

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

MADELINE MENDOZA,)	
)	
Plaintiff,)	
)	Case No. 23-cv-2441
v.)	
)	
REYNALDO GUEVARA, et al.,)	
)	
Defendants.)	
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MARILYN MULERO,)	
)	Case No. 23-cv-4795
Plaintiff,)	
)	
v.)	
)	
REYNALDO GUEVARA, et al.,)	
)	
Defendants.)	

**DEFENDANTS’ RESPONSE IN OPPOSITION TO PLAINTIFFS’
MOTION FOR ENTRY OF PROTECTIVE ORDER REGARDING
JACQUELINE MONTANEZ’S PRISON RECORDS**

NOW COME Defendants, REYNALDO GUEVARA, by and through his attorneys Borkan & Scahill, Ltd., CITY OF CHICAGO, by and through its attorneys, Rock, Fusco & Connelly, ANTHONY RICCO, STEPHEN GAWRYS, and GERI LYNN YANOW, as special representative for ERNEST HALVORSEN, deceased, by and through their attorneys, the Sotos Law Firm, P.C., and hereby responds in opposition to Plaintiffs’ Motion for Entry of a Protective Order of third-party witness Jacqueline Montanez’s prison records, stating as follows:

INTRODUCTION

Plaintiffs’ attempts to obstruct access to highly relevant discovery from the Illinois Department of Corrections in the form of records relating to their criminal co-defendant, Jacqueline

Montanez, on the basis of privacy concerns and relevance are baseless. IDOC records of non-party criminal co-defendants and/or material witnesses are routinely subpoenaed and produced in civil cases under Section 1983 and contain a wealth of highly relevant discoverable information including (1) detailed records of contacts and communications with witnesses, parties, attorneys, journalists, and other persons relating to the facts and allegations of the criminal case at issue here via call logs, visitor logs, kite records, and placement and housing records; (2) records of gang affiliation relevant to bias and corroboration of the facts of this case (which were undisputedly gang involved murders) which are routinely contained within disciplinary records and housing records; and (3) disciplinary records and grievances relevant to conduct occurring in IDOC facilities which may shed light on the circumstances or reasons for an inmate's varying stories or be admissible as either credibility evidence under Fed. R. Evid. 608 or other bad acts evidence under Fed. R. Civ. P. 404(b). Most tellingly, despite the routine discoverability of such records in these types of cases, Plaintiffs have not cited *a single case* where access to IDOC records of a criminal co-defendant or witness has been found non-discoverable by any Court. The cases Plaintiffs do cite have no bearing or relevance to the matter at issue.

Most importantly, however, Plaintiffs gloss over Ms. Montanez's involvement as a key material witness in this case, the undisputed fact that Ms. Montanez has repeatedly discussed these matters while in IDOC, and the highly troubling circumstances of her changing stories over the years and while in IDOC facilities. As set forth below, Ms. Montanez is not just any third party. She is the person who Plaintiffs have both attempted to portray as the only culpable person involved in the murders for which they were both convicted (and to which Plaintiffs pleaded guilty). She is far and away the most important witness in this case. She is also a person who has shown little timidity in speaking freely about the circumstances of her criminal case while incarcerated (and after being released on parole). In fact, as set forth below, Ms. Montanez's communications with persons while she was in prison was *specifically relied upon by Plaintiffs* numerous times in order to extricate themselves from their own prison

sentences. There is no legal or factual basis to quash this subpoena to IDOC. The records at issue fall well within the constraints of Rule 26 and 45. This Motion must be denied.

BACKGROUND

This case stems from the double murders of Jimmy Cruz (“Cruz”) and Hector Reyes (“Reyes”) in May 1992 in Humboldt Park. Plaintiffs, Madeline Mendoza (“Mendoza”), and Marilyn Mulero (“Mulero”), were convicted of committing these murders together along with their criminal co-defendant, Jacqueline Montanez (“Montanez”).

