for resolution of cases in the District of Columbia and the Central District of California as shown by judicial case load statistics proves to be precisely applicable here, relative congestion of the courts is one factor this Court should consider and judicial case load statistics are the way that this factor is measured. Here those statistics show that: 1) overall, on average,

[2] *See http://www.dickinson-wright.com/our-firm/locations*.

[3] *See Wendt v. Smith*, No. 5:02-cv-01361-VAP-SGL, ECF No. 7 (C.D. Cal.).

cases are disposed of more quickly in the Central District of California (median time for disposition of 5.3 months in the Central District of California and 9.5 months in the District of Columbia); 2) cases terminated by Court action prior to the pretrial stage are also disposed of more quickly in the Central District of California (median time for disposition by Court action before pretrial of 5.4 months in the Central District of California and 9.5 months in the District of Columbia); and 3) cases terminated by Court action during pretrial, after pretrial proceedings, and through trial are also disposed of at a faster rate in the Central District.[4] Thus, regardless of the manner in which this case is ultimately resolved, the statistics indicate that it almost certainly will be resolved more quickly in the Central District of California, and this unquestionably weighs in favor of transfer of venue.

Moreover, Plaintiff's Complaint was filed less than three months ago and the only other pleading to date concerning the merits of the case is Defendants' Answer, (ECF No. 5), which was recently filed on May 31, 2013. Thus, this Court has not yet been required to invest any significant time in reviewing the merits of this case, and contrary to Plaintiff's protestations, neither the Court nor the parties will be required to "shift gears" if venue is transferred to the Central District of California.

D. Convenience of Witnesses, Access to Sources of Proof, and the Courts' Relative Familiarity with Governing Law Are Neutral in the Transfer Analysis.

Finally, Plaintiff inexplicably devotes a full page of his four-page opposition to arguing that the IBIA's affirmance of the lease termination constitutes final agency action such that judicial review is limited to the administrative record and there will be no need for the Court to

[4] *See* 2012 Federal Judicial Caseload Statistics, Table C-5: Median Time Intervals From Filing to Disposition of Civil Cases Terminated *available at* http://www.uscourts.gov/Statistics/FederalJudicialCaseloadStatistics/FederalJudicialCaseloadStatistics2012.aspx (last visited on June 10, 2013) (Table C-5, "U.S. District Courts—Median Time Intervals From Filing to Disposition of Civil Cases").

consider anything outside of that record. *See* Pl.'s Opp'n 3-4. Defendants agree. *See* Defs.' Mem. 8, 11 n.3. Contrary to Plaintiff's arguments, however, these factors are entirely neutral in the transfer analysis and do not favor maintaining venue in the District of Columbia.

CONCLUSION

For the foregoing reasons and those set forth in Defendants' Memorandum in Support of Motion to Transfer Venue, Defendants' motion should be granted.

Respectfully submitted,

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Certificate of Service

I hereby certify that on June 10, 2013, I electronically filed the foregoing Defendants' Reply in Support of Motion to Transfer Venue with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all listed counsel of record.

/s/ Barbara M.R. Marvin
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