

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

JANET JENKINS, et al.,

Plaintiffs,

v.

No. 2:12-cv-184-WKS

KENNETH L. MILLER, et al.,

Defendants.

**PLAINTIFF JANET JENKINS'S RESPONSE IN OPPOSITION TO DEFENDANTS  
LIBERTY COUNSEL AND RENA M. LINDEVALDSEN'S MOTION FOR PARTIAL  
SUMMARY JUDGMENT AS TO ALL CLAIMS PLAINTIFF JANET JENKINS  
PURPORTS TO BRING AS NEXT FRIEND OF ISABELLA MILLER**

Scott D. McCoy  
Southern Poverty Law Center  
P.O. Box 10788  
Tallahassee, Florida 32302  
Phone: (850) 521-3042  
Fax: (850) 521-3001  
Email: scott.mccoy@splcenter.org

J. Tyler Clemons  
Southern Poverty Law Center  
201 St. Charles Avenue, Suite 2000  
New Orleans, Louisiana 70170  
Phone: (504) 526-1530  
Fax: (504) 486-8947  
Email: tyler.clemons@splcenter.org

Diego A. Soto  
Maya G. Rajaratnam  
Southern Poverty Law Center  
400 Washington Avenue  
Montgomery, Alabama 36104  
Phone: (334) 956-8200  
Fax: (334) 956-8481  
Email: diego.soto@splcenter.org  
Email: maya.rajaratnam@splcenter.org

Frank H. Langrock  
Langrock Sperry & Wool, LLP  
111 S. Pleasant Street  
P.O. Drawer 351  
Middlebury, Vermont 05753-0351  
Phone: (802) 388-6356  
Fax: (802) 388-6149  
Email: flangrock@langrock.com

Sarah Star  
Sarah Star, PL  
P.O. Box 106  
Middlebury, Vermont 05753  
Phone: (802) 385-1023  
Email: srs@sarahstarlaw.com

*Counsel for Plaintiff Janet Jenkins*

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... ii

STATEMENT OF THE CASE..... 1

SUMMARY OF ARGUMENT ..... 3

ARGUMENT..... 4

    I. Jenkins Retains Next-Friend Standing to Bring Claims on Behalf of Isabella Because Isabella Lacks Access to the Court to Bring Claims for Herself..... 4

        A. The Courts Are Inaccessible to Isabella, Who Remains Missing After Being Kidnapped Outside of the United States Against Her Will. .... 5

        B. Jenkins, as Isabella’s Mother, Has a Significant Relationship with Isabella and Is Dedicated to Her Best Interests..... 8

    II. The Court Has Broad Discretion Under Rule 17(c)(2) to Allow Jenkins to Continue Acting as Isabella’s Next Friend Because Isabella Is Effectively Incompetent to Bring Claims for Herself..... 10

        A. Rule 17 Provides the Court Broad Authority to Protect Parties Unable to Protect Themselves. .... 10

        B. Isabella Is Unable to Protect Her Own Interests and Needs to Proceed Via a Next Friend. .... 12

    III. The Court Should Exercise Its Broad Equitable Powers to Allow Isabella’s Claim to Continue Via Jenkins..... 13

CONCLUSION..... 15

CERTIFICATE OF SERVICE ..... 17

**TABLE OF AUTHORITIES**

**Cases**

*Al-Aulaqi v. Obama*,  
727 F. Supp. 2d 1 (D.D.C. 2010) ..... 5, 7

*Ali Jaber v. United States*,  
155 F. Supp. 3d 70 (D.D.C. 2016) ..... 4, 5, 7, 9

*Bowen v. Rubin*,  
213 F. Supp. 2d 220 (E.D.N.Y. 2001) ..... 10

*Carson P. ex rel. Foreman v. Heineman*,  
240 F.R.D. 456 (D. Neb. 2007)..... 4

*Fonner v. Fairfax Cty.*,  
415 F.3d 325 (4th Cir. 2005) ..... 11

*Gibbs ex rel. Gibbs v. Carnival Cruise Lines*,  
314 F.3d 125 (3d Cir. 2002)..... 11

*Guardianship of H.L.*,  
460 A.2d 478 (Vt. 1983) ..... 12

*Hecht Co. v. Bowles*,  
321 U.S. 321 (1944)..... 13

*In re Guardianship of E.B.*,  
568 A.2d 399 (Vt. 1989) ..... 12

*Knowlton v. Moore*,  
178 U.S. 41 (1900)..... 15

*Magallon v. Livingston*,  
453 F.3d 268 (5th Cir. 2006) ..... 12

*Movimiento Democracia, Inc. v. Johnson*,  
193 F. Supp. 3d 1353 (S.D. Fla. 2016) ..... 6, 8

*Neilson v. Colgate-Palmolive Co.*,  
199 F.3d 642 (2d Cir. 1999)..... 10, 11

*Padilla v. Rumsfeld*,  
352 F.3d 695 (2d Cir. 2003)..... 5

*Perri v. City of N.Y.*,  
350 F. App'x 489 (2d Cir. 2009) ..... 11, 12

*Porter v. Warner Holding Co.*,  
328 U.S. 395 (1946)..... 13

*Sam M. ex rel. Elliott v. Carcieri*,  
608 F.3d 77 (1st Cir. 2010)..... 8, 10

*Thomas v. Humfield*,  
916 F.2d 1032 (5th Cir. 1990) ..... 11

*Union Pac. Ry. Co. v. Chicago, R.I. & P. Ry. Co.*,  
 163 U.S. 564 (1896)..... 13

*Whitmore v. Arkansas*,  
 495 U.S. 149 (1990)..... passim

**Statutes**

18 U.S.C. § 1204..... 1, 6

**Other Authorities**

*Nicaragua Travel Advisory*, U.S. DEP’T OF STATE – BUREAU OF CONSULAR AFF.,  
<https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/nicaragua-travel-advisory.html> (last visited May 16, 2020)..... 14

*The World Factbook – Nicaragua*, CENT. INTELLIGENCE AGENCY,  
<https://www.cia.gov/library/publications/resources/the-world-factbook/geos/nu.html>  
 (last updated Mar. 17, 2020)..... 14

**Rules**

Fed. R. Civ. P. 17(c)(2)..... 1, 3, 10, 13

**Treatises**

6A Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane,  
*Federal Practice & Procedure* § 1570 (3d ed.)..... 10, 12

6A Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane,  
*Federal Practice & Procedure* § 1571 (3d ed.)..... 11, 12

Defendants Liberty Counsel, Inc. and Rena M. Lindevaldsen’s (collectively, “Liberty Counsel Defendants”) motion for partial summary judgment as to all claims brought by Plaintiff Janet Jenkins as next friend of Plaintiff Isabella Miller-Jenkins should be denied. The Court retains subject-matter jurisdiction over Isabella’s claim because Jenkins can and should proceed as Isabella’s next friend under *Whitmore v. Arkansas*, 495 U.S. 149 (1990), Rule 17(c)(2) of the Federal Rules of Civil Procedure, and the Court’s broad equitable powers.

### **STATEMENT OF THE CASE**

Jenkins filed this action on August 14, 2012, the day a jury in this Court convicted Defendant Kenneth Miller for his involvement in the September 2009 kidnapping of then-seven-year-old Isabella from the United States to interfere with Jenkins’s parental rights. In that case and two others against Defendants Philip Zodhiates and Timothy Miller, Jenkins learned that Defendant Lisa Miller, with the help of her co-conspirators, including the Liberty Counsel Defendants, had taken Isabella to Nicaragua, where Lisa could not be extradited. *See, e.g.*, Dep. Tr. 24, ECF 470-1. She hid Isabella among a Beachy Amish Mennonite community, giving her the pseudonym Lydia and clothing her in traditional Mennonite garb. *See, e.g., id.* at 42–43. Zodhiates, Kenneth Miller, and Timothy Miller were adjudicated guilty of conspiring to commit, or aiding and abetting, international parental kidnapping, which makes it unlawful to “remove[] a child from the United States, or attempt[] to do so, or retain[] a child (who has been in the United States) outside the United States with intent to obstruct the lawful exercise of parental rights.” 18 U.S.C. § 1204. *See generally* Mem. in Supp. of Pl. Janet Jenkins’s Mot. for Partial Summ. J. on Count One Against Defs. Philip Zodhiates, Kenneth Miller, and Timothy Miller, ECF 439-27.

According to information available to Jenkins about Isabella’s last known whereabouts, on April 27, 2010, Lisa took Isabella from Managua, Nicaragua, back to Jinotega, Nicaragua, *see* Dep. Tr. 55, ECF 470-1, where Timothy Miller thought Lisa and Isabella would be less likely to

be found, *see id.* at 40.<sup>1</sup> The federal government is continuing its efforts to locate Lisa for prosecution. *See Lisa Miller* Docket Report 4, Ex. 1 (minute entry of Dec. 13, 2019, scheduling status conference for June 18, 2020, ordering updated due diligence affidavit by June 11, 2020, and noting Lisa remains a fugitive).

In this case, Jenkins has asserted claims for her still-missing daughter, as Isabella's next friend. After a two-year stay of all proceedings from April 6, 2015, through March 23, 2017, during the pendency of Zodiates's criminal trial and sentencing, *see* Mem. & Order, ECF 192 (granting Defendants motion to stay); Op. & Order, ECF 220 (lifting stay), another round of motions to dismiss, *see* Op. & Order, ECF 277 (ruling on four motions to dismiss and two special motions to strike), discovery formally commenced on August 29, 2018, *see* Order, ECF 329—six years after the filing of the complaint, when Isabella was already nearly sixteen-and-a-half years old.

On April 16, 2020, the day of Isabella's eighteenth birthday, the Liberty Counsel Defendants filed this motion for partial summary judgment on all claims Jenkins has brought as Isabella's next friend. *See* Liberty Counsel Defs.' Mot. for Partial Summ. J. as to All Claims Pl. Janet Jenkins Purports to Bring as Next Friend of Isabella Miller, and Incorporated Mem. of Law ("Mot."), ECF 495. They argue that, purely by virtue of Isabella's having reached the age of majority under Vermont law, Jenkins lacks standing or authority to maintain any claim as Isabella's next friend. Mot. 4–6. They further argue that this Court must dismiss Isabella's claims

---

<sup>1</sup> On March 30, 2020, the Liberty Counsel Defendants submitted for *in camera* review a potential communication from Lisa. *See* Notice of Submitting Materials to Court for In Camera Review, ECF 488. Plaintiff obviously has not seen that communication and does not know if it purports to reveal Isabella's recent whereabouts.

because the Court has no subject-matter jurisdiction over the claims Jenkins has brought as Isabella's next friend if Jenkins does not have standing. Mot. 6.

### **SUMMARY OF ARGUMENT**

The Court has subject-matter jurisdiction over Jenkins's claim as Isabella's next friend because Jenkins retains standing and authority to bring claims for her still-missing daughter notwithstanding Isabella's recent eighteenth birthday.

*First*, under the Supreme Court's test in *Whitmore v. Arkansas*, 495 U.S. 149 (1990), next-friend standing is proper when the real party in interest lacks access to the Court and the putative next friend is truly dedicated to the best interests of the real party in interest. Jenkins retains next-friend standing because Isabella, as a kidnapping victim who is still missing, lacks access to the Court to assert claims on her own behalf. Moreover, Jenkins is Isabella's proper next friend because she is Isabella's mother and has shown dedication to her daughter's best interests throughout this suit.

*Second*, Rule 17(c)(2) of the Federal Rules of Civil Procedure requires the Court to appoint a next friend or guardian ad litem for an unrepresented incompetent person. The Court must allow Jenkins to continue as Isabella's next friend because Isabella's status as a still-missing kidnapping victim makes her effectively incompetent to protect her own interests in court.

*Finally*, it would be inequitable for the Court not to allow Isabella, a kidnapped child who remains missing past her eighteenth birthday, to continue to protect her interests through her mother. Isabella was kidnapped when she was only seven years old, this suit was filed when Isabella was only ten years old, and despite Jenkins's efforts over almost eight years, this case is still only in discovery. It would be a miscarriage of justice for Isabella's claims to be dismissed just because she has remained missing long enough to reach her eighteenth birthday, especially

since she has still not been heard from or reappeared. The Court should exercise its broad equitable powers to ensure Isabella’s claim can proceed notwithstanding her recent birthday.

## ARGUMENT

### **I. Jenkins Retains Next-Friend Standing to Bring Claims on Behalf of Isabella Because Isabella Lacks Access to the Court to Bring Claims for Herself.**

Jenkins meets the requirements to assert claims as Isabella’s next friend. Whether a party may proceed via a next friend is governed by the Supreme Court’s two-prong test in *Whitmore v. Arkansas*, 495 U.S. 149 (1990). Although this test was first developed in the context of habeas law, it has since become a generally applicable test for next-friend standing in federal civil litigation. See *Carson P. ex rel. Foreman v. Heineman*, 240 F.R.D. 456, 516 (D. Neb. 2007) (“Although *Whitmore*’s next friend analysis was first enunciated in the context of habeas law, it has been extended to general civil litigation.”); see also *Ali Jaber v. United States*, 155 F. Supp. 3d 70, 76 (D.D.C. 2016) (“[T]he most natural reading of *Whitmore* is that next friend standing is *not* limited to habeas cases, but instead may be invoked if plaintiffs can sufficiently demonstrate its necessity.”).<sup>2</sup>

First, the putative next friend must show that there is “an adequate explanation—such as inaccessibility, mental incompetence, or other disability—why the real party in interest cannot appear on his own behalf to prosecute the action.” *Whitmore*, 495 U.S. at 163. In this context, “inaccessibility” means “lack of access to court.” *Id.* at 165. “Second, the ‘next friend’ must be truly dedicated to the best interests of the person on whose behalf he seeks to litigate.” *Id.* at 163.

---

<sup>2</sup> Indeed, *Whitmore* itself was not a habeas case; the next friend was seeking to intervene in the prisoner’s state court direct appeal of his conviction and sentence. 495 U.S. at 164 (holding that “any federal doctrine of ‘next friend’ standing is no broader than what is permitted by the habeas corpus statute, which codified the historical practice,” expressly declining to decide whether statutory authorization is necessary for next friend standing, and deciding the case on the merits).

The Supreme Court has also suggested that, as part of the second prong, the next friend “must have some significant relationship with the real party in interest.” *Id.* at 163–64.<sup>3</sup> Jenkins easily meets both prongs of the *Whitmore* test to proceed as Isabella’s next friend: Isabella is “inaccessible” as the victim of an international kidnapping who is still missing, and Jenkins is her mother.<sup>4</sup>

**A. The Courts Are Inaccessible to Isabella, Who Remains Missing After Being Kidnapped Outside of the United States Against Her Will.**

Isabella is sufficiently “inaccessible” to meet *Whitmore*’s first prong. Individuals, including those outside the United States, who lack access to the courts through no fault of their own satisfy the inaccessibility requirement. *See Ali Jaber*, 155 F. Supp. 3d at 75–77.

In *Ali Jaber*, the estates of two civilians killed in Yemen following an alleged U.S. drone strike brought claims of wrongful death and violation of the Torture Victim Protection Act, requesting to proceed via a next friend—a family member living in Canada. *Id.* at 73–74. The court held that the real parties in interest (the estates’ representatives) were “sufficiently inaccessible” to justify proceeding via a next friend because “financial hardships and the ongoing civil war in Yemen ma[de] it impossible for them to travel to the United States” from their “remote Yemeni village” and infrastructure limitations made regular telephone or internet-based communication “nearly impossible.” *Id.* at 76–77; *see also Movimiento Democracia, Inc. v.*

---

<sup>3</sup> The Second Circuit has more recently indicated, without expressly holding, that the second factor includes a requirement that the putative next friend have a “significant relationship” with the party. *See Padilla v. Rumsfeld*, 352 F.3d 695, 703 n.7 (2d Cir. 2003), *overruled on other grounds by Rumsfeld v. Padilla*, 542 U.S. 426 (2004).

<sup>4</sup> When the *Whitmore* test is satisfied, the next friend does not become a party to the action themselves but is “simply pursu[ing] the cause on behalf of the ... real party in interest.” *Al-Aulaqi v. Obama*, 727 F. Supp. 2d 1, 16 (D.D.C. 2010) (quoting *Whitmore*, 495 U.S. at 163). In this situation, the next friend relies on the real party in interest’s individual standing to meet the constitutional requirements of injury-in-fact, causation, and redressability. *Id.* at 16–17 & n.2 (quoting *Whitmore*, 495 U.S. at 177 n.6 (Marshall, J., dissenting)).

*Johnson*, 193 F. Supp. 3d 1353, 1367 (S.D. Fla. 2016) (“[I]t is undisputed that the Migrant Plaintiffs lack access to the Court or the counsel representing them due to the fact that they presently remain incommunicado on the Coast Guard cutter without access to their counsel and their family members.”).

In this case, Isabella is sufficiently “inaccessible” because she has not been heard from since she was kidnapped to a foreign country. In September 2009, when Isabella was only seven years old, Defendant Lisa Miller kidnapped her to Nicaragua, where Lisa could not be extradited, and hid her among a Beachy Amish Mennonite community with a pseudonym and in Mennonite garb. *See, e.g.*, Dep. Tr. 42–43, ECF 470-1. Three defendants in this case were criminally convicted for their participation in the international parental kidnapping. *See* 18 U.S.C. § 1204; *Kenneth L. Miller* Judgment, ECF 439-10; *Timothy Miller* Judgment, ECF 439-18; *Zodhiates* Judgment, ECF 439-22. *See generally* Mem. in Supp. of Pl. Janet Jenkins’s Mot. for Partial Summ. J. on Count One Against Defs. Philip Zodhiates, Kenneth Miller, and Timothy Miller ECF 439-27. Isabella’s lack of access to the U.S. court system is even more obvious than that of the decedents’ estate representatives in *Ali Jaber* found to be sufficiently “inaccessible” because the restrictions on Isabella as a still-missing victim of kidnapping go beyond the extreme financial hardship and infrastructure deficits that obstructed the estate representatives.

Isabella has not resurfaced either inside or outside the United States. According to information available to Jenkins about Isabella’s last known whereabouts, on April 27, 2010, Lisa took Isabella from Managua, Nicaragua, back to Jinotega, Nicaragua, *see* Dep. Tr. 55, ECF 470-1, where Timothy Miller thought Lisa and Isabella would be less likely to be found, *see id.* at 40. The federal government is continuing its efforts to locate Lisa for prosecution. *See Lisa*

*Miller* Docket Report 4, Ex. 1. All publicly available evidence supports the conclusion that Isabella remains a captive, likely outside the United States.

In contrast, the court in *Al-Aulaqi v. Obama*, 727 F. Supp. 2d 1 (D.D.C. 2010), held that an alleged enemy combatant hiding from U.S. law enforcement to avoid his likely arrest and detention did not lack access to the courts because he “is not in U.S. custody, nor is he being held incommunicado against his will. To the extent that Anwar Al–Aulaqi is currently incommunicado, that is the result of his own choice.” *Id.* at 19 The court also noted that “there is reason to doubt whether Anwar Al-Aulaqi is, in fact, incommunicado” because he had “communicated with the outside world on numerous occasions” through email, participating in video interviews, and posting written articles on the internet. *Id.* Like *Ali Jaber*, this case is materially different from *Al-Aulaqi*. The available evidence supports the conclusion that Isabella’s inaccessibility is not by choice; she has not resurfaced since Lisa Miller kidnapped her to a country where Lisa could not be extradited and held her there incommunicado because Lisa sought to avoid compliance with orders granting Jenkins visitation and custody of Isabella. There has been no communication from Isabella since her eighteenth birthday, even as the federal government continues its efforts to locate and prosecute Lisa for kidnapping Isabella, and no available evidence suggests that anything but Isabella’s age has changed since she was kidnapped. Whatever Vermont law might say about an eighteen-year-old’s rights, it does not appear to have freed Isabella at the stroke of midnight on her eighteenth birthday. These extreme and unusual circumstances make Isabella inaccessible, satisfying *Whitmore*’s first prong and supporting Jenkins’s next-friend standing on her behalf.

**B. Jenkins, as Isabella’s Mother, Has a Significant Relationship with Isabella and Is Dedicated to Her Best Interests.**

Under *Whitmore*’s second prong, Jenkins is the proper next friend to bring claims for Isabella. Jenkins is Isabella’s mother and clearly is dedicated to Isabella’s best interests. She is the exact opposite of those “intruders or uninvited meddlers, styling themselves as next friends” whom the second prong is meant to weed out. *Whitmore*, 495 U.S. at 164 (quoting *U.S. ex rel. Bryant v. Houston*, 273 F. 915, 916 (2d Cir. 1921)). “In determining whether a proposed Next Friend is ‘truly dedicated to the best interests’ of the [real party in interest], courts may consider the individual’s familiarity with the litigation, the reasons that move her to pursue the litigation, and her ability to pursue the case on the [real party in interest]’s behalf.” *Sam M. ex rel. Elliott v. Carcieri*, 608 F.3d 77, 92 (1st Cir. 2010). For years, Jenkins fought in court to maintain her mother–daughter relationship with Isabella and won because she had Isabella’s best interests at heart. Then, for over a decade after Lisa kidnapped Isabella, Jenkins has searched tirelessly for her daughter, supported the investigations into the kidnapping, and testified against those who helped kidnap Isabella. On the day of the first conviction of one of Lisa’s co-conspirators in 2012, Jenkins brought this civil suit to bring those responsible for kidnapping Isabella to justice, and she has diligently litigated this case since. She is extremely familiar with the litigation and is committed to pursuing the case until the end.

Furthermore, as Isabella’s mother with sole physical and legal custody for the past decade, Jenkins clearly has a significant relationship with Isabella, unaffected by Isabella’s eighteenth birthday. *See Movimiento Democracia, Inc.*, 193 F. Supp. 3d at 1367 (“[T]he Family Plaintiffs, as the parents and close relatives of the Migrant Plaintiffs, satisfy the ‘significant relationship’ requirement.”). To the extent that the closeness of this relationship has been

affected by the ten years of Isabella's absence, that absence was deliberately caused by Defendants, was due to no fault of Jenkins or Isabella, and Defendants should not benefit from it.

The unusual circumstances of this case—the kidnapping of a child to a foreign country by one parent to obstruct the other parent's custody rights long enough for the child to become an adult—suggest that no slippery slope is likely to result from this Court's recognition that Jenkins retains next-friend standing to bring claims for Isabella. *See Ali Jaber*, 155 F. Supp. 3d at 77 (concluding no slippery slope was likely to arise from holding that plaintiffs who could not access courts could proceed via close family relative). Such a holding would not disturb the normal rule that parents lack standing to bring claims for their children after they reach the age of majority, but would instead recognize the obvious—that kidnappers cannot escape liability merely because their victim has since turned eighteen.

