

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

BARRY E. LIVINGSTON §  
VS. § CIVIL ACTION NO. 1:10-CV-475  
TRIAL ATTORNEY, ET AL. §

**MEMORANDUM OPINION REGARDING TRANSFER**

Plaintiff Barry E. Livingston, an inmate confined at the Clements Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed this civil rights action pursuant to 42 U.S.C. § 1983.<sup>1</sup>

Discussion

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. Under 28 U.S.C. § 1404(a), for the convenience of parties and witnesses and in the interest of justice, a district court may transfer any civil action to any other district where it

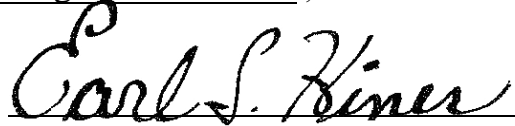
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<sup>1</sup> Plaintiff filed this case on a form intended for prisoners challenging their conviction under 28 U.S.C. § 2254. Because his claims concern the conditions of his confinement, the court has construed the petition as a civil rights action.

could have been brought. Such a transfer may be done *sua sponte* and is reviewable only for an abuse of discretion. *Mills v. Beech Aircraft Corp.*, 886 F.2d 758, 761 (5th Cir. 1989).

Plaintiff complains of incidents that occurred at the Clements Unit, and he complains about the disposition of lawsuits filed in the Northern District of Texas. The Clements Unit is located in the Amarillo Division of the United States District Court for the Northern District of Texas. The court has considered the circumstances and has determined that the interest of justice would best be served if the complaint were transferred to the Northern District of Texas. Therefore, the case should be transferred to the Amarillo Division of the Northern District of Texas. An order so providing will be entered by the undersigned.

**SIGNED** this 16 day of August, 2010.



EARL S. HINES  
UNITED STATES MAGISTRATE JUDGE