

**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' MOTION TO COMPEL DEFENDANT TIMOTHY MILLER**

Defendant Timothy Miller insists he can avoid all his discovery obligations because he has moved for reconsideration of his failed motion to dismiss and because Plaintiff Janet Jenkins has moved for partial summary judgment on one of her claims. He plainly is wrong. After nearly four months of good-faith attempts to obtain discovery from Defendant without court action, Plaintiffs Janet Jenkins and Isabella Miller-Jenkins move pursuant to Rules 26, 34, and 37 of the Federal Rules of Civil Procedure for an order compelling Defendant to engage in discovery in good faith, including by promptly serving written responses and objections to Plaintiffs' requests for production, producing documents responsive to requests to which he does not object, producing a privilege log for responsive documents over which he claims a privilege, and conferring in good faith with Plaintiffs to resolve any objections. Plaintiffs seek the reasonable expenses incurred in making this motion, including attorney's fees.

**STATEMENT OF THE CASE**

Plaintiffs filed their complaint against Defendant and others on August 14, 2012. *See* Compl., ECF 1. They served Defendant on March 30, 2015. *See* Returned Summons, ECF 193. After the other defendants refused to participate in discovery pending various motions to dismiss, *see* Pls.' Mot. for a Status Conference, ECF 298, Plaintiffs were finally able to serve requests for

production on Defendant on June 27, 2018, *see* Pls.’ First Set of Reqs. for Produc. to Def. Timothy Miller, Ex. 1.

On October 1, 2018, over six years after the original complaint was filed, Defendant finally entered an appearance, *see* Notice of Appearance, ECF 336, and moved to dismiss for lack of personal jurisdiction and insufficient service of process, *see* Def. Timothy D. Miller’s Mot. to Dismiss for Lack of Personal Jurisdiction & Insufficient Service of Process, ECF 337. The Court denied that motion just over a year later, on October 29, 2019. *See* Op. & Order: Def.’s Mot. to Dismiss, ECF 396.

The next day, on October 30, 2019, Plaintiffs asked Defendant when they could expect his initial disclosures and his responses to their requests for production. *See* Emails 15–16, Ex. 2. Defendant did not respond. *See id.*

On November 8, 2019, Defendant moved for reconsideration of the Court’s order denying his motion to dismiss. *See* Def. Timothy D. Miller’s Mot. to Reconsider Court’s Order of Oct. 29, 2019 (Doc. 396), ECF 403. That day, Plaintiffs asked Defendant whether he would engage in discovery pending disposition of that motion or whether he would instead seek a stay of discovery. *See* Emails 15, Ex. 2. Plaintiffs and Defendant spoke by phone. Soto Decl. ¶ 5. Defendant agreed that Plaintiffs were entitled to discovery from him. *Id.* He informed Plaintiffs that he had given his criminal defense attorney documents that his attorney then produced to the government. *Id.* He warned Plaintiffs that his ability to produce the criminal discovery could be complicated by his criminal defense attorney’s now being a judge. *Id.* Defendant agreed to cooperate with Plaintiffs to produce the criminal discovery. *Id.* Given the potential complication Defendant raised, Plaintiffs offered to seek the criminal discovery from the government, such as

by Freedom of Information Act request, if Defendant would sign the requisite authorization form. *Id.*<sup>1</sup>

On December 13, 2019, Jenkins moved for partial summary judgment on her Vermont tort claim against Defendant and Defendants Philip Zodhiates and Kenneth Miller. *See* Pl. Janet Jenkins's Mot. for Partial Summ. J. on Count One Against Defs. Philip Zodhiates, Kenneth Miller, and Timothy Miller, ECF 439.

Plaintiffs and Defendant again spoke by phone on January 27, 2020. Soto Decl. ¶ 6. Defendant informed Plaintiffs that he did not believe he had an obligation to engage in discovery, including to serve initial disclosures and written responses and objections to Plaintiffs' requests for production, because his pending motion for reconsideration of his motion to dismiss challenged the Court's personal jurisdiction and because Jenkins had moved for partial summary judgment on her Vermont claim against him, suggesting she did not believe she needed discovery from him to impose liability on him. *Id.* He also represented that he would object, based on his Fifth Amendment privilege against compulsory self-incrimination, to producing anything beyond the criminal discovery. *Id.*<sup>2</sup>

In a follow-up letter on January 29, 2020, Plaintiffs made their position clear: the Court's local rules unambiguously require Defendant to participate in discovery. *See* Letter, Ex. 3.

Neither his motion for reconsideration, *see id.* at 2–4, nor Jenkins's motion for partial summary

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<sup>1</sup> Plaintiffs had tried to acquire the criminal discovery from the government through a FOIA request on October 17, 2018. Soto Decl. ¶ 7. The government denied the request on December 7, 2018, because Defendant had not given express authorization and consent for its release. *Id.*

<sup>2</sup> Between November 8, 2019, and February 24, 2020, Plaintiffs made repeated unsuccessful attempts to obtain the required written authorization from Defendant to allow the Department of Justice to release the criminal discovery to Plaintiffs, even while Defendant insisted Plaintiffs seek that discovery from the government rather than from him. *See* Emails, Ex. 2. The parties have now negotiated a narrower written authorization to accompany a FOIA request. *See id.* at 1–2. This motion does not seek to compel Defendant to produce that criminal discovery himself.

judgment, *see id.* at 4–5, automatically stays all discovery against him. Moreover, Defendant cannot make a blanket Fifth Amendment objection; he must make it in writing to specific requests. *See id.* at 4. Plaintiffs asked for Defendant’s response by February 5, 2020. *See id.* at 5. On February 5, 2020, Defendant asked for an extension of time to respond to Plaintiffs’ letter. *See* Emails 7, Ex. 2. Plaintiffs offered Defendant until February 7, 2020. *See id.* at 6–7. On February 7, 2020, Defendant responded that the parties “should wait and see what the result of the pending motions are before dealing substantively with” Plaintiffs’ discovery requests. *Id.* at 5–6. He also finally served initial disclosures, which he refused to do until Plaintiffs stipulated that his doing so would not waive or forfeit the defenses he had raised in his motion to dismiss and his motion for reconsideration, despite the clear language of Local Rule 26(a)(3) requiring participation in discovery and preserving those defenses. *Id.*; *see also* Letter 1–3, Ex. 3.

On February 24, 2020, Defendant reiterated his position that he does not have an obligation to engage in discovery while his motion for reconsideration and Jenkins’s motion for partial summary judgment remain pending. *See* Emails 3–4, Ex. 2. The next day, on February 25, 2020, Plaintiffs reiterated their position that Defendant has an obligation to engage in discovery and notified Defendant that they would file this motion to compel. *See id.* at 2–3.

## **ARGUMENT**

### **I. Defendant should be ordered to engage in discovery in good faith**

Defendant should be ordered to engage in discovery in good faith, including by promptly serving written responses and objections to Plaintiffs’ requests for production, producing documents responsive to requests to which he does not object, producing a privilege log for responsive documents over which he claims a privilege, and conferring in good faith with Plaintiffs to resolve any objections.

Defendant cannot use the pending motions as shields against discovery. *First*, the Court's local rules clearly require him to participate in discovery, despite his pending motion for reconsideration, unless and until he moves to stay discovery and that motion is granted. *See* L.R. 26(a)(3). Defendant refuses to move to stay all discovery against him,<sup>3</sup> and he offers no justification for a stay pending his motion that would not equally apply to every civil defendant that files a dispositive motion. In fact, because “[c]ourts generally disfavor motions for reconsideration,” “the arguments in favor of a stay on a motion to dismiss have less force when the pending motion is one for reconsideration.” *United States ex rel. Brooks v. Stevens-Henager Coll., Inc.*, No. 2:15-cv-119, 2017 WL 5241002, at \*1 (D. Utah June 23, 2017).

*Second*, Jenkins's motion for partial summary judgment did not stay all discovery against Defendant. No law or rule provides for such an automatic stay. Even if a discovery stay might be appropriate in some cases if requested after the filing of a summary judgment motion, a stay of discovery against Defendant would not be appropriate. Jenkins's motion would, if granted, impose liability on at most two defendants on one claim,<sup>4</sup> and Plaintiffs are entitled to obtain discovery from Defendant that is relevant to *any* of their claims against *any* defendant, including *all* their claims against him. *See* Fed. R. Civ. P. 26(b)(1).

Defendant's reliance on *Hendricks v. Boltja*, 20 F. App'x 34, 37 (2d Cir. 2001), is unavailing. *See* Letter 1–2, Ex. 3. *Hendricks* did not hold that discovery is, should be, or must be stayed during the pendency of a motion for summary judgment; instead, it merely held that “the

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<sup>3</sup> Refusing to participate in discovery while a motion to dismiss is pending has been defendants' modus operandi. *See, e.g.*, Pls.' Mot. for a Status Conference, ECF 298. But the other defendants at least filed motions to stay discovery, which the Court ultimately denied as moot. *See, e.g.*, Order, ECF 301. Defendant refuses to do even that.

<sup>4</sup> Jenkins did not move for summary judgment on all elements of her Vermont tort claim against Kenneth Miller.

district court did not abuse its wide discretion” when it denied the plaintiff’s motion to compel and then granted the defendants summary judgment. 20 F. App’x at 37; *see also* Letter 4–5, Ex. 3. Defendant offers no convincing justification for staying all discovery against him given the realities of this case.

**II. Defendant should be ordered to pay Plaintiffs’ reasonable expenses incurred in making this motion**

Plaintiffs are entitled to the reasonable expenses, including attorney’s fees, incurred in making this motion. If the Court grants this motion to compel, then it must, after giving an opportunity to be heard, require Defendant to pay Plaintiffs’ reasonable expenses incurred in making the motion, including attorney’s fees, only unless “circumstances make an award of expenses unjust,” such as if Defendant’s position is “substantially justified.” Fed. R. Civ. P. 37(a)(5)(A).

No circumstances justify not ordering Defendant to pay Plaintiffs’ expenses for this motion. Plaintiffs have attempted in good faith to obtain this discovery without court action for nearly four months. Despite Defendant’s obstinance and unjustified delays, Plaintiffs are still working with him to obtain the criminal discovery from the government. But Defendant refuses even to serve written responses and objections as to discovery beyond what was exchanged in his criminal case.

Defendant’s position is not substantially justified. It is contrary to this Court’s unambiguous local rule that discovery is not automatically stayed upon the filing of a motion to dismiss. Defendant cites no precedent or rule providing that all discovery against a party is automatically stayed upon the filing of a motion for partial summary judgment. He even refuses to file a motion to stay all discovery against him to vindicate his position that he should not be

required to engage in discovery. Plaintiffs should not be required to bear the cost of forcing Defendant to meet his clear discovery obligations.

### CONCLUSION

Plaintiffs' motion to compel should be granted, and Defendant should be ordered to engage in discovery in good faith, including by promptly serving written responses and objections to Plaintiffs' requests for production, producing documents responsive to requests to which he does not object, producing a privilege log for responsive documents over which he claims a privilege, and conferring in good faith with Plaintiffs to resolve any objections. Defendant should also be ordered to pay Plaintiffs' reasonable expenses incurred in making this motion.

Respectfully submitted.

February 26, 2020

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*Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that, on this date, the foregoing document was served on the following counsel of record and unrepresented parties through the Court's CM/ECF system:

Richard Boyer  
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*Counsel for Defendants Liberty Counsel, Inc. and Rena M. Lindevaldsen*

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and on the following unrepresented parties by United States mail:

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February 26, 2020

/s/ Diego A. Soto  
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JANET JENKINS, et al.,

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**PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION  
TO DEFENDANT TIMOTHY MILLER**

Plaintiffs Janet Jenkins and Isabella Miller-Jenkins, pursuant to Federal Rule of Civil Procedure 34, request that Defendant Timothy Miller 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.

