

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ISMAEL AGUILA,

Plaintiff,

v.

ORDER

GARY HAMBLIN, ROBERT KAISER,
DAVID DRESSER, MICHAEL HAACK, RYAN
MICHELS, OFFICER SPADE, OFFICER SMITH,
B. ALBRIGHT, VERONA POLICE DEPARTMENT and
FITCHBURG POLICE DEPARTMENT,

06-C-602-S

Defendants.

Upon receipt of plaintiff's partial filing fee in the amount of \$16.62, the Court addresses the merits of plaintiff's complaint. According to 28 U.S.C. § 1915(b)(2), the institution's financial officer is authorized to deduct monthly payments from plaintiff's account until the \$350.00 filing fee is paid in full.

Plaintiff alleges that when he was arrested on May 20, 2005 by defendants Officer Ryan Michels, Officer Spade, Officer Smith, Michael Haack and David Dresser he was not notified of his right to have the Cuban consulate notified of his arrest. He further alleges that when he was interviewed by Detective Bernie Albright on May 23, 2005 he was not notified of this right.

The United States Court of Appeals for the Seventh Circuit has held that a person may bring a private action for a violation of

the Alien Tort Statute (ATS). Jogi v. Voges, 425 F. 3d 367 (7th Cir. 2005). The statute provides a remedy for a violation of the Vienna Convention which requires that a foreign national's consulate be advised of his arrest. Plaintiff has arguably stated a claim under this statute against defendants David Dresser, Michael Haack, Detective Bernie Albright, Officer Ryan Michels, Officer Spade and Officer Smith who arrested him. He has not stated a claim against defendants Gary Hamblin and Robert Kaiser who were not personally involved in his arrest. Further defendants Verona Police Department and Fitchburg Police Department are not suable entities.

ORDER

IT IS ORDERED that plaintiff is allowed to proceed on his claim against defendants David Dresser, Michael Haack, Ryan Michels, Officer Spade, Officer Smith and Bernie Albright.

IT IS FURTHER ORDERED that all other defendants are DISMISSED,

The summons and complaint are being delivered to the United States Marshal for service on David Dresser, Michael Haack and Bernie Albright at the Verona Police Department, 111 Lincoln Street, Verona, Wisconsin, 53953 and on Officer Ryan Michels, Officer Spade and Officer Smith, at the Fitchburg Police Department, 5520 Lacy Road, Madison, WI, 53711.

Entered this 27th day of October, 2006.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge