UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MADELINE MENDOZA,	)	
	)	
Plaintiff,	)	
	)	No. 23-cv-2441
-vs-	)	
	)	*(Judge Durkin)*
REYNALDO GUEVARA, *et al.*,	)	
	)	
Defendants.	)	
MARILYN MULERO,	)	
	)	
Plaintiff,	)	
	)	No. 23-cv-4795
-vs-	)	
	)	*(Judge Durkin)*
REYNALDO GUEVARA, *et al.*,	)	
	)	
Defendants.	)	

PLAINTIFFS' MOTION FOR ENTRY OF PROTECTIVE ORDER REGARDING JACQUELINE MONTANEZ'S PRISON RECORDS

Plaintiffs Madeline Mendoza and Marilyn Mulero respectfully move this Court to enter a protective order barring defendants' proposed subpoena for the prison records of third-party witness Jacqueline Montanez. That Montanez will be a witness is not a sufficient basis to permit defendant "to rummage through confidential and sensitive records based on nothing but the hope that something relevant will be found." *Arms v. Milwaukee County*, No. 18-CV-1835, 2020 WL 5292146, at *2 (E.D. Wis. Sept. 4, 2020).

Factual Background

This case arises out of Plaintiffs' allegations that various Chicago police officers, including Reynaldo Guevara and Ernest Halvorsen, framed Plaintiffs Madeline Mendoza and Marilyn Mulero for murder. Plaintiffs allege that they served more than 45 years of combined imprisonment for crimes they did not commit. Jacqueline Montanez – the woman who committed the murders – has now

confessed to committing these murders on multiple occasions.[1] Specifically, Montanez admits to following one victim into a bathroom and shooting him in the back of the head, exiting the bathroom, approaching a second victim, and shooting him in the back of the head as well. She further admits to committing these acts alone, and that neither Plaintiff had anything to do with the murders.

Plaintiffs allege that CPD officers sought to implicate additional innocents by concocting a false story implicating Madeline Mendoza and Marilyn Mulero in the crimes by engaging in a string of unconstitutional and malicious conduct to fabricate evidence against Ms. Mendoza and Ms. Mulero.

Overview of Issue

On February 27, 2024, counsel for various Chicago police officer defendants sent notice of their intention to issue a subpoena to the Illinois Department of Corrections ("IDOC"), seeking records relating to third-party witness Jacqueline Montanez's incarceration. (Ex. A, Montanez Subpoena). On April 24, 2024, defendants revised the rider attached the subpoena. (Ex. B, Revised Rider.) The materials sought cover a staggering 25 categories of documents, many of which have subparts:

> Any and all records relating to JACQUELINE MONTANEZ (DOB: 05/29/76; IR No: 1006670), including, but not limited to:
>
> housing assignment and transfer documents; admissions, processing or placement records; documentation of gang affiliation; conduct and disciplinary records; adjustment committee summaries; incident reports; behavioral reports; grievances; "CHAMPS" records; any and all "kite logs" related to Jacqueline Montanez; parole records; prisoner review board records; parole agreements; any documents, correspondence, memoranda or notes related to any requests for early release; administrative review board decisions; screening forms; visitor logs; visitation requests; telephone number list request; telephone logs; supplemental program consideration reports; documentation of any requests, denials or completion of any educational programs; documentation of any requests, denials, or assignment to any job or work duties; any and all documentation related to cellmates of Ms. Montanez, and any other documentation maintained in or outside of the master file of JACQUELINE MONTANEZ. This request expressly seeks not just the master file currently housed

[1] These confessions are documented in a police report, multiple letters over the course of years, and interviews with media.

> at this individual's most recent parent institution, but any and all files kept by any prior parent institutions in connection with previously discharged sentences. (Ex. B.)

On its face, the subpoena is wildly overbroad in both time and subject matter. Ms. Montanez was incarcerated in the IDOC system for approximately 24 years from 1992 through 2016 – all of which was *after* the murders at issue. Ms. Montanez is not a party to this litigation, there is no reason to believe that any of the material requested would be relevant to the disputed issues in this case, and production of this vast trove of documents is not proportional to the needs of this case.

Pursuant to Rule 37.2, on April 22, 2024, at about 1:00 p.m., counsel for the parties met-and-conferred on this issue via Zoom.[2] During the conference, Plaintiffs explained their objections to the scope of the subpoena. In response, Defendants agreed to withdraw their request for certain categories of documents (namely Ms. Montanez's substance abuse records), but in turn, added additional categories of records – "CHAMPS" records and "kite logs" – which Plaintiffs also considers irrelevant to the subject litigation.[3] After consultation over Zoom and good faith attempts to resolve differences, the parties are unable to reach an accord.

Legal Standard

Rule 26 prescribes the proper scope of discovery:

> Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable. Fed. R. Civ. P. 26(b)(1).

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[2] The attendees of this Rule 37.2 conferences were as follows: Carter Grant and Patrick Driscoll for Plaintiff Mulero; Joel and Kenneth Flaxman for Plaintiff Mendoza; George Yamin and John Timbo for the Defendant Officers who issued the subpoena at issue; Krystal Gonzalez for Defendant Guevara; and Jessica Zehner for the City of Chicago.

[3] CHAMPS record are a list of prisoner's communication with correctional counselors. (*Cano v. Dixon Correctional Center*, 18 cv 50080, 2020 WL 70930, *2 (N.D. Ill. January 7, 2020). A "kite log" is a record of communications with the warden. *Wallace v. Baldwin*, 55 F.4th 535, 540 (7th Cir. 2022).

A court may limit discovery for various reasons, including to "protect a party or person from annoyance, embarrassment, oppression or undue burden or expense, including . . . forbidding inquiring into certain matters, or limiting the scope of disclosure or discovery to certain matters." Fed. R. Civ. P. 26(c)(1)(D). A party to litigation may move for such a protective order regarding the scope of discovery that is sought from a third party. *Cusumano v. NRB, Inc.*, No. 96 C 6876, 1998 WL 673833, at *4 (N.D. Ill. Sept. 23, 1998); *DeLeon-Reyes v. Guevara*, 18 cv 1028, 2020 WL 7059444, at *2-3 (N.D. Ill. December 2, 2020) ("Defendants do have standing to seek a protective order under Rule 26 to limit discovery from a third party"). Indeed, it is the "power—and duty—of the district courts [to] actively [ ] manage discovery and to limit discovery that exceeds its proportional and proper bounds." *Noble Roman's, Inc. v. Hattenhauer Distrib. Co.*, 314 F.R.D. 304, 306 (S.D. Ind. 2016) (emphasis in original).

Argument

The Defendant Officers' subpoena regarding Jacqueline Montanez's IDOC records are overboard and not reasonably tailored to seek discovery relevant to Plaintiffs' claims or any defense. As a starting point, "it is [] important to recognize that these document requests are directed to [a] third-part[y] through a Rule 45 subpoena, and thus imposing the burden of production on a nonparty to this lawsuit require[s] more careful consideration." *DeLeon-Reyes v. Guevara,* No. 18 cv 01028, 2020 WL 3050230, *6 (N.D. Ill. June 8, 2020) (citing *Uppal v. Rosalind Franklin University of Medicine and Science*, 124 F. Supp 811, 813-14 (N.D. Ill. 2015)). Under Rule 401 evidence is relevant if it has any tendency to make a fact of consequence "more or less probable than it would be without the evidence." *Fed. R. Evid. 401(a)-(b).*

Here, the Defendant Officers' subpoena requests three general categories of documents:

1. Administrative documents relating to Jacqueline Montanez's imprisonment with the IDOC (this category includes requests for transfer documents, admissions, and processing documents);

2. Those relating to Jacqueline Montanez's conduct while imprisoned with the IDOC, (this category includes requests for conduct and disciplinary records, grievances, parole records, prisoner review board records, educational programs, and job / work records); and

3. Those relating to individuals Jacqueline Montanez may have encountered while imprisoned in the IDOC, (this category includes requests for housing assignments, telephone logs, visitor logs, and visitation requests). (Ex. B, Revised Rider).