**EXHIBIT**

**1**

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 [god1ofchild@live.com](mailto: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\\_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.

David C. Dinielli\*  
Beth D. Jacob\*  
Diego A. Soto\*  
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\* *Admitted Pro Hac Vice*

/s/ Frank Langrock  
\_\_\_\_\_  
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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:

Timothy D. Miller  
1380 Girl Scout Road  
Denver, Pennsylvania 17517

June 27, 2018

/s/ Diego A. Soto  
\_\_\_\_\_  
Diego A. Soto

## Diego Soto

---

**From:** Diego Soto  
**Sent:** Wednesday, February 26, 2020 9:23 AM  
**To:** Michael Tierney  
**Cc:** Brooks G. McArthur; Anthony Duprey; Daniel J. Schmid; Horatio Mihet; Roger K. Gannam; Adam Hochschild; Norman C. Smith; Richard Boyer; Toddy Ferguson; Beth Littrell; Claudia Huerta; Emily Joselson; flangrock; Jessica Stone; jswift; Julie Jackman; Maya Rajaratnam; Sarah Star; Scott McCoy; srs; Tyler Clemons  
**Subject:** RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Plaintiffs' First Set of Requests for Production to Defendant Timothy Miller  
**Attachments:** DRAFT Timothy Miller Authorization and Consent to Release Records to Another Person v2.docx

Thanks, Michael. I just realized the draft authorization I sent you on Tuesday did not include the case in which Mr. Miller pleaded guilty. Please use the attached corrected version. I apologize for this oversight. Please let me know if you won't be able to send me the signed authorization by close of business Friday. We will produce to all parties whatever we receive in response to the FOIA request.

Please also let me know whether I can interpret your email from Monday to mean that Mr. Miller's criminal defense firm does not possess a copy of the criminal discovery.

Thanks,  
Diego



**Diego Soto** *he/him/his*  
Staff Attorney | LGBTQ Rights & Special Litigation  
Southern Poverty Law Center  
T 334.956.8427 C 334.604.1414 F 334.956.8481  
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Admitted in Alabama and the District of Columbia

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---

**From:** Michael Tierney <[mtierney@wadleighlaw.com](mailto:mtierney@wadleighlaw.com)>  
**Sent:** Tuesday, February 25, 2020 5:46 PM  
**To:** Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>  
**Cc:** Brooks G. McArthur <[bmcarthur@jarvismcarthur.com](mailto:bmcarthur@jarvismcarthur.com)>; Anthony Duprey <[anthony@ndp-law.com](mailto:anthony@ndp-law.com)>; Daniel J. Schmid <[dschmid@lc.org](mailto:dschmid@lc.org)>; Horatio Mihet <[hmihet@lc.org](mailto:hmihet@lc.org)>; Roger K. Gannam <[rgannam@lc.org](mailto:rgannam@lc.org)>; Adam Hochschild <[adam@hochschildlaw.com](mailto:adam@hochschildlaw.com)>; Norman C. Smith <[norman@normansmithlaw.com](mailto:norman@normansmithlaw.com)>; Richard Boyer <[rickboyerlaw@gmail.com](mailto:rickboyerlaw@gmail.com)>; Toddy Ferguson <[cs.fergie@myfairpoint.net](mailto:cs.fergie@myfairpoint.net)>; Beth Littrell <[beth.littrell@splcenter.org](mailto:beth.littrell@splcenter.org)>; Claudia Huerta <[claudia.huerta@splcenter.org](mailto:claudia.huerta@splcenter.org)>; Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>; Emily Joselson <[ejoselson@langrock.com](mailto:ejoselson@langrock.com)>; flangrock <[flangrock@langrock.com](mailto:flangrock@langrock.com)>; Jessica Stone <[jessica.stone@splcenter.org](mailto:jessica.stone@splcenter.org)>; jswift <[jswift@langrock.com](mailto:jswift@langrock.com)>; Julie Jackman <[jjackman@langrock.com](mailto:jjackman@langrock.com)>; Maya Rajaratnam <[maya.rajaratnam@splcenter.org](mailto:maya.rajaratnam@splcenter.org)>; Sarah Star <[sarahstar.esq@gmail.com](mailto:sarahstar.esq@gmail.com)>; Scott McCoy <[Scott.McCoy@splcenter.org](mailto:Scott.McCoy@splcenter.org)>; srs <[srs@sarahstarlaw.com](mailto:srs@sarahstarlaw.com)>; Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>  
**Subject:** Re: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Plaintiffs' First Set of Requests for Production to Defendant Timothy Miller

Diego:

<b>EXHIBIT</b> <b>2</b>
----------------------------

No edits are required. I have sent the authorization to my client to sign and return. I will send it to you as soon as I have it back from my client in Pennsylvania.

May I presume you will share a copy of whatever you obtain without us needing to make a formal request?

Thanks,

Michael

---

**From:** Diego Soto <Diego.Soto@splcenter.org>

**Sent:** Tuesday, February 25, 2020 11:45:40 AM

**To:** Michael Tierney <mtierney@wadleighlaw.com>

**Cc:** Brooks G. McArthur <bmcArthur@jarvismcarthur.com>; Anthony Duprey <anthony@ndp-law.com>; Daniel J. Schmid <dschmid@lc.org>; Horatio Mihet <hmihet@lc.org>; Roger K. Gannam <rgannam@lc.org>; Adam Hochschild <adam@hochschildlaw.com>; Norman C. Smith <norman@normansmithlaw.com>; Richard Boyer <rickboyerlaw@gmail.com>; Toddy Ferguson <cs.fergie@myfairpoint.net>; Beth Littrell <beth.littrell@splcenter.org>; Claudia Huerta <claudia.huerta@splcenter.org>; Diego Soto <Diego.Soto@splcenter.org>; Emily Joselson <ejoselson@langrock.com>; flangrock <flangrock@langrock.com>; Jessica Stone <jessica.stone@splcenter.org>; jswift <jswift@langrock.com>; Julie Jackman <jjackman@langrock.com>; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; Sarah Star <sarahstar.esq@gmail.com>; Scott McCoy <Scott.McCoy@splcenter.org>; srs <srs@sarahstarlaw.com>; Tyler Clemons <Tyler.Clemons@splcenter.org>

**Subject:** RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Plaintiffs' First Set of Requests for Production to Defendant Timothy Miller

Michael,

Thank you for your response. Since we first spoke in November, I have asked you no less than six times in writing whether Mr. Miller's criminal defense firm possesses a copy of the criminal discovery. Three-and-a-half months later, you still have not clearly answered my specific question whether Mr. Miller's criminal defense firm possesses a copy of the criminal discovery; if it does, then those documents are within Mr. Miller's control and he is required to produce them. Can I interpret your email to mean that Mr. Miller's criminal defense firm does not possess a copy of the criminal discovery?

Since November, I also have asked you no less than five times in writing whether Mr. Miller would sign the required form authorizing the Department of Justice to release the criminal discovery to Plaintiffs in response to a FOIA request. To the best of my recollection, you have raised this concern about the breadth of the required authorization form for the first time yesterday. Had you raised this earlier, instead of ignoring my clear questions until yesterday, I would have gladly worked with you to draft narrower authorization language and to confirm its sufficiency with DOJ.

This delay is of your making, not mine. I have made every effort to narrow our discovery disputes by offering to seek the bulk (I imagine) of Mr. Miller's responsive documents from the government. You have obstructed that potential avenue even while insisting on it. I hope you will now extend to me the same professionalism I have extended to you.

I have attached a proposed narrower authorization and consent. It is my understanding that the consent must be notarized or signed under penalty of perjury pursuant to 18 U.S.C. § 1001. **Please send me any proposed edits by close of business today and a signed copy from Mr. Miller by close of business Thursday.** I will let you know if DOJ deems the authorization inadequate for whatever reason. I look forward to your prompt review and approval. And for the record, although DOJ is required to determine within 20 days whether it will produce records responsive to a FOIA request, it does not typically produce all the records within 20 days, which often necessitates lawsuits.

As for discovery beyond the criminal discovery, I am more than willing to work with you to narrow and clarify Plaintiffs' requests for production, but I cannot begin to do that until Mr. Miller serves written responses and objections. It remains Plaintiffs' position that Mr. Miller has an obligation now to engage in discovery even while his and Ms. Jenkins's

dispositive motions remain pending. Given Mr. Miller's steadfast refusal to meet his discovery obligations, Plaintiffs will move to compel Mr. Miller to serve written responses and objections and to engage in discovery. Plaintiffs will ask for reasonable expenses incurred in making the motion, including attorney's fees.

Sincerely,  
Diego



**Diego Soto** he/him/his  
Staff Attorney | LGBTQ Rights & Special Litigation  
Southern Poverty Law Center  
T 334.956.8427 C 334.604.1414 F 334.956.8481  
[diego.soto@splcenter.org](mailto:diego.soto@splcenter.org) | [www.splcenter.org](http://www.splcenter.org)  
Admitted in Alabama and the District of Columbia

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**From:** Michael Tierney <[mtierney@wadleighlaw.com](mailto:mtierney@wadleighlaw.com)>

**Sent:** Monday, February 24, 2020 4:38 PM

**To:** Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>

**Cc:** Brooks G. McArthur <[bmcarthur@jarvismcarthur.com](mailto:bmcarthur@jarvismcarthur.com)>; Anthony Duprey <[anthony@ndp-law.com](mailto:anthony@ndp-law.com)>; Daniel J. Schmid <[dschmid@lc.org](mailto:dschmid@lc.org)>; Horatio Mihet <[hmihet@lc.org](mailto:hmihet@lc.org)>; Roger K. Gannam <[rgannam@lc.org](mailto:rgannam@lc.org)>; Adam Hochschild <[adam@hochschildlaw.com](mailto:adam@hochschildlaw.com)>; Norman C. Smith <[norman@normansmithlaw.com](mailto:norman@normansmithlaw.com)>; Richard Boyer <[rickboyerlaw@gmail.com](mailto:rickboyerlaw@gmail.com)>; Toddy Ferguson <[cs.fergie@myfairpoint.net](mailto:cs.fergie@myfairpoint.net)>

**Subject:** RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Plaintiffs' First Set of Requests for Production to Defendant Timothy Miller

Diego:

Mr. Miller does not currently possess the information you seek (i.e. the criminal discovery produced in his criminal trial). As I have explained to you numerous times, you would likely be more successful seeking this information directly from the federal government, either via FOIA or via a subpoena. The fact that you have sought information regarding Kenneth Miller via a FOIA request means that you can make such a request for whatever non-privileged information you may seek regarding Timothy Miller. The government must respond to a FOIA request within 20 days. Any delays you have in making this request is entirely of your own making as I have been consistently telling you for months that you should be directing your requests to the federal government. Where you have filed a motion for summary judgment against Timothy Miller alleging you can show liability without additional discovery, it would be unduly burdensome and disproportionate to require Mr. Miller to assist in your fishing expedition where you have asserted to the court that no discovery is needed. It is important to note that the authorization you are asking Mr. Miller to sign is not limited to criminal discovery but is asking Mr. Miller to waive all privilege that may exist against the production of any and all documents (for example, such authorization would allow you to access Mr. Miller's tax or social security records that have no relevance to this case and would be privileged from discovery). Regardless, I am not aware of any case where a defendant has been required to waive his privileges and affirmatively give the plaintiff who is suing him complete and unfettered access to all federal records that any federal agency may possess on him. As I have explained on the telephone, if you would like to narrow your requests and the Court were to both deny your motion for summary judgment and my motion to reconsider the motion to dismiss, we can discuss the proper parameters of such requests. If you would like to send me a more limited authorization authorizing a FOIA request limited to the criminal prosecution of Mr. Miller and go that route, I would be happy to discuss.

