

Analysis

The Civil Rights Act, 42 U.S.C. §1981, *et seq.*, under which this case is brought, does not contain a specific venue provision. Accordingly, venue in civil rights cases is controlled by 28 U.S.C. § 1391. *Jones v. Bailey*, 58 F.R.D. 453 (N.D. Ga. 1972), *aff'd per curiam*, 480 F.2d 805 (5th Cir. 1973).

When, as in this case, jurisdiction is not founded solely on diversity of citizenship, 28 U.S.C. § 1391 provides that venue is proper only in the judicial district where the defendants reside or in which the claim arose. Plaintiff's claims arose at the Stringfellow Unit in Rosharon, Texas. Rosharon is located in Brazoria County, Texas. Further, the defendant was employed as an Assistant Warden at the Stringfellow Unit at the time of the incident which forms the basis of this complaint.¹ When public officials are parties to an action in their official capacities, they reside for venue purposes in the county where they perform their official duties, which in this case is Brazoria County, Texas. *Holloway v. Gunnell*, 685 F.2d 150 (5th Cir. 1982); *Lowrey v. Estelle*, 433 F.2d 265 (5th Cir. 1976).

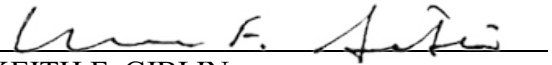
Pursuant to 28 U.S.C. § 124, Brazoria County is in the Galveston Division of the Southern District of Texas. As Brazoria County is located in the Southern District of Texas, venue in the Eastern District of Texas is not proper.

When venue is not proper, the court "shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." 28 U.S.C. §

¹ Assistant Warden James was later promoted to Warden at the LeBlanc Unit located in Beaumont, Texas. See http://www.tdcj.state.tx.us/connections/NovDec2010/webexclusives_vol18no2.html.

1406(a). This case should be transferred to the Southern District of Texas, Galveston Division. An appropriate order so providing will be entered by the undersigned.

SIGNED this 17 day of April, 2013.



KEITH F. GIBLIN
UNITED STATES MAGISTRATE JUDGE