Every case Defendants cite for the normal rule is distinguishable. *See* Mot. 4–6. As expected, given the unusual circumstances of this case, not one of those cases involved a kidnapped, allegedly kidnapped, or officially missing child who became an adult during the pendency of the suit. Instead, every case involved a child who either affirmatively expressed the desire to continue or dismiss the suit after reaching adulthood or who just never reappeared but without any allegation of foul play. Unlike those cases, this case does involve foul play—kidnapping—and nothing suggests Isabella's circumstances have changed such that she could express a desire to continue or dismiss her claim in this suit but has chosen to remain silent. All she has in common with the plaintiffs in those cases is reaching the age of majority. Under *Whitmore*, Jenkins must be allowed to continue as Isabella's next friend to ensure Isabella's interests are protected while she lacks access to the courts to do so herself.

**II. The Court Has Broad Discretion Under Rule 17(c)(2) to Allow Jenkins to Continue Acting as Isabella’s Next Friend Because Isabella Is Effectively Incompetent to Bring Claims for Herself.**

Although Jenkins does not also need statutory authorization to proceed as Isabella’s next friend because she meets both prongs of the *Whitmore* test, Rule 17 of the Federal Rules of Civil Procedure gives the Court broad discretion to grant her that authorization because Isabella is effectively incompetent due to her kidnapping. Rule 17(c)(2) provides broad discretion for a federal court to ensure that the rights of vulnerable parties are protected and specifically requires the court to “protect a minor or incompetent person who is unrepresented in an action” by allowing them to proceed via a next friend. Isabella is effectively incompetent; she cannot protect her own rights in court because she was kidnapped to a foreign country as a child more than a decade ago and has not resurfaced.

**A. Rule 17 Provides the Court Broad Authority to Protect Parties Unable to Protect Themselves.**

The Court’s discretion under Rule 17(c)(2) is broad. *See Bowen v. Rubin*, 213 F. Supp. 2d 220, 223 (E.D.N.Y. 2001) (“The power given to a district court to appoint a guardian ad litem ‘has been broadly interpreted and has not been limited by a narrow construction of the words ‘infant’ or ‘incompetent person.’” (quoting 6A Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice & Procedure* § 1570 (3d ed.) (hereinafter “*Federal Practice & Procedure*”)); accord *Sam M. ex rel. Elliott*, 608 F.3d at 85 (The “decision as to whether or not to appoint [a Next Friend or guardian ad litem] rests with the sound discretion of the district court and will not be disturbed unless there has been an abuse of its authority.” (quoting *Developmental Disabilities Advocacy Ctr., Inc. v. Melton*, 689 F.2d 281, 285 (1st Cir. 1982))). And the Court’s authority under Rule 17 is not limited by any constraints state law might impose. *Neilson v. Colgate-Palmolive Co.*, 199 F.3d 642, 656 (2d Cir. 1999) (“[I]nsofar as state

law might be read to preclude the federal court from exercising its appointive power under Rule 17(c), [state law] must give way, Rule 17(b) notwithstanding.” (quoting *Federal Practice & Procedure* § 1571)).<sup>5</sup>

“What [Rule 17(c)(2)] undoubtedly contemplates is that form of mental deficiency which ... affects the person’s practical ability ‘to manage his or her own affairs.’” *Perri v. City of N.Y.*, 350 F. App’x 489, 490 (2d Cir. 2009) (quoting *Hudnall v. Sellner*, 800 F.2d 377, 385 (4th Cir. 1986)). The Court may consider any factors or use any procedures to determine Isabella’s competency. *See Thomas v. Humfield*, 916 F.2d 1032, 1035 (5th Cir. 1990) (“[W]e reject the notion that in determining whether a person is competent to sue in federal court a federal judge must use the state’s procedures for determining competency or capacity. ... [A] federal procedure better preserves the integrity and interests of the federal courts.”); *see also Fonner v. Fairfax Cty.*, 415 F.3d 325, 330 (4th Cir. 2005) (“Nothing in the rule prohibits the district court from appointing a guardian ad litem to represent a person not previously adjudicated as incompetent through a state proceeding.”). In determining which factors to consider and what procedures to use, the Court’s primary consideration is the interests of Isabella, while “bearing in mind the particular context of the decision to appoint a [next friend or] guardian ad litem.” *Neilson*, 199 F.3d at 651; *see also Gibbs ex rel. Gibbs v. Carnival Cruise Lines*, 314 F.3d 125, 135–36 (3d Cir. 2002) (“[I]n determining what factors or procedures to use when appointing the guardian ad litem[,], [the court’s] polestar appears to be the protection of the infant’s interests.”). The only limitation is consideration of due process. *Neilson*, 199 F.3d at 651.

---

<sup>5</sup> Defendants rely solely on Rule 17(b) to support their assertion that Jenkins lacks standing to bring claims as Isabella’s next friend since Isabella turned eighteen. *See* Mot. 4. This law must give way to Rule 17(c)(2), which requires the Court allow Isabella to proceed via a representative to protect her in this action because she is effectively incompetent due to her status as the still-missing victim of an international kidnapping.

Federal law has a clear policy of appointing representatives for adults who would otherwise be unable to protect their own interests in court and of giving courts discretion to enact that policy even in the absence of an obvious statutory authorization under state law. *See Federal Practice & Procedure* § 1571 (“[A] federal court would be unable to effectuate the philosophy of Rule 17(c) if the application of state law prevents or makes difficult the appointment of a guardian ad litem for a minor or incompetent person who is not represented in the action.”). This broad discretion and flexibility exist in order to ensure that those who cannot protect their own interests in litigation can be protected via a next friend. *See id.* § 1570 (“In determining the extent of its power under Rule 17(c), the court should be guided by its appraisal of the particular party’s ability to protect his interests in the litigation adequately.”).<sup>6</sup>

**B. Isabella Is Unable to Protect Her Own Interests and Needs to Proceed Via a Next Friend.**

Isabella is effectively incompetent because she lacks access to the court and therefore has no ability to protect her own interests in this litigation. Given that she was kidnapped as a child and held incommunicado against her will more than a decade ago and has not been heard from since, even as the federal government continues its efforts to locate and prosecute her kidnapper, Isabella should be presumed to have no ability to manage her own affairs, communicate with her attorneys, or aid her attorneys in effectuating her interests. *See Perri*, 350 F. App’x at 490; *Magallon v. Livingston*, 453 F.3d 268, 272 (5th Cir. 2006) (“An ability to communicate with your attorneys—to tell them your interests and to give them information to help them effectuate

---

<sup>6</sup> Vermont law also supports the appointment of a representative for those who need one. *See Guardianship of H.L.*, 460 A.2d 478, 479 (Vt. 1983) (“[T]he appointment of a guardian ad litem is a power inherent in courts in dealing with those appearing before them who are under disability.”); *In re Guardianship of E.B.*, 568 A.2d 399, 400 (Vt. 1989) (“[I]t is the duty of the court at all stages of a trial to see that the interests of an incompetent person are fully protected and preserved.”).

those interests—tends to show that you have the ability to take care of yourself in litigation” and therefore do not need to proceed via a next friend.) These limitations, which were not automatically removed by Isabella’s eighteenth birthday, require the appointment of a representative to ensure that Isabella’s interests are protected.<sup>7</sup>

The Court should use its broad discretion under Rule 17(c)(2) to find Isabella effectively incompetent and allow Jenkins to continue as Isabella’s next friend.<sup>8</sup>

### **III. The Court Should Exercise Its Broad Equitable Powers to Allow Isabella’s Claim to Continue Via Jenkins.**

The Court may use its broad equitable powers to allow Isabella’s claim to proceed via Jenkins. It is well settled that federal courts such as this one have broad powers to effect equity and justice. “The essence of equity jurisdiction has been the power of the [court] to do equity and to mould each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it.” *Hecht Co. v. Bowles*, 321 U.S. 321, 329 (1944). This flexibility exists for the Court “to meet the requirements of every case, and to satisfy the needs of a progressive social condition, in which new primary rights and duties are constantly arising, and new kinds of wrongs are constantly committed.” *Union Pac. Ry. Co. v. Chicago, R.I. & P. Ry. Co.*, 163 U.S. 564, 601 (1896). The purpose of this broad power is “to accord full justice to all the real parties in interest ... and give whatever other relief may be necessary under the circumstances. Only in that way can equity do complete rather than truncated justice.” *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946). The “comprehensiveness” of the Court’s broad equitable powers is

---

<sup>7</sup> Traditional procedures such as notice, mental examination, or a hearing to determine competency are not needed to satisfy due process in this case, given that Isabella’s effective incompetency is caused by her kidnapping to a foreign country and resulting inability to access the court.

<sup>8</sup> Jenkins is the proper person to act as Isabella’s next friend under Rule 17(c)(2). *See supra* section I.B.

“not to be denied or limited in the absence of a clear and valid legislative command” because “[t]he great principles of equity, securing complete justice, should not be yielded to light inferences, or doubtful construction.” *Id.* (internal quotations omitted).

Equity and justice demand that Jenkins must be allowed to continue to bring claims for Isabella. Isabella was kidnapped as part of a conspiracy to violate the civil rights of her and her mother because Jenkins is a lesbian. Jenkins alleges that, because of their animus against lesbians, Defendants would rather kidnap a child and have her be raised in an extremely poor and dangerous country<sup>9</sup> away from her family than let her be raised in the United States by her lesbian mother. Isabella was kidnapped to a foreign country and separated from her mother over a decade ago. Since then, Jenkins has been trying to get justice for herself and for Isabella. She brought this suit to hold those responsible accountable in August 2012, when Isabella was only ten years old. And after almost eight years, Jenkins is still fighting. No case like this one, involving an international kidnapping, nine defendants, and an intervening criminal prosecution, would resolve quickly. It would be inequitable and unjust to throw Isabella’s claim out of court just because she was missing long enough to turn eighteen before this case could reach final judgment. Isabella’s interests and the harms Defendants have caused her have not changed with her eighteenth birthday. Even after more than ten years, she is still separated from her mother, family, and home country.

---

<sup>9</sup> *Nicaragua Travel Advisory*, U.S. DEP’T OF STATE – BUREAU OF CONSULAR AFF., <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/nicaragua-travel-advisory.html> (last visited May 16, 2020) (“Reconsider travel to Nicaragua due to civil unrest, crime, limited healthcare availability, and arbitrary enforcement of laws.”); *The World Factbook – Nicaragua*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/resources/the-world-factbook/geos/nu.html> (last updated Mar. 17, 2020) (“Nicaragua, the poorest country in Central America and the second poorest in the Western Hemisphere, has widespread underemployment and poverty.”).

The Liberty Counsel Defendants urge this court to strictly and formalistically apply the general legal proposition that a parent's next-friend authority automatically ceases upon a child reaching the age of majority. But that ignores the egregious and tragic facts of this case and the inequity and injustice that would result. Unlike most eighteen-year-olds, Isabella, although now legally an adult, is not free to litigate on her own behalf, having been kidnapped and having not resurfaced. It would be an injustice to apply the normal rule under these unusual and terrible circumstances. *Cf. Knowlton v. Moore*, 178 U.S. 41, 77 (1900) (“[W]here a particular construction of a statute will occasion great inconvenience or produce inequality and injustice, that view is to be avoided if another and more reasonable interpretation is present in the statute.”).

