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**Akiachak Native Community v. Department of Interior**



502 F.Supp.2d 64  
D.D.C., 2007.

August 21, 2007 (Approx. 6 pages)

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502 F.Supp.2d 64, 2007 WL 2367754 (D.D.C.)

[Motions, Pleadings and Filings](#)

United States District Court,  
District of Columbia.  
AKIACHAK NATIVE COMMUNITY, et al., Plaintiffs,  
v.  
DEPARTMENT OF the INTERIOR, et al., Defendants.  
Civil Action No. 06-969 (RWR).  
Aug. 21, 2007.

**Background:** In action challenging regulation which precluded most Alaskan Indian tribes from acquiring land in trust pursuant to the Indian Reorganization Act (IRA), Department of the Interior (DOI) moved to transfer venue to the District of Alaska.

**Holdings:** The District Court, [Roberts, J.](#), held that:

- (1) private-interest factors weighed in favor of District of Columbia as the more appropriate venue for action, and
- (2) public-interest factor, when balanced against private-interest factors, did not support transfer.

Motion denied.

West Headnotes



[1] [KeyCite Notes](#)

[170B Federal Courts](#)

[170BII Venue](#)

[170BII\(B\) Change of Venue](#)

[170BII\(B\)4 Proceedings and Effect of Change](#)

[170Bk144 k. Presumptions and Burden of Proof. Most Cited Cases](#)

Moving party bears burden of establishing that transfer of venue is proper. [28 U.S.C.A. § 1404\(a\)](#).



[2] [KeyCite Notes](#)

[170B Federal Courts](#)

[170BII Venue](#)

[170BII\(B\) Change of Venue](#)

[170BII\(B\)1 In General; Venue Laid in Proper Forum](#)

[170Bk101 k. In General; Convenience and Interest of Justice. Most Cited Cases](#)



[170B Federal Courts KeyCite Notes](#)

[170BII Venue](#)

[170BII\(B\) Change of Venue](#)

[170BII\(B\)1 In General; Venue Laid in Proper Forum](#)

[170Bk103 k. Discretion of Court. Most Cited Cases](#)

When venue is proper in more than one locale, district court has discretion to adjudicate motions for transfer according to an individualized, case-by-case consideration of convenience and fairness. [28 U.S.C.A. § 1404\(a\)](#).



[3] [KeyCite Notes](#)

[170B Federal Courts](#)

[170BII Venue](#)

[170BII\(B\) Change of Venue](#)

[170BII\(B\)1 In General; Venue Laid in Proper Forum](#)

↻ [170Bk105 k. Plaintiff's Choice of Forum; Forum Shopping. Most Cited Cases](#)

A plaintiff's choice of forum is usually accorded great deference, unless the plaintiff chooses a forum that is not his home and that has no substantial connection to the subject matter of the action.



[4] [KeyCite Notes](#)

↻ [170B Federal Courts](#)

↻ [170BII Venue](#)

↻ [170BII\(B\) Change of Venue](#)

↻ [170BII\(B\)1 In General; Venue Laid in Proper Forum](#)

↻ [170Bk101 k. In General; Convenience and Interest of Justice. Most Cited Cases](#)



↻ [170B Federal Courts KeyCite Notes](#)

↻ [170BII Venue](#)

↻ [170BII\(B\) Change of Venue](#)

↻ [170BII\(B\)1 In General; Venue Laid in Proper Forum](#)

↻ [170Bk104 k. Matters Considered. Most Cited Cases](#)

In considering a motion for transfer of venue to a district court where the action might have been brought, court weighs in the balance the convenience of the witnesses and those public-interest factors of systemic integrity and fairness that, in addition to private concerns, come under the heading of the interest of justice. [28 U.S.C.A. § 1404\(a\)](#).



[5] [KeyCite Notes](#)

↻ [170B Federal Courts](#)

↻ [170BII Venue](#)

↻ [170BII\(B\) Change of Venue](#)

↻ [170BII\(B\)1 In General; Venue Laid in Proper Forum](#)

↻ [170Bk101 k. In General; Convenience and Interest of Justice. Most Cited Cases](#)



↻ [170B Federal Courts KeyCite Notes](#)

↻ [170BII Venue](#)

↻ [170BII\(B\) Change of Venue](#)

↻ [170BII\(B\)1 In General; Venue Laid in Proper Forum](#)

↻ [170Bk104 k. Matters Considered. Most Cited Cases](#)



↻ [170B Federal Courts KeyCite Notes](#)

↻ [170BII Venue](#)

↻ [170BII\(B\) Change of Venue](#)

↻ [170BII\(B\)1 In General; Venue Laid in Proper Forum](#)

↻ [170Bk105 k. Plaintiff's Choice of Forum; Forum Shopping. Most Cited Cases](#)

Private-interest factors to be considered in determining whether a change of venue is warranted include (1) plaintiff's choice of forum, unless the balance of convenience is strongly in favor of defendants, (2) defendant's choice of forum, (3) whether the claim arose elsewhere, (4) the convenience of the parties, (5) the convenience of the witnesses, but only to extent they may actually be unavailable for trial in one of the fora, and (6) ease of access to sources of proof. [28 U.S.C.A. § 1404\(a\)](#).



[6] [KeyCite Notes](#)

↻ [170B Federal Courts](#)

↻ [170BII Venue](#)

↻ [170BII\(B\) Change of Venue](#)

↻ [170BII\(B\)1 In General; Venue Laid in Proper Forum](#)

↻ [170Bk104 k. Matters Considered. Most Cited Cases](#)

Public-interest factors to be considered in determining whether a change of venue is warranted include (1) the transferee court's familiarity with the governing laws, (2) the relative congestion of the calendars of the potential transferee and the transferor courts, and (3) the local interest in deciding local controversies at home. 28 U.S.C.A. § 1404(a).



[7] [KeyCite Notes](#)

- ↳ [170B Federal Courts](#)
- ↳ [170BXI Courts of District of Columbia](#)
- ↳ [170BXI\(A\) In General; District Court](#)
- ↳ [170Bk1040 Procedure in District Court](#)
- ↳ [170Bk1041 k. Venue and Change of Venue. Most Cited Cases \(Formerly 170Bk106.5\)](#)

Private-interest factors weighed in favor of District of Columbia as the more appropriate venue for action challenging regulation which precluded most Alaskan Indian tribes from acquiring land in trust pursuant to the Indian Reorganization Act (IRA); fact that the national rule-making process engaged in when the regulation was formulated took place in the district presented a sufficiently substantial nexus to the district to warrant deference, relevant sources of proof were likely to be found there, and it was unlikely that Alaska residents would be called as witnesses. Indian Reorganization Act, § 5, 25 U.S.C.A. § 465; 28 U.S.C.A. § 1404(a).



[8] [KeyCite Notes](#)

- ↳ [170B Federal Courts](#)
- ↳ [170BXI Courts of District of Columbia](#)
- ↳ [170BXI\(A\) In General; District Court](#)
- ↳ [170Bk1040 Procedure in District Court](#)
- ↳ [170Bk1041 k. Venue and Change of Venue. Most Cited Cases \(Formerly 170Bk106.5\)](#)

Although fact that effects of action challenging regulation which precluded most Alaskan Indian tribes from acquiring land in trust pursuant to the Indian Reorganization Act (IRA) would be felt principally in Alaska presented a public-interest factor weighing in favor of District of Alaska as the more appropriate venue for the action, that interest, when balanced against private-interest factors, did not support transfer. Indian Reorganization Act, § 5, 25 U.S.C.A. § 465; 28 U.S.C.A. § 1404(a).

\***66** [Richard A. Guest](#), Native American Rights Fund, Washington, DC, Heather Kendall Miller, Native American Rights Fund, Anchorage, AK, for Plaintiffs.

Daniel G. Steele, United States Department of Justice, Washington, DC, for Defendants.