On or around May 12, 1992, Ms. Montanez and Plaintiffs plotted the execution of two rival gang members as retaliation for the earlier murder of their fellow gang member. At the time of the murders, Plaintiffs and Montanez were known members of, and/or known affiliates of, the Chicago street gang, the Maniac Latin Disciples (“MLD”). The MLD are, and remain, bitter rivals with the Latin Kings. The women encountered Cruz and Reyes, who invited the girls to party and get high with them. Reyes was a known gang-member of the Latin Kings. One or both men were responsible for Plaintiffs’ and Montanez’s friend’s death in a drive-by shooting days before hand. After arriving at Humboldt Park, Montanez followed Reyes into a park public restroom where she shot him, execution style in the back of the head while he was turned away from her, using a urinal. Montanez then exited the bathroom and handed the gun to Mulero, who shot Cruz in the back of the head on the street. Afterwards, the three girls got in their car, went to a neighborhood party, and celebrated, calling themselves as “King killers.”

When brought in for questioning by police, Montanez detailed the murders of Cruz and Reyes, including how Plaintiffs participated in both crimes. When brought before Cook County Assistant State’s Attorneys (“ASAs”), Montanez echoed her statement to the police, including how Plaintiffs were involved in both murders. Montanez was ultimately convicted of both murders and originally

sentenced to natural life without the possibility of parole. However, later in 2016, her sentence was reduced to 63 years and she has since been recently paroled, then discharged from the IDOC.

Since her arrest in 1992, Montanez has repeatedly admitted to her participation and that of the Plaintiffs in these crimes. However, Montanez's story has changed depending on her audience and under highly suspicious circumstances. In 1992 upon her arrest, Montanez told Defendants it was Mulero, Mendoza, and herself, who were responsible for the murders of Cruz and Reyes. In 1993 during her criminal trial in her own defense, Montanez pinned the murders on a girl named Yvette Rodriguez, who was allegedly present, while she, Mulero, and Mendoza watched.

In 2017 Montanez gave an interview with the Chicago Tribune from prison, allegedly taking sole responsibility for both murders. In this regard, Plaintiff Mendoza specifically attached one such prison statement that Ms. Montanez gave in 2017 from IDOC as evidence in support of her post-conviction filings to attempt to gain release from her prison sentence and claimed such statements as evidence "Montanez acted alone in committing the murders" and disclaiming any involvement or knowledge of her actions beforehand. Ex. 1 at ¶ 1.

Ms. Montanez, however, has given other statements directly implicating both Plaintiffs in the planning and commission of the execution-style murders, admitting that she lied to help Ms. Mulero (at Ms. Mulero's urging in prison) during her attempt to get her sentence reduced by downplaying her role in the murders, accusing Ms. Mulero of hiring another inmate to attempt to kill her, and referencing communications she had with CCSAO during her time in prison relating to Plaintiffs' case. *See e.g.* "Loca D on Doing 31 Years in Prison for Killing 2 Latin Kings (Full Interview)" available at <https://www.youtube.com/watch?v=vGqOOC6i9bw> (transcript attached as Ex. 2) at 9:26-10:23 ("Q: Okay. So, two days later, on May 12th, you went and got two girls from the Disciples?...Q: Winneka aka Marilyn Milero (phonetic), age 22, who actually had two kids of her own? A: Yep. Q: And Tutti. A: Tutti, yep. Q: I don't know Tutti's first name. A: Humadelyn (phonetic). Q: Madelyn,

what's her last name? A: Mendoza. Q: Okay, so Tutti aka Madelyn Mendoza. ...*Q: So, the three of you got together and planned a mission to get revenge. A: Yep.*"); *id.* at 25:19-26:12 ("I had to modify the statement and say she knew nothing about it, you know what I'm saying, I made her come with me just so she could come home. I had to make it seem like she didn't know absolutely nothing; because if I didn't she was going to stay in prison for something she didn't do, she didn't pull no trigger."); *id.* at 31:22-32:1 ("And so, they did me dirty, but at the end of the day in my mind - and I tell Melaros the same thing today, I feel like you're pursuing this innocent project, or you're pursuing the conviction, getting money off of detective, I feel like it's Karma's a motherfucker, man. Like, I feel like you trying to get paid for being involved in a murder; like you was involved, bro."); "Loca D At 15 Sentenced To Life In Prison For Committing A Double Murder" available at <https://www.youtube.com/watch?v=KdLFPZHskPk>. at 32:00-33:00 (discussing initial planning of murders involving the three women luring Cruz and Reyes back to their territory so male gang members could kill them); *id.* at 55:00-56:00 ("When you got news, when you found out that Marilyn was sentenced to death row, what emotions did you feel A: I was happy. Bitch deserved it. She was trying to pay somebody to kill me in prison. In jail. She literally paid an IG, an Imperial Gangster. And I knew her, Her name was Blanca....Mulero was paying her to kill me"); *id.* at 57:00-1:00 (describing writing a letter taking blame for crimes because she did not want Mulero to die as a result of a threat to her life from other inmates on death row and describing involvement of IDOC personnel in Montanez's intervention on same).¹

Ms. Montanez has also freely discussed her prison experience and disseminated it for the world to see as well exhibited her general lack of remorse for her actions. *See* <https://www.chicagotribune.com/2017/02/22/new-hope-of-freedom-for-those-given-mandatory-life-sentences-as-juveniles/> ("At trial, she glared at the victims' families. Once convicted and behind

¹ Ms. Montanez goes by the nickname "Loca D."

bars, she was ticketed more than 100 times for her misbehavior, according to court records. A few years into her sentence, she started a fire in her room and assaulted an officer, though records show she was found to be mentally ill. She said she had little remorse and even less incentive to change. ‘(Prison) was my home,’ Montanez said. ‘I knew these walls were going to be the walls that I was going to look at for the rest of my life. I knew that I would die here, so authorities couldn’t tell me anything.’”).

This is not all of recent vintage either. For example, in moving for habeas relief in the Northern District of Illinois in 2009, Plaintiff Mulero cited Ms. Montanez’s communications and contacts with various other inmates during their overlapping incarceration as bases for seeking to have her sentence overturned. *See Mulero v. Walker*, 09 CV 3146, Dckt. No. 1 at ¶¶ 37. The prison communications at issue cited by Plaintiff Mulero began as early as 1995. *Id.* at 1-2 at Ex. F and Ex. G. Plaintiff also alleges that Ms. Montanez in 1994 allegedly had her cellmate write a letter on her behalf from prison to help Plaintiff Mulero reverse her death sentence. *See* Ex. 3 (Pl.’s Fed. R. Civ. P. 26(a) Disclosures) at 3. As noted above, the circumstances of this letter appear to be the result of witness tampering by Ms. Mulero.

Given the variety of stories in play, the claims of pressure and witness tampering while in prison, and Montanez’s generally inconsistent statements of being the “real killer,” there is more than sufficient reason to believe that Montanez discussed not only the Plaintiffs, but details about the murders during her incarceration at IDOC with not only other incarcerated individuals, but IDOC personnel (i.e., Chaplains, Counselors, etc.). In fact, there seems to be no dispute about the fact that this occurred. The question is only to who and how many times this occurred. Defendants are entitled to discover all occasions when Montanez’s motives for changing her story may have been discussed and the individuals who heard each version during her incarceration. Given the above record, there is also a wealth of discoverable information in her IDOC file in the form of disciplinary records, housing

records, and other matters contained within the IDOC files. Defendants, thus, gave notice of intent to subpoena IDOC for a variety of routinely sought records relating to Montanez and her incarceration. Counsel for Plaintiffs objected to the *entire* subpoena and the Parties engaged in a 37.2 Conference over the issue that ultimately resulted at impasse.

