

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

CRISTINA NICHOLE IGLESIAS (A.K.A)
CHRISTIAN NOEL IGLESIAS),)
)
Plaintiff,)
)
vs.) Civil No. 19-cv-00415-JPG
)
IAN CONNORS AND DIRECTOR OF THE)
FEDERAL BUREAU OF PRISONS,)
)
Defendants.)

MOTION TO QUASH SECOND SUBPOENA

The defendant, Director of the Bureau of Prisons, in his official capacity, by his attorneys, Steven D. Weinhoef, United States Attorney for the Southern District of Illinois, and Laura J. Jones, Assistant United States Attorney, moves this Court to quash a subpoena issued by plaintiff to the United States Penitentiary in Marion and states as follows:

1. On July 10, 2020, the Director of the Federal Bureau of Prisons (BOP)¹ filed a Motion to Quash Subpoena (Doc. 48) that was directed to the Federal Medical Center in Ashland, Kentucky. That subpoena had not been sent to counsel for defendants. The undersigned counsel had no idea when she filed her motion to quash the subpoena in Ashland that plaintiff had also sent another subpoena to the United States Penitentiary in Marion (USP-Marion). This motion seeks to quash that subpoena as well.

2. Counsel for defendants, Laura K. Smith (who represents National Inmate Appeals Administrator Ian Connors in his individual capacity) and undersigned counsel did not receive a copy of the second subpoena from plaintiff's counsel directed to USP-Marion, the letter from plaintiff's counsel to USP-Marion, or the notice of a subpoena required by Rule 45(a)(4), Fed. R.

¹ The Director of the BOP is currently Michael Carvajal.

Civ. P.

3. After the Motion to Quash (Doc. 48) was filed, an attorney for plaintiff's firm called the undersigned and told her that she was a new attorney, that she did not mean to intentionally fail to send the subpoena to counsel for defendants, that the documents were needed, and that she could send a copy of the subpoena (which defendants had attached as Exhibit B to Doc. 48). Plaintiff's counsel did not mention that a second subpoena had been sent to a different prison (USP-Marion).

4. Later that day, plaintiff's counsel sent defendants' counsel a copy of the Ashland subpoena and a copy of another subpoena dated July 2, 2020, that had already been sent to USP-Marion on July 2, 2020. The letter plaintiff's counsel sent to USP-Marion dated July 2, 2020, is attached as Exhibit A, and the subpoena is attached as Exhibit B. The letter, signed by plaintiff's appointed counsel, does not indicate that copies were sent to counsel for defendants.

5. The subpoena (issued from the U.S. District Court for the Southern District of Illinois by plaintiff's appointed counsel) requires production at the office of plaintiff's counsel on July 23, 2020, at 1 p.m., the same date as the subpoena to Ashland (Doc. 48).

6. For the second time, counsel for plaintiff sought documents in a subpoena to the undersigned's client and failed to notify defendants' counsel of the subpoena. Plaintiff is also in violation of Rule 45(a)(4) which requires that prior to service of a subpoena for documents ("before it is served on the person to whom it is directed") that a notice and copy of the subpoena be served on each party.

7. Plaintiff's counsel was appointed on February 10, 2020. (Doc. 40). She requested two lengthy extensions to prepare the amended complaint, as ordered by the Court (Doc. 42, 46), and defendants' attorneys had no objection to a five-month extension in part because she was appointed.

8. The complaint was dismissed by this Court (Doc. 40), and there is no current complaint

pending. (Doc. 40). In fact, none is due until September 8, 2020. (Doc. entry 47). The Court will determine whether the amended complaint comports with 28 U.S.C. 1915A in its initial screening. No “discovery” should be due prior to the filing of the amended complaint or before screening.