### **MEMORANDUM OPINION AND ORDER**

**ROBERTS**, District Judge.

\***1** Plaintiffs Akiachak Native Community, Chalkyitsik Village, Chilkoot Indian Association, and Tuluksak Native Community, brought this suit against defendants the United States Department of Interior and P. Lynn Scarlett, Deputy-Secretary designee for the Secretary of the Interior <sup>FN1</sup> (collectively "DOI"), challenging 25 C.F.R. Part 151, a DOI regulation governing the procedures for federally recognized Indian tribes to acquire land in trust pursuant to section 5 of the Indian Reorganization Act ("IRA"), 25 U.S.C. § 465. DOI has moved under 28 U.S.C. § 1404(a) to transfer venue to the United States District Court for the District of Alaska and to suspend its obligation to answer here. Because transfer of venue is not in the interest of justice, DOI's motion will be denied.

<sup>FN1</sup>. Dirk Kempthorne has been confirmed as Secretary of the Interior and is substituted for P. Lynn Scarlett under Fed.R.Civ.P. 25(d)(1).

### **BACKGROUND**

Plaintiffs are federally recognized Indian tribes with sovereign governments located in Alaska. As federally recognized tribes, they are eligible for special programs and services provided by the United States government. The DOI is the primary federal government agency responsible for supervising Indian affairs.




Plaintiffs challenge the validity of 25 C.F.R. Part 151, a DOI regulation that controls the application process for federally recognized Indian tribes to acquire land in trust under section 5 of the IRA, 25 U.S.C. § 465. The IRA authorizes the Secretary of the Interior to take real property into trust on behalf of the tribes. The challenged regulation does not provide for the acquisition of land in trust for most federally recognized tribes in Alaska. <sup>FN2</sup>




FN2. 25 C.F.R. Part 151.1 states that "[t]hese regulations do not cover the acquisition of land in trust status in the State of Alaska, except acquisitions for the Metlakatla Indian Community of the Annette Island Reserve or its members." 25 C.F.R. Part 151.1.

Akiachak alleges that Part 151 violates the IRA's provisions which prohibit agencies from promulgating regulations that diminish the privileges and immunities available to the tribe relative to the privileges and immunities available to other federally recognized tribes by virtue of their status as Indian tribes. See 25 U.S.C. § 476(f) and (g). Akiachak also contends that the regulation violates the Administrative Procedures Act ("APA") and the Due Process and Equal Protection Clauses of the Fifth Amendment to the United States Constitution.

DOI has moved under 28 U.S.C. § 1404(a) to transfer venue to the United \*67 States District Court for the District of Alaska and to suspend its obligation to answer in the District of Columbia. DOI contends that there is no connection between this case and the District of Columbia. DOI further argues that the policy at issue applies to, and its impacts are felt in, only Alaska and therefore it is in the interest of justice to transfer the case there. Akiachak contests this argument and asserts that because DOI's regulation governs the application process for establishing land trusts for all federally recognized tribes, it is a matter of national significance.


#### DISCUSSION

[1]  [2]  [3]  "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." 28 U.S.C. § 1404(a). "[T]he moving party bears the burden of establishing that transfer is proper." *Schmidt v. Am. Inst. of Physics*, 322 F.Supp.2d 28, 31 (D.D.C.2004). When venue is proper in more than one locale, the district court has discretion "to adjudicate motions for transfer according to an 'individualized, case-by-case consideration of convenience and fairness.'" *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29, 108 S.Ct. 2239, 101 L.Ed.2d 22 (1988) (quoting *Van Dusen v. Barrack*, 376 U.S. 612, 622, 84 S.Ct. 805, 11 L.Ed.2d 945 (1964)). A plaintiff's choice of forum is usually accorded great deference, unless the plaintiff chooses a forum that is not his home and that has no substantial connection to the subject matter of the action. See *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508, 67 S.Ct. 839, 91 L.Ed. 1055 (1947) (stating that "unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed").

