

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT**

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JANET JENKINS, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	Docket No. 2:12-cv-00184
v.	)	
	)	
KENNETH L. MILLER, ET AL.,	)	
	)	
Defendants.	)	
_____	)	

**DEFENDANTS LIBERTY COUNSEL AND RENA M. LINDEVALDSEN’S  
MOTION FOR PROTECTIVE ORDER AND STAY OF  
PROCEEDINGS PENDING EXHAUSTION OF DEFENDANTS’ APPEAL**

Pursuant to Fed. R. Civ. P. 26 and L.R. 26(c), Defendants, Liberty Counsel, Inc. (“Liberty Counsel”) and Rena M. Lindevaldsen (“Lindevaldsen”) (collectively “Defendants”), by and through counsel, hereby move this Court for a protective order and for an order staying the proceedings against Defendants in this Court pending the United States Court of Appeals for the Second Circuit’s consideration of their Petition for Rehearing En Banc concerning their Writ of Mandamus, filed on July 23, 2018, and if necessary, exhaustion of other appellate remedies including any Petition for Writ of Certiorari to the Supreme Court.

Although this Court has already shown disinclination to further stay these proceedings, albeit in a different context, Defendants are required to seek a stay in this Court first, prior to requesting any stay from the Second Circuit. Fed. R. App. P. 8(a)(1)(A), 8(a)(2)(A). Moreover, Plaintiff **has now served invasive discovery requests**, and is attempting to force Defendants – an attorney and a law firm – to produce documents relating to their privileged and sensitive communications with their client, documents concerning their understanding of facts, ideas, and

other work-product inquiries, and a vast array of other highly intrusive and burdensome inquiries. Such discovery requests are inflicting the very harm Defendants are seeking to avoid, and violating the very fundamental due process right Defendants are seeking to protect through their mandamus petition – being forced to litigate in a distant forum without constitutionally sufficient contacts, on claims that are time barred.

Because this Court has already acknowledged that at least some of the issues for which Defendants seek review “may be subject to reasonable debate” (dkt. 302 at 6), a stay is also appropriate and should be issued.

In compliance with this Court’s Local Rule 26(c)(2), counsel for Defendants has conferred with counsel for Plaintiff regarding the invasive discovery requests from which Defendants seek a protective order. Counsel were unable to resolve the underlying issues concerning the instant motion. (*See* Exhibit A, Affidavit of Daniel J. Schmid).

## **MEMORANDUM OF LAW IN SUPPORT**

### **INTRODUCTION**

#### **A. Jenkins’ Invasive Discovery Requests.**

The principal thrust of Plaintiff’s discovery request to Defendants concerns their legal representation of Defendant Lisa Miller in the family law matter in Vermont state court, including *inter alia* “[a]ll documents and communications concerning Plaintiff Janet Jenkins,” “[a]ll documents concerning Plaintiff Isabella Miller-Jenkins,” “[a]ll documents concerning Defendant Lisa Miller,” and “[a]ll communications with Defendant Lisa Miller.” (*See* Exhibit B, Plaintiffs’ Request to Produce Documents to Defendant Lindevalsen, at 8 ¶¶ 3-8; Exhibit C, Plaintiffs’ Request to Produce Documents to Defendant Liberty Counsel, at 8 ¶¶ 3-8). In addition to those invasive requests into privileged information, Jenkins’ two sets of discovery requests span over

28-pages with 138 inquiries into Lindevaldsen and Liberty Counsel's alleged involvement in Jenkins' "conspiracy." Forcing Defendants to submit to any discovery while they pursue mandamus relief at the Second Circuit and all appellate remedies risks violating both the attorney-client and work-product privileges and Defendants' due process rights. A protective order should issue while their constitutional defenses are heard by the Second Circuit.

**B. Defendants' Petition for Rehearing En Banc and Petition for Mandamus.**

On March 29, 2018, Defendants filed a Petition for Writ of Mandamus with the Second Circuit Court of Appeals, requesting extraordinary review of this Court's Order (dkt. 277) denying Defendants' motion to dismiss. A copy of the mandamus petition was served on Plaintiff and this Court via overnight mail. In a one-paragraph order not addressing the merits, the Second Circuit panel reviewing Defendants' Petition denied it asserting that an appeal after final judgment would be an adequate remedy thereby obviating mandamus review. The panel's conclusion is in direct conflict with related Second Circuit precedent and the long-standing tradition of permitting mandamus petitions to confine the lower courts to the lawful exercise of their prescribed jurisdiction, and to prevent irreparable injury that arises from privileged communications being subject to disclosure in discovery. Defendants have now sought a Petition for Rehearing En Banc, filed on July 23, 2018.

Defendants now seek a stay of these proceedings from this Court pursuant to Fed. R. App. P. 8(a)(1)(A), as a prerequisite to seeking such relief from the Second Circuit. *Id.*

As the Second Circuit has recognized, "[a] request for a stay is an appeal to equity." *Ofusu v. McElroy*, 98 F.3d 694, 699 (2d Cir. 1996). Here, all equities necessitate a finding that these proceedings should be stayed against Defendants pending resolution of their mandamus pursuit and exhaustion of appellate remedies.

First, Defendants present constitutionally significant threshold questions involving whether this court's exercise of personal jurisdiction over them is patently erroneous and a usurpation of power. Absent a stay, Defendants will be forced to litigate in a forum in which they have no constitutionally requisite contacts and thus be forced to surrender their cherished constitutional right to due process – **the very right not to be subjected to litigation which they are seeking to protect in the mandamus petition.** Imposing such a surrender of rights indisputably imposes immediate and irreparable injury on Defendants.

Second, the status quo – a significant consideration in requests for a stay – is preserved by staying the proceedings against Defendants.

Third, no harm will result to Plaintiff should this Court stay the proceedings against Defendants. Plaintiff strategically and voluntarily chose not to sue these Defendants until **four years** after she initially filed this action. An additional brief delay while Defendants seek expedited, emergency and extraordinary relief will not harm Plaintiff.

Finally, Defendants can demonstrate a significant likelihood of success on the merits of their mandamus petition, and they at least present serious questions “subject to reasonable debate” (dkt. 302 at 6) concerning constitutionally significant matters, namely whether due process would be violated by haling them into court in a forum in which they lack constitutionally requisite minimum contacts. All equities thus tip decidedly in Defendants' favor, and a stay is necessary to prevent serious and irreparable harm to Defendants' fundamental liberties.

## LEGAL ARGUMENT

### **I. GOOD CAUSE EXISTS FOR A PROTECTIVE ORDER BECAUSE FORCING DEFENDANTS TO PARTICIPATE IN DISCOVERY IN VERMONT WHILE APPELLATE ISSUES “SUBJECT TO REASONABLE DEBATE” ARE PENDING RISKS IRREPARABLE HARM, UNDUE BURDEN, AND HARRASSMENT OF DEFENDANTS.**

Rule 26 provides that “[a] party or any person from whom discovery is sought may move for a protective order in the court where the action is pending.” Fed. R. Civ. P. 26(c)(1). It also provides that “[t]he court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden and expense.” *Id.* Here, Plaintiff served Defendants with very broad, lengthy, and invasive discovery requests while Defendants seek mandamus relief from the Second Circuit on the threshold jurisdictional issues present in this instant litigation. Defendants’ satisfy the requirements of good cause because a protective order is necessary to prevent irreparable harm to their constitutional rights.

Here, Defendants are currently seeking en banc review and a writ of mandamus, which the Second Circuit has recognized is appropriate when necessary to “prevent an otherwise irreparable harm.” *Linde v. Arab Bank, PLC*, 706 F.3d 92, 107 (2d Cir. 2013). Post-judgment appeals are particularly unsuited to preventing irreparable harm, where, as here, fundamental constitutional protections would be forever lost absent mandamus relief. Indeed, “timing matters: ‘Once the cat is out of the bag,’ the right against disclosure cannot later be vindicated.” *In re Roman Catholic Diocese of Albany, N.Y., Inc.*, 745 F.3d 30, 36 (2d Cir. 2014) (quoting *S.E.C. v. Rajaratnam*, 622 F.3d 159, 170 (2d Cir. 2010)).

Defendants’ due process rights not to be subjected to litigation and invasive discovery in Vermont, which are currently the subject of a pending petition at the Second Circuit, cannot later be vindicated. It is axiomatic that Defendants cannot be forced to litigate in a forum in which they

lack constitutionally requisite contacts. *Fox v. Boucher*, 794 F.2d 34, 37 (2d Cir. 1986). Forcing Defendants to litigate and submit to discovery in this forum in which the constitutional threshold for personal jurisdiction is, as this Court noted “subject to reasonable debate” (dkt. 302 at 6), risks running roughshod over the fundamental rights of Defendants. Forcing participation in discovery while a merited petition is pending in higher appellate courts violates the basic principle of due process, and it cannot be remedied through a regular appeal. Indeed, an appeal after final judgment from a process in which **the right not to be subjected to litigation has already been infringed** cannot undue the harm suffered by Defendants.