Michael

Michael J. Tierney, Esq.

Wadleigh, Starr & Peters, PLLC  
95 Market Street  
Manchester, NH 03101  
603-669-4140  
603-206-7239 (Direct)  
603-669-6018 (Fax)

---

**From:** Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>  
**Sent:** Monday, February 24, 2020 10:11 AM  
**To:** Michael Tierney <[mtierney@wadleighlaw.com](mailto:mtierney@wadleighlaw.com)>  
**Cc:** Beth Littrell <[beth.littrell@splcenter.org](mailto:beth.littrell@splcenter.org)>; Claudia Huerta <[claudia.huerta@splcenter.org](mailto:claudia.huerta@splcenter.org)>; Emily Joselson <[ejoselson@langrock.com](mailto:ejoselson@langrock.com)>; flangrock <[flangrock@langrock.com](mailto:flangrock@langrock.com)>; Jessica Stone <[jessica.stone@splcenter.org](mailto:jessica.stone@splcenter.org)>; jswift <[jswift@langrock.com](mailto:jswift@langrock.com)>; Julie Jackman <[jjackman@langrock.com](mailto:jjackman@langrock.com)>; Maya Rajaratnam <[maya.rajaratnam@splcenter.org](mailto:maya.rajaratnam@splcenter.org)>; Sarah Star <[sarahstar.esq@gmail.com](mailto:sarahstar.esq@gmail.com)>; Scott McCoy <[Scott.McCoy@splcenter.org](mailto:Scott.McCoy@splcenter.org)>; srs <[srs@sarahstarlaw.com](mailto:srs@sarahstarlaw.com)>; Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>; Brooks G. McArthur <[bmcarthur@jarvismcarthur.com](mailto:bmcarthur@jarvismcarthur.com)>; Anthony Duprey <[anthony@ndp-law.com](mailto:anthony@ndp-law.com)>; Daniel J. Schmid <[dschmid@lc.org](mailto:dschmid@lc.org)>; Horatio Mihet <[hmihet@lc.org](mailto:hmihet@lc.org)>; Roger K. Gannam <[rgannam@lc.org](mailto:rgannam@lc.org)>; Adam Hochschild <[adam@hochschildlaw.com](mailto:adam@hochschildlaw.com)>; Norman C. Smith <[norman@normansmithlaw.com](mailto:norman@normansmithlaw.com)>; Richard Boyer <[rickboyerlaw@gmail.com](mailto:rickboyerlaw@gmail.com)>; Toddy Ferguson <[cs.fergie@myfairpoint.net](mailto:cs.fergie@myfairpoint.net)>  
**Subject:** RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Plaintiffs' First Set of Requests for Production to Defendant Timothy Miller

Michael,

Please let me know by close of business today (1) whether Mr. Miller's criminal defense firm has a copy of the criminal discovery and (2) whether Mr. Miller will sign the [authorization](#) for DOJ to release the criminal discovery to plaintiffs. If Mr. Miller will sign the authorization, please email me the signed authorization by close of business Wednesday. Otherwise, Plaintiffs will be forced to seek relief from the Court.

As my January 29 letter and February 7 email make clear, FOIA is not an option to obtain the criminal discovery without Mr. Miller's signed authorization. It is also a time-consuming process, and much time has been lost—since at least December 2—because of Mr. Miller's failure even to say whether he will sign the authorization form.

Sincerely,  
Diego



**Diego Soto** *he/him/his*  
Staff Attorney | LGBTQ Rights & Special Litigation  
Southern Poverty Law Center  
T 334.956.8427 C 334.604.1414 F 334.956.8481  
[diego.soto@splcenter.org](mailto:diego.soto@splcenter.org) | [www.splcenter.org](http://www.splcenter.org)  
Admitted in Alabama and the District of Columbia

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---

**From:** Diego Soto  
**Sent:** Thursday, February 13, 2020 9:42 AM  
**To:** Michael Tierney <[mtierney@wadleighlaw.com](mailto:mtierney@wadleighlaw.com)>  
**Cc:** Beth Littrell <[beth.littrell@splcenter.org](mailto:beth.littrell@splcenter.org)>; Claudia Huerta <[claudia.huerta@splcenter.org](mailto:claudia.huerta@splcenter.org)>; Emily Joselson <[ejoselson@langrock.com](mailto:ejoselson@langrock.com)>; flangrock <[flangrock@langrock.com](mailto:flangrock@langrock.com)>; Jessica Stone <[jessica.stone@splcenter.org](mailto:jessica.stone@splcenter.org)>; jswift <[jswift@langrock.com](mailto:jswift@langrock.com)>; Julie Jackman <[jjackman@langrock.com](mailto:jjackman@langrock.com)>; Maya Rajaratnam

<[maya.rajaratnam@splcenter.org](mailto:maya.rajaratnam@splcenter.org)>; Sarah Star <[sarahstar.esq@gmail.com](mailto:sarahstar.esq@gmail.com)>; Scott McCoy <[scott.mccoy@splcenter.org](mailto:scott.mccoy@splcenter.org)>; srs <[srs@sarahstarlaw.com](mailto:srs@sarahstarlaw.com)>; Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>; Brooks G. McArthur <[bmcarthur@jarvismcarthur.com](mailto:bmcarthur@jarvismcarthur.com)>; Anthony Duprey <[anthony@ndp-law.com](mailto:anthony@ndp-law.com)>; Daniel J. Schmid <[dschmid@lc.org](mailto:dschmid@lc.org)>; Horatio Mihet <[hmihet@lc.org](mailto:hmihet@lc.org)>; Roger K. Gannam <[rgannam@lc.org](mailto:rgannam@lc.org)>; Adam Hochschild <[adam@hochschildlaw.com](mailto:adam@hochschildlaw.com)>; Norman C. Smith <[norman@normansmithlaw.com](mailto:norman@normansmithlaw.com)>; Richard Boyer <[rickboyerlaw@gmail.com](mailto:rickboyerlaw@gmail.com)>; Toddy Ferguson <[cs.fergie@myfairpoint.net](mailto:cs.fergie@myfairpoint.net)>

**Subject:** RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Plaintiffs' First Set of Requests for Production to Defendant Timothy Miller

Michael,

Attached are Plaintiffs' initial disclosures, which were originally served on July 9, 2018. Apologies for the delay.

Do you have an update on the issues I raised in my email below?

Thanks,  
Diego



**Diego Soto** he/him/his  
Staff Attorney | LGBTQ Rights & Special Litigation  
Southern Poverty Law Center  
T 334.956.8427 C 334.604.1414 F 334.956.8481  
[diego.soto@splcenter.org](mailto:diego.soto@splcenter.org) | [www.splcenter.org](http://www.splcenter.org)  
Admitted in Alabama and the District of Columbia

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---

**From:** Diego Soto

**Sent:** Friday, February 7, 2020 5:40 PM

**To:** Michael Tierney <[mtierney@wadleighlaw.com](mailto:mtierney@wadleighlaw.com)>

**Cc:** Beth Littrell <[beth.littrell@splcenter.org](mailto:beth.littrell@splcenter.org)>; Claudia Huerta <[claudia.huerta@splcenter.org](mailto:claudia.huerta@splcenter.org)>; Emily Joselson <[ejoselson@langrock.com](mailto:ejoselson@langrock.com)>; flangrock <[flangrock@langrock.com](mailto:flangrock@langrock.com)>; Jessica Stone <[jessica.stone@splcenter.org](mailto:jessica.stone@splcenter.org)>; jswift <[jswift@langrock.com](mailto:jswift@langrock.com)>; Julie Jackman <[jjackman@langrock.com](mailto:jjackman@langrock.com)>; Maya Rajaratnam <[maya.rajaratnam@splcenter.org](mailto:maya.rajaratnam@splcenter.org)>; Sarah Star <[sarahstar.esq@gmail.com](mailto:sarahstar.esq@gmail.com)>; Scott McCoy <[Scott.McCoy@splcenter.org](mailto:Scott.McCoy@splcenter.org)>; srs <[srs@sarahstarlaw.com](mailto:srs@sarahstarlaw.com)>; Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>; Brooks G. McArthur <[bmcarthur@jarvismcarthur.com](mailto:bmcarthur@jarvismcarthur.com)>; Anthony Duprey <[anthony@ndp-law.com](mailto:anthony@ndp-law.com)>; Daniel J. Schmid <[dschmid@lc.org](mailto:dschmid@lc.org)>; Horatio Mihet <[hmihet@lc.org](mailto:hmihet@lc.org)>; Roger K. Gannam <[rgannam@lc.org](mailto:rgannam@lc.org)>; Adam Hochschild <[adam@hochschildlaw.com](mailto:adam@hochschildlaw.com)>; Norman C. Smith <[norman@normansmithlaw.com](mailto:norman@normansmithlaw.com)>; Richard Boyer <[rickboyerlaw@gmail.com](mailto:rickboyerlaw@gmail.com)>; Toddy Ferguson <[cs.fergie@myfairpoint.net](mailto:cs.fergie@myfairpoint.net)>

**Subject:** Re: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Plaintiffs' First Set of Requests for Production to Defendant Timothy Miller

Thanks, Michael. Are you able to confirm whether Mr. Miller's criminal defense firm has a copy of the criminal discovery and whether Mr. Miller would sign the authorization described in my letter? FOIA isn't an option without that authorization and is becoming less of a realistic option as time progresses.

I'll forward you Plaintiffs' initial disclosures shortly.

On Feb 7, 2020, at 5:25 PM, Michael Tierney <[mtierney@wadleighlaw.com](mailto:mtierney@wadleighlaw.com)> wrote:

Diego:

Pursuant to your request, attached are a copy of Timothy Miller's Initial Disclosures.

You have my assent to have an extra week on getting a reply to the motion for summary judgment filed.

As far as other discovery requests, we should wait and see what the result of the pending motions are before dealing substantively with those. As you recognize in your letter, the discovery requests are overly burdensome and could be substantially narrowed. Most of what you are looking for could be more easily obtained via a FOIA request or another avenue and you are once again encouraged to pursue those other avenues.

Finally, I could not find a record in my file of having received Jenkin's initial disclosures. Would you please send those to me or let me know when they will be produced?

Thanks,

Michael

Michael J. Tierney, Esq.  
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95 Market Street  
Manchester, NH 03101  
603-669-4140  
603-206-7239 (Direct)  
603-669-6018 (Fax)

---

**From:** Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>  
**Sent:** Wednesday, February 5, 2020 11:08 AM  
**To:** Michael Tierney <[mtierney@wadleighlaw.com](mailto:mtierney@wadleighlaw.com)>  
**Cc:** Beth Littrell <[beth.littrell@splcenter.org](mailto:beth.littrell@splcenter.org)>; Claudia Huerta <[claudia.huerta@splcenter.org](mailto:claudia.huerta@splcenter.org)>; Emily Joselson <[ejoselson@langrock.com](mailto:ejoselson@langrock.com)>; flangrock <[flangrock@langrock.com](mailto:flangrock@langrock.com)>; Jessica Stone <[jessica.stone@splcenter.org](mailto:jessica.stone@splcenter.org)>; jswift <[jswift@langrock.com](mailto:jswift@langrock.com)>; Julie Jackman <[jjackman@langrock.com](mailto:jjackman@langrock.com)>; Maya Rajaratnam <[maya.rajaratnam@splcenter.org](mailto:maya.rajaratnam@splcenter.org)>; Sarah Star <[sarahstar.esq@gmail.com](mailto:sarahstar.esq@gmail.com)>; Scott McCoy <[Scott.McCoy@splcenter.org](mailto:Scott.McCoy@splcenter.org)>; srs <[srs@sarahstarlaw.com](mailto:srs@sarahstarlaw.com)>; Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>; Brooks G. McArthur <[bmcarthur@jarvismcarthur.com](mailto:bmcarthur@jarvismcarthur.com)>; Anthony Duprey <[anthony@ndp-law.com](mailto:anthony@ndp-law.com)>; Daniel J. Schmid <[dschmid@lc.org](mailto:dschmid@lc.org)>; Horatio Mihet <[hmihet@lc.org](mailto:hmihet@lc.org)>; Roger K. Gannam <[rgannam@LC.org](mailto:rgannam@LC.org)>; Adam Hochschild <[adam@hochschildlaw.com](mailto:adam@hochschildlaw.com)>; Norman C. Smith <[norman@normansmithlaw.com](mailto:norman@normansmithlaw.com)>; Richard Boyer <[rickboyerlaw@gmail.com](mailto:rickboyerlaw@gmail.com)>; Toddy Ferguson <[cs.fergie@myfairpoint.net](mailto:cs.fergie@myfairpoint.net)>  
**Subject:** RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Plaintiffs' First Set of Requests for Production to Defendant Timothy Miller

Michael,

Thanks for reaching out. Would a new deadline of COB Friday be sufficient?

Plaintiffs stipulate that Mr. Miller's service of initial disclosures does not waive or forfeit the defenses he has raised, in his motion to dismiss and his motion for reconsideration, that the Court lacks personal jurisdiction and that service of process was insufficient. If that suffices, please let me know when we can expect those initial disclosures.

Please also let me know if Mr. Miller objects to a 1-week extension of the time for Ms. Jenkins to reply to his response in opposition to her motion for partial summary judgment on Count 1.

Thanks,  
Diego



**Diego Soto** he/him/his  
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Admitted in Alabama and the District of Columbia

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---

**From:** Michael Tierney <[mtierney@wadleighlaw.com](mailto:mtierney@wadleighlaw.com)>  
**Sent:** Wednesday, February 5, 2020 9:39 AM  
**To:** Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>  
**Cc:** Beth Littrell <[beth.littrell@splcenter.org](mailto:beth.littrell@splcenter.org)>; Claudia Huerta <[claudia.huerta@splcenter.org](mailto:claudia.huerta@splcenter.org)>; Emily Joselson <[ejoselson@langrock.com](mailto:ejoselson@langrock.com)>; flangrock <[flangrock@langrock.com](mailto:flangrock@langrock.com)>; Jessica Stone <[jessica.stone@splcenter.org](mailto:jessica.stone@splcenter.org)>; jswift <[jswift@langrock.com](mailto:jswift@langrock.com)>; Julie Jackman <[jjackman@langrock.com](mailto:jjackman@langrock.com)>; Maya Rajaratnam <[maya.rajaratnam@splcenter.org](mailto:maya.rajaratnam@splcenter.org)>; Sarah Star <[sarahstar.esq@gmail.com](mailto:sarahstar.esq@gmail.com)>; Scott McCoy <[Scott.McCoy@splcenter.org](mailto:Scott.McCoy@splcenter.org)>; srs <[srs@sarahstarlaw.com](mailto:srs@sarahstarlaw.com)>; Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>; Brooks G. McArthur <[bmcarthur@jarvismcarthur.com](mailto:bmcarthur@jarvismcarthur.com)>; Anthony Duprey <[anthony@ndp-law.com](mailto:anthony@ndp-law.com)>; Daniel J. Schmid <[dschmid@lc.org](mailto:dschmid@lc.org)>; Horatio Mihet <[hmihet@lc.org](mailto:hmihet@lc.org)>; Roger K. Gannam <[rgannam@LC.org](mailto:rgannam@LC.org)>; Adam Hochschild <[adam@hochschildlaw.com](mailto:adam@hochschildlaw.com)>; Norman C. Smith <[norman@normansmithlaw.com](mailto:norman@normansmithlaw.com)>; Richard Boyer <[rickboyerlaw@gmail.com](mailto:rickboyerlaw@gmail.com)>; Toddy Ferguson <[cs.fergie@myfairpoint.net](mailto:cs.fergie@myfairpoint.net)>  
**Subject:** RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Plaintiffs' First Set of Requests for Production to Defendant Timothy Miller

Diego:

I have reviewed your letter from last week but will need additional time to respond more fully. As an initial matter, however, and as I explained to you on the telephone, I would be happy to provide you with initial disclosures if you would be able to stipulate that this would not be considered a waiver of our personal jurisdiction or lack of service arguments for which the Court currently has a pending motion. Let me know how you would like to proceed.

Michael

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603-206-7239 (Direct)  
603-669-6018 (Fax)

---

**From:** Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>  
**Sent:** Wednesday, January 29, 2020 12:58 PM  
**To:** Michael Tierney <[mtierney@wadleighlaw.com](mailto:mtierney@wadleighlaw.com)>  
**Cc:** Beth Littrell <[beth.littrell@splcenter.org](mailto:beth.littrell@splcenter.org)>; Claudia Huerta <[claudia.huerta@splcenter.org](mailto:claudia.huerta@splcenter.org)>; Emily Joselson <[ejoselson@langrock.com](mailto:ejoselson@langrock.com)>; flangrock <[flangrock@langrock.com](mailto:flangrock@langrock.com)>; Jessica Stone <[jessica.stone@splcenter.org](mailto:jessica.stone@splcenter.org)>; jswift <[jswift@langrock.com](mailto:jswift@langrock.com)>; Julie Jackman <[jjackman@langrock.com](mailto:jjackman@langrock.com)>; Maya Rajaratnam

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**Subject:** RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Plaintiffs' First Set of Requests for Production to Defendant Timothy Miller

Michael,

Thanks again for conferring by telephone on Monday. Please find attached a letter that summarizes our conversation and sets forth Plaintiffs' responses to Mr. Miller's positions on the matters we discussed. Please do let me know if I misunderstood you on any point. I'd appreciate a response by COB on February 5.

Sincerely,  
Diego



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Admitted in Alabama and the District of Columbia

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---

**From:** Diego Soto

**Sent:** Monday, January 27, 2020 12:10 PM

**To:** 'Michael Tierney' <[mtierney@wadleighlaw.com](mailto:mtierney@wadleighlaw.com)>

**Cc:** Beth Littrell <[beth.littrell@splcenter.org](mailto:beth.littrell@splcenter.org)>; Claudia Huerta <[claudia.huerta@splcenter.org](mailto:claudia.huerta@splcenter.org)>; Emily Joselson <[ejoselson@langrock.com](mailto:ejoselson@langrock.com)>; flangrock <[flangrock@langrock.com](mailto:flangrock@langrock.com)>; Jessica Stone <[jessica.stone@splcenter.org](mailto:jessica.stone@splcenter.org)>; jswift <[jswift@langrock.com](mailto:jswift@langrock.com)>; Julie Jackman <[jjackman@langrock.com](mailto:jjackman@langrock.com)>; Maya Rajaratnam <[maya.rajaratnam@splcenter.org](mailto:maya.rajaratnam@splcenter.org)>; Sarah Star <[sarahstar.esq@gmail.com](mailto:sarahstar.esq@gmail.com)>; Scott McCoy <[scott.mccoy@splcenter.org](mailto:scott.mccoy@splcenter.org)>; srs <[srs@sarahstarlaw.com](mailto:srs@sarahstarlaw.com)>; Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>; 'Brooks G. McArthur' <[bmcarthur@jarvismcarthur.com](mailto:bmcarthur@jarvismcarthur.com)>; 'Anthony Duprey' <[anthony@ndp-law.com](mailto:anthony@ndp-law.com)>; 'Daniel J. Schmid' <[dschmid@lc.org](mailto:dschmid@lc.org)>; 'Horatio Mihet' <[hmihet@lc.org](mailto:hmihet@lc.org)>; 'Roger K. Gannam' <[rgannam@LC.org](mailto:rgannam@LC.org)>; 'Adam Hochschild' <[adam@hochschildlaw.com](mailto:adam@hochschildlaw.com)>; 'Norman C. Smith' <[norman@normansmithlaw.com](mailto:norman@normansmithlaw.com)>; 'Richard Boyer' <[rickboyerlaw@gmail.com](mailto:rickboyerlaw@gmail.com)>; 'Toddy Ferguson' <[cs.fergie@myfairpoint.net](mailto:cs.fergie@myfairpoint.net)>

**Subject:** RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Plaintiffs' First Set of Requests for Production to Defendant Timothy Miller

Michael,

In case any of my colleagues or any counsel for the other parties wishes to join, let's instead use this dial-in information:

**Direct Dial:** 646-558-8656,,826828724#

**Dial:** 646-558-8656

**Meeting ID:** 826 828 724



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**From:** Diego Soto

**Sent:** Friday, January 24, 2020 1:45 PM

**To:** Michael Tierney <[mtierney@wadleighlaw.com](mailto:mtierney@wadleighlaw.com)>

**Cc:** Beth Littrell <[beth.littrell@splcenter.org](mailto:beth.littrell@splcenter.org)>; Claudia Huerta <[claudia.huerta@splcenter.org](mailto:claudia.huerta@splcenter.org)>; Emily Joselson <[ejoselson@langrock.com](mailto:ejoselson@langrock.com)>; flangrock <[flangrock@langrock.com](mailto:flangrock@langrock.com)>; Jessica Stone <[jessica.stone@splcenter.org](mailto:jessica.stone@splcenter.org)>; jswift <[jswift@langrock.com](mailto:jswift@langrock.com)>; Julie Jackman <[jjackman@langrock.com](mailto:jjackman@langrock.com)>; Maya Rajaratnam <[maya.rajaratnam@splcenter.org](mailto:maya.rajaratnam@splcenter.org)>; Sarah Star <[sarahstar.esq@gmail.com](mailto:sarahstar.esq@gmail.com)>; Scott McCoy <[scott.mccoy@splcenter.org](mailto:scott.mccoy@splcenter.org)>; srs <[srs@sarahstarlaw.com](mailto:srs@sarahstarlaw.com)>; Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>; Brooks G. McArthur <[bmcarthur@jarvismcarthur.com](mailto:bmcarthur@jarvismcarthur.com)>; Anthony Duprey <[anthony@ndp-law.com](mailto:anthony@ndp-law.com)>; Daniel J. Schmid <[dschmid@lc.org](mailto:dschmid@lc.org)>; Horatio Mihet <[hmihet@lc.org](mailto:hmihet@lc.org)>; Roger K. Gannam <[rgannam@LC.org](mailto:rgannam@LC.org)>; Adam Hochschild <[adam@hochschildlaw.com](mailto:adam@hochschildlaw.com)>; Norman C. Smith <[norman@normansmithlaw.com](mailto:norman@normansmithlaw.com)>; Richard Boyer <[rickboyerlaw@gmail.com](mailto:rickboyerlaw@gmail.com)>; Toddy Ferguson <[cs.fergie@myfairpoint.net](mailto:cs.fergie@myfairpoint.net)>

**Subject:** RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Plaintiffs' First Set of Requests for Production to Defendant Timothy Miller

Will do, thanks.



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---

**From:** Michael Tierney <[mtierney@wadleighlaw.com](mailto:mtierney@wadleighlaw.com)>

**Sent:** Friday, January 24, 2020 1:41 PM

**To:** Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>

**Cc:** Beth Littrell <[beth.littrell@splcenter.org](mailto:beth.littrell@splcenter.org)>; Claudia Huerta <[claudia.huerta@splcenter.org](mailto:claudia.huerta@splcenter.org)>; Emily Joselson <[ejoselson@langrock.com](mailto:ejoselson@langrock.com)>; flangrock <[flangrock@langrock.com](mailto:flangrock@langrock.com)>; Jessica Stone <[jessica.stone@splcenter.org](mailto:jessica.stone@splcenter.org)>; jswift <[jswift@langrock.com](mailto:jswift@langrock.com)>; Julie Jackman <[jjackman@langrock.com](mailto:jjackman@langrock.com)>; Maya Rajaratnam <[maya.rajaratnam@splcenter.org](mailto:maya.rajaratnam@splcenter.org)>; Sarah Star <[sarahstar.esq@gmail.com](mailto:sarahstar.esq@gmail.com)>; Scott McCoy <[Scott.McCoy@splcenter.org](mailto:Scott.McCoy@splcenter.org)>; srs <[srs@sarahstarlaw.com](mailto:srs@sarahstarlaw.com)>; Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>; Brooks G. McArthur <[bmcarthur@jarvismcarthur.com](mailto:bmcarthur@jarvismcarthur.com)>; Anthony Duprey <[anthony@ndp-law.com](mailto:anthony@ndp-law.com)>; Daniel J. Schmid <[dschmid@lc.org](mailto:dschmid@lc.org)>; Horatio Mihet <[hmihet@lc.org](mailto:hmihet@lc.org)>; Roger K. Gannam <[rgannam@LC.org](mailto:rgannam@LC.org)>; Adam Hochschild <[adam@hochschildlaw.com](mailto:adam@hochschildlaw.com)>; Norman C. Smith <[norman@normansmithlaw.com](mailto:norman@normansmithlaw.com)>; Richard Boyer <[rickboyerlaw@gmail.com](mailto:rickboyerlaw@gmail.com)>; Toddy Ferguson <[cs.fergie@myfairpoint.net](mailto:cs.fergie@myfairpoint.net)>

**Subject:** Re: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Plaintiffs' First Set of Requests for Production to Defendant Timothy Miller

Why don't you call me at 2 Pm on Monday.

Have a good weekend.

Michael

---

**From:** Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>

**Sent:** Friday, January 24, 2020, 2:29 PM

**To:** Michael Tierney

**Cc:** Beth Littrell; Claudia Huerta; Emily Joselson; flangrock; Jessica Stone; jswift; Julie Jackman; Maya Rajaratnam; Sarah Star; Scott McCoy; srs; Tyler Clemons; Brooks G. McArthur; Anthony Duprey; Daniel J. Schmid; Horatio Mihet; Roger K. Gannam; Adam Hochschild; Norman C. Smith; Richard Boyer; Toddy Ferguson

**Subject:** RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Plaintiffs' First Set of Requests for Production to Defendant Timothy Miller

Thanks, Michael. Any time Monday works for me. Just let me know. Also, I only just noticed that you had called my desk on January 9. I'm working now with the IT department to resolve what appears to be a problem with my voicemail after switching desks. In the meantime, you can reach me at my cell phone number below, if you can't reach me at my desk. Apologies for that.



**Diego Soto** *he/him/his*

Staff Attorney | LGBTQ Rights & Special Litigation

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---

**From:** Michael Tierney <[mtierney@wadleighlaw.com](mailto:mtierney@wadleighlaw.com)>

**Sent:** Friday, January 24, 2020 1:22 PM

**To:** Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>

**Cc:** Beth Littrell <[beth.littrell@splcenter.org](mailto:beth.littrell@splcenter.org)>; Claudia Huerta <[claudia.huerta@splcenter.org](mailto:claudia.huerta@splcenter.org)>; Emily Joselson <[ejoselson@langrock.com](mailto:ejoselson@langrock.com)>; flangrock <[flangrock@langrock.com](mailto:flangrock@langrock.com)>; Jessica Stone <[jessica.stone@splcenter.org](mailto:jessica.stone@splcenter.org)>; jswift <[jswift@langrock.com](mailto:jswift@langrock.com)>; Julie Jackman <[jjackman@langrock.com](mailto:jjackman@langrock.com)>; Maya Rajaratnam <[maya.rajaratnam@splcenter.org](mailto:maya.rajaratnam@splcenter.org)>; Sarah Star <[sarahstar.esq@gmail.com](mailto:sarahstar.esq@gmail.com)>; Scott McCoy <[Scott.McCoy@splcenter.org](mailto:Scott.McCoy@splcenter.org)>; srs <[srs@sarahstarlaw.com](mailto:srs@sarahstarlaw.com)>; Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>; Brooks G. McArthur <[bmcarthur@jarvismcarthur.com](mailto:bmcarthur@jarvismcarthur.com)>; Anthony Duprey <[anthony@ndp-law.com](mailto:anthony@ndp-law.com)>; Daniel J. Schmid <[dschmid@lc.org](mailto:dschmid@lc.org)>; Horatio Mihet <[hmihet@lc.org](mailto:hmihet@lc.org)>; Roger K. Gannam <[rgannam@LC.org](mailto:rgannam@LC.org)>; Adam Hochschild <[adam@hochschildlaw.com](mailto:adam@hochschildlaw.com)>; Norman C. Smith <[norman@normansmithlaw.com](mailto:norman@normansmithlaw.com)>; Richard Boyer <[rickboyerlaw@gmail.com](mailto:rickboyerlaw@gmail.com)>; Toddy Ferguson <[cs.fergie@myfairpoint.net](mailto:cs.fergie@myfairpoint.net)>

**Subject:** Re: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Plaintiffs' First Set of Requests for Production to Defendant Timothy Miller

I am out of town today but happy to discuss on the phone on Monday.

Michael

---

**From:** Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>

**Sent:** Friday, January 24, 2020, 2:04 PM

**To:** Michael Tierney

**Cc:** Beth Littrell; Claudia Huerta; Emily Joselson; flangrock; Jessica Stone; jswift; Julie Jackman; Maya Rajaratnam; Sarah Star; Scott McCoy; srs; Tyler Clemons; Brooks G. McArthur; Anthony Duprey; Daniel J. Schmid; Horatio Mihet; Roger K. Gannam; Adam Hochschild; Norman C. Smith; Richard Boyer; Toddy Ferguson

**Subject:** RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Plaintiffs' First Set of Requests for Production to Defendant Timothy Miller

Michael,

Please let me know by close of business today when you are available to meet and confer by telephone regarding the matters I listed in my email below. Plaintiffs intend to move to compel and to seek payment of expenses, including attorney's fees, if I don't receive a timely response.

Sincerely,  
Diego



**Diego Soto** he/him/his

Staff Attorney | LGBTQ Rights & Special Litigation  
Southern Poverty Law Center

T 334.956.8427 C 334.604.1414 F 334.956.8481

[diego.soto@splcenter.org](mailto:diego.soto@splcenter.org) | [www.splcenter.org](http://www.splcenter.org)

Admitted in Alabama and the District of Columbia

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---

**From:** Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>

**Sent:** Tuesday, January 21, 2020 2:44 PM

**To:** Michael Tierney <[mtierney@wadleighlaw.com](mailto:mtierney@wadleighlaw.com)>

**Cc:** Beth Littrell <[beth.littrell@splcenter.org](mailto:beth.littrell@splcenter.org)>; Claudia Huerta <[claudia.huerta@splcenter.org](mailto:claudia.huerta@splcenter.org)>; Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>; Emily Joselson <[ejoselson@langrock.com](mailto:ejoselson@langrock.com)>; flangrock <[flangrock@langrock.com](mailto:flangrock@langrock.com)>; Jessica Stone <[jessica.stone@splcenter.org](mailto:jessica.stone@splcenter.org)>; jswift <[jswift@langrock.com](mailto:jswift@langrock.com)>; Julie Jackman <[jjackman@langrock.com](mailto:jjackman@langrock.com)>; Maya Rajaratnam <[maya.rajaratnam@splcenter.org](mailto:maya.rajaratnam@splcenter.org)>; Sarah Star <[sarahstar.esq@gmail.com](mailto:sarahstar.esq@gmail.com)>; Scott McCoy <[Scott.McCoy@splcenter.org](mailto:Scott.McCoy@splcenter.org)>; srs <[srs@sarahstarlaw.com](mailto:srs@sarahstarlaw.com)>; Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>; Brooks G. McArthur <[bmcarthur@jarvismcarthur.com](mailto:bmcarthur@jarvismcarthur.com)>; Anthony Duprey <[anthony@ndp-law.com](mailto:anthony@ndp-law.com)>; Daniel J. Schmid <[dschmid@lc.org](mailto:dschmid@lc.org)>; Horatio Mihet <[hmihet@lc.org](mailto:hmihet@lc.org)>; Roger K. Gannam <[rgannam@LC.org](mailto:rgannam@LC.org)>; Adam Hochschild <[adam@hochschildlaw.com](mailto:adam@hochschildlaw.com)>; Norman C. Smith <[norman@normansmithlaw.com](mailto:norman@normansmithlaw.com)>; Richard Boyer <[rickboyerlaw@gmail.com](mailto:rickboyerlaw@gmail.com)>; Toddy Ferguson <[cs.fergie@myfairpoint.net](mailto:cs.fergie@myfairpoint.net)>

**Subject:** RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Plaintiffs' First Set of Requests for Production to Defendant Timothy Miller

Michael,

I have yet to receive a response as to the following matters:

1. When Plaintiffs can expect Mr. Miller's initial disclosures;

2. When Plaintiffs can expect Mr. Miller's responses to Plaintiffs' first requests for production;
3. Whether you confirmed with Judge Conrad's former firm whether it has a copy of the criminal discovery documents in its file for Mr. Miller;
4. When Plaintiffs can expect a signed [Certification of Identity](#) authorizing the Department of Justice to release to Plaintiffs information relating to Mr. Miller.

I would appreciate a response to each matter by close of business tomorrow.

Sincerely,  
Diego



**Diego Soto** he/him/his  
Staff Attorney | LGBTQ Rights & Special Litigation  
Southern Poverty Law Center  
T 334.956.8427 C 334.604.1414 F 334.956.8481  
[diego.soto@splcenter.org](mailto:diego.soto@splcenter.org) | [www.splcenter.org](http://www.splcenter.org)  
Admitted in Alabama and the District of Columbia

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---

**From:** Diego Soto

**Sent:** Tuesday, December 17, 2019 2:56 PM

**To:** Michael Tierney <[mtierney@wadleighlaw.com](mailto:mtierney@wadleighlaw.com)>

**Cc:** Claudia Huerta <[claudia.huerta@splcenter.org](mailto:claudia.huerta@splcenter.org)>; David Dinielli <[David.Dinielli@splcenter.org](mailto:David.Dinielli@splcenter.org)>; Emily Joselson <[ejoselson@langrock.com](mailto:ejoselson@langrock.com)>; flangrock <[flangrock@langrock.com](mailto:flangrock@langrock.com)>; Jessica Stone <[jessica.stone@splcenter.org](mailto:jessica.stone@splcenter.org)>; jswift <[jswift@langrock.com](mailto:jswift@langrock.com)>; Julie Jackman <[jjackman@langrock.com](mailto:jjackman@langrock.com)>; Sarah Star <[sarahstar.esq@gmail.com](mailto:sarahstar.esq@gmail.com)>; srs <[srs@sarahstarlaw.com](mailto:srs@sarahstarlaw.com)>; Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>; Brooks G. McArthur <[bmcarthur@jarvismcarthur.com](mailto:bmcarthur@jarvismcarthur.com)>; Anthony Duprey <[anthony@ndp-law.com](mailto:anthony@ndp-law.com)>; Daniel J. Schmid <[dschmid@lc.org](mailto:dschmid@lc.org)>; Horatio Mihet <[hmihet@lc.org](mailto:hmihet@lc.org)>; Roger K. Gannam <[rgannam@LC.org](mailto:rgannam@LC.org)>; Adam Hochschild <[adam@hochschildlaw.com](mailto:adam@hochschildlaw.com)>; Norman C. Smith <[norman@normansmithlaw.com](mailto:norman@normansmithlaw.com)>; Toddy Ferguson <[cs.fergie@myfairpoint.net](mailto:cs.fergie@myfairpoint.net)>; Hillary A. Borcherding <[hborcherding@gravelshea.com](mailto:hborcherding@gravelshea.com)>; Linda Bradford Barron <[lbarron@gravelshea.com](mailto:lbarron@gravelshea.com)>; Matthew D. Preedom <[mpreedom@gravelshea.com](mailto:mpreedom@gravelshea.com)>; Robert B. Hemley <[rhemley@gravelshea.com](mailto:rhemley@gravelshea.com)>

**Subject:** RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Plaintiffs' First Set of Requests for Production to Defendant Timothy Miller

Michael,

Do you have an update on this?