\*\*2 [4]  [5]  [6]  The threshold requirement for transfer of venue under § 1404(a) is that the transferee court is a district court where the action "might have been brought." <sup>FN3</sup> See 28 U.S.C. § 1404(a). Once this threshold is met, a court then "must weigh in the balance the convenience of the witnesses and those public-interest factors of systemic integrity and fairness that, in addition to private concerns, come under the heading of 'the interest of justice.'" *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. at 30, 108 S.Ct. 2239. "The private-interest considerations include: (1) the plaintiff's choice of forum, unless the balance of convenience is strongly in favor of the defendants; (2) the defendant's choice of forum; (3) whether the claim arose elsewhere; (4) the convenience of the parties; (5) the convenience of the witnesses, but only to the extent that the witnesses may actually be unavailable for trial in one of the fora; and (6) the ease of access to sources of proof." *Schmidt*, 322 F.Supp.2d at 31-32. "The public-interest considerations include: (1) the [transferee court's] familiarity with the governing laws; (2) the relative congestion of the calendars of the potential transferee and the transferor courts; and (3) the local interest in deciding local controversies at home." *Id.* at 32.

FN3. The parties do not dispute that venue would be appropriate in either this district or Alaska.

#### I. PRIVATE INTEREST CONSIDERATIONS

[7]  DOI contends that Alaska is a more appropriate forum because the land that is the subject of this dispute is located there and the impact of any decision will be felt there. However, the national rule-\*68 making process DOI engaged in when formulating the regulation took place in this district, and public discussions of the proposed regulation took place here. This case presents a sufficiently substantial nexus to this district to warrant deference to Akiachak's choice of forum.

Additionally, Akiachak has chosen a forum that is advantageous for both of its party opponents since both are located in the District. The DOI does not challenge that the relevant sources of proof will likely include any documentation from the DOI's decision-making process and the public discussions on the proposed regulation that took place in this district. ( See

Pls.' Opp'n at 14.) Further, the DOI does not dispute Akiachak's contention that given that the relief sought in this case is a declaratory judgment that DOI's regulation violates the IRA, the APA and the Constitution, the court will be limited to review of the administrative record and thus it will be unnecessary to call witnesses, particularly Alaskan residents, in this case. ( *See id.* at 13.) Thus, the private interest considerations favor this district as the more appropriate venue for this action.

## II. PUBLIC INTEREST CONSIDERATIONS

The relevant public interest concerns on balance have lesser bearing in this case. Judges in both districts are presumed to possess equal familiarity with the federal laws governing this dispute and certainly possess equal competence in adjudicating those laws. No issue has been raised regarding the relative congestion of the respective courts.



**\*\*3** [8] Next, though plaintiffs claim that this case will have an impact on more than just the residents of Alaska, the DOI has made the more compelling showing that the ramifications of any decision here will affect principally Alaska. If the case touches the affairs of many in Alaska, there is reason for the case to be held within their view and reach rather than in remote parts of the country. *See Gulf Oil Corp.*, 330 U.S. at 509, 67 S.Ct. 839. While Akiachak argues that local entities will have the opportunity at a later date to express their views pertaining to any land trust applications submitted by Alaskan tribes after any decision made here in Akiachak's favor, this argument ignores that this fact by itself is a local consequence that will be felt in Alaska. Further, though Akiachak claims that the relief sought here is invalidation of Part 151 as violative of the IRA, a statute that has national application to all federally recognized tribes, this case will have an immediate effect only felt in Alaska. Specifically, a decision rendering Part 151 invalid would require the DOI to immediately consider applications for land trusts in Alaska. However, though the local interest in this case may support transfer, on balance the public and private interest considerations slightly favor keeping this case here.

### CONCLUSION AND ORDER

Because the balance of considerations tilts in favor of venue in this district, DOI's motion to transfer venue pursuant to 28 U.S.C. § 1404(a) will be denied. Accordingly, it is hereby

ORDERED that defendant's motion [6] to transfer venue be, and hereby is, DENIED.

D.D.C., 2007.

Akiachak Native Community v. Department of Interior  
502 F.Supp.2d 64, 2007 WL 2367754 (D.D.C.)

Motions, Pleadings and Filings ([Back to top](#))

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- [1:06cv00969](#) (Docket) (May 24, 2006)

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