Absent a protective order pending resolution of Defendants’ pursuit of appellate remedies, Defendants’ due process rights not to be subjected to litigation in Vermont will have been thrust out of the bag, never to be recaptured. Such a loss of constitutional rights “for even minimal periods of time, unquestionably constitute irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Moreover, where litigation and discovery would unquestionably involve matters of sensitive attorney-client and work product privileges, “a remedy after final judgment cannot unsay the confidential information that has been revealed.” *In re City of New York*, 607 F.3d 923, 934 (2d Cir. 2010). This is why the Second Circuit has often deployed the precise mandamus power Defendants are currently seeking where it is necessary to prevent the disclosure of confidential or privileged information. *Catholic Diocese*, 745 F.3d at 36; *In re City of New York*, 607 F.3d 923, 934 (2d Cir. 2010); *Rajaratnam*, 622 F.3d at 170; *In re Long Island Lighting Co.*, 129 F.3d 268 (2d Cir. 1997); *In re von Bulow*, 828 F.2d 94 (2d Cir. 1987).

Jenkins has sued Liberty Counsel, a law firm, and Lindevaldsen, an attorney, based on allegations concerning their representation of a client. Any discovery propounded in such an action will undoubtedly reveal information unquestionably protected by attorney-client and work product

privileges. Indeed, as just a glance at Jenkins' propounded discovery reveals, she seeks very broad and invasive discovery into Defendants' legal representation of Defendant Lisa Miller in the family law matter in Vermont state court, including *inter alia* "[a]ll documents and communications concerning Plaintiff Janet Jenkins," "[a]ll documents concerning Plaintiff Isabella Miller-Jenkins," "[a]ll documents concerning Defendant Lisa Miller," and "[a]ll communications with Defendant Lisa Miller." (See Ex. B, at 8 ¶¶ 3-8; Ex. C, at 8 ¶¶3-8). In addition to those invasive requests into privileged information, Jenkins' two sets of discovery requests span over 28-pages with 138 inquiries into Lindevaldsen and Liberty Counsel's alleged involvement in Jenkins' "conspiracy." Forcing Defendants to comply with Jenkins' discovery demands while threshold jurisdictional issues subject to reasonable dispute are pending before higher appellate courts works an irreparable injury on Defendants' constitutional rights.

Jenkins contends that discovery against Lindevaldsen and Liberty Counsel should proceed in Vermont, as if they are proper parties, because they would have to submit to discovery in any event, even as non-parties. This is not the law, and the argument fails. Non-party discovery is governed by an entirely different standard under Fed. R. Civ. P. 45, and non-parties cannot be subjected to the same or even similar discovery burdens as parties. *See, e.g., Cohen v. City of New York*, 255 F.R.D. 110, 255 (S.D.N.Y. 2008) (when assessing a Rule 45 subpoena, "special weight should be given to the burden on non-parties of producing documents to parties involved in the litigation"); *Travelers Indem. Co. v. Metro Life Ins. Co.*, 228 F.R.D. 111 (D. Conn. 2005) ("concern for the unwanted burden thrust upon non-parties is a factor entitled to special weight") (quoting *Cusumano v. Microsoft Corp.*, 162 F.3d 708, 717 (1st Cir. 1998)). More importantly, discovery disputes – which are guaranteed to arise, since Jenkins expressly seeks privileged communications – would be decided in jurisdictions where Lindevaldsen and Liberty Counsel are

subject to jurisdiction, **not** in Vermont. Treating Lindevaldsen and Liberty Counsel as parties, subjecting them to party discovery burdens in Vermont, and requiring them to litigate the inevitable privilege and other discovery disputes in a forum where they lack minimum contacts (Vermont), works the exact same due process violations upon them that they are asking the Second Circuit to forestall. Jenkins' contention that Defendants would have to encounter the same burdens, hardships and due process violations as "non-parties" is factually wrong and legally irrelevant.

Therefore, good cause exists to enter a protective order as to Jenkins' pending discovery requests to Lindevaldsen and Liberty Counsel, until these Defendants pursue and exhaust their mandamus remedy.

## **II. DEFENDANTS SATISFY THE REQUIREMENTS FOR A STAY PENDING APPEAL.**

To warrant the issuance of a stay pending appeal, Defendants must demonstrate the four "well known" factors: (1) that Defendants are likely to succeed on the merits, (2) that Defendants will suffer irreparable injury absent issuance of a stay, (3) that the balance of the equities favors a stay, and (4) that the public interest is served by issuance of a stay. *In re World Trade Ctr. Disaster Site Litig.*, 503 F.3d 167, 170 (2d Cir. 2007). The Supreme Court has instructed that these "traditional stay factors contemplate individualized judgments in each case [and] the formula cannot be reduced to a set of rigid rules." *Hilton v. Braunskill*, 481 U.S. 770, 777 (1987). The Second Circuit treats the factors as a "sliding scale," *Thapa v. Gonzales*, 460 F.3d 323, 334 (2d Cir. 2006), meaning that "the degree to which each factor must be present varies with the strength of the other factors." *World Trade Ctr.*, 503 F.2d at 170; *see also Mohammed v. Reno*, 309 F.3d 95, 101 (2d Cir. 2002) ("The necessary level or degree of possibility of success will vary according to the court's assessment of the other stay factors."). "Simply stated, more of one excuses less of

another.” *Thapa*, 460 F.3d at 134. Defendants easily satisfy these requirements, and a stay pending appeal is warranted.

**A. Defendants Will Suffer Irreparable Injury Absent The Issuance Of A Stay.**

In the context of a stay pending appeal, the deprivation of significant rights constitutes irreparable harm and warrants a stay. *S.E.C. v. Daspin*, 557 F. App’x 46, 48 (2d Cir. 2014) (holding that a stay is warranted if “denying a stay would deprive [petitioner] of significant rights”). If denying a stay would require Defendants to suffer the loss of significant constitutional defenses and lose the right to not to be subject to litigation in a forum lacking personal jurisdiction, irreparable injury is unquestionably present. *In re World Trade Ctr. Disaster Site Litig.*, 503 F.3d 167, 170 (2d Cir. 2007). The Second Circuit has often recognized that a party suffers irreparable injury where, absent the issuance of a stay, “there is a substantial chance that upon final resolution of the action the parties cannot be returned to the positions they previously occupied.” *Brenntag Int’l Chem., Inc. v. Bank of India*, 175 F.3d 245, 249-50 (2d Cir. 1999); *Daspin*, 557 F. App’x at 48.

Forcing Defendants to submit to discovery and further litigation in the absence of personal jurisdiction would work irreparable injury on them. Obtaining vindication in a direct appeal will be meaningless to Defendants, since they will have already been forced to incur the harm of litigating in a jurisdiction-less forum. It is axiomatic that a defendant should not and cannot be forced to litigate in a forum in which he lacks sufficient minimum contacts. *See, e.g., Fox v. Boucher*, 794 F.2d 34, 37 (2d Cir. 1986). Indeed, it is black letter law that “[t]he Due Process Clause protects an individual’s liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful contacts, ties, or relations.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471-72 (1985). Forcing a defendant to submit to discovery in a forum

where personal jurisdiction is constitutionally suspect (and, as here, utterly lacking) and the subject of merited dispute would violate this basic principle of due process.

Given that Defendants would suffer the loss of the fundamental constitutional right to due process, irreparable injury will unquestionably be suffered absent a stay. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) (the loss of constitutional rights “for even minimal periods of time, unquestionably constitutes irreparable injury”). Indeed, “violations of constitutional rights are **presumed** irreparable injury.” *Connecticut Dep’t of Env’tl Protection v. O.S.H.A.*, 356 F.3d 226, 231 (2d Cir. 2004) (emphasis added) (citing *Elrod v. Burns*, 427 U.S. 347, 373 (1976)); *see also ALCU v. Clapper*, 804 F.3d 617, 622 (2d Cir. 2015) (holding that “irreparable harm is presumed where there is an alleged deprivation of constitutional rights”); *Jones v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996) (“there is a presumption of irreparable injury that flows from a violation of constitutional rights”). Submitting to litigation in a distant forum imposes irreparable injury when one should be absolved of that burden by constitutional protections. *In re World Trade Ctr.*, 503 F.3d at 170. A stay pending appeal is appropriate here.

**B. Defendants Are Likely To Succeed On The Merits Of Their Mandamus Pursuit, And Have At Least Demonstrated A Serious Case On The Merits Involving Legal Questions “Subject To Reasonable Debate.”**

A stay is appropriate where, as here, Defendants can demonstrate a likelihood of success on appeal, or “failing that, [they] can nonetheless demonstrate a substantial case on the merits.” *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987). Defendants satisfy both criteria.

To determine whether Defendants can demonstrate a likelihood of success on the merits, the Second Circuit looks to “whether the district court applied the proper legal principles and acted within the bounds of its discretion.” *United States v. Eastern Air Lines, Inc.*, 923 F.2d 241, 244 (2d Cir. 1991). Demonstrating a likelihood of success is not a difficult burden because, as the

Second Circuit has held, if the district court's decision represents a "**debatable holding**," a petitioner demonstrates enough to warrant a stay. *Ofusu v. McElroy*, 98 F.3d 694, 701 (2d Cir. 1996) (emphasis added); *see also Providence Journal Co. v. FBI*, 595 F.2d 889, 890 (1st Cir. 1979) ("appellants need not show an absolute probability of success in order to be entitled to a stay," but merely need to show "that their appeals have **potential merit**." (emphasis added)); *Standard Havens Prod., Inc. v. Gencor Indus., Inc.*, 897 F.2d 511, 513 (Fed. Cir. 1990) (if petitioner can demonstrate irreparable harm, "a court will not require a strong showing that the applicant is likely to succeed on the merits"); *id.* at 515 (noting that a stay is appropriate even in cases where petitioner has established a "fair" or "better than negligible chance of succeeding on the merits").

Defendants understand that this Court is not likely to agree with them on the **merits** of their extraordinary appeal, given the Court's holdings to the contrary. But, as the authorities above demonstrate, it is not necessary for this Court to agree with Defendants on the merits in order to issue a stay – the only requirement is that this Court agree that Defendants' appeal raises "debatable" questions of "potential merit." This Court has already held that Defendants' appeal raises debatable questions and recognized that "**some of these issues may be subject to reasonable debate**." (Order Denying Motion for Interlocutory Appeal, dkt. 302, p. 6 (emphasis added)). Accordingly, Defendants have shown – and this Court has agreed – that the Court's decision for which Defendants are seeking review represents a "debatable holding," for which a stay is warranted. *Ofusu*, 98 F.3d at 701.

This Court has also acknowledged that if Defendants ultimately prevail on subject matter and personal jurisdiction, the litigation would terminate as to them. "**Defendants Liberty Counsel and Lindevaldsen are correct that a finding that the Court lacks subject matter jurisdiction or personal jurisdiction as to them would terminate their direct involvement in the**

**litigation . . . .**” (Dkt. 302, at 5 (emphasis added)). This is precisely why a stay is warranted as to Defendants. The likelihood of success on subject matter and personal jurisdiction is high and the implications are significant.

As to the merits themselves, in their Petition for Writ of Mandamus Defendants demonstrate that this Court’s Order is erroneous and amounts to a judicial usurpation of power on several fronts. First, Defendants show that this Court exceeded the lawful bounds of its prescribed jurisdiction and misapplied binding precedent from the Second Circuit and the Supreme Court, by subjecting Defendants to litigation in a forum where they have no constitutionally significant contacts. Defendants also demonstrate that this Court misapplied binding precedent from the Supreme Court and the Second Circuit on the timeliness of Plaintiff’s claims. Although this Court disagrees, Defendants respectfully believe that they are likely to succeed on the merits of their petition, and a stay is appropriate.

While Defendants’ initial petition was denied, the panel’s decision was based solely on the contention that a post-judgment appeal would be a sufficient remedy to obviate mandamus review. That contention, as Defendants point out in their petition for rehearing en banc, is directly contrary to a multitude of Second Circuit precedent, and Defendants are likely to prevail on the ultimate merits of their mandamus petition.

At the end of the day, however, Defendants reiterate that agreement on the merits is not at all required at this point, for the limited purpose of obtaining a stay. Defendants have at least shown that their Petition for Writ of Mandamus presents a serious case on the merits, and this, too, is sufficient to warrant a stay of the proceedings in the district court. *See, e.g., Hilton*, 481 U.S. at 778; *LaRouche v. Kezer*, 20 F.3d 68, 72-73 (2d Cir. 1994) (“movant need only present a substantial case on the merits when a serious legal question is involved”); *Natural Res. Defense Council, Inc.*

*v. FDA*, 884 F. Supp. 2d 108 (S.D.N.Y. 2012) (“if a serious legal question is involved, a stay may issue when the movant presents a substantial case on the merits”); *Church & Dwight Co., Inc. v. SPD Swiss Precision Diagnostics, GmbH*, No. 14-CV-585 (AJN), 2015 WL 5051769, \*3 (S.D.N.Y. Aug. 25, 2015) (“if the applicant demonstrates that a serious legal question is involved in the appeal, a stay is appropriate where there is a substantial case on the merits”).

Here, there can be no dispute that Defendants have demonstrated that serious legal questions are involved.

### C. The Balance Of The Equities Tips Decidedly In Defendants’ Favor.

As both the Supreme Court and the Second Circuit have held, preservation of the status quo pending an appeal does not impose any harm on the party opposing the stay. *See, e.g., Commodity Futures Trading Comm’n v. British Am. Commodity Options Corp.*, 434 U.S. 1316, 1320 (1977) (if status quo is maintained during appeal, no harm results to party opposing the stay); *S.E.C. v. Citigroup Global Markets Inc.*, 673 F.3d 158, 168 (2d Cir. 2012) (where, as here, a “stay does nothing more than maintain the status quo existing prior to the district court’s order . . . we can see no appreciable harm to anyone from issuance of the stay”).

Here, the status quo is best preserved by staying the proceedings as to Defendants pending resolution of Defendants’ petitions at the Second Circuit. Plaintiff originally filed her complaint in 2012, seeking the same relief she seeks against Defendants now. But, Plaintiff chose not to name Defendants in her original complaint despite admittedly having actual knowledge of Defendants’ alleged involvement in the events she alleges. Defendants, however, have only recently been afforded the constitutionally required opportunity to be heard in their significant constitutional and statutory defenses. Having voluntarily waited **four years** after initiating this litigation to bring her claims against Defendants, Plaintiff will suffer no harm if the proceedings against Defendants are

stayed pending the outcome of their mandamus Petition. On the other hand, Defendants will suffer the immediate and irreparable injury attendant to being subjected to litigation in the absence of personal jurisdiction, including the loss of their cherished constitutional right to due process. *See supra* Section II.A. The status quo clearly favors Defendants here, and a stay is necessary to preserve it and to prevent the violation of Defendants' constitutional rights.

**D. The Public Interest Favors A Stay.**

In the context of a stay pending appeal, the Second Circuit has noted that the public interest is well served by vindicating constitutional defenses to which a party is entitled. *In re World Trade Ctr. Disaster Site Litig.*, 503 F.3d 167, 170 (2d Cir. 2007). Indeed, as the Second Circuit has unequivocally stated, the protection of constitutional rights is always in the public interest. *See, e.g., Lopez Torres v. N.Y. State Bd. of Elections.*, 462 F.3d 161, 208 (2d Cir. 2006), *rev'd on other grounds, N.Y. State Bd. of Elections v. Lopez Torres*, 552 U.S. 196 (2008) (continuation of "constitutionally infirmity" "cuts sharply against the public interest"); *id.* (the public interest clearly favors the protection of constitutional rights" (quoting *Council of Alternative Political Parties v. Hooks*, 121 F.3d 876, 884-84 (3d Cir. 1997)). This conclusion is also universally recognized among the circuits. *See, e.g., ACLU of Ill. v. Alvarez*, 679 F.3d 583, 590 (7th Cir. 3012) (protecting constitutional rights is "always in the public interest"); *Phelps-Roper v. Nixon*, 509 F.3d 480, 485 (8th Cir. 2007) (same); *KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1272 (11th Cir. 2006) ("it is always in the public interest to protect [constitutional] liberties"); *Newson v. Albermarle Cnty. Sch. Bd.*, 354 F.3d 249, 261 (4th Cir. 2003) ("Surely, upholding constitutional rights serves the public interest."); *Swartzwelder v. McNeilly*, 297 F.3d 228, 242 (3d Cir. 2002) ("the public interest is best served by eliminating [constitutional violations]"); *Sammartano v. First Judicial Dist. Ct.*, 202 F.3d 959, 975 (9th Cir. 2002) ("it is always in the public interest to protect

constitutional rights”); *Homans v. City of Albuquerque*, 264 F.3d 1240, 1244 (10th Cir. 2001) (“we believe that the public interest is better served by following binding Supreme Court precedent and protecting the core [constitutional rights]”); *G&V Loungs, Inc. v. Mich. Liquor Control Comm’n*, 23 F.3d 1071, 1079 (6th Cir. 1994) (“it is always in the public interest to prevent the violation of a party’s constitutional rights”); *Machesky v. Bizzell*, 414 F.2d 283, 288-90 (5th Cir. 1969) (constitutional rights are “rights of the general public for the benefits of all”).

Here, Defendants will suffer irreparable harm by sacrificing the cherished constitutional protections of due process, which is unquestionably “one of the most important personal rights guaranteed by the Constitution of the United States.” *United States v. Broncheau*, 759 F. Supp. 2d 694, 697 (E.D.N.C. 2010). Issuance of a stay pending appeal will provide adequate constitutional protections for Defendants’ due process rights and is therefore *ipso facto* in the public interest. A stay pending appeal is warranted and should be issued.

### **CONCLUSION**

For the foregoing reasons, this Court should issue a protective order and should stay the proceeding as to Liberty Counsel and Lindevaldsen pending resolution of these Defendants’ mandamus petition, including all higher appeals.

Dated: July 27, 2018

Respectfully submitted,

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*Attorneys for Defendants Liberty Counsel,  
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individual capacities)*

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### CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of July, 2018, I caused the foregoing to be electronically filed with this Court. Service will be effectuated on all counsel of record via this Court's ECF/electronic notification system.

/s/ Daniel J. Schmid  
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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT

_____	)	
JANET JENKINS, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	Docket No. 2:12-cv-00184
v.	)	
	)	
KENNETH L. MILLER, ET AL.,	)	
	)	
Defendants.	)	
_____	)	

**DECLARATION OF DANIEL J. SCHMID**

1. I, Daniel J. Schmid, am over the age of 18 years. The statements in this Declaration are true and correct, based upon my personal knowledge (unless otherwise indicated), and if called upon to testify to them, I would and could do so competently.

2. I submit this declaration pursuant to Local Rule 26(c)(2) and in support of the Motion for Protective Order and Stay of Proceedings filed by Defendants Liberty Counsel, Inc. (“Liberty Counsel”) and Rena M. Lindevaldsen, individually and as alleged agent of Liberty Counsel (“Lindevaldsen”) (collectively “Defendants”).

3. I hereby certify that Defendants have, in good faith, met and conferred with counsel for Plaintiff to resolve this dispute without court intervention.

4. Counsel met and conferred on July 25, 2018. Participating in the conference were Horatio G. Mihet and Daniel J. Schmid for Defendants, and Diego Soto, Beth Jacob, and Jessica Mathis for Plaintiff. The conference lasted approximately fifteen minutes.

5. All issues relating to Plaintiff’s discovery request to Defendants are still unresolved, and the parties are unable to reach agreement as to Defendants’ request for a stay of discovery and protective order pending the exhaustion of their merited appeal to the Second Circuit Court of Appeals.

6. The parties are unable to reach agreement concerning the protective order and stay because Plaintiff does not believe the local rules permit such a stay and that Defendants would be required to participate in discovery even if they were not parties. Defendants noted that the scope, location, burdens, and any discovery disputes would be handled by a different rule and in a different manner altogether if they were non-parties, and that submitting to discovery while threshold jurisdictional questions are still pending on appeal is inappropriate.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge.

Dated: July 27, 2018

/s/ Daniel J. Schmid

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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT**

JANET JENKINS, et al.,

Plaintiffs,

v.

KENNETH L. MILLER, et al.,

Defendants.

No. 2:12-cv-184-WKS

**PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION  
TO DEFENDANT RENA LINDEVALDSEN**

Plaintiffs Janet Jenkins and Isabella Miller-Jenkins, pursuant to Federal Rule of Civil Procedure 34, request that Defendant Rena Lindevaldsen produce the following documents and things for inspection and copying at the offices of the Southern Poverty Law Center, c/o Beth D. Jacob, 400 Washington Avenue, Montgomery, Alabama 36104, within thirty days of receipt.

**DEFINITIONS**

1. "Aid" means help or assistance in any form, including but not limited to gifts, loans, advice, recommendations, suggestions, ideas, introductions, favors, and provision of services.
2. "Communication" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise), including but not limited to telephone calls, voice recordings, emails, text messages, letters, postcards, notes, cards, instant messages, text chats, voice chats, tweets, notes, memoranda, speeches, lectures, seminars, conferences, and conversations.
3. "Complaint" means the Revised Second Amended Complaint and Demand for Trial by Jury, ECF 223, filed in this case on May 4, 2017.

4. “Concerning” means relating to, referring to, describing, evidencing, or constituting.

5. “Court Orders” means any order issued or expected to be issued by a state court of Vermont or Virginia concerning Plaintiff Isabella Miller-Jenkins, including but not limited to any order issued in the Vermont Proceedings, including but not limited to the Custody Transfer Order, or in the Virginia Proceedings.

6. “Custody Transfer Order” means the November 20, 2009 order by the Vermont Superior Court, Rutland County Division, in *Miller-Jenkins v. Miller-Jenkins*, No. 454-11-03 Rddm (Vt. Super. Ct. Rutland Fam. Div.), ordering, among other things, that Plaintiff Janet Jenkins have sole physical and legal custody of Plaintiff Isabella Miller-Jenkins and that transfer of Plaintiff Isabella Miller-Jenkins occur at the home of Plaintiff Janet Jenkins’s parents in Virginia on January 1, 2010, at 1:00 p.m.

7. “Dispute” means the disagreement between Plaintiff Janet Jenkins and Defendant Lisa Miller over parental rights concerning Plaintiff Isabella Miller-Jenkins, including but not limited to the Vermont Proceedings and the Virginia Proceedings.

8. “Document” is defined to be synonymous in meaning and equal in scope to the usage of the term “documents or electronically stored information” (ESI) in Federal Rule of Civil Procedure 34(a)(1)(A). A draft or nonidentical copy is a separate document within the meaning of this term.

9. “Identify,” when referring to a person, means to produce documents sufficient to show the person’s full name, present or last known address, present or last known phone number, present or last known email address, and when referring to a natural person, the present or last known place of employment.

10. “Identify,” when referring to documents, means to produce documents sufficient to show the type of document, general subject matter, date of the document, and authors, addressees, and recipients.

11. “Identify,” when referring to social media, means to produce documents sufficient to show the name of the social media platform; the Uniform Resource Locator for the platform; any names, handles, usernames, accounts, or profiles, including but not limited to any account or identification number; and the owner of the account.

12. “Isabella Miller-Jenkins” means Plaintiff Isabella Miller-Jenkins, regardless of the name used by her or to refer to her, including but not limited to the name “Lydia,” who was the minor child subject of the Custody Transfer Order.

13. “Lisa Miller” means Defendant Lisa Miller, regardless of the name used by her or to refer to her, including but not limited to the names “Lisa Miller-Jenkins” and “Sarah,” who was a party in the Vermont Proceedings and the Virginia Proceedings and who is a parent of Plaintiff Isabella Miller-Jenkins.

14. The terms “Plaintiff” and “Defendant,” as well as a party’s full or abbreviated name or a pronoun referring to a party, mean the party, regardless of the name used by the party or to refer to the party, and where applicable, the party’s successors and predecessors in interest, and the party’s current and former officers, directors, employees, partners, parents, subsidiaries, affiliates, agents, consultants, and others purporting to act on the party’s behalf. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

15. “Person” means any natural person or any legal entity, including but not limited to any governmental entity or association or any business entity or association, including but not limited to its successors and predecessors in interest, and its current and former officers,

directors, employees, partners, parents, subsidiaries, affiliates, agents, consultants, and others purporting to act on its behalf.

16. “Requests” means the Requests for Production set forth in this document.

17. “Vermont Proceedings” means any Vermont state court case concerning Plaintiff

Isabella Miller-Jenkins, including but not limited to:

- a. *Miller-Jenkins v. Miller-Jenkins*, No. 2007-271 (Vt.);
- b. *Miller-Jenkins v. Miller-Jenkins*, No. 2009-473 (Vt.);
- c. *Miller-Jenkins v. Miller-Jenkins*, No. 454-11-03 Rddm (Vt. Super. Ct. Rutland Fam. Div.); and
- d. *Miller-Jenkins v. Miller-Jenkins*, Nos. 2004-443, 2005-030 (Vt.).

18. “Virginia Proceedings” means any Virginia state court case concerning Plaintiff

Isabella Miller-Jenkins, including but not limited to:

- a. *Jenkins v. Miller*, No. CL09000723-00 (Va. Cir. Ct. Frederick Cty.);
- b. *Miller v. Jenkins*, No. JJ019920-01-00 (Va. Juv. & Dom. Rel. Dt. Ct. Bedford Cty.);
- c. *Miller-Jenkins v. Miller-Jenkins*, No. 070933 (Va. Ct. App.);
- d. *Miller v. Jenkins*, No. 0705-09-4 (Va. Ct. App.);
- e. *Miller-Jenkins v. Miller-Jenkins*, No. CH04-280 (Va. Cir. Ct. Frederick Cty.);
- f. *Miller-Jenkins v. Miller-Jenkins*, No. CH05-000336-00 (Va. Cir. Ct. Frederick Cty.); and
- g. *Miller-Jenkins v. Miller-Jenkins*, No. JJ018902-01-00 (Va. Juv. & Dom. Rel. Dt. Ct. Frederick Cty.).

19. “You” and “Your” refer to the party to whom this set of requests is directed, regardless of the name used by the party or to refer to the party, and where applicable, the party’s successors and predecessors in interest, and the party’s current and former officers, directors, employees, partners, parents, subsidiaries, affiliates, agents, consultants, and others purporting to act on the party’s behalf. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

20. The singular form of a noun or pronoun includes the plural form of the noun or pronoun, and vice versa. The gendered form of a noun or pronoun includes all gendered and nongendered forms of the noun or pronoun.

21. The past tense includes the present tense and vice versa, except where the clear meaning would be distorted.

22. The term “or” means “and” and vice versa to bring within the scope of these Requests all documents or ESI that would be excluded absent this definition.

#### **INSTRUCTIONS**

1. Provide all information and documents in Your possession, custody, or control in response to each Request.

2. For each Request that seeks production of documents, produce each such document in its entirety and all drafts and non-identical copies of each document.

3. If You are able or willing to provide only part of the information and documents sought by a Request, provide that partial information and documentation and specify in writing the reason for Your inability or unwillingness to provide the remainder.

4. When responding to these Requests, state in writing as to each Request either that:
- a. there are such documents and they will be produced;
  - b. there are such documents and that they already have been produced;

- c. there are such documents, but You refuse to produce them because of a claim of privilege or for some other identified reason; or
- d. the documents requested do not exist.

5. For every objection to a Request, specify in writing the grounds for objecting to the Request, including the reasons, whether any responsive materials are being withheld on the basis of that objection, and the parts of the documents being withheld on the basis of that objection. Produce the parts of the document not being withheld on the basis of an objection.

6. For every document or part of a document withheld from production because of an assertion of privilege, identify the nature of the claimed privilege (including work product) and, if the privilege is governed by state law, identify the state's privilege rule being invoked.

7. If any document sought by these Requests has been destroyed or no longer exists, state as to each such document its date, authors, recipients, contents, and the date and circumstances of its destruction or ceasing to exist.

8. If any answer to these Requests is made upon information and belief, so state and set forth and identify the sources of such information and belief. If You lack the knowledge necessary to answer any of these Requests, so state.

9. For every document or part of document withheld from production, provide the following information with respect to each such document, in a single privilege log in a Microsoft Excel Worksheet (.xlsx) file with clearly marked rows for each document and ESI withheld and clearly marked columns for each descriptor used:

- a. First Bates number;
- b. Last Bates number;
- c. Type of document (for example, memorandum, email, letter);

- d. Subject matter;
- e. Date;
- f. Title;
- g. Authors;
- h. Recipients;
- i. Relationship of authors and recipients to each other;
- j. Person asserting the privilege; and
- k. Nature of the claimed privilege (including work product) and, if the privilege is governed by state law, the state's privilege rule being invoked.

10. If You cannot fully and completely answer any of these Requests, separately respond to each such Request to the extent possible, stating with specificity the reasons for Your inability to answer the remainder, the substance of Your knowledge, information, and belief concerning the subject matter of the unanswered portion, and the steps taken to locate any responsive documents.

11. Furnish all responsive documents available to You or in your custody or control.

12. Unless otherwise stated in a Request, the applicable timeframe begins on December 18, 2000.

13. These Requests are continuing. If, after responding to these Requests, You obtain or become aware of any additional facts, information, or documents responsive to these Requests, supplement or correct Your response as required by the Federal Rules of Civil Procedure and Local Rules.

14. Plaintiffs reserve the right to serve additional Requests.

### REQUESTS FOR PRODUCTION

1. All documents disclosed or identified in Your initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1)(A)(ii).
2. All documents that support Your defenses to the claims alleged in the Complaint.
3. All documents that contradict Your defenses to or that support the claims alleged in the Complaint.
4. All documents and communications concerning Plaintiff Janet Jenkins.
5. All documents and communications concerning Plaintiff Isabella Miller-Jenkins.
6. All documents and communications concerning Defendant Lisa Miller.
7. All communications with Plaintiff Isabella Miller-Jenkins.
8. All communications with Defendant Lisa Miller.
9. Documents sufficient to identify and disclose all telephone numbers; email addresses; international calling services, including but not limited to PennyTalk and VIVOphone; electronic means of communication; communications applications accounts, including but not limited to WhatsApp, Viber, and Signal; and social media accounts or applications, including but not limited to Facebook, Twitter, Snapchat, and Instagram, used by Defendant Lisa Miller from 2002 to date.
10. Documents sufficient to identify and disclose all telephone numbers; email addresses; international calling services, including but not limited to PennyTalk and VIVOphone; electronic means of communication; communications applications accounts, including but not limited to WhatsApp, Viber, and Signal; and social media accounts or applications, including but not limited to Facebook, Twitter, Snapchat, and Instagram, used by or on behalf of Plaintiff Isabella Miller-Jenkins from 2002 to date.

11. All communications with [zeusdesfor@aol.com](mailto:zeusdesfor@aol.com) concerning the Dispute; Defendant Lisa Miller's whereabouts from September 20, 2009, to date; Plaintiff Isabella Miller-Jenkins's whereabouts from September 20, 2009, to date; the Beachy Amish Mennonites; or Nicaragua.

12. All communications with [godlofchild@live.com](mailto:godlofchild@live.com) concerning the Dispute; Defendant Lisa Miller's whereabouts from September 20, 2009, to date; Plaintiff Isabella Miller-Jenkins's whereabouts from September 20, 2009, to date; the Beachy Amish Mennonites; or Nicaragua.

13. All communications with the Skype account with the username `childofjesus1` concerning the Dispute; Defendant Lisa Miller's whereabouts from September 20, 2009, to date; Plaintiff Isabella Miller-Jenkins's whereabouts from September 20, 2009, to date; the Beachy Amish Mennonites; or Nicaragua.

14. All communications with the Facebook account with identification number 1539940246 concerning the Dispute; Defendant Lisa Miller's whereabouts from September 20, 2009, to date; Plaintiff Isabella Miller-Jenkins's whereabouts from September 20, 2009, to date; the Beachy Amish Mennonites; or Nicaragua.

15. All documents and communications concerning names, aliases, or identities used by Defendant Lisa Miller.

16. All documents and communications concerning names, aliases, or identities used by Plaintiff Isabella Miller-Jenkins.

17. All documents and communications concerning the Dispute.

18. All documents and communications concerning the Court Orders.

19. All communications on November 20, 2009.

20. All documents and communications concerning the Protect Isabella Coalition.
21. All documents and communications concerning the website [www.protectisabella.com](http://www.protectisabella.com).
22. All documents and communications concerning the Only One Mommy Facebook group, identification number 81022155363.
23. All documents and communications concerning <http://imgodschild.wordpress.com>.
24. All documents and communications concerning [http://works.bepress.com/rena\\_lindevaldsen/](http://works.bepress.com/rena_lindevaldsen/) concerning the Dispute; Defendant Lisa Miller's whereabouts from September 20, 2009, to date; Plaintiff Isabella Miller-Jenkins's whereabouts from September 20, 2009, to date; the Beachy Amish Mennonites; or Nicaragua.
25. All documents and communications concerning <http://www.debbiethurman.com/> concerning the Dispute; Defendant Lisa Miller's whereabouts from September 20, 2009, to date; Plaintiff Isabella Miller-Jenkins's whereabouts from September 20, 2009, to date; the Beachy Amish Mennonites; or Nicaragua.
26. All documents concerning and communications concerning <http://www.theformers.wordpress.com/> concerning the Dispute; Defendant Lisa Miller's whereabouts from September 20, 2009, to date; Plaintiff Isabella Miller-Jenkins's whereabouts from September 20, 2009, to date; the Beachy Amish Mennonites; or Nicaragua.
27. All documents and communications concerning <https://lezgetreal.com/> concerning the Dispute; Defendant Lisa Miller's whereabouts from September 20, 2009, to date; Plaintiff Isabella Miller-Jenkins's whereabouts from September 20, 2009, to date; the Beachy Amish Mennonites; or Nicaragua, and any visits or posts by Defendant Lisa Miller.

28. All documents and communications concerning <https://www.lifesitenews.com/> concerning the Dispute; Defendant Lisa Miller's whereabouts from September 20, 2009, to date; Plaintiff Isabella Miller-Jenkins's whereabouts from September 20, 2009, to date; the Beachy Amish Mennonites; or Nicaragua.

29. All communications with Matthew Cullinan Hoffman concerning the Dispute; Defendant Lisa Miller's whereabouts from September 20, 2009, to date; Plaintiff Isabella Miller-Jenkins's whereabouts from September 20, 2009, to date; the Beachy Amish Mennonites; or Nicaragua.

30. Documents sufficient to show Defendant Lisa Miller's whereabouts from September 13, 2003, through September 19, 2009.

31. Documents sufficient to show Plaintiff Isabella Miller-Jenkins's whereabouts from April 16, 2002, through September 19, 2009.

32. All documents, regardless of when created or dated, concerning Defendant Lisa Miller's whereabouts from September 20, 2009, to date.

33. All documents, regardless of when created or dated, concerning Plaintiff Isabella Miller-Jenkins's whereabouts from September 20, 2009, to date.

34. All documents and communications concerning Your whereabouts on September 20, 2009, September 21, 2009, and September 22, 2009.

35. All communications on September 20, 2009, September 21, 2009, and September 22, 2009.

36. All documents and communications concerning events that happened, or were planned or expected to happen, on September 20, 2009, September 21, 2009, and September 22, 2009.

37. All documents and communications concerning Nicaragua.
38. All documents and communications concerning the Beachy Amish Mennonite Church in Nicaragua.
39. All communications with the Beachy Amish Mennonite Church in Nicaragua.
40. All documents and communications concerning any Aid directly or indirectly given to Defendant Lisa Miller concerning her compliance or noncompliance with the Court Orders.
41. All documents and communications concerning any Aid directly or indirectly given to Defendant Lisa Miller or Plaintiff Isabella Miller-Jenkins concerning their departure from 203B Greentree Drive, Forest, Virginia, in September 2009, travel to Canada, departure from the United States, travel to Nicaragua, living in Nicaragua, or remaining in Nicaragua.
42. All documents and communications concerning Defendant Lisa Miller's efforts to remain undetected by United States authorities, including but not limited to Aid directly or indirectly given to her to allow her to avoid such detection.
43. All documents and communications concerning [jesman21@gmail.com](mailto:jesman21@gmail.com).
44. All communications with [jesman21@gmail.com](mailto:jesman21@gmail.com).
45. All communications with Jessica Fehr.
46. All documents and communications concerning 203B Greentree Drive, Forest, Virginia, including but not limited to payment of rent and the removal and storage of personal property.
47. All communications on November 8, 2009, November 9, 2009, November 10, 2009, November 11, 2009, November 12, 2009, and November 13, 2009.

48. All documents and communications concerning events that happened, or were planned or expected to happen, on November 8, 2009, November 9, 2009, November 10, 2009, November 11, 2009, November 12, 2009, and November 13, 2009.

49. All communications with Anthony Phelps, the landlord of 203B Greentree Drive, Forest, Virginia.

50. Documents sufficient to Identify all telephone numbers, including but not limited to landlines and cellular lines or applications, used by You in 2009 to date.

51. Documents sufficient to Identify all email addresses used by You in 2009 to date.

52. Documents sufficient to Identify all international calling services and the accounts or numbers, including but not limited to PennyTalk and VIVOphone, used by You in 2009 to date.

53. Documents sufficient to Identify social media and electronic means of communication used by You in 2009 to date.

54. All communications with the Facebook account of Lisa Wall, identification number 1436421487, concerning the Dispute; Defendant Lisa Miller's whereabouts from September 20, 2009, to date; Plaintiff Isabella Miller-Jenkins's whereabouts from September 20, 2009, to date; the Beachy Amish Mennonites; or Nicaragua.

55. All communications with [wall4america@netzero.net](mailto:wall4america@netzero.net) concerning the Dispute; Defendant Lisa Miller's whereabouts from September 20, 2009, to date; Plaintiff Isabella Miller-Jenkins's whereabouts from September 20, 2009, to date; the Beachy Amish Mennonites; or Nicaragua.

56. All communications with the Facebook account of Beth Ehrhorn, identification number 1072853392, concerning the Dispute; Defendant Lisa Miller's whereabouts from

September 20, 2009, to date; Plaintiff Isabella Miller-Jenkins's whereabouts from September 20, 2009, to date; the Beachy Amish Mennonites; or Nicaragua.

57. All communications with [behrhorn@aol.com](mailto:behrhorn@aol.com) concerning the Dispute; Defendant Lisa Miller's whereabouts from September 20, 2009, to date; Plaintiff Isabella Miller-Jenkins's whereabouts from September 20, 2009, to date; the Beachy Amish Mennonites; or Nicaragua.

58. All communications with the Facebook account of Sarah Bloedorn, identification number 1371510997, concerning the Dispute; Defendant Lisa Miller's whereabouts from September 20, 2009, to date; Plaintiff Isabella Miller-Jenkins's whereabouts from September 20, 2009, to date; the Beachy Amish Mennonites; or Nicaragua.

59. All communications with [qtjars@gmail.com](mailto:qtjars@gmail.com) concerning the Dispute; Defendant Lisa Miller's whereabouts from September 20, 2009, to date; Plaintiff Isabella Miller-Jenkins's whereabouts from September 20, 2009, to date; the Beachy Amish Mennonites; or Nicaragua.

60. All communications with [timjomiller@gmail.com](mailto:timjomiller@gmail.com) concerning the Dispute; Defendant Lisa Miller's whereabouts from September 20, 2009, to date; Plaintiff Isabella Miller-Jenkins's whereabouts from September 20, 2009, to date; the Beachy Amish Mennonites; or Nicaragua.

61. All communications with [kingdomseeker1@gmail.com](mailto:kingdomseeker1@gmail.com) concerning the Dispute; Defendant Lisa Miller's whereabouts from September 20, 2009, to date; Plaintiff Isabella Miller-Jenkins's whereabouts from September 20, 2009, to date; the Beachy Amish Mennonites; or Nicaragua.

62. All communications with [millersofwaslala@gmail.com](mailto:millersofwaslala@gmail.com) concerning the Dispute; Defendant Lisa Miller's whereabouts from September 20, 2009, to date; Plaintiff Isabella Miller-

Jenkins's whereabouts from September 20, 2009, to date; the Beachy Amish Mennonites; or Nicaragua.

63. All communications with [philipz@responseunlimited.com](mailto:philipz@responseunlimited.com) concerning the Dispute; Defendant Lisa Miller's whereabouts from September 20, 2009, to date; Plaintiff Isabella Miller-Jenkins's whereabouts from September 20, 2009, to date; the Beachy Amish Mennonites; or Nicaragua.

64. All documents and communications concerning Your opinions or beliefs concerning same-sex marriage, same-sex civil unions, or same-sex relationships.

65. All documents and communications concerning Your opinions or beliefs concerning whether homosexual persons should have custody of or visitation with children.

66. All documents and communications concerning Your opinions or beliefs concerning the relative supremacy of secular law (including but not limited to court orders and court opinions) over religion, morality, ethics, or conscience.

67. All documents and communications concerning Your opinions or beliefs concerning the relative supremacy of religion, morality, ethics, or conscience over secular law (including but not limited to court orders and court opinions).

68. All documents and communications concerning Your opinions or beliefs concerning compliance or noncompliance with the Court Orders.

69. All documents and communications concerning Your opinions or beliefs concerning whether Plaintiff Janet Jenkins should have custody of or visitation with Plaintiff Isabella Miller-Jenkins.

June 27, 2018

Respectfully submitted.

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*Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that on this date the foregoing document was served via U.S. mail to the following:

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June 27, 2018

/s/ Diego A. Soto  
Diego A. Soto



4. “Concerning” means relating to, referring to, describing, evidencing, or constituting.

5. “Court Orders” means any order issued or expected to be issued by a state court of Vermont or Virginia concerning Plaintiff Isabella Miller-Jenkins, including but not limited to any order issued in the Vermont Proceedings, including but not limited to the Custody Transfer Order, or in the Virginia Proceedings.

6. “Custody Transfer Order” means the November 20, 2009 order by the Vermont Superior Court, Rutland County Division, in *Miller-Jenkins v. Miller-Jenkins*, No. 454-11-03 Rddm (Vt. Super. Ct. Rutland Fam. Div.), ordering, among other things, that Plaintiff Janet Jenkins have sole physical and legal custody of Plaintiff Isabella Miller-Jenkins and that transfer of Plaintiff Isabella Miller-Jenkins occur at the home of Plaintiff Janet Jenkins’s parents in Virginia on January 1, 2010, at 1:00 p.m.

7. “Dispute” means the disagreement between Plaintiff Janet Jenkins and Defendant Lisa Miller over parental rights concerning Plaintiff Isabella Miller-Jenkins, including but not limited to the Vermont Proceedings and the Virginia Proceedings.

8. “Document” is defined to be synonymous in meaning and equal in scope to the usage of the term “documents or electronically stored information” (ESI) in Federal Rule of Civil Procedure 34(a)(1)(A). A draft or nonidentical copy is a separate document within the meaning of this term.

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10. “Identify,” when referring to documents, means to produce documents sufficient to show the type of document, general subject matter, date of the document, and authors, addressees, and recipients.

11. “Identify,” when referring to social media, means to produce documents sufficient to show the name of the social media platform; the Uniform Resource Locator for the platform; any names, handles, usernames, accounts, or profiles, including but not limited to any account or identification number; and the owner of the account.

12. “Isabella Miller-Jenkins” means Plaintiff Isabella Miller-Jenkins, regardless of the name used by her or to refer to her, including but not limited to the name “Lydia,” who was the minor child subject of the Custody Transfer Order.

13. “Lisa Miller” means Defendant Lisa Miller, regardless of the name used by her or to refer to her, including but not limited to the names “Lisa Miller-Jenkins” and “Sarah,” who was a party in the Vermont Proceedings and the Virginia Proceedings and who is a parent of Plaintiff Isabella Miller-Jenkins.

14. The terms “Plaintiff” and “Defendant,” as well as a party’s full or abbreviated name or a pronoun referring to a party, mean the party, regardless of the name used by the party or to refer to the party, and where applicable, the party’s successors and predecessors in interest, and the party’s current and former officers, directors, employees, partners, parents, subsidiaries, affiliates, agents, consultants, and others purporting to act on the party’s behalf. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

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Isabella Miller-Jenkins, including but not limited to:

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- b. *Miller-Jenkins v. Miller-Jenkins*, No. 2009-473 (Vt.);
- c. *Miller-Jenkins v. Miller-Jenkins*, No. 454-11-03 Rddm (Vt. Super. Ct. Rutland Fam. Div.); and
- d. *Miller-Jenkins v. Miller-Jenkins*, Nos. 2004-443, 2005-030 (Vt.).

18. “Virginia Proceedings” means any Virginia state court case concerning Plaintiff

Isabella Miller-Jenkins, including but not limited to:

- a. *Jenkins v. Miller*, No. CL09000723-00 (Va. Cir. Ct. Frederick Cty.);
- b. *Miller v. Jenkins*, No. JJ019920-01-00 (Va. Juv. & Dom. Rel. Dt. Ct. Bedford Cty.);
- c. *Miller-Jenkins v. Miller-Jenkins*, No. 070933 (Va. Ct. App.);
- d. *Miller v. Jenkins*, No. 0705-09-4 (Va. Ct. App.);
- e. *Miller-Jenkins v. Miller-Jenkins*, No. CH04-280 (Va. Cir. Ct. Frederick Cty.);
- f. *Miller-Jenkins v. Miller-Jenkins*, No. CH05-000336-00 (Va. Cir. Ct. Frederick Cty.); and
- g. *Miller-Jenkins v. Miller-Jenkins*, No. JJ018902-01-00 (Va. Juv. & Dom. Rel. Dt. Ct. Frederick Cty.).

19. “You” and “Your” refer to the party to whom this set of requests is directed, regardless of the name used by the party or to refer to the party, and where applicable, the party’s successors and predecessors in interest, and the party’s current and former officers, directors, employees, partners, parents, subsidiaries, affiliates, agents, consultants, and others purporting to act on the party’s behalf. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

20. The singular form of a noun or pronoun includes the plural form of the noun or pronoun, and vice versa. The gendered form of a noun or pronoun includes all gendered and nongendered forms of the noun or pronoun.

21. The past tense includes the present tense and vice versa, except where the clear meaning would be distorted.

22. The term “or” means “and” and vice versa to bring within the scope of these Requests all documents or ESI that would be excluded absent this definition.

### **INSTRUCTIONS**

1. Provide all information and documents in Your possession, custody, or control in response to each Request.

2. For each Request that seeks production of documents, produce each such document in its entirety and all drafts and non-identical copies of each document.

3. If You are able or willing to provide only part of the information and documents sought by a Request, provide that partial information and documentation and specify in writing the reason for Your inability or unwillingness to provide the remainder.

4. When responding to these Requests, state in writing as to each Request either that:
- a. there are such documents and they will be produced;
  - b. there are such documents and that they already have been produced;

- c. there are such documents, but You refuse to produce them because of a claim of privilege or for some other identified reason; or
- d. the documents requested do not exist.

5. For every objection to a Request, specify in writing the grounds for objecting to the Request, including the reasons, whether any responsive materials are being withheld on the basis of that objection, and the parts of the documents being withheld on the basis of that objection. Produce the parts of the document not being withheld on the basis of an objection.

6. For every document or part of a document withheld from production because of an assertion of privilege, identify the nature of the claimed privilege (including work product) and, if the privilege is governed by state law, identify the state's privilege rule being invoked.

7. If any document sought by these Requests has been destroyed or no longer exists, state as to each such document its date, authors, recipients, contents, and the date and circumstances of its destruction or ceasing to exist.

8. If any answer to these Requests is made upon information and belief, so state and set forth and identify the sources of such information and belief. If You lack the knowledge necessary to answer any of these Requests, so state.

9. For every document or part of document withheld from production, provide the following information with respect to each such document, in a single privilege log in a Microsoft Excel Worksheet (.xlsx) file with clearly marked rows for each document and ESI withheld and clearly marked columns for each descriptor used:

- a. First Bates number;
- b. Last Bates number;
- c. Type of document (for example, memorandum, email, letter);

- d. Subject matter;
- e. Date;
- f. Title;
- g. Authors;
- h. Recipients;
- i. Relationship of authors and recipients to each other;
- j. Person asserting the privilege; and
- k. Nature of the claimed privilege (including work product) and, if the privilege is governed by state law, the state's privilege rule being invoked.

10. If You cannot fully and completely answer any of these Requests, separately respond to each such Request to the extent possible, stating with specificity the reasons for Your inability to answer the remainder, the substance of Your knowledge, information, and belief concerning the subject matter of the unanswered portion, and the steps taken to locate any responsive documents.

11. Furnish all responsive documents available to You or in your custody or control.

12. Unless otherwise stated in a Request, the applicable timeframe begins on December 18, 2000.

13. These Requests are continuing. If, after responding to these Requests, You obtain or become aware of any additional facts, information, or documents responsive to these Requests, supplement or correct Your response as required by the Federal Rules of Civil Procedure and Local Rules.

14. Plaintiffs reserve the right to serve additional Requests.

### REQUESTS FOR PRODUCTION

1. All documents disclosed or identified in Your initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1)(A)(ii).
2. All documents that support Your defenses to the claims alleged in the Complaint.
3. All documents that contradict Your defenses to or that support the claims alleged in the Complaint.
4. All documents and communications concerning Plaintiff Janet Jenkins.
5. All documents and communications concerning Plaintiff Isabella Miller-Jenkins.
6. All documents and communications concerning Defendant Lisa Miller.
7. All communications with Plaintiff Isabella Miller-Jenkins.
8. All communications with Defendant Lisa Miller.
9. Documents sufficient to identify and disclose all telephone numbers; email addresses; international calling services, including but not limited to PennyTalk and VIVOfone; electronic means of communication; communications applications accounts, including but not limited to WhatsApp, Viber, and Signal; and social media accounts or applications, including but not limited to Facebook, Twitter, Snapchat, and Instagram, used by Defendant Lisa Miller from 2002 to date.
10. Documents sufficient to identify and disclose all telephone numbers; email addresses; international calling services, including but not limited to PennyTalk and VIVOfone; electronic means of communication; communications applications accounts, including but not limited to WhatsApp, Viber, and Signal; and social media accounts or applications, including but not limited to Facebook, Twitter, Snapchat, and Instagram, used by or on behalf of Plaintiff Isabella Miller-Jenkins from 2002 to date.

11. All communications with zeusdesfor@aol.com concerning the Dispute; Defendant Lisa Miller's whereabouts from September 20, 2009, to date; Plaintiff Isabella Miller-Jenkins's whereabouts from September 20, 2009, to date; the Beachy Amish Mennonites; or Nicaragua.

12. All communications with god1ofchild@live.com concerning the Dispute; Defendant Lisa Miller's whereabouts from September 20, 2009, to date; Plaintiff Isabella Miller-Jenkins's whereabouts from September 20, 2009, to date; the Beachy Amish Mennonites; or Nicaragua.

13. All communications with the Skype account with the username childofjesus1 concerning the Dispute; Defendant Lisa Miller's whereabouts from September 20, 2009, to date; Plaintiff Isabella Miller-Jenkins's whereabouts from September 20, 2009, to date; the Beachy Amish Mennonites; or Nicaragua.

14. All communications with the Facebook account with identification number 1539940246 concerning the Dispute; Defendant Lisa Miller's whereabouts from September 20, 2009, to date; Plaintiff Isabella Miller-Jenkins's whereabouts from September 20, 2009, to date; the Beachy Amish Mennonites; or Nicaragua.

15. All documents and communications concerning names, aliases, or identities used by Defendant Lisa Miller.

16. All documents and communications concerning names, aliases, or identities used by Plaintiff Isabella Miller-Jenkins.

17. All documents and communications concerning the Dispute.

18. All documents and communications concerning the Court Orders.

19. All communications on November 20, 2009.

20. All documents and communications concerning the Protect Isabella Coalition.

21. All documents and communications concerning the website

[www.protectisabella.com](http://www.protectisabella.com).

22. All documents and communications concerning the Only One Mommy Facebook group, identification number 81022155363.

23. All documents and communications concerning

<http://imgodschild.wordpress.com>.

24. All documents and communications concerning

[http://works.bepress.com/rena\\_indevaldsen/](http://works.bepress.com/rena_indevaldsen/) concerning the Dispute; Defendant Lisa Miller's whereabouts from September 20, 2009, to date; Plaintiff Isabella Miller-Jenkins's whereabouts from September 20, 2009, to date; the Beachy Amish Mennonites; or Nicaragua.