ARGUMENT

The Federal Rules of Civil Procedure provide for broad discovery. Pursuant to Rule 26, parties may seek discovery “that is relevant to any party’s claim or defense and proportional to the needs of the case[.]” *See* Fed. R. Civ. P. 26(b)(1). Information sought “need not be admissible in evidence to be discoverable.” *Id.* As explained in *Oppenheimer Fund, Inc. v. Sanders*, “discovery is not limited to issues raised by the pleadings, for discovery itself is designed to help define and clarify the issues. Nor is discovery limited to the merits of a case, for a variety of fact-orientated issues may arise during litigation that are not related to the merits.” 437 U.S. 340, 351 (1978) (citation omitted). Here, Defendants subpoena to IDOC seeks relevant information related to a material eyewitness to the underlying criminal incident at issue in this case and is appropriately limited to fit the needs of this case at this early juncture.

I. Neither Plaintiffs Nor Jacqueline Montanez Have Any Privacy Interests In IDOC’s Records.

Under Federal Rule of Civil Procedure 45(a), a party may issue a subpoena to command production of documents or other tangible material in a person’s possession or control. *See* Fed. R. Civ. P. 45(a). A district court must quash or modify a subpoena that “(1) ‘fails to allow a reasonable time for compliance,’ (2) requires a nonparty to travel more than 100 miles, (3) ‘requires disclosure of privileged or other protected matter, if no exception or waiver applies,’ or (4) ‘subjects a person to undue burden.’” *TCYK LLC v. Doe*, No. 13 C 3845, 2013 U.S. Dist. LEXIS 145722, at *5 (N.D. Ill. Oct. 9, 2013). Relevant here, a party has standing to quash a subpoena issued by another party to the litigation and directed to a non-party in two instances: if the movant has a claim of privilege attached

to the information sought or the subpoena implicates the movant's privacy interests. *Simon v. Northwestern University*, 2017 WL 66818, at *2 (N.D. Ill. Jan. 6, 2017). The party seeking to quash a subpoena has the burden of demonstrating that the information or documents sought are either privileged or implicate a privacy interest. *Id.* Moreover, it is important to note that "non-recipients do not have standing to quash subpoenas on relevance and proportionality grounds." *DeLeon-Reyes v. Guevara*, 2020 WL 3050230, at *2; *see also Buonavolanto v. LG Chem, Ltd.*, No. 18 C 2801, 2019 WL 8301068, at *2 (N.D. Ill. Mar. 8, 2019) (defendants did not have standing to quash nonparty subpoena on basis that the subpoena went "beyond the scope of discovery as outlined in Rule 26").

Because neither Plaintiff claimed that the documents being sought are privileged, the Court's decision to quash Defendants' subpoena rests on whether the subpoena implicates a privacy interest. It does not. Neither Plaintiffs nor Montanez have a legitimate privacy interest in administrative records², conduct and/or disciplinary records³, and non-privileged communications with incarcerated or civilian individuals related to Montanez's incarceration, which compiles the bulk of Defendants document subpoena request. Any arguable privacy interest Montanez may have had in this information was waived when she consciously chose to participate in public interviews with members of the media (i.e., podcast interviews streamed on multiple platforms) and openly discuss her gang-membership with the MLDs, her ties to the Latin Kings, her turbulent childhood and home life (including graphic details of purported substance, physical, and sexual abuse), and details about the murders of Cruz and Reyes. Plaintiffs' motion for entry for a protective order should be denied on these grounds alone.

And Plaintiffs' citation of 730 ILCS 5/3-5-1 as a basis for quashing this subpoena is completely without merit. In addition to the fact that this is a state statute which does not limit discovery in a

