

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

CECIL FRANCIS,

Plaintiff,

vs.

DOCTOR MULLENS.

Defendant.

Civil No. 2023-39

REPORT AND RECOMMENDATION and ORDER

This matter is before the Court *sua sponte*. On August 23, 2023, plaintiff Cecil Francis, a Virgin Islands inmate incarcerated in Virginia, filed a *pro se* complaint under 42 U.S.C. § 1983 alleging constitutional violations relating to inadequate medical care. [ECF 1]. Plaintiff names Doctor Mullens at Wallace Ridge Correctional Center¹ as the sole defendant. *Id.* at 2. Plaintiff further states the events giving rise to his claims took place at Wallens Ridge in January 2022. *Id.* Accordingly, this matter should be dismissed or transferred for improper venue.

Pursuant to 28 U.S.C. § 1391(b),

A civil action may be brought in--

- (1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located;
- (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred . . . ; or
- (3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.

¹ An institution by this name does not exist, and the Court presumes plaintiff meant Wallens Ridge State Prison, which is located in Virginia.

Francis v. Mullens
 Civil No. 2023-39
 Page 2

See Urrutia v. Harrisburg Cnty. Police Dep’t, 91 F.3d 451, 462 (3d Cir. 1996) (because 42 U.S.C. § 1983 “contains no special venue provision . . . , the general venue provisions of 28 U.S.C. § 1391 apply”); *see generally Atl. Marine Const. Co. v. U.S. Dist. Ct. for W. Dist. of Texas*, 571 U.S. 49, 55–57 (2013). Here, there is no indication that any of the events—let alone a substantial part of the events or omissions—giving rise to plaintiff’s claims occurred in the U.S. Virgin Islands. Nor does Dr. Mullens appear to be a resident of the U.S. Virgin Islands. Venue in this Court is therefore improper. However, because the incidents plaintiff complains of occurred at Wallens Ridge State Prison, which is located in the Western District of Virginia,² venue is proper there.³

“The district court of a district in which is filed a case laying venue in the wrong division or district 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. § 1406(a); *see also* 28 U.S.C. § 1404(a) (“For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought . . .”).⁴ “[A] court has considerable discretion to determine whether transfer pursuant to Section 1406 is in the interest of justice[,] . . . [and] generally transfer is favored over dismissal.” *Gottlieb v. United States*, 2006 WL 2591069, at *2 (D.N.J. Sept. 8, 2006). Though plaintiff’s complaint here

² *See* <https://www.uscourts.gov/federal-court-finder/search>

³ *See, e.g., Pennello v. United States*, 2011 WL 6097771, at *3 (D.N.J. Dec. 6, 2011) (although case was filed in in New Jersey, because plaintiff claimed he was denied medical care by prison officials at the Federal Detention Center in Philadelphia, venue was appropriate in the Eastern District of Pennsylvania).

⁴ “Section 1404(a) provides for the transfer of a case where both the original and the requested venue are proper. Section 1406, on the other hand, applies where the original venue is improper and provides for either transfer or dismissal of the case.” *Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 878 (3d Cir. 1995); *see also Belt v. Fed. Bureau of Prisons*, 336 F. Supp. 3d 428, 434 (D.N.J. 2018) (“Pursuant to 28 U.S.C. § 1406(a), a district court is permitted to either dismiss or transfer a case to another court even if it does not have jurisdiction.”).

Francis v. Mullens
Civil No. 2023-39
Page 2

is not a model of clarity, a determination of whether this matter should be allowed to move forward and whether plaintiff should be granted leave to proceed *in forma pauperis* is more appropriately made by the court in which venue is proper.⁵

Accordingly, in the interest of justice, the Court hereby RECOMMENDS that this matter be transferred to the United States District Court for the Western District of Virginia.

Any objections to this Report and Recommendation must be filed in writing within 14 days of receipt of this notice. Failure to file objections within the specified time shall bar the aggrieved party from attacking such Report and Recommendation before the assigned District Court Judge. 28 U.S.C. § 636(b)(1); LRCi 72.3.

In addition, it is hereby ORDERED that the Clerk of Court shall update ECF to indicate plaintiff's correct inmate identification number: 1691568.⁶

Dated: January 17, 2024

S_____
RUTH MILLER
United States Magistrate Judge

⁵ See *Gottlieb*, 2006 WL 2591069, at *2 (“A court determining whether to transfer an action pursuant to Section 1406 is not required to balance any specific private or public interests, but instead must simply determine if there is a venue where the action originally ‘could have been brought’ that serves the interest of justice.”).

⁶ Plaintiff listed the correct number on his complaint, *see* [ECF 1] at 1, but it was evidently entered incorrectly on the docket.