25. All documents and communications concerning <http://www.debbiethurman.com/>

concerning the Dispute; Defendant Lisa Miller's whereabouts from September 20, 2009, to date; Plaintiff Isabella Miller-Jenkins's whereabouts from September 20, 2009, to date; the Beachy Amish Mennonites; or Nicaragua.

26. All documents concerning and communications concerning

<http://www.theformers.wordpress.com/> concerning the Dispute; Defendant Lisa Miller's whereabouts from September 20, 2009, to date; Plaintiff Isabella Miller-Jenkins's whereabouts from September 20, 2009, to date; the Beachy Amish Mennonites; or Nicaragua.

27. All documents and communications concerning <https://lezgetreal.com/> concerning

the Dispute; Defendant Lisa Miller's whereabouts from September 20, 2009, to date; Plaintiff Isabella Miller-Jenkins's whereabouts from September 20, 2009, to date; the Beachy Amish Mennonites; or Nicaragua, and any visits or posts by Defendant Lisa Miller.

28. All documents and communications concerning <https://www.lifesitenews.com/> concerning the Dispute; Defendant Lisa Miller's whereabouts from September 20, 2009, to date; Plaintiff Isabella Miller-Jenkins's whereabouts from September 20, 2009, to date; the Beachy Amish Mennonites; or Nicaragua.

29. All communications with Matthew Cullinan Hoffman concerning the Dispute; Defendant Lisa Miller's whereabouts from September 20, 2009, to date; Plaintiff Isabella Miller-Jenkins's whereabouts from September 20, 2009, to date; the Beachy Amish Mennonites; or Nicaragua.

30. Documents sufficient to show Defendant Lisa Miller's whereabouts from September 13, 2003, through September 19, 2009.

31. Documents sufficient to show Plaintiff Isabella Miller-Jenkins's whereabouts from April 16, 2002, through September 19, 2009.

32. All documents, regardless of when created or dated, concerning Defendant Lisa Miller's whereabouts from September 20, 2009, to date.

33. All documents, regardless of when created or dated, concerning Plaintiff Isabella Miller-Jenkins's whereabouts from September 20, 2009, to date.

34. All documents and communications concerning Your whereabouts on September 20, 2009, September 21, 2009, and September 22, 2009.

35. All communications on September 20, 2009, September 21, 2009, and September 22, 2009.

36. All documents and communications concerning events that happened, or were planned or expected to happen, on September 20, 2009, September 21, 2009, and September 22, 2009.

37. All documents and communications concerning Nicaragua.
38. All documents and communications concerning the Beachy Amish Mennonite Church in Nicaragua.
39. All communications with the Beachy Amish Mennonite Church in Nicaragua.
40. All documents and communications concerning any Aid directly or indirectly given to Defendant Lisa Miller concerning her compliance or noncompliance with the Court Orders.
41. All documents and communications concerning any Aid directly or indirectly given to Defendant Lisa Miller or Plaintiff Isabella Miller-Jenkins concerning their departure from 203B Greentree Drive, Forest, Virginia, in September 2009, travel to Canada, departure from the United States, travel to Nicaragua, living in Nicaragua, or remaining in Nicaragua.
42. All documents and communications concerning Defendant Lisa Miller's efforts to remain undetected by United States authorities, including but not limited to Aid directly or indirectly given to her to allow her to avoid such detection.
43. All documents and communications concerning [jesman21@gmail.com](mailto:jesman21@gmail.com).
44. All communications with [jesman21@gmail.com](mailto:jesman21@gmail.com).
45. All communications with Jessica Fehr.
46. All documents and communications concerning 203B Greentree Drive, Forest, Virginia, including but not limited to payment of rent and the removal and storage of personal property.
47. All communications on November 8, 2009, November 9, 2009, November 10, 2009, November 11, 2009, November 12, 2009, and November 13, 2009.

48. All documents and communications concerning events that happened, or were planned or expected to happen, on November 8, 2009, November 9, 2009, November 10, 2009, November 11, 2009, November 12, 2009, and November 13, 2009.

49. All communications with Anthony Phelps, the landlord of 203B Greentree Drive, Forest, Virginia.

50. Documents sufficient to Identify all telephone numbers, including but not limited to landlines and cellular lines or applications, used by You in 2009 to date.

51. Documents sufficient to Identify all email addresses used by You in 2009 to date.

52. Documents sufficient to Identify all international calling services and the accounts or numbers, including but not limited to PennyTalk and VIVOphone, used by You in 2009 to date.

53. Documents sufficient to Identify social media and electronic means of communication used by You in 2009 to date.

54. All communications with the Facebook account of Lisa Wall, identification number 1436421487, concerning the Dispute; Defendant Lisa Miller's whereabouts from September 20, 2009, to date; Plaintiff Isabella Miller-Jenkins's whereabouts from September 20, 2009, to date; the Beachy Amish Mennonites; or Nicaragua.

55. All communications with [wall4america@netzero.net](mailto:wall4america@netzero.net) concerning the Dispute; Defendant Lisa Miller's whereabouts from September 20, 2009, to date; Plaintiff Isabella Miller-Jenkins's whereabouts from September 20, 2009, to date; the Beachy Amish Mennonites; or Nicaragua.

56. All communications with the Facebook account of Beth Ehrhorn, identification number 1072853392, concerning the Dispute; Defendant Lisa Miller's whereabouts from

September 20, 2009, to date; Plaintiff Isabella Miller-Jenkins's whereabouts from September 20, 2009, to date; the Beachy Amish Mennonites; or Nicaragua.

57. All communications with [behrhorn@aol.com](mailto:behrhorn@aol.com) concerning the Dispute; Defendant Lisa Miller's whereabouts from September 20, 2009, to date; Plaintiff Isabella Miller-Jenkins's whereabouts from September 20, 2009, to date; the Beachy Amish Mennonites; or Nicaragua.

58. All communications with the Facebook account of Sarah Bloedorn, identification number 1371510997, concerning the Dispute; Defendant Lisa Miller's whereabouts from September 20, 2009, to date; Plaintiff Isabella Miller-Jenkins's whereabouts from September 20, 2009, to date; the Beachy Amish Mennonites; or Nicaragua.

59. All communications with [qtjars@gmail.com](mailto:qtjars@gmail.com) concerning the Dispute; Defendant Lisa Miller's whereabouts from September 20, 2009, to date; Plaintiff Isabella Miller-Jenkins's whereabouts from September 20, 2009, to date; the Beachy Amish Mennonites; or Nicaragua.

60. All communications with [timjomiller@gmail.com](mailto:timjomiller@gmail.com) concerning the Dispute; Defendant Lisa Miller's whereabouts from September 20, 2009, to date; Plaintiff Isabella Miller-Jenkins's whereabouts from September 20, 2009, to date; the Beachy Amish Mennonites; or Nicaragua.

61. All communications with [kingdomseeker1@gmail.com](mailto:kingdomseeker1@gmail.com) concerning the Dispute; Defendant Lisa Miller's whereabouts from September 20, 2009, to date; Plaintiff Isabella Miller-Jenkins's whereabouts from September 20, 2009, to date; the Beachy Amish Mennonites; or Nicaragua.

62. All communications with [millersofwaslala@gmail.com](mailto:millersofwaslala@gmail.com) concerning the Dispute; Defendant Lisa Miller's whereabouts from September 20, 2009, to date; Plaintiff Isabella Miller-

Jenkins's whereabouts from September 20, 2009, to date; the Beachy Amish Mennonites; or Nicaragua.

63. All communications with [philipz@responseunlimited.com](mailto:philipz@responseunlimited.com) concerning the Dispute; Defendant Lisa Miller's whereabouts from September 20, 2009, to date; Plaintiff Isabella Miller-Jenkins's whereabouts from September 20, 2009, to date; the Beachy Amish Mennonites; or Nicaragua.

64. All documents and communications concerning Your policies or positions concerning same-sex marriage, same-sex civil unions, or same-sex relationships.

65. All documents and communications concerning Your policies or positions concerning whether homosexual persons should have custody of or visitation with children.

66. All documents and communications concerning Your policies or positions concerning the relative supremacy of secular law (including but not limited to court orders and court opinions) over religion, morality, ethics, or conscience.

67. All documents and communications concerning Your policies or positions concerning the relative supremacy of religion, morality, ethics, or conscience over secular law (including but not limited to court orders and court opinions).

68. All documents and communications concerning Your policies or positions concerning compliance or noncompliance with the Court Orders.

69. All documents and communications concerning Your policies or positions concerning whether Plaintiff Janet Jenkins should have custody of or visitation with Plaintiff Isabella Miller-Jenkins.

June 27, 2018

Respectfully submitted.

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*Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that on this date the foregoing document was served via U.S. mail to the following:

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June 27, 2018

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