To grant judgment on Isabella's claim in favor of Defendants now would be a miscarriage of justice. Child kidnappers everywhere would be incentivized to hold their victims hostage at least until they reach adulthood to avoid liability and redress by and for their victims. The Court has the authority under its broad equitable powers to allow the search for justice for Isabella to proceed by allowing Jenkins to continue to bring claims on behalf of Isabella as her next friend. Such an order would be the only possible equitable outcome.

\* \* \*

The Court retains subject-matter jurisdiction over Isabella's claim because Jenkins can and should proceed as Isabella's next friend under *Whitmore v. Arkansas*, 495 U.S. 149 (1990), Rule 17(c)(2) of the Federal Rules of Civil Procedure, and the Court's broad equitable powers.

### CONCLUSION

The Liberty Counsel Defendants' motion for partial summary judgment should be denied.

Respectfully submitted.

May 18, 2020

/s/ Frank H. Langrock  
Frank H. Langrock  
Langrock Sperry & Wool, LLP  
111 S. Pleasant Street  
P.O. Drawer 351  
Middlebury, Vermont 05753-0351  
Phone: (802) 388-6356  
Fax: (802) 388-6149  
Email: flangrock@langrock.com

Sarah Star  
Sarah Star, PL  
P.O. Box 106  
Middlebury, Vermont 05753  
Phone: (802) 385-1023  
Email: srs@sarahstarlaw.com

Scott D. McCoy  
Southern Poverty Law Center  
P.O. Box 10788  
Tallahassee, Florida 32302  
Phone: (850) 521-3042  
Fax: (850) 521-3001  
Email: scott.mccoy@splcenter.org

J. Tyler Clemons  
Southern Poverty Law Center  
201 St. Charles Avenue, Suite 2000  
New Orleans, Louisiana 70170  
Phone: (504) 526-1530  
Fax: (504) 486-8947  
Email: tyler.clemons@splcenter.org

Diego A. Soto  
Maya G. Rajaratnam  
Southern Poverty Law Center  
400 Washington Avenue  
Montgomery, Alabama 36104  
Phone: (334) 956-8200  
Fax: (334) 956-8481  
Email: diego.soto@splcenter.org  
Email: maya.rajaratnam@splcenter.org

*Counsel for Plaintiff Janet Jenkins*

**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  
Integrity Law Firm, PLLC  
*Counsel for Defendant Linda M. Wall*

Anthony R. Duprey  
Neuse, Duprey & Putnam, PC  
*Counsel for Defendants Liberty Counsel, Inc. and Rena M. Lindevaldsen*

Roger K. Gannam  
Liberty Counsel  
*Counsel for Defendants Liberty Counsel, Inc. and Rena M. Lindevaldsen*

Adam S. Hochschild  
Hochschild Law Firm, LLC  
*Counsel for Defendant Linda M. Wall*

Brooks G. McArthur  
Jarvis, McArthur & Williams, LLC  
*Counsel for Defendant Kenneth L. Miller*

Horatio G. Mihet  
Liberty Counsel  
*Counsel for Defendants Liberty Counsel, Inc. and Rena M. Lindevaldsen*

Daniel Joseph Schmid  
Liberty Counsel  
*Counsel for Defendants Liberty Counsel, Inc. and Rena M. Lindevaldsen*

Norman C. Smith  
Norman C. Smith, PC  
*Counsel for Defendant Linda M. Wall*

Michael J. Tierney  
Wadleigh, Starr & Peters, PLLC  
*Counsel for Defendant Timothy D. Miller*

Defendant Philip Zodiates

May 18, 2020

/s/ Diego A. Soto  
Diego A. Soto  
*Counsel for Plaintiff Janet Jenkins*

**U.S. DISTRICT COURT  
U.S. District Court, Western District of New York (Buffalo)  
CRIMINAL DOCKET FOR CASE #: 1:14-cr-00175-RJA-JJM-1**

Case title: USA v. Miller et al

Date Filed: 09/19/2014

---

Assigned to: Hon. Richard J. Arcara  
Referred to: Hon. Jeremiah J. McCarthy

**Defendant (1)**

**Lisa Miller**

**Pending Counts**

**Disposition**

CONSPIRACY TO DEFRAUD THE UNITED STATES

(1)

18:371.F CONSPIRACY TO DEFRAUD THE UNITED STATES

(1s)

18:1204.F INTERNATIONAL PARENTAL KIDNAPPING

(2)

18:1204.F INTERNATIONAL PARENTAL KIDNAPPING and 2

(2s)

**Highest Offense Level (Opening)**

Felony

**Terminated Counts**

**Disposition**

None

**Highest Offense Level (Terminated)**

None

**Complaints**

**Disposition**

None

---

**Plaintiff**

**USA**

represented by **Michael DiGiacomo**  
U.S. Attorney's Office  
Federal Centre  
138 Delaware Avenue  
Buffalo, NY 14202  
(716) 843-5885  
Fax: 716-551-3146  
Email: [michael.digiacomo@usdoj.gov](mailto:michael.digiacomo@usdoj.gov)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**  
*Designation: government attorney*

**EXHIBIT**  
**1**

**Paul J. Van De Graaf**

U.S. Attorney's Office  
 11 Elmwood Avenue  
 3rd Floor  
 Burlington, VT 05401  
 802-951-6725  
 Email: [paul.van.de.graaf@usdoj.gov](mailto:paul.van.de.graaf@usdoj.gov)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**  
*Designation: government attorney*