Thanks,  
Diego



**Diego Soto** he/him/his  
Staff Attorney | LGBTQ Rights & Special Litigation  
Southern Poverty Law Center  
T 334.956.8427 C 334.604.1414 F 334.956.8481  
[diego.soto@splcenter.org](mailto:diego.soto@splcenter.org) | [www.splcenter.org](http://www.splcenter.org)  
Admitted in Alabama and the District of Columbia

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---

**From:** Diego Soto

**Sent:** Monday, December 2, 2019 10:13 AM

**To:** Michael Tierney <[mtierney@wadleighlaw.com](mailto:mtierney@wadleighlaw.com)>

**Cc:** Claudia Huerta <[claudia.huerta@splcenter.org](mailto:claudia.huerta@splcenter.org)>; David Dinielli <[David.Dinielli@splcenter.org](mailto:David.Dinielli@splcenter.org)>; Emily Joselson <[ejoselson@langrock.com](mailto:ejoselson@langrock.com)>; flangrock <[flangrock@langrock.com](mailto:flangrock@langrock.com)>; Jessica Stone <[jessica.stone@splcenter.org](mailto:jessica.stone@splcenter.org)>; jswift <[jswift@langrock.com](mailto:jswift@langrock.com)>; Julie Jackman <[jjackman@langrock.com](mailto:jjackman@langrock.com)>; Sarah Star <[sarahstar.esq@gmail.com](mailto:sarahstar.esq@gmail.com)>; srs <[srs@sarahstarlaw.com](mailto:srs@sarahstarlaw.com)>; Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>; Brooks G. McArthur <[bmcarthur@jarvismcarthur.com](mailto:bmcarthur@jarvismcarthur.com)>; Anthony Duprey <[anthony@ndp-law.com](mailto:anthony@ndp-law.com)>; Daniel J. Schmid <[dschmid@lc.org](mailto:dschmid@lc.org)>; Horatio Mihet <[hmihet@lc.org](mailto:hmihet@lc.org)>; Roger K. Gannam <[rgannam@LC.org](mailto:rgannam@LC.org)>; Adam Hochschild <[adam@hochschildlaw.com](mailto:adam@hochschildlaw.com)>; Norman C. Smith <[norman@normansmithlaw.com](mailto:norman@normansmithlaw.com)>; Toddy Ferguson <[cs.fergie@myfairpoint.net](mailto:cs.fergie@myfairpoint.net)>; Hillary A. Borcharding <[hborcharding@gravelshea.com](mailto:hborcharding@gravelshea.com)>; Linda Bradford Barron <[lbarron@gravelshea.com](mailto:lbarron@gravelshea.com)>; Matthew D. Preedom <[mpreedom@gravelshea.com](mailto:mpreedom@gravelshea.com)>; Robert B. Hemley <[rhemley@gravelshea.com](mailto:rhemley@gravelshea.com)>

**Subject:** RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Plaintiffs' First Set of Requests for Production to Defendant Timothy Miller

Michael,

Thanks for your reply. I believe the easiest and fastest route would be for you to confirm with Judge Conrad's former firm whether it has a copy of the criminal discovery documents in its file for Mr. Miller. If it does not, then I can submit a FOIA request for those documents. I believe I will need Mr. Miller to fill out and sign this form to submit with the FOIA request:

[https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/cert\\_ind.pdf](https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/cert_ind.pdf)

Thanks,  
Diego



**Diego Soto** he/him/his  
Staff Attorney | LGBTQ Rights & Special Litigation  
Southern Poverty Law Center  
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[diego.soto@splcenter.org](mailto:diego.soto@splcenter.org) | [www.splcenter.org](http://www.splcenter.org)  
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---

**From:** Michael Tierney <[mtierney@wadleighlaw.com](mailto:mtierney@wadleighlaw.com)>

**Sent:** Tuesday, November 26, 2019 4:30 PM

**To:** Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>

**Cc:** Claudia Huerta <[claudia.huerta@splcenter.org](mailto:claudia.huerta@splcenter.org)>; David Dinielli <[David.Dinielli@splcenter.org](mailto:David.Dinielli@splcenter.org)>; Emily Joselson <[ejoselson@langrock.com](mailto:ejoselson@langrock.com)>; flangrock <[flangrock@langrock.com](mailto:flangrock@langrock.com)>; Jessica Stone <[jessica.stone@splcenter.org](mailto:jessica.stone@splcenter.org)>; jswift <[jswift@langrock.com](mailto:jswift@langrock.com)>; Julie Jackman <[jjackman@langrock.com](mailto:jjackman@langrock.com)>; Sarah Star <[sarahstar.esq@gmail.com](mailto:sarahstar.esq@gmail.com)>; srs <[srs@sarahstarlaw.com](mailto:srs@sarahstarlaw.com)>; Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>; Brooks G. McArthur <[bmcarthur@jarvismcarthur.com](mailto:bmcarthur@jarvismcarthur.com)>; Anthony Duprey <[anthony@ndp-law.com](mailto:anthony@ndp-law.com)>; Daniel J. Schmid <[dschmid@lc.org](mailto:dschmid@lc.org)>; Horatio Mihet <[hmihet@lc.org](mailto:hmihet@lc.org)>; Roger K. Gannam <[rgannam@LC.org](mailto:rgannam@LC.org)>; Adam Hochschild <[adam@hochschildlaw.com](mailto:adam@hochschildlaw.com)>; Norman C. Smith <[norman@normansmithlaw.com](mailto:norman@normansmithlaw.com)>; Toddy Ferguson <[cs.fergie@myfairpoint.net](mailto:cs.fergie@myfairpoint.net)>; Hillary A. Borcharding <[hborcharding@gravelshea.com](mailto:hborcharding@gravelshea.com)>; Linda Bradford Barron <[lbarron@gravelshea.com](mailto:lbarron@gravelshea.com)>; Matthew D.

Preedom <[mpreedom@gravelshea.com](mailto:mpreedom@gravelshea.com)>; Robert B. Hemley <[rhemley@gravelshea.com](mailto:rhemley@gravelshea.com)>

**Subject:** RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Plaintiffs' First Set of Requests for Production to Defendant Timothy Miller

Diego:

As I explained on our telephone call on November 8<sup>th</sup>, any materials were obtained or turned over to the federal prosecutors in the criminal cases. You had said that you were going to reach out to the prosecutors and see if a FOIA action would be necessary to obtain the documents you seek or if the prosecutors would provide the documents without filing a FOIA request. I trust that you have done one or both of these options. Please let me know if you have success in your FOIA request or informally. There is no reason, that I am aware of, that I would have any greater success in obtaining documents via a FOIA action from the government than you would.

Michael

Michael J. Tierney, Esq.  
Wadleigh, Starr & Peters, PLLC  
95 Market Street  
Manchester, NH 03101  
603-669-4140  
603-206-7239 (Direct)  
603-669-6018 (Fax)

---

**From:** Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>

**Sent:** Thursday, November 21, 2019 9:13 AM

**To:** Michael Tierney <[mtierney@wadleighlaw.com](mailto:mtierney@wadleighlaw.com)>

**Cc:** Claudia Huerta <[claudia.huerta@splcenter.org](mailto:claudia.huerta@splcenter.org)>; David Dinielli <[David.Dinielli@splcenter.org](mailto:David.Dinielli@splcenter.org)>; Emily Joselson <[ejoselson@langrock.com](mailto:ejoselson@langrock.com)>; flangrock <[flangrock@langrock.com](mailto:flangrock@langrock.com)>; Jessica Stone <[jessica.stone@splcenter.org](mailto:jessica.stone@splcenter.org)>; jswift <[jswift@langrock.com](mailto:jswift@langrock.com)>; Julie Jackman <[jjackman@langrock.com](mailto:jjackman@langrock.com)>; Sarah Star <[sarahstar.esq@gmail.com](mailto:sarahstar.esq@gmail.com)>; srs <[srs@sarahstarlaw.com](mailto:srs@sarahstarlaw.com)>; Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>; Brooks G. McArthur <[bmcarthur@jarvismcarthur.com](mailto:bmcarthur@jarvismcarthur.com)>; Anthony Duprey <[anthony@ndp-law.com](mailto:anthony@ndp-law.com)>; Daniel J. Schmid <[dschmid@lc.org](mailto:dschmid@lc.org)>; Horatio Mihet <[hmihet@lc.org](mailto:hmihet@lc.org)>; Roger K. Gannam <[rgannam@LC.org](mailto:rgannam@LC.org)>; Adam Hochschild <[adam@hochschildlaw.com](mailto:adam@hochschildlaw.com)>; Norman C. Smith <[norman@normansmithlaw.com](mailto:norman@normansmithlaw.com)>; Toddy Ferguson <[cs.fergie@myfairpoint.net](mailto:cs.fergie@myfairpoint.net)>; Hillary A. Borcharding <[hborcharding@gravelshea.com](mailto:hborcharding@gravelshea.com)>; Linda Bradford Barron <[lbarron@gravelshea.com](mailto:lbarron@gravelshea.com)>; Matthew D. Preedom <[mpreedom@gravelshea.com](mailto:mpreedom@gravelshea.com)>; Robert B. Hemley <[rhemley@gravelshea.com](mailto:rhemley@gravelshea.com)>

**Subject:** RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Plaintiffs' First Set of Requests for Production to Defendant Timothy Miller

Michael,

Thank you again for your phone call on November 8.

Plaintiffs do not possess a copy of the documents you indicated Mr. Miller produced to the government in his criminal case. Have you learned whether Judge Conrad's former firm, Clymer Musser & Conrad, PC, which I believe is now Clymer Musser & Sarno, PC, has retained a copy that they can give to Mr. Miller for production to Plaintiffs?

Also, given the current discovery schedule, please let me know as soon as possible when Plaintiffs can expect Mr. Miller's initial disclosures and discovery responses.

