

NOTE: This order is nonprecedential.

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

PEARLETTE SARACEIN MOURNING,
Petitioner

v.

DEPARTMENT OF DEFENSE,
Respondent

2023-1371

Petition for review of the Merit Systems Protection Board in No. CH-0752-22-0129-I-1.

ON MOTION

Before DYK, CUNNINGHAM, and STARK, *Circuit Judges*.

PER CURIAM.

O R D E R

Pearlette Saracein Mourning filed an appeal with the Merit Systems Protection Board to challenge her removal, alleging racial discrimination and retaliation as affirmative defenses. The administrative judge affirmed. Ms. Mourning then petitioned this court for review. On March 17, 2023, we dismissed for failure to file the required

statement concerning discrimination and to pay the docketing fee. On June 1, 2023, Ms. Mourning submitted, among other things, a motion to proceed *in forma pauperis*, her statement concerning discrimination, and her informal opening brief. The Department of Defense (DOD) now moves to waive the requirements of Federal Circuit Rule 27(f) and dismiss this petition for lack of jurisdiction. Ms. Mourning has not responded to that motion.

In her filings before this court, Ms. Mourning indicates that she does not wish to abandon her discrimination claims. See ECF No. 10 at 1–3; ECF No. 7 at 2. We have jurisdiction to review final decisions from the Board, except in “[c]ases of discrimination subject to the provisions of [5 U.S.C. §] 7702,” 5 U.S.C. §§ 7703(b)(2), (b)(1)(A). Those cases, which involve appeals to the Board and allegations of covered discrimination, 5 U.S.C. § 7702(a)(1), belong in district court. 5 U.S.C. § 7703(b)(2); *Perry v. Merit Sys. Prot. Bd.*, 582 U.S. 420, 432 (2017); *Diggs v. Dep’t of Hous. & Urb. Dev.*, 670 F.3d 1353, 1357 (Fed. Cir. 2011). Although DOD requests dismissal, we deem it appropriate to reinstate and to transfer the case, pursuant to 28 U.S.C. § 1631, to the United States District Court for the Southern District of Illinois, where Ms. Mourning resides and where the employment action occurred.

Accordingly,

IT IS ORDERED THAT:

- (1) The court’s mandate is recalled, the March 17, 2023, dismissal order is vacated, and the petition is reinstated.
- (2) DOD’s motion, ECF No. 11, is denied.
- (3) This case and all filings are transferred to the United States District Court for the Southern District of

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Illinois pursuant to 28 U.S.C. § 1631.

FOR THE COURT

October 5, 2023

Date

/s/ Jarrett B. Perlow

Jarrett B. Perlow

Clerk of Court