² Dkt. 65, p. 4

³ Dkt. 65, p. 5

federal civil rights case, this statute itself does not prohibit disclosure at all in civil litigation; rather, the statute is not a privilege but merely makes such records not subject to FOIA and potentially subject to an applicable protective order. *See Reed v. Wexford Health Sources, Inc.*, 2022 WL 4483949, at *5 (S.D.Ill. 2022)(“IDOC objects to the disclosure of the medical records and other documents and communications relating to the medical care of third party individuals because ‘the master record of individuals in IDOC custody are confidential per 730 ILCS 5/3-5-1(b).”). As other courts have observed, this statute “does not prohibit disclosure to a party pursuant to a court order, and documents in master files have been produced in civil and criminal cases. Additionally, because Plaintiffs are bringing federal claims against Defendants, federal law and federal privileges control. Accordingly, 730 ILCS 5/3-5-1 does not prevent production.”); *Sultan v. Duncan*, 2020 WL 2542958, at *1 (S.D. Ill. May 19, 2020)(same); *McCroy v. Ill. Dep’t of Corr.*, 2006 WL 8077033 (C.D. Ill. May 12, 2006)(same)(“That the master file is required to be kept confidential under this statute does not prohibit disclosure to a party pursuant to a court order, and documents in master files have been produced in civil and criminal cases, including by prison officials when needed for their defense.”).

II. Defendants’ Subpoena Seeks Highly Relevant Information.

Plaintiffs claim Defendants’ subpoena to IDOC is overbroad in time and subject matter in its request for records related to Montanez during her incarceration. In support of this, Plaintiffs claim that because Montanez is not a named party to the instant litigation, there is no reason to believe that any of the material requested would be relevant to the disputed issues in this case and therefore this request amounts to a “fishing expedition.” This position is totally without merit given the nature of Ms. Montanez’s singular involvement, Plaintiffs’ reliance on her numerous prison statements, and the highly troubling apparent circumstances of Ms. Montanez’s shifting stories. Again, while Montanez is not a party to this litigation, she is the person that Plaintiffs claim is the “real killer” of both Cruz and Reyes to the exclusion of their involvement. Indeed, she is *the* most important witness to the crimes

at issue in this case. This fact is well known to Plaintiffs, who capitalized on Montanez's interview with the Chicago Tribune in 2017 as a corner stone to their post-conviction petitions for relief.⁴ In fact, in addition to her 2017 Chicago Tribune interview, Montanez has since participated in numerous podcast interviews, currently streaming on YouTube and Spotify, discussing the crimes and her involvement, Plaintiffs, and her gang-affiliation in relation to the murders. Suffice it to say, these interviews have most certainly not exonerated Plaintiffs of their own involvement in these murders. Indeed, to the contrary as referenced above, Ms. Montanez has repeatedly implicated both Plaintiffs in planning the execution of Reyes and Cruz and has indicated she essentially lied about the extent of their involvement to help them get out of prison.

If anything, Plaintiffs' objections to Defendants' subpoena and the subsequent filing of the instant motion is a thinly veiled attempt to stone-wall Defendants from accessing information.

The only question is whether Plaintiffs have sustained their burden of showing that the records that IDOC has in its possession do not contain information that might be reasonably calculated to lead to the discovery of relevant information. Rule 401 of the Federal Rules of Evidence state that evidence is relevant if it has any tendency to make a fact of consequence "more or less probable when it would be without evidence." *See* Fed. R. Evid. 401(a)-(b). For the purposes of determining scope under Rule 26, relevance is construed broadly. *Oppenheimer Fund, Inc.*, 437 U.S. at 351. It is clear this subpoena seeks materials that are reasonably calculated to lead to the discovery of relevant evidence.

First, perhaps the most telling part of Plaintiffs' Motion is the fact that they are not able to cite even a single case where a subpoena for IDOC records of a criminal co-defendant or material witness was quashed by any court. *See* Dckt. No. 65. Rather, Plaintiffs rely heavily upon cases in other contexts addressing discovery matters that have little resemblance to this issue.

⁴ *See People of the State of Illinois v. Madeline Mendoza*, 92CR13088-03, attached hereto as Exhibit 1.

In this regard, Plaintiffs' heavy reliance on *DeLeon-Reyes v. Guevara*, No. 18 cv 01028, 2020 WL 3050230 (N.D. Ill. June 8, 2020) as a basis to quash this subpoena is unavailing and contains a highly misleading summary of the issues at stake in that case. To that end, Plaintiffs imply that the Court quashed these subpoenas because they related to non-parties and because the communications being sought were alleged to have occurred after the incident at issue in the civil case. Dckt. No. 65 at 5-6. That is not remotely why the Court quashed those subpoenas. The subpoenas at issue were sent by Plaintiffs and sought communications and documents of the Cook County State's Attorney's Office relating to two non-defendants (Joseph Miedzianowski, and John Galligan) who had apparently been implicated in a corruption scheme during their time as Chicago Police Officers. *DeLeon-Reyes*, 2020 WL 3050230 at *1.