Illinois law recognizes a former inmate's privacy interest in these materials by statute. Under 730 ILCS 5/3-5-1, the records sought by defendants "shall be confidential and access shall be limited to authorized personnel of the respective Department or by disclosure in accordance with a court order or subpoena." The Court should quash the subpoena because defendants cannot show sufficient relevance to overcome Ms. Montanez's privacy interests.

Plaintiffs' claims relate to constitutional violations by CPD officers, resulting in Plaintiffs' wrongful conviction and decades of wrongful imprisonment. The Defendant Officers cannot articulate any basis for the proposition that the administration of non-party Jacqueline Montanez's imprisonment, or the decades of conduct she engaged in while in prison *after* the murders, could possibly make Plaintiffs' claims, or any defense, more or less true. To choose only a few examples, defendants will be unable to show any connection between the disputed facts in this case and Ms. Montanez's prison grievances, disciplinary history, or work history. These categories of documents are wholly irrelevant.

DeLeon-Reyes v. Guevara, No. 18 cv 01028, 2020 WL 3050230 (N.D. Ill. June 8, 2020) is instructive on this issue. In *DeLeon-Reyes,* separate lawsuits were consolidated for discovery where plaintiffs claimed they were wrongfully convicted and served almost 20 years in prison due to defendants' constitutional violations. *DeLeon-Reyes*, 2020 WL 3050230, at *1. Plaintiffs issued various subpoenas to third parties. One such subpoenas was issued to the Cook County State's Attorney's Office ("CCSAO") for communications between the CCSAO and Chicago Police Officers, including

CPD officers who were *not* defendants in the *DeLeon-Reyes v. Guevara* case. *Id.* As argued by the same defendants in this litigation, the records requested did *not* relate to parties, creating "significant hurdles to overcome in order to demonstrate the relevancy of the information to this wrongful conviction case." *Id.* at *6. The court also took issue with the timeframe for the requested information, holding that "[c]ommunication from over a decade later . . . do not bear a temporal relationship to the allegations in the [c]omplaint." *Id.* at *10. Further, the plaintiffs in *DeLeon-Reyes v. Guevara* could not articulate a legitimate basis to show how the requested communications made any fact in the litigation more or less true. *Id.* at *7. Thus, plaintiff's "guess work does not establish relevance[, and] their speculation amounts to an impermissible fishing expedition in this case." *Id.* at *7. The Court should find the same here.

Defendants may argue that evidence relevant to credibility may be found in disciplinary records, but courts routinely reject this argument in employment cases when a defendant employer seeks the plaintiff employee's personnel file from previous employers. *E.g., McPhail v. Trustees of Indiana Univ.*, No. 2:22-CV-137, 2023 WL 416173 (N.D. Ind. Jan. 26, 2023); *Dirickson v. Intuitive Surgical, Inc.*, No. 19 C 7249, 2020 WL 11421622, at *2 (N.D. Ill. Dec. 29, 2020), *aff'd*, No. 19-CV-7149, 2021 WL 4461574 (N.D. Ill. July 2, 2021). The same rule should apply here.

As noted above, Defendant's request is even less relevant because it seeks information about a non-party. The court considered a similar request in *Arms v. Milwaukee County*, No. 18-CV-1835, 2020 WL 5292146 (E.D. Wis. Sept. 4, 2020), where the plaintiff sought personnel files of potential witnesses. The Court rejected the plaintiff's request because "the fact that someone is a 'potential witness' is not a sufficient basis for permitting [parties] to rummage through confidential and sensitive records based on nothing but the hope that something relevant will be found." Id. at *2.

The Court should also reject defendants' request for documents about the many people that Ms. Montanez may have communicated with during more than two decades in prison. Plaintiffs

understand defendants seek these documents in order to identify potential witnesses who Ms. Montanez may have communicated with about the murders at issue. But Defendants' overbroad request goes well beyond this goal. For example, their request for "any and all documentation related to cellmates of Ms. Montanez" shows the unreasonably broad scope of their proposed subpoena.

WHEREFORE, Plaintiffs respectfully request that this Court issue a protective order preventing the Defendant Officers from issuing this subpoena in its present form.

Dated: May 6, 2024

Respectfully submitted,

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