9. Plaintiff herself has access to most of the documents requested and can provide them to her counsel. This does not require discovery or a subpoena, as indicated in the first motion to quash. Plaintiff can go through her unit team or file a FOIA request. She can ask for non FOIA-exempt parts of the central file and can request the disclosable parts of her medical and mental health records. Surely, plaintiff provided some documents to plaintiff’s counsel since February. If plaintiff is not satisfied with the information gathering channels already available to her, she can avail herself of proper discovery procedures at the appropriate time (i.e., once there’s an operative complaint, any necessary screening has taken place, and the court has resolved applicable threshold defenses).

10. Plaintiff has been incarcerated for several years. Her central file is voluminous, and plaintiff’s requests are very broad. Plaintiff requests information from plaintiff’s “initial date of confinement” and “from all the institutions.” She also requests “digital” or “electronic” information. The institutions that plaintiff has subpoenaed would not have all the documents plaintiff has requested, such as grievances and administrative remedies. The defendant is uncertain what “Sentry daily logs for unit assignments” would be, but it would not be in the central file and is clearly discovery. Plaintiff would not be able to get copies of what the “Privacy Folder” contains, assuming that plaintiff means the Privacy Act exemption information, from the central file, which is also clearly discovery. “Digital” or “electronic” information would also be considered discovery which would also be premature. In any event, two weeks is insufficient to allow the BOP to provide such documents, even documents from plaintiff’s central and medical files. At the very least, plaintiff should be required to send a Touhy letter for discovery. The BOP

is inundated with other matters, and to the extent possible, has tried to accommodate plaintiff's attorneys, including arranging an "emergency" call on June 29, 2020, at the request of plaintiff's attorneys. The BOP will attempt to expedite any request from plaintiff for the documents she can view, and if necessary, plaintiff can ask for another extension without objection. If plaintiff would agree to electronic records post-2008 those records would be available sooner. Medical records were paper prior to 2008 and will have to be copied.

11. In addition, it is customary for attorneys in a case to consult each other for appropriate and agreeable dates. Counsel for the Director of the BOP is aware that the production requested for July 23, 2020 is not a deposition. Defendant's counsel would not be able to appear at the production date on July 23, 2020, as she will be out of town at a family funeral on July 23, 2020, and cannot be in Carbondale on that date. The BOP should not appear at plaintiff's counsel's office, if that is required, without counsel.

WHEREFORE, defendant, Director of the BOP, requests that this Court quash the subpoena.

ATTORNEYS FOR DIRECTOR OF THE
FEDERAL BUREAU OF PRISONS

STEVEN D. WEINHOEFT
United States Attorney


s/ Laura J. Jones

LAURA J. JONES
Assistant United States Attorney
United States Attorney's Office
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Fairview Heights, IL 62208-1344
Phone: (618) 628-3700
Fax: (618) 622-3810
E-mail: Laura.Jones@usdoj.gov

EXHIBIT

A



Feirich/Mager/Green/Ryan

ATTORNEYS

July 2, 2020

Timothy Groninger
FMC Lexington
Federal Medical Center
3301 Leestown Road
Lexington, KY 40511

VIA CERTIFIED MAIL 7018 1130 0000 6817 4458

Re: Cristian Noel Iglesias a/k/a Cristina Nichole Iglesias, #17248-018
U.S. District Court for the Southern District of Illinois Case No.: 19-cv-00415-JPG
Our File No.: 24399

Dear Timothy Groninger:

I represent Cristian Noel Iglesias a/k/a Cristina Nichole Iglesias in the above-referenced matter. Enclosed herein with this correspondence are the following documents:

1. Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in Civil Action, which requests our client's medical records, mental health records, and central file in their entirety from the date of our client's initial date of confinement through present;
2. Authorization for Release of Medical Information executed by our client; and
3. Release of Information Consent executed by our client.

I request that the fee associated with the attached Subpoena be waived. If you have any questions regarding this request please have your legal liaison contact me at 618-529-3000.

Your records must be copied or submitted electronically and made available no later than the subpoena date of **JULY 23, 2020 at 1:00 p.m.**

Very truly yours,

FEIRICH/MAGER/GREEN/RYAN

A handwritten signature in black ink, appearing to read 'Angela M. Povolish', written over a horizontal line.

