

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA**

VIRGILIO G. PENALOZA,)	
)	
Plaintiff,)	
vs.)	2:06-CV-0046-RLY-WGH
)	
OFFICER WALTHERY,)	
)	
Defendant.)	

Order Transferring Action to the Middle District of Pennsylvania

The plaintiff has commenced an action against a member of the staff at a federal prison in Pennsylvania, where the plaintiff was apparently formerly confined. The plaintiff, who is now confined within the Southern District of Indiana, alleges that the defendant mistreated him. The plaintiff seeks unspecified damages. He also seeks leave to proceed *in forma pauperis*.

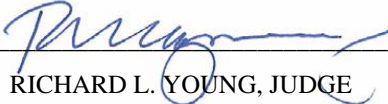
Under 28 U.S.C. § 1391(a), venue will lie in a diversity action "only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the acts or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant is subject to personal jurisdiction at the time the action is commenced, if there is no district in which the action may otherwise be brought." When venue is improper, the district court has the discretion to either dismiss the case or transfer it "in the interest of justice." 28 U.S.C. § 1406(a).

Here, the acts the plaintiff alleges in support of his claim took place in the Middle District of Pennsylvania and at least according to the complaint the defendant is located within that District. Under these circumstances, the proper venue for plaintiff's action is the Middle District of Pennsylvania.

Accordingly, and without ruling on the plaintiff's request to proceed *in forma pauperis*, the above action is now **TRANSFERRED** to the United States District Court for the Middle District of Pennsylvania, at Scranton, Pennsylvania.

IT IS SO ORDERED.

Date: 03/07/2006


 RICHARD L. YOUNG, JUDGE
 United States District Court
 Southern District of Indiana

Copies to:

Virgilio G. Penaloza
REG NO 25709-179
FCI
P O Box 33
Terre Haute, IN 47808