

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

FRANCISCO FERNANDEZ,

Plaintiff,

-v-

06-CV-0506(Sr)

**CORRECTIONS OFFICER J. CALLENS,
et al.,**

Defendants,

ORDER

Pursuant to 28 U.S.C. § 636(c), the parties have consented to the assignment of this case to the undersigned to conduct all proceedings in this case, including the entry of final judgment. Dkt. #21.

By Decision and Order entered October 29, 2010, this Court granted in part, and denied in part, defendants' motion for summary judgment. Dkt. #51. On the same date, the Court issued a Text Order setting a telephone status conference for November 12, 2010. Dkt. #52. The Court ordered a telephone conference because plaintiff is currently residing in the Dominican Republic. Plaintiff did not provide the Court with a telephone number at which he could be reached and did not appear or otherwise contact the Court with respect to the status conference. As a result, the Court issued an Order to Show Cause why this matter should not be dismissed for failure to prosecute pursuant to Fed. R. Civ. P. 41(b) and warned plaintiff that his failure to comply with this Order would result in the dismissal of this action with prejudice.

Plaintiff responded to the Order to Show Cause by letter dated January 12, 2011 indicating his willingness to pursue this action but expressing concern as to “how that would happen” given his residence in the Dominican Republic. Dkt. #54. Plaintiff requested appointment of counsel to advise him how to proceed. Dkt. #54.

In order for this case to proceed, plaintiff will need to return to the Western District of New York for trial. While the Court is willing to be flexible with respect to the scheduling of the trial, it cannot postpone the trial indefinitely. Plaintiff must provide the Court with proposed dates for his return within 60 days of the entry of this Order. If plaintiff has been deported, he must apply for permission to reapply for admission to the United States by filing Form I-212 with the Attorney General. See 8 C.F.R. § 212.2. A copy of such application shall be provided to this Court within 60 days of the entry of this Order. Plaintiff is warned that his failure to make provisions for his return to this district for trial will result in the dismissal of his complaint pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

Plaintiff's motion for appointment of counsel is denied without prejudice.

SO ORDERED.

**DATED: Buffalo, New York
March 4, 2011**

**s/ H. Kenneth Schroeder, Jr.
H. KENNETH SCHROEDER, JR.
United States Magistrate Judge**