The Court's bases for quashing those subpoenas had very little to do with their status as non-parties *per se* and everything to do with the fact that Plaintiff had not shown that either of these individuals were involved in any way *in the specific claims and allegations of Plaintiffs in their own cases*. Rather, Plaintiffs were attempting to obtain this discovery to try to obtain evidence of the named defendants connection to non-parties relating to misconduct that had absolutely nothing whatsoever to do with the actual case resulting in the plaintiffs' arrest and conviction. *Id.* To wit:

Defendants first take issue with the request for communications relating to former Chicago Police officers Miedzianowski and Galligan. Defendants point out, persuasively, that Miedzianowski and Galligan: (1) are not defendants in this case; and (2) *were not involved at all with the investigation of the Soto murders and kidnappings at the heart of this lawsuit...* **However**, even if Plaintiffs' proffered evidence did connect Guevara's accepting bribes to Miedzianowski and Galligan, bribing criminals and/or involvement in a drug conspiracy is a far cry from the allegations of the complaints in this case. In a nutshell, Plaintiffs here accuse the individual defendant officers of causing their wrongful convictions for the 1998 double murder of Mariano and Jacinta Soto. Within that overarching framing claim, Plaintiffs' complaint alleges various unconstitutional acts by the individual officers, including the use of physical violence, psychological abuse, and coercion to secure false confessions from Plaintiffs for the 1998 double murder of Mariano and Jacinta Soto. Discovery into Guevara's accepting of bribes to help guilty drug dealers and murderers avoid conviction would not help Plaintiffs prove that Guevara and the other individual officers framed the purportedly innocent Plaintiffs to ensure their convictions. Put another way, the alleged acts are too dissimilar to the allegations of the

Complaint and the elements of the asserted claims that Plaintiffs must prove to constitute relevant, discoverable evidence in this case.

As far as the timing of the communications at issue, the Court most certainly did not premise relevance on communications based on whether such communications occurred before the incident allegedly being discussed. Indeed, such an assertion would be utterly ludicrous because, again, the laws of physics governing time and space dictate that communications about a thing that has already happened always occur after the thing has happened. Rather, the timing issue discussed by the Court had to do with relevance to Plaintiff's *Monell* claim. Specifically, the Court held that communications about the alleged misdeeds of Miedzianowski and Galligan after Plaintiffs' arrest and prosecution could not be the "moving force" behind the violation of the plaintiffs' constitutional rights because they occurred after the plaintiffs' rights had allegedly been violated. *Id.* at *10-11. To wit:

[T]here is a significant temporal problem. The investigation of the Soto murders took place in 1998. It is unclear how communications starting in 2010 between the City and the CCSAO could show that the City was on notice in 1998 for misconduct occurring then....[T]he CCSAO's communications with the City from 2010 to the present certainly do not have a tendency to make it more likely that the City was on notice of any 1998 misconduct. The Plaintiffs' notice reason therefore flops.

The fact of the matter is that court's routinely permit discovery into the IDOC records of non-party witnesses who have knowledge or involvement in the underlying facts relating to a plaintiff's claims. *See e.g. Bishop v. White*, 2023 WL 35157, at *2-6, 8-9 (N.D.Ill., 2023)(dismissing civil case as sanction and relying upon IDOC communications of third party witness obtained in discovery to show that witness had been coerced into recanting adverse testimony against plaintiff); *Coleman v. City of Peoria*, 2016 WL 3974005, at *2 (C.D.Ill., 2016)(refusing to quash subpoena for IDOC call recordings of plaintiff as well as six other inmates who were criminal co-defendants or witnesses to the case); *Doe v. MacLeod*, 2019 WL 2601338, at *4 (C.D.Ill., 2019)(ordering production of non-party IDOC records but requiring such records to be subject to protective order); *McCroy v. Ill. Dep't of Corr.*, 2006 WL 8077033 (C.D. Ill. 2006)(compelling production of IDOC file for non-party witness; "The master file

of the inmate who allegedly attacked the plaintiff may hold evidence relevant to that inmate's history of violence, and thus to the defendants' knowledge of that inmate's violent propensities (if any).”).

