

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

TREVA THOMPSON, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 2:16-cv-783-ECM-SMD
)	
JOHN H. MERRILL, <i>et al.</i> ,)	
)	
Defendants)	

ORDER

Before the Court is a Motion to Compel Production of Documents by Plaintiffs Treva Thompson, *et al.*, (“Plaintiffs”) (Doc. 154), along with Defendant Lyn Head’s¹ (“Head”) opposition thereto (Doc. 156), the plaintiffs’ reply brief (Doc. 158), and Defendants’ sur-reply. (Doc. 160)². When this action was proceeding as a putative class action, plaintiffs promulgated sweeping discovery seeking, *inter alia*, information from the pardon files of all Certificate of Eligibility to Register to Vote (CERV) applicants in the State of Alabama. (Doc. 156-1) Requests 16-24. Information from the pardon files of approximately 23,000 convicted felons are covered by these broad requests. (Doc. 156) at 23. Plaintiffs argue that “[a]ll of these documents are important to Plaintiffs’ claim that the CERV process is unlawful because it limits access to voting rights restoration to those

¹ Lyn Head, no longer serving as the Chair of the Alabama Board of Pardons and Paroles, is no longer a party to this litigation, and has been substituted by her successor. (Doc. 172). Leigh Gwathney now serves as the Chair, but for simplicity and consistency with the instant filings, the undersigned will continue to refer to Lyn Head as applicable. *See also* (Doc. 156) at 2, n. 1.

² The undersigned overrules Defendant’s objections to Plaintiffs’ unauthorized reply and considers both the reply (Doc. 158) and the proffered sur-reply. (Doc. 160).

who can afford to pay their LFO's in their entirety.” (Doc. 154) at 2. The Court has now denied plaintiffs motion for class certification. (Doc. 194). Accordingly, for the reasons explained below, plaintiffs’ discovery requests are not proportional to the needs of the case, and their motion to compel (Doc. 154) is **DENIED**.

I. BACKGROUND

Plaintiffs challenge Alabama’s constitutional and statutory scheme for the disenfranchisement and re-enfranchisement of individuals convicted of crimes of moral turpitude. (Docs. 1, 93). In Count 13, plaintiffs bring a § 1983 claim alleging disenfranchisement for failure to pay Legal Financial Obligations (LFOs) in violation of the Fourteenth Amendment. (Doc. 1 at 53-54). Named plaintiffs Darius Gamble (“Gamble”) and Treva Thompson (“Thompson”) sought to represent an LFO subclass consisting of “[a]ll persons otherwise eligible to register to vote in Alabama who . . . are unable to pay their fines, fees, and/or restitution due to their socioeconomic status but are otherwise eligible to apply for a CERV.” (Doc. 106) at 7-8. By Order dated January 24, 2020 (Doc. 194), the Court denied plaintiffs’ motion for class certification. (Doc. 194).

Plaintiffs’ motion to compel concerns thousands of documents from the Board of Pardons and Paroles (Pardons and Paroles) that relate to the CERV process, the remission of fines and fees process, and the impact of LFOs on the pardon process. (Doc. 154) at 1, 3. These documents are responsive to plaintiffs’ First Request for Production Nos. 16-24. (Doc. 156-1) at 19-23. In these requests, plaintiffs seek documents concerning, *inter alia*, every CERV applicants in the State of Alabama and every pardon applicant with outstanding LFOs. *Id.* at Nos. 16, 17. Plaintiffs argue that these documents could show

“the impact that outstanding LFOs may have on pardon applications, CERV applications, and any remission of fines.” (Doc. 154) at 2. Pardons and Paroles withheld these documents on the basis of the state pardon file privilege under Ala. Code § 15-22-36(b). (Doc. 154) at 3.

II. LEGAL STANDARD

Motions to compel under Rule 37(a) are committed to the sound discretion of the trial court. *Commercial Union Ins. Co. v. Westrope*, 730 F.2d 729, 731 (11th Cir. 1984). Rule 26(b)(1) provides that “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 discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1). The moving party bears the initial burden of proving that the information sought is relevant. *Schwanke v. JB Medical Mgt. Solutions, Inc.*, 2017 WL 3034039, at *2 (M.D. Fla. 2017) (unpublished) (internal quotes and citations omitted).

III. DISCUSSION

Pardons and Paroles withheld thousands of responsive documents on the basis of the state’s statutory pardon file privilege. The Alabama Code provides that “[e]ach member of the Board of Pardons and Paroles favoring a pardon, parole, remission of a fine or forfeiture, or restoration of civil and political rights shall enter in the file his or her reasons in detail, which entry and the order shall be public records, but *all other portions*

of the file shall be privileged.” Ala. Code § 15-22-36(b) (1975) (emphasis added). Federal Rule of Evidence 501 governs claims of privilege in federal proceedings. It provides that state-law privileges only apply in civil cases where state law supplies the rule of decision. FRE 501. In all other cases, the federal “common law—as interpreted by United States courts in the light of reason and experience—governs a claim of privilege[.]” *Id.* There are no state-law claims in this case, and the privilege created in Ala. Code § 15-22-36(b) does not apply.

However, plaintiffs’ motion to compel fails for a more fundamental reason. Following denial of class certification, there are now only two named plaintiffs, Gamble and Thompson, pursuing Count 13. (Doc. 194 at 2). Plaintiffs’ requests for production numbers 16-24 that seek information from the pardon files of every CERV applicant in the State of Alabama are now grossly disproportional to the needs of the case. Fed. R. Civ. P. 26(b)(1). Gamble and Thompson have not established how information in non-parties’ parole files is relevant to their individual claims. Plaintiffs’ sweeping discovery requests that were clearly aimed at supporting the LFO subclasses’ claim now impose a burden and expense on Pardons and Paroles that completely outweighs any conceivable benefit to Gamble and Thompson. In addition, the Eleventh Circuit has considered the fact that parole files are privileged under state law as a proper factor to consider when analyzing the burden of the proposed discovery on respondent under Rule 26. *McGoy v. Ray*, 164 F. App’x 876, 878 (11th Cir. 2006) (unpublished) (explaining that “the district court balanced [plaintiff’s] need for discovery against the burden such discovery would place on the

Board. Here, the burden was quite great since parole records in Georgia are confidential state secrets”).

Gamble and Thompson can propound narrowly-tailored discovery requests aimed at information in their own parole files that is relevant to their claims. However, the Court will not order Pardons and Paroles to produce anything from their files in response to the current overbroad requests.

IV. CONCLUSION

ACCORDINGLY, for the above-stated reasons, plaintiffs’ Motion to Compel Production of Documents (Doc. 154) is hereby **DENIED** in its entirety.

DONE this 24th day of March, 2020.

/s/ Stephen M. Doyle
STEPHEN M. DOYLE
UNITED STATES MAGISTRATE JUDGE