

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ANTONIO FAHIE,

CASE NO. 1:06-cv-01132-GSA PC

Plaintiff,

ORDER DENYING REQUEST FOR
TRANSPORTATION OF INMATES ORTIZ,
HERNANDEZ, AND BERBERENA FOR
TRIAL, AND SELECTING INMATES
MARAIN, JOHNSON, AND RIVERA FOR
TRANSPORTATION FOR TRIAL

v.

N. CORREA,

Defendant.

(Docs. 99 and 101)

Plaintiff Antonio Fahie is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This matter is set for jury trial on May 18, 2009, on Plaintiff's claim that Defendant N. Correa used excessive force against him, in violation of the Eighth Amendment of the United States Constitution.

On March 26, 2009, the Court issued an order granting in part and denying in part Plaintiff's motion for the attendance of twelve incarcerated witnesses. The order directed Plaintiff to select, within fifteen days, three of the following potential trial witnesses: Marain, Kurtz, Johnson, Rivera, and Salazar. On April 8, 2009, Plaintiff responded to the order by selecting inmates Ortiz, Hernandez, and Berberena. Defendant filed an opposition on April 13, 2009.

As explained in the March 26 order, inmates Ortiz, Hernandez, and Berberena were not ear or eye witnesses to the incident at issue in this action, and are not eligible to be transported to testify at trial. The Court selects and shall order the transportation of inmates Marain, Johnson, and Rivera for trial.

Accordingly, Plaintiff's request that inmates Ortiz, Hernandez, and Berberena be transported to testify is HEREBY DENIED, and inmates Marain, Johnson, and Rivera shall be transported for trial by separate order.

IT IS SO ORDERED.

Dated: April 14, 2009

/s/ **Gary S. Austin**
UNITED STATES MAGISTRATE JUDGE