Indeed, the undersigned attorneys have routinely subpoenaed and obtained IDOC records of non-party criminal co-defendants and witnesses in discovery in other like cases. *See Walker v. City, et al.*, 20 CV 7209 (in reversed conviction case subpoenas sent to IDOC and received for records of Plaintiff's criminal co-defendant and witness, Jovanie Long); *Jackson v. Wojcik, et al.*, 23 CV 2027 (same; records of Plaintiff's criminal co-defendant and witness, Anthony Powell/Curtis); *Ochoa v. Lopez, et al.*, 20 CV 2977 (same; records of Plaintiff's criminal co-defendant and witness, Eduardo Torres, Arturo Simon, Arturo Bentazos); *Williams v. Kato, et al.*, 21 CV 819 (same; records of witness, DeAngelo Johnson); *Taylor v. City of Chicago*, 14 CV 737 (same; records of Plaintiff's criminal co-defendant and witnesses and alleged “real killer” including inmates Rodney Matthews, Lemuel Hardy, Dennis Mixon, James Anderson, and Akia Phillips); *Prince v. Kato*, 18 CV 2952 (same; records of Plaintiff's criminal co-defendant and witnesses Jeffrey Williams, Corey Scott, Dushun Wilkins, Eric Lemon, Keith Gunn, Nathaniel Martin); *Velez v. City, et al.*, 18 CV 8144 (same; records of witnesses Joseph Rivera, Williams Pelmer, and Gustavo Rivera).⁵ Indeed, because of the rather obvious probative value of these records, Defendants cannot recall any instances of a plaintiff claiming that IDOC records of a criminal co-defendant or material witness are wholesale objectionable as Plaintiffs do here.

Second, given Ms. Montanez's role in this case and her penchant for discussing it, it is clear that Defendants are entitled to know the identity of persons she may have communicated with and the circumstances of any such communications. This information is contained within call logs, visitor logs, and visitation requests as well as housing assignments and movement history.⁶

⁵ Defendants have not attached these records/subpoenas but can provide any matters relating to these cases as necessary by this Court.

⁶ Notably, Defendants have not yet sought actual recorded telephone communications or other communications of Ms. Montanez. Rather, they have only sought the logs of who she spoke with and when. Once these materials are received, Defendants can further attempt to winnow down the universe of communications which might relate to the underlying

Moreover, based upon prior experience in many like cases, the records at issue will contain references to gang affiliation and involvement by virtue of placement and housing records and assignments. Gang-retaliatory antics inside prisons are a known and common phenomenon. It is such a common occurrence that it plays a significant role on how IDOC decides on housing and assigning cellmates to certain individuals. Because gangs played such a predominate role in these crimes, Defendants are entitled to explore Montanez's experience as a prominent MLD figure within IDOC and whether it impacted her decision to change her story. An avenue to explore this, is through IDOC documents related to Montanez's living unit history, movement history, cellmate history, placement requests, housing assignments, and intake documentation. These documents play a role in Defendants building their defense, investigating the claims against them, and narrowing issues for trial.

Next, the records sought by Defendants related to Montanez's conduct and/or disciplinary history are relevant to Ms. Montanez's credibility and propensity for truthfulness. The IDOC identifies a litany of offenses – which if the perpetrator is found guilty – will result in punishment to an incarcerated individual during their incarceration period. *See* Title 20 Ill. Admin. Code §504.20, Appendix A. Included in these offenses is the offense of giving false information to an employee.⁷ *Id.* at Appendix A, ¶303. Should Montanez have been found guilty of such an offense, it would tend to show her propensity to lie. This is plainly an inference Defendants are entitled to explore as it relates to her actions taken both before and after the murders of Cruz and Reyes.