Angela M. Povolish
apovolish@fmgr.com

AMP/RJH/arc - Enclosures

G:\Iglesias v. True #24399\Discovery\FMC Lexington\Subpoena Cor. Lexington.wpd

John C. Ryan/Kevin L. Mechler/Pieter N. Schmidt/John S. Rendleman III
R. James Giacone II/Cheryl L. Intravaia/Angela M. Povolish
Kara L. Jones/Jonathan A. Mitchell/D. Brian Smith
Bentley J. Bender/Connor M. Oehmke/Rebecca J. Harris/William G. Albee

John K. Feirich (1909 - 1998) T. Richard Mager (1934 - 2002) Richard A. Green (retired)

2001 West Main Street/Post Office Box 1570/Carbondale, Illinois 62903
PH: 618-529-3000/FAX 618-529-3008

EXHIBIT

B

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
Southern District of Illinois

Cristian Noel Iglesias aka Cristina Nichole Iglesias)	
<i>Plaintiff</i>)	
v.)	Civil Action No. 19-cv-00415-JPG
Ian Connors and Director of Federal Bureau of Prisons)	
<i>Defendant</i>)	

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

To: Timothy Groninger, FMC Lexington, Federal Medical Center, 3301 Leestown Rd., Lexington, KY. 40511

(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:

See attached request for documents "Exhibit A"

Place: FEIRICH/MAGER/GREEN/Ryan, 2001 W. Main Street, P.O. Box 1570, Carbondale, Illinois 62903-1570	Date and Time: 07/23/2020 1:00 pm
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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:	Date and Time:
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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: 07/02/2020

CLERK OF COURT

OR

_____ <i>Signature of Clerk or Deputy Clerk</i>	/s/Angela M. Povolish <i>Attorney's signature</i>
--	--

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Cristian Noel Iglesias aka Cristina Nichole Iglesias, who issues or requests this subpoena, are:
Angela M. Povolish, 2001 W. Main Street, P.O. Box 1570, Carbondale, IL 62903, apovolish@fmgr.com, (618) 529-3000

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).

Exhibit A

Hospital records, laboratory records and reports relating to Cristian Noel Iglesias's care and treatment including x-rays, photographs, electronic and digital files, all statements of charges, and any and all records pertaining to Cristian Noel Iglesias, including the initial visit patient history and data form, condition, treatment, diagnosis, prognosis, etiology or expense from Cristian Noel Iglesias's initial date of confinement through present;

Medical records, including patient's record cards, laboratory records and reports, all tests of any type and character and reports thereof, statements of charges, and any and all of Cristian Noel Iglesias's records pertaining to medical care, including the initial visit patient history and data form, condition, treatment, diagnosis, prognosis, etiology or expense from Cristian Noel Iglesias's initial date of confinement through present;

Mental health records relating to Cristian Noel Iglesias, including but not limited to, psychological records, all psychiatric records, mental health assessments, social work records, charts, file notes and reports from Cristian Noel Iglesias's initial date of confinement through present;

Any and all records of the Inmate Central File pertaining to Cristian Noel Iglesias, periodically published in the *Federal Register*, currently maintained at Federal Medical Center Lexington and all other institutions of confinement, including but not limited to, any and all formal requests of grievance filed at the institution level and all administrative remedy appeals filed up through the Administrator, National Inmate Appeals, transfer requests, SENTRY daily logs for unit assignments, and Privacy Folder.

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.

BP-A621.060
FEB 05

U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS

AUTHORIZATION FOR RELEASE OF MEDICAL INFORMATION

Inmate Name Cristian Noel Iglesias	Register Number 17248-018	Date 6-18-20
	Date of Birth 06/10/1974	Social Security Number 695-40-2994

I hereby authorize and request the Federal Bureau of Prisons to:

release information to, or obtain information from

PLEASE CONTACT IF
PAYMENT IS REQUIRED
PRIOR TO FILLING
REQUEST

Name/Facility: Angela M. Povolish of FEIRICH/MAGER/GREEN/RYAN

Address: 2001 West Main Street, P.O. Box 1570

City, State, Zip: Carbondale, Illinois 62903

I understand the information is to be used for (specific reason for release of information):

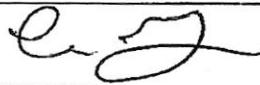
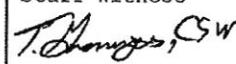
Continuation of care, or Other Attorney review of medical and mental records for pending litigation

Information to be Released/Obtained: Copy of and/or information from my medical file pertaining to my evaluation and treatment received from _____ to _____.

