

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

MOISES MORALES; MONTREAL THOMAS;	)	
JOAQUIN ROCHA; SHAVONISE BUCHANNAN;	)	
and KELVIN PERRY, on behalf of themselves and	)	
all similarly situated individuals;	)	
	)	
Plaintiffs,	)	Case No. 13CV7572
	)	
v.	)	Judge Amy J. St. Eve
	)	
CRAIG FINDLEY, in his official capacity as	)	
Chairman of the Illinois Prisoner Review Board; and	)	
GLADYSE TAYLOR, in her official capacity	)	
as Acting Director of the	)	
Illinois Department of Corrections;	)	
	)	
Defendants.	)	

PLAINTIFFS' MOTION TO COMPEL EXPERT ACCESS TO IDOC FACILITIES

Plaintiffs, on behalf of themselves and the class they seek to represent, file this motion seeking to compel Defendants' compliance with the subpoena requesting that the Plaintiffs' expert be permitted to conduct parole hearing observations in Illinois Department of Corrections facilities. In further support of this motion, the Plaintiffs state:

1. On August 3, 2015 Plaintiffs counsel served a subpoena on counsel for Defendants requesting access to the IDOC correctional facilities where final and preliminary parole hearings occur in order to permit their expert an opportunity to observe parole proceedings. Counsel for Plaintiffs explained that their expert resides in California, and requested that the Defendants inform them of their position on this request by August 7, 2015, so that the expert would have enough time to make travel arrangements. See Exhibit A.
2. Further on August 7, 2015, counsel for Plaintiffs provided counsel for Defendants with a draft proposed joint order that if entered by this Court would provide Plaintiffs' expert with

access to IDOC facilities and would set forth ground rules for his observations. Counsel for Plaintiffs unsuccessfully attempted to reach counsel for Defendants by phone to discuss this matter on August 10, 2015. Counsel for Defendants responded by email and stated that he was unable to communicate with his client—but expected to have a response by the end of this week. Counsel for Plaintiffs responded and explained that because of scheduling reasons, counsel for Plaintiffs would be required to file this motion today if the Defendants were unable to confirm that they would comply with the subpoena.

3. The ability of the Plaintiffs' expert to observe parole proceedings is essential to this case and these observations are an important part of the expert's methodology. There is no substitute for these in-person observations. This is particularly so because the Defendants' failure to maintain an adequate record of parole proceedings creates and compounds the procedural due process violations that are at the heart of the Plaintiffs' case. In short, the information sought by the Plaintiffs and their expert cannot be divined from a review of parole files.

4. For these reasons, the Plaintiffs respectfully request that this Court enter an order that will require the Defendants to 1) permit Plaintiffs' expert to conduct observations of preliminary and final parole revocation proceedings from August 24, 2015-September 4, 2015; 2) within three days of the date of this order, provide Plaintiffs' counsel with the schedule and location of all preliminary and final parole revocation hearings that will occur during this time; 3) ensure that Plaintiffs' expert has full access to the final and preliminary parole hearings, which shall include the opportunity to visually observe the proceedings, to hear and understand the proceedings and to review parole violation reports and other documents considered by the hearing officer and/or Prisoner Review Board member at the conclusion of the hearing; 4) provide Plaintiffs' expert with the opportunity to interview putative class members in a

confidential manner, at the conclusion of the parole proceedings; 5) allow Plaintiffs' expert to bring with him into IDOC facilities one digital recording device, notepads, pens, and one bottle of sealed water. Undersigned counsel will submit a proposed order setting forth the terms described above for the Court's consideration.

Respectfully submitted,

By: /s/ Sheila A. Bedi
Counsel for the Plaintiff class

Sheila A. Bedi
Alexa Van Brunt
Roderick and Solange MacArthur Justice Center
Northwestern University School of Law
375 East Chicago Avenue
Chicago, Illinois 60611
(312) 503-8576

Alan Mills
Uptown People's Law Center
4413 North Sheridan Road
Chicago, Illinois 60640
(773) 769-1410

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that she served the foregoing document via the Court's CM/ECF system on Wednesday, August 12, 2015.

/s/ Sheila A. Bedi

Sheila A Bedi

From: Bhave, Sunil <SBhave@atg.state.il.us>
Sent: Tuesday, August 11, 2015 2:51 PM
To: Sheila A Bedi; Alexa Anne Van Brunt; Dierkes, Michael
Cc: Alan Mills
Subject: RE: Morales - Proposed Joint Order Re Expert Access

Sheila,

We do not waive our right to have a Local Rule 37.2 conference prior to the filing of any discovery-related motion. And to have a good-faith discussion at such a conference (a conference which you must certify in your motion was held, or was unsuccessfully attempted), we need to speak with our client. We received your proposed order on 8/7, counsel at IDOC with whom we must confer is out of the office until tomorrow, 8/12. We do not think this 4-5 day period is unreasonable, in light of the intervening weekend.