Other documents affiliated with Plaintiffs' second category of documents include the requested "CHAMP" records⁸ and grievance records. Plaintiffs claim each set of records are wholly

facts of this case by focusing in on specific individuals and/or time periods. However, at present, it is clear that Defendants are entitled to this information.

⁷ Lying or knowingly providing false information to an employee, either orally or in writing.

⁸ Also known as "cumulative counseling summary" records. *Rhodes v. Hammers*, 2022 WL 19793903, at *1 (C.D. Ill. June 8, 2022). This record logs a prisoner's communications with correctional counselors. *Cano v. Dixon Correctional Center*, 18 C 50080, 2020 WL 70930, *2 (N.D. Ill. Jan. 7, 2020).

irrelevant to the instant litigation. Not so. Incarcerated individuals utilize a variety of tools to communicate with IDOC personnel about a host of issues they may encounter during their incarceration, including informal “kites” (notes) and formal written grievances. These communications are logged in a number of ways by the IDOC. Some institutions utilize “kite logs,” which tracks notes sent IDOC administrators by offenders. Further, every IDOC institution tracks every in-coming correspondence, out-going correspondence, communication with a counselor, phone call, and grievance received by or sent by an incarcerated individual in its CHAMPs system. This system follows an incarcerated individual for their *entire* incarceration period. Being able to review these records serves a critical purpose of potentially narrowing and pinpointing communications Montanez had without revealing the substance of such communications, protecting them from any potential privilege violations.

All information that can be gleaned from IDOC records related to Montanez is directly relevant to establishing Defendants’ defense to Plaintiffs’ claims that they wrongfully caused their convictions for the 1992 double murder of Cruz and Reyes and their attempts to use Montanez’s statements to exculpate themselves. Discovery into Montanez’s activities during her incarceration may prove Montanez had ulterior motives for claiming responsibility of the deaths of Cruz and Reyes, beyond remorse and reveal other statements she has made over the years about this subject matter. Such information is discoverable and well within the confines of Rule 26.

CONCLUSION

For the reasons explained herein, Defendants respectfully request that this Court deny Plaintiffs Mendoza and Mulero’s Motion for Entry of a Protective Order.

Respectfully submitted,

s/Timothy P. Scahill
Special Assistant Corporation Counsel
One of the Attorneys for Defendant, Reynaldo Guevara

Timothy P. Scahill
Steven B. Borkan
Whitney N. Hutchinson
Emily E. Schnidt
Kathryn E. Boyle
Krystal R. Gonzalez
BORAN & SCAHILL, LTD.
20 South Clark Street, Ste 1700
Chicago, IL 60603
(312) 580-1030
tscahill@borkanscahill.com
sborkan@borkanscahill.com
whutchinson@borkanscahill.com
eschnidt@borkanscahill.com
kboyle@borkanscahill.com
kgonzalez@borkanscahill.com

By: /s/ Catherine M. Barber
*Special Assistant Corporation Counsel
for Defendant City of Chicago*

Eileen E. Rosen
Catherine M. Barber
Theresa B. Carney
Austin Rahe
Jessica Zehner
Lauren Ferrise
ROCK FUSCO & CONNELLY, LLC
333 W. Wacker, 19th Floor
Chicago, IL 60606
(312) 494-1000
erosen@rfclaw.com
cbarber@rfclaw.com
tcарney@rfclaw.com
arahe@rfclaw.com
jzehner@rfclaw.com
lferrise@rfclaw.com

s/ John J. Timbo
*Special Assistant Corporation Counsel
For Anthony Riccio, Stephen Gawrys,
and Gerri Lynn Yanow, as special*

representatives for Earnest Halvorsen
The Sotos Law Firm, P.C.
141 W. Jackson Blvd. Suite 1240A
Chicago, IL 60604
(630) 735-3300