This is to include: Complete Record Discharge Summary History & Physical
 Operative Reports Consultations Progress Notes X-ray Reports
 Laboratory Reports Pathology Reports Actual Films*# Actual Slides*
 Other: _____

*will be returned
#duplicates accepted

I understand that authorizing the disclosure of this health information is voluntary. I can refuse to sign this authorization. I need not sign this form in order to assure treatment. I understand that information used or disclosed pursuant to this authorization could be subject to redisclosure by the recipient and, if so, may not be subject to federal or state law protecting its confidentiality. I understand that I may revoke this consent at any time by sending a written notice to the Supervisor of Medical Records. I understand that any release which has been made prior to my revocation and which was made in reliance upon this authorization shall not constitute a breach of my rights to confidentiality. This authorization will automatically expire three months from the date of the signature.

Signature of Patient 	Date (Month, Day, Year) 6-18-20	Staff Witness  SW
FAX SIGNATURE VALID ORIGINAL		

SPECIFIC AUTHORIZATION FOR RELEASE OF INFORMATION PROTECTED BY STATE OR FEDERAL LAW.
Must sign below, to Release Protected Information.

I specifically authorize the release of data and information relating to:

1. Substance Abuse 2. Mental Health 3. HIV


Signature

6-18-20
Date

Deliver Records To: (Institution Address & Fax number)

Angela M. Povolish
FEIRICH/MAGER/GREEN/RYAN
2001 West Main Street, P.O. Box 1570
Carbondale, Illinois 62903

Fax/facsimile: (618) 529-3008

(This form may be replicated via WP)

This form replaces BP-S621 Dtd AUG 96

BP-A0192
JUN 10

RELEASE OF INFORMATION CONSENT CDFRM

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

Not for use where consent is needed for participation in drug abuse programs or research projects, or for contact with news media. The appropriate form for each of these areas is to be substituted.

1. I (Name of Inmate) Cristian Noel Iglesias a/k/a Cristina Nichole Iglesias	2. Register Number 17248-018
3. Authorize (Person, Agency, Org.) Federal Bureau of Prisons	4. To disclose to (Recipients) Angela M. Povolish of Feirich/Mager/Green/Ryan

5. The following information: (Initial one that applies):

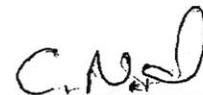
(a) For Community Programming: (To educational facilities, Social Agencies, prospective employers, etc.)

That I am currently in the custody of the U.S. Attorney General either serving sentence or under supervision of the U.S. Parole Commission or U.S. Probation Office and any and all information in my Inmate Central File except as indicated below:

(Initials)

(b) Other Objective (Specify Information)

My Central File in its entirety currently maintained at my institution of confinement AND at any and all former institutions of confinement.



(Initials)

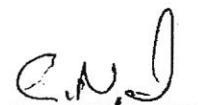
6. Disclosure is made for the purpose of
Attorney review and analysis of my administrative file for pending litigation

7. I understand that I may revoke this consent in writing at any time except to the extent that disclosure has already been made based on that consent. In any event this consent ceases to be effective (Initial applicable):

(a) For Community Programming: Upon my release from supervision

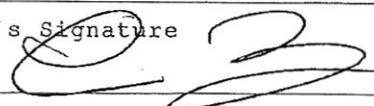
(Initials)

(b) Other Objective: (3 months from signature date)
Three (3) months from signature date



(Initials)

8. Inmate's Signature



Date

6-18-20