I expect that we will have a response in the next day or two, and then we will make ourselves available to have the required conference by the end of this week. I believe that we will likely be able to come to an agreement, but until we speak with the client, we cannot adequately participate in such a conference. And in light of your representation that your expert seeks to observe hearings on August 23, I think any impasse between the parties (which I hope will not result) will be evident early enough to give you time sufficient to file your motion.

Thank you,
Sunil

From: Sheila A Bedi [mailto:sheila.bedi@law.northwestern.edu]
Sent: Tuesday, August 11, 2015 2:04 PM
To: Bhave, Sunil; Alexa Anne Van Brunt; Dierkes, Michael
Cc: Alan Mills
Subject: RE: Morales - Proposed Joint Order Re Expert Access

Sunil: Thank you for your response. Because we need to solidify our expert's travel arrangements, we will file our motion today and notice it for Monday. If we can reach an agreement on this matter before then, we will withdrawal the motion. Also, please note that our expert intends to conduct observations from August 23 through September 23.
Thanks, s

From: Bhave, Sunil [mailto:SBhave@atg.state.il.us]
Sent: Tuesday, August 11, 2015 1:44 PM
To: Alexa Anne Van Brunt <a-vanbrunt@law.northwestern.edu>; Dierkes, Michael <MDierkes@atg.state.il.us>
Cc: Sheila A Bedi <sheila.bedi@law.northwestern.edu>; Alan Mills <alan@uplcchicago.org>
Subject: RE: Morales - Proposed Joint Order Re Expert Access

Alexa,

I have left a message for the client's position, but learned that counsel at IDOC is out of the office until tomorrow. I have advised him to call me upon his return to square this matter away, so we should have an answer soon. As soon as I hear, I will let you know.

Thank you,
Sunil

From: Alexa Anne Van Brunt [<mailto:a-vanbrunt@law.northwestern.edu>]
Sent: Tuesday, August 11, 2015 1:41 PM
To: Dierkes, Michael; Bhavé, Sunil
Cc: Sheila A Bedi; Alan Mills
Subject: RE: Morales - Proposed Joint Order Re Expert Access

Hi,

Any response on this?

Thanks,
Alexa

From: Alexa Anne Van Brunt
Sent: Friday, August 07, 2015 9:31 AM
To: mdierkes@atg.state.il.us; Bhavé, Sunil <SBhave@atg.state.il.us>
Cc: Sheila A Bedi <sheila.bedi@law.northwestern.edu>; Alan Mills <alan@uplcchicago.org>
Subject: Morales - Proposed Joint Order Re Expert Access

Hi Mike and Sunil,

Attached please find a draft proposed order regarding our expert's access to conduct hearing observations. Please let us know your thoughts as soon as possible. If you object to the order, we will file it unilaterally early next week.

Thanks,
Alexa

Sheila A Bedi

From: Sheila A Bedi
Sent: Monday, August 03, 2015 3:53 PM
To: 'Dierkes, Michael'; Bhawe, Sunil
Subject: Expert observations during the week of August 17
Attachments: parole subpoena.pdf

Importance: High

Mike and Sunil: Please find attached a subpoena requesting access to the IDOC facilities in which preliminary and final parole revocation hearings occur during the week of August 17, 2015. Our expert is from California—so we have travel logistics to work out and need to move quickly to lock down these dates. Please advise by Friday, August 7, 2015 whether your client will object to this request. If you are unable to provide us with an answer by then, we will have to file a motion to compel access.

Additionally, we intend to have the expert conduct a total of two weeks of observations—we will subpoena for access to another week in September once he has a better sense of his schedule. Thanks and please let us know if you'd like to discuss. -s

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Illinois

Morales et al

Plaintiff

v.

Monreal et al

Defendant

Civil Action No. 1:13cv07572

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: S.A. Godniez and Craig Findley c/o counsel, Michael T. Dierkes

(Name of person to whom this subpoena is directed)

☐ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

Place:	Date and Time:
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☒ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place: IDOC facilities where preliminary and final parole revocation proceedings occur. Note this subpoena covers 8/15/15 through 8/21/15	Date and Time: 8/15/2015-8/21/2015; 8:00am to 5:00pm
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The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 08/03/2015

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk



Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Plaintiffs
Sheila Bedi, MacArthur Justice Center, Northwestern School of Law, who issues or requests this subpoena, are:
375 East Chicago Avenue, Chicago, IL. 60611; 312-503-2492; sheila.bedi@law.northwestern.edu

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 1:13cv07572

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____.

☒ I served the subpoena by delivering a copy to the named person as follows: S.A. Godniez and Craig Findley c/o counsel, Michael T. Dierkes via electronic mail to: MDierkes@atg.state.il.us

on *(date)* 08/03/2015 ; or

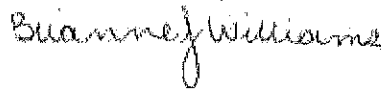
☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: 08/03/2015



Server's signature

Brianne Williams, Paralegal

Printed name and title

MacArthur Justice Center
Northwestern University School of Law
375 East Chicago Ave, 8th Floor
Chicago, IL. 60611

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.