Thanks,  
Diego



**Diego Soto** he/him/his  
Staff Attorney | LGBTQ Rights & Special Litigation  
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T 334.956.8427 C 334.604.1414 F 334.956.8481  
[diego.soto@splcenter.org](mailto:diego.soto@splcenter.org) | [www.splcenter.org](http://www.splcenter.org)  
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---

**From:** Diego Soto

**Sent:** Friday, November 8, 2019 2:11 PM

**To:** Michael J. Tierney <[mtierney@wadleighlaw.com](mailto:mtierney@wadleighlaw.com)>

**Cc:** Claudia Huerta <[claudia.huerta@splcenter.org](mailto:claudia.huerta@splcenter.org)>; David Dinielli <[david.dinielli@splcenter.org](mailto:david.dinielli@splcenter.org)>; Emily Joselson <[ejoselson@langrock.com](mailto:ejoselson@langrock.com)>; flangrock <[flangrock@langrock.com](mailto:flangrock@langrock.com)>; Jessica Stone <[jessica.stone@splcenter.org](mailto:jessica.stone@splcenter.org)>; jswift <[jswift@langrock.com](mailto:jswift@langrock.com)>; Julie Jackman <[jjackman@langrock.com](mailto:jjackman@langrock.com)>; Sarah Star <[sarahstar.esq@gmail.com](mailto:sarahstar.esq@gmail.com)>; srs <[srs@sarahstarlaw.com](mailto:srs@sarahstarlaw.com)>; Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>; Brooks G. McArthur <[bmcarthur@jarvismcarthur.com](mailto:bmcarthur@jarvismcarthur.com)>; Anthony Duprey <[anthony@ndp-law.com](mailto:anthony@ndp-law.com)>; Daniel J. Schmid <[dschmid@lc.org](mailto:dschmid@lc.org)>; Horatio Mihet <[hmihet@lc.org](mailto:hmihet@lc.org)>; Roger K. Gannam <[rgannam@LC.org](mailto:rgannam@LC.org)>; Adam Hochschild <[adam@hochschildlaw.com](mailto:adam@hochschildlaw.com)>; Norman C. Smith <[norman@normansmithlaw.com](mailto:norman@normansmithlaw.com)>; Toddy Ferguson <[cs.fergie@myfairpoint.net](mailto:cs.fergie@myfairpoint.net)>; Hillary A. Borcharding <[hborcharding@gravelshea.com](mailto:hborcharding@gravelshea.com)>; Linda Bradford Barron <[lbarron@gravelshea.com](mailto:lbarron@gravelshea.com)>; Matthew D. Preedom <[mpreedom@gravelshea.com](mailto:mpreedom@gravelshea.com)>; Robert B. Hemley <[rhemley@gravelshea.com](mailto:rhemley@gravelshea.com)>

**Subject:** RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Plaintiffs' First Set of Requests for Production to Defendant Timothy Miller

Michael,

I received notice of Mr. Miller's motion for reconsideration. Please let me know if, consistent with Local Rule 26(a)(3), Mr. Miller will engage in discovery pending disposition of that motion or if he will instead seek a stay of discovery.

Thanks,  
Diego



**Diego Soto** he/him/his  
Staff Attorney | LGBTQ Rights & Special Litigation  
Southern Poverty Law Center  
T 334.956.8427 C 334.604.1414 F 334.956.8481  
[diego.soto@splcenter.org](mailto:diego.soto@splcenter.org) | [www.splcenter.org](http://www.splcenter.org)  
Admitted in Alabama and the District of Columbia

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---

**From:** Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>

**Sent:** Wednesday, October 30, 2019 11:09 AM

**To:** Michael J. Tierney <[mtierney@wadleighlaw.com](mailto:mtierney@wadleighlaw.com)>

**Cc:** Claudia Huerta <[claudia.huerta@splcenter.org](mailto:claudia.huerta@splcenter.org)>; David Dinielli <[David.Dinielli@splcenter.org](mailto:David.Dinielli@splcenter.org)>; Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>; Emily Joselson <[ejoselson@langrock.com](mailto:ejoselson@langrock.com)>; flangrock <[flangrock@langrock.com](mailto:flangrock@langrock.com)>; Jessica Stone <[jessica.stone@splcenter.org](mailto:jessica.stone@splcenter.org)>; jswift <[jswift@langrock.com](mailto:jswift@langrock.com)>; Julie Jackman <[jjackman@langrock.com](mailto:jjackman@langrock.com)>; Sarah Star <[sarahstar.esq@gmail.com](mailto:sarahstar.esq@gmail.com)>; srs <[srs@sarahstarlaw.com](mailto:srs@sarahstarlaw.com)>; Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>; Brooks G. McArthur <[bmcarthur@jarvismcarthur.com](mailto:bmcarthur@jarvismcarthur.com)>; Anthony Duprey <[anthony@ndp-law.com](mailto:anthony@ndp-law.com)>; Daniel J. Schmid <[dschmid@lc.org](mailto:dschmid@lc.org)>; Horatio Mihet <[hmihet@lc.org](mailto:hmihet@lc.org)>; Roger K. Gannam <[rgannam@LC.org](mailto:rgannam@LC.org)>; Adam Hochschild

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**Subject:** Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Plaintiffs' First Set of Requests for Production to Defendant Timothy Miller

Michael,

I trust you received notice yesterday of the Court's order denying Defendant Timothy Miller's motion to dismiss. I have attached a copy of that order for your convenience.

Please let me know when Mr. Miller will serve his initial disclosures and produce documents in response to Plaintiffs' first set of requests for production, which were served on Mr. Miller by mail on June 27, 2018. I have attached a copy of those requests and Plaintiffs' supplemental instructions, served on Mr. Miller by mail on August 13, 2018, for your convenience.

Sincerely,  
Diego



**Diego Soto** he/him/his  
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January 29, 2020

**By Email**

Michael Tierney  
Wadleigh, Starr & Peters, PLLC  
mtierney@wadleighlaw.com

**Re: *Jenkins et al. v. Miller et al.*, No. 2:12-cv-184 (D. Vt.)  
Follow-Up from January 27, 2020 Meet-and-Confer**

Dear Michael:

Thank you again for conferring by telephone on January 27, 2020. Below are my summary of our conversation and Plaintiffs' responses to Mr. Miller's positions on these matters. Please do let me know if I misunderstood you on any point.

We discussed the four matters raised in my January 21, 2020 email to you:

1. When Plaintiffs can expect Mr. Miller's initial disclosures;
2. When Plaintiffs can expect Mr. Miller's responses to Plaintiffs' first requests for production;
3. Whether you confirmed with Judge Conrad's former firm whether it has a copy of the criminal discovery documents in its file for Mr. Miller;
4. When Plaintiffs can expect a signed Certification of Identity authorizing the Department of Justice to release to Plaintiffs information relating to Mr. Miller.

**I. Plaintiffs' Understanding of Mr. Miller's Position**

Mr. Miller takes the position that he is not required to participate in discovery for three primary reasons: (1) his participation in discovery would amount to an undue burden if his pending motion for reconsideration of his motion to dismiss, which challenges the Court's personal jurisdiction over him, were granted; (2) his participation in discovery would be unduly burdensome and disproportional to the needs of the case because he believes Ms. Jenkins's pending motion for partial summary judgment on her Vermont claim against

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him indicates she does not believe she needs to obtain discovery from him to impose liability on him, *see Hendricks v. Boltja*, 20 F. App'x 34, 37 (2d Cir. 2001); and (3) the Court has effectively stayed the case, including the Court's disposition of Ms. Jenkins's motions for partial summary judgment, while Defendants Philip Zodiates, Victoria Hyden, and Response Unlimited, Inc. (collectively, "RUL Defendants") have time to obtain new counsel.

Mr. Miller acknowledges that Local Rule 26(a)(3) provides that "[d]iscovery . . . shall not be stayed during the pendency of a Fed. R. Civ. P. 12(b) or (c) motion," that "[a] party may request a stay, or phased discovery, until the motion is decided, if a stay or phasing will help to secure the just, speedy, and inexpensive determination of the action," and that "[p]articipation in discovery as required under this rule will not be deemed a forfeiture or waiver of any Fed. R. Civ. P. 12 defenses." Yet Mr. Miller does not believe that Local Rule 26(a)(3) is specific enough to protect him from forfeiting his jurisdictional arguments by serving initial disclosures.

If Mr. Miller were required to participate in discovery, the only relevant, nonprivileged documents that he would produce to Plaintiffs comprise the discovery he exchanged with the government in his criminal case. To the extent Plaintiffs request more than those documents, Mr. Miller would object on the basis of his Fifth Amendment privilege against compulsory self-incrimination. Mr. Miller believes he still has such a privilege, even though he exhausted all direct appeals, because a person has the privilege regardless of how speculative or fanciful any potential criminal claims could be, although he does not concede the potential for criminal claims in his case is speculative or fanciful. *See Lefkowitz v. Cunningham*, 431 U.S. 801 (1977); *In re Folding Carton Antitrust Litig.*, 609 F.2d 867 (2d Cir. 1979).

## **II. Plaintiffs' Position**

### **A. Mr. Miller Is Required to Participate in Discovery Even While His Motion for Reconsideration Is Pending**

The Court's Local Rules clearly require Mr. Miller to participate in discovery, despite his pending motion for reconsideration, unless and until he moves to stay discovery and that motion is granted. The Local Rules clearly protect Mr. Miller from forfeiting his jurisdictional arguments by participating in discovery. Mr. Miller has made clear that he wishes to preserve his jurisdictional challenge, including by filing his motion to dismiss and his motion for reconsideration before participating in any discovery. *See Betco Corp. v. Peacock*, No. 3:12-cv-1045, 2014 WL 809211, at \*3–4 (N.D. Ohio Feb. 28, 2014) (holding defendants did not forfeit personal jurisdiction defense by engaging in discovery, including by serving initial disclosures, because they were "steadfast in asserting their objections to this Court's personal jurisdiction over them"); *cf. Hamilton v. Atlas Turner, Inc.*, 197 F.3d 58, 62 (2d Cir. 1999) (holding defendant forfeited personal jurisdictional argument by participating in discovery for four years before moving to dismiss); *Schall v. Suzuki Motor of Am., Inc.*, No. 4:14-cv-74, 2017 WL 2059662 (W.D. Ky. May 12, 2017) (holding defendant forfeited personal jurisdiction defense by withdrawing motion to dismiss for lack of personal jurisdiction and participating in discovery for over two years before re-filing). Under these

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circumstances, Plaintiffs would not argue that Mr. Miller forfeited his jurisdictional challenge by now participating in discovery.

Mr. Miller's specific position on initial disclosures appears inconsistent with his position on producing responsive documents, which Plaintiffs understand he at least contemplated doing before Ms. Jenkins filed her motion for partial summary judgment. In any event, Local Rule 26(a)(3) clearly and sufficiently protects Mr. Miller from forfeiting his jurisdictional arguments by serving initial disclosures.

Although Mr. Miller should actually seek a stay of discovery before proceeding as if discovery is stayed, he would not be entitled to a stay of discovery during the pendency of his motion for reconsideration just because he challenges the Court's personal jurisdiction. The Federal Rules of Civil Procedure and the Local Rules are clear: Discovery "shall not be stayed during the pendency of a Fed. R. Civ. P. 12(b) or (c) motion." L.R. 26(a)(3); *accord In re Chase Manhattan Corp. Sec. Litig.*, No. 90 Civ. 6092, 1991 WL 79432, at \*1 (S.D.N.Y. 1991) ("Had the Federal Rules contemplated that a motion to dismiss under Fed.R.Civ.P. 12(b)(6) would stay discovery, they would contain such a provision."). Mr. Miller offers no justification for a stay pending his motion that would not equally apply to every civil defendant that files a dispositive motion. A discovery stay in these circumstances would squarely contradict the policy that the mere filing of a dispositive motion does not stay discovery. In fact, because "[c]ourts generally disfavor motions for reconsideration," "the arguments in favor of a stay on a motion to dismiss have less force when the pending motion is one for reconsideration." *United States ex rel. Brooks v. Stevens-Henager Coll., Inc.*, No. 2:15-CV-119, 2017 WL 5241002, at \*1 (D. Utah June 23, 2017).

The requested discovery would be required of Mr. Miller whether or not he is a party, which makes a discovery stay unwarranted. *See Hachette Distribution, Inc. v. Hudson Cty. News Co.*, 136 F.R.D. 356, 359 (E.D.N.Y. 1991) (denying motion to stay discovery pending motion to dismiss in part because, even if granted, defendants would be subject to discovery as nonparties). Even if Mr. Miller would have greater protections from discovery as a nonparty, he cannot refuse even to respond in writing to Plaintiffs' discovery requests, including to make and preserve specific objections, so the parties can negotiate narrower requests.

Mr. Miller appears to agree that he would have been required to produce to Plaintiffs the discovery exchanged between him and the government in his criminal case had Ms. Jenkins not moved for partial summary judgment. If Mr. Miller's criminal defense attorneys possess a copy of that discovery, then production of those documents would hardly impose an undue burden on Mr. Miller. In fact, that would be the least burdensome, least expensive, and least time-consuming way for Plaintiffs to obtain this particular discovery. If Mr. Miller's criminal defense attorneys do not possess a copy of that discovery, then Plaintiffs are willing to request that discovery from the U.S. Department of Justice. Mr. Miller would not be unduly burdened by authorizing the Department to release records by signing a Certification of

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Identity form.<sup>1</sup> **Plaintiffs make clear again that they cannot obtain these records from the Department without this authorization from Mr. Miller and that the Freedom of Information Act (FOIA) has already proved to be a time-consuming process for obtaining documents.**<sup>2</sup>

Mr. Miller’s blanket Fifth Amendment objection can only be resolved when it is actually made in written responses to specific discovery requests. *See United States v. Bowe*, 698 F.2d 560, 566 (2d Cir. 1983) (citing *United States v. Zappola*, 646 F.2d 48, 53 (2d Cir. 1981)). In summary, however, Mr. Miller does not have a privilege against compulsory self-incrimination related to his involvement in Isabella’s kidnapping, for which he pleaded guilty and was convicted. “To qualify for the Fifth Amendment privilege, a communication must be testimonial, incriminating, and compelled.” *Hibel v. Sixth Judicial Dist. Court of Nev.*, 542 U.S. 177, 189 (2004) (citing *United States v. Hubbell*, 530 U.S. 27, 34–38 (2000)). Mr. Miller bears the burden of establishing the existence of a “real, not remote or speculative” “danger of self-incrimination.” *Estate of Fisher v. CIR*, 905 F.2d 645, 649 (2d Cir. 1990). “[T]here can be no further incrimination,” and thus “there is no basis for the assertion of the privilege,” in “cases in which the sentence has been fixed and the judgment of conviction has become final.” *Mitchell v. United States*, 526 U.S. 314, 326 (1999); *accord United States v. Romero*, 249 F.2d 371 (2d Cir. 1957) (“It is well established that once a witness has been convicted for the transactions in question, he is no longer able to claim the privilege of the Fifth Amendment and may be compelled to testify.”). Absolute bars on prosecution, such as statute of limitations, immunity, and double jeopardy, may dispose of claims of privilege. *Estate of Fisher*, 905 F.2d at 651 (citing *In re Folding Carton Antitrust Litig.*, 609 F.2d at 872).

### **III. Mr. Miller Is Required to Participate in Discovery Even While Ms. Jenkins’s Motion for Partial Summary Judgment Against Him Is Pending**

Ms. Jenkins’s motion for partial summary judgment on her Vermont claim against Mr. Miller does not stay discovery against Mr. Miller in any way. Ms. Jenkins raises two claims—one under Vermont law and the other under federal law—against nine defendants. She also raises a federal claim against those same defendants as next friend of Isabella. Plaintiffs are entitled to obtain discovery from Mr. Miller that is relevant to any of their claims against any defendant, including all of their claims against Mr. Miller. *See Fed. R. Civ. P. 26(b)(1)*.

*Hendricks*, on which Mr. Miller relies, is materially distinguishable from this case. In *Hendricks*, a prisoner sued two corrections officers under 42 U.S.C. § 1983, alleging violations of the First, Sixth, Eighth, and Fourteenth Amendments. 20 F. App’x at 35–36.

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<sup>1</sup> U.S. Dep’t of Justice, Certification of Identity, Form DOJ-361, [https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/cert\\_ind.pdf](https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/cert_ind.pdf).

<sup>2</sup> For example, on January 9, 2018, Plaintiffs requested all exhibits introduced at Mr. Zodiates’s criminal trial. Over two years later, Plaintiffs are still waiting for the final exhibits.

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The prisoner moved to compel discovery responses and then moved for summary judgment. *Id.* at 36–37. The magistrate judge denied the motion to compel without prejudice, *see* Order, *Hendricks v. Boltja*, No. 9:98-cv-1435 (N.D.N.Y. Jan. 7, 2000) (ECF 59), and recommended that the summary judgment motion be denied and that defendants’ cross-motions for summary judgment be granted, 20 F. App’x at 36. The defendant objected “that discovery was not complete because defendants had not fully answered his interrogatories.” *Id.* The district court overruled the objection, adopted the report and recommendation, and dismissed the complaint. *Id.* at 37. The Second Circuit affirmed, holding that “the district court did not abuse its wide discretion.” *Id.* The court reasoned that the defendant “himself moved for summary judgment while his motion to compel was pending, thus indicating that there were no issues of fact to be resolved.” *Id.* He also failed to “suggest[] what facts obtainable through the discovery process might have altered the judgment.” *Id.*

Unlike the summary judgment motion in *Hendricks*, which if granted would have imposed liability on all defendants, Ms. Jenkins’s pending motions for partial summary judgment would if granted impose liability on at most three defendants—Mr. Miller, Kenneth Miller, and Mr. Zodiates—on one claim—Ms. Jenkins’s Vermont claim. Ms. Jenkins and Isabella would still be entitled to obtain discovery from Mr. Miller that is relevant to their federal claims against him or to their claims against the other defendants.

As Mr. Miller recognizes, there is a chance the Court will decide Ms. Jenkins’s motions for partial summary judgment together<sup>3</sup> and that the Court will not decide the motions until Mr. Zodiates has had enough time to obtain new counsel and until the parties have had time to complete briefing, which could extend through the end of March.<sup>4</sup> If Mr. Miller’s motion for reconsideration and Ms. Jenkins’s motion for partial summary judgment against him were denied, then Ms. Jenkins would have lost at least three-and-a-half months to obtain discovery from Mr. Miller—time that the other defendants likely will not agree to account for when negotiating a new discovery schedule.

*Hendricks* did not hold that discovery is, should be, or must be stayed during the pendency of a motion for summary judgment. It merely held that “the district court did not abuse its wide discretion” when it denied the prisoner’s motion to compel and then granted the defendants summary judgment. If Mr. Miller believes discovery against him should be stayed, then he should seek such a stay from the Court. Nevertheless, he would not be entitled to one, for all the reasons set forth above.

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<sup>3</sup> It is Plaintiffs’ position that the Court need not and should not decide the motions together, especially given Mr. Miller’s position on discovery pending decision on those motions.

<sup>4</sup> Ms. Jenkins filed her motions for partial summary judgment on December 13, 2019. Mr. Zodiates currently has until February 5, 2020, to obtain new counsel. The Local Rules normally would afford Mr. Zodiates 30 days to respond to a motion for summary judgment and Plaintiffs 14 days to reply.

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**IV. Discovery Against Mr. Miller Is Not Stayed While the RUL Defendants Have Time to Obtain New Counsel**

The Court did not stay all discovery by allowing the RUL Defendants time to obtain new counsel. The Court's order granting them that time neither says nor implies anything of the sort. *See* Order, ECF 449 (Jan. 6, 2020). The RUL Defendants would not be unfairly prejudiced by Plaintiffs obtaining discovery from Mr. Miller.

\* \* \*

Please let me know by close of business on **Wednesday, February 5, 2020**, whether Mr. Miller continues to object to participating in discovery, including serving initial disclosures, serving responses and objections to Plaintiffs' discovery requests, searching for and producing documents (including the discovery exchanged in Mr. Miller's criminal case), and signing a Certification of Identity to allow Plaintiffs to request that discovery from the government, if Mr. Miller's criminal defense attorneys no longer possess that discovery. Please also confirm whether Mr. Miller's criminal defense attorneys possess that discovery.

If Mr. Miller stands by these objections, Plaintiffs intend to move to compel and to request that the Court order him to pay the expenses incurred in making the motion, including attorney's fees.

Sincerely,



Diego A. Soto  
*Counsel for Plaintiffs*

Copy: Adam S. Hochschild, Esq.  
Anthony R. Duprey Esq.  
Beth Littrell, Esq.  
Brooks G. McArthur, Esq.  
Claudia Huerta  
Daniel J. Schmid, Esq.  
Emily Joselson, Esq.  
Frank H. Langrock, Esq.  
Horatio G. Mihet, Esq.  
J. Tyler Clemons, Esq.  
James W. Swift, Esq.  
Jessica Stone, Esq.  
Julie Jackman  
Maya Rajaratnam, Esq.  
Norman C. Smith, Esq.  
Richard Boyer, Esq.

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Roger K. Gannam, Esq.  
Sarah Star, Esq.  
Scott McCoy, Esq.  
Toddy Ferguson

**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

**DECLARATION OF DIEGO A. SOTO IN SUPPORT OF  
PLAINTIFFS' MOTION TO COMPEL DEFENDANT TIMOTHY MILLER**

I, Diego A. Soto, declare under penalty of perjury that the following is true and correct:

1. I am a Staff Attorney at the Southern Poverty Law Center and represent Plaintiffs Janet Jenkins and Isabella Miller-Jenkins in this case.

2. I certify that I have conferred in good faith with counsel for Defendant Timothy Miller to resolve this dispute without court intervention.

3. Exhibit 1 is a true and correct copy of Plaintiff's First Set of Requests for Production to Defendant Timothy Miller, which were served on him on June 27, 2018.

4. Exhibit 2 is a true and correct copy of an email exchange between me and Michael Tierney, Esq., counsel for Defendant.

5. Mr. Tierney and I spoke by phone on November 8, 2019. Defendant agreed that Plaintiffs were entitled to discovery from him. He informed Plaintiffs that he had given his criminal defense attorney documents that his attorney then produced to the government. He warned Plaintiffs that his ability to produce the criminal discovery could be complicated by his criminal defense attorney's now being a judge. Defendant agreed to cooperate with Plaintiffs to produce the criminal discovery. Given the potential complication Defendant raised, Plaintiffs

offered to seek the criminal discovery from the government, such as by Freedom of Information Act request, if Defendant would sign the requisite authorization form.

6. Mr. Tierney and I again spoke by phone on January 27, 2020. Claudia Huerta, an Outreach Paralegal at the Southern Poverty Law Center, was also present on the call. Defendant informed Plaintiffs that he did not believe he had an obligation to engage in discovery, including to serve initial disclosures and written responses and objections to Plaintiffs' requests for production, because his pending motion for reconsideration of his motion to dismiss challenged the Court's personal jurisdiction and because Jenkins had moved for partial summary judgment on her Vermont claim against him, suggesting she did not believe she needed discovery from him to impose liability on him. He also represented that he would object, based on his Fifth Amendment privilege against compulsory self-incrimination, to producing anything beyond the criminal discovery.

7. On October 17, 2018, I, on behalf of Plaintiffs, submitted a FOIA request to the United States Department of Justice for the criminal discovery. The government denied the request on December 7, 2018, because Defendant had not given express authorization and consent for its release.

8. Exhibit 3 is a true and correct copy of the January 29, 2020 letter I sent to Mr. Tierney following our January 27, 2020 phone call.

Executed on February 26, 2020

/s/ Diego A. Soto

Diego A. Soto

*Counsel for Plaintiffs*