**Kathleen Ann Lynch**  
 United States Attorney's Office  
 Federal Centre  
 138 Delaware Avenue  
 Buffalo, NY 14202  
 716-843-5830  
 Fax: 716-855-0203  
 Email: [Kathleen.lynch@usdoj.gov](mailto:Kathleen.lynch@usdoj.gov)  
**TERMINATED: 07/20/2016**  
*Designation: government attorney*

Date Filed	#	Docket Text
09/19/2014	<u>1</u>	INDICTMENT as to Lisa Miller (1) count(s) 1, 2, Philip Zodhiates (2) count(s) 1, 2, Timothy Miller (3) count(s) 1, 2. (DZ) (Entered: 09/19/2014)
09/19/2014	2	TEXT ORDER OF REFERRAL Hon. Jeremiah J. McCarthy, United States Magistrate Judge, is hereby designated to act in this case as follows: All pre-trial matters in this case are referred to the above-named United States Magistrate Judge, including all pre-trial matters that a Magistrate Judge may hear and determine pursuant to 28 U.S.C. Section 636(b)(1)(A), and those which a Magistrate Judge may hear and thereafter file a report and recommendation for disposition pursuant to Section 636(b)(1)(B). All procedural aspects of matters properly before the Magistrate Judge under this Order, including scheduling and the filing of briefs or other supporting material, shall be determined by the Magistrate Judge. All motions or applications shall be filed with the Clerk and made returnable before the Magistrate Judge. IT IS SO ORDERED. Signed by Hon. Richard J. Arcara on 9/19/14. (DZ) (Entered: 09/19/2014)
11/14/2014	<u>8</u>	MOTION for Leave to Appear Pro Hac Vice Pro Hac Vice Attorney: Jeffrey Conrad. by Timothy Miller as to Lisa Miller, Philip Zodhiates, Timothy Miller. (Pro Hac Admission Fee Paid - Receipt No. 0209-2146585) (Attachments: # <u>1</u> Affidavit Sponsor affidavit, # <u>2</u> Exhibit Attorney's Oath, # <u>3</u> Errata Oath of Office, # <u>4</u> Exhibit ECF data form)(Behr, Laurence) Modified to add receipt number on 12/4/2014 (CMD). (Entered: 11/14/2014)
11/17/2014	<u>9</u>	Sponsoring Affidavit of Laurence D. Behr in support of <u>8</u> Motion for Leave to Appear Pro Hac Vice : Attorney Jeffrey Conrad as to defendants Lisa Miller, Philip Zodhiates, Timothy Miller. (DAZ) (Entered: 11/17/2014)
11/17/2014	<u>11</u>	NOTICE OF ATTORNEY APPEARANCE Kathleen Ann Lynch appearing for USA. <i>NOTICE OF ATTORNEY APPEARANCE Paul J. Van de Graaf</i> (Lynch, Kathleen) (Entered: 11/17/2014)
11/17/2014	12	TEXT ORDER as to Philip Zodhiates (2) : With good cause shown and the consent of all parties, the Motion 10 to Adjourn the March 17, 2015 Oral Argument is granted. Oral Argument is rescheduled for March 24, 2015 at 2:00 p.m. SO ORDERED. Issued by Hon. Jeremiah J. McCarthy on 11/6/13. (DAZ) (Entered: 11/17/2014)
12/03/2014	<u>15</u>	NOTICE OF ATTORNEY APPEARANCE Paul J. Van De Graaf appearing for USA. (Van De Graaf, Paul) (Entered: 12/03/2014)
12/04/2014	<u>16</u>	CONTINUATION OF EXHIBITS by Lisa Miller, Philip Zodhiates, Timothy Miller to <u>8</u> MOTION for Leave to Appear Pro Hac Vice Pro Hac Vice Attorney: Jeffrey Conrad. (Behr, Laurence) (Entered: 12/04/2014)

12/05/2014	17	TEXT ORDER as to Lisa Miller (1), Philip Zodhiates (2), Timothy Miller (3): The motion of Jeffrey A. Conrad, Esq. for <i>pro hac vice</i> admission is granted. SO ORDERED. Issued by Hon. Jeremiah J. McCarthy on 12/5/14.(DAZ) (Entered: 12/05/2014)
04/24/2015	<u>41</u>	SUPERSEDING INDICTMENT as to Lisa Miller (1) count(s) 1s, 2s, Philip Zodhiates (2) count(s) 1s, 2s, Timothy Miller (3) count(s) 1s, 2s. (DLC) (Entered: 04/27/2015)
09/15/2015	<u>66</u>	REPORT AND RECOMMENDATION as to Philip Zodhiates re 19 MOTION to Suppress and 51 Supplemental MOTION to Suppress <i>and Dismiss the Indictment</i> . Objections to R&R due by 10/2/2015. Signed by Hon. Jeremiah J. McCarthy on 9/15/15.(DAZ) (Entered: 09/15/2015)
09/17/2015	<u>67</u>	Consent MOTION for Extension of Time to File <i>Objections to Report and Recommendation</i> by Philip Zodhiates as to Lisa Miller, Philip Zodhiates, Timothy Miller. (Grable, James) (Entered: 09/17/2015)
07/20/2016	<u>83</u>	NOTICE OF ATTORNEY APPEARANCE Michael DiGiacomo appearing for USA. (DiGiacomo, Michael) (Entered: 07/20/2016)
07/20/2016		Attorney update in case as to Lisa Miller, Philip Zodhiates, Timothy Miller. Attorney Kathleen Ann Lynch terminated. (KLH) (Entered: 07/21/2016)
09/15/2016	103	TEXT ORDER as to Defendants Lisa Miller (1), Philip Zodhiates (2) and Timothy Miller (3). Pursuant to Federal Rule of Criminal Procedure 14(a), and for the reasons stated on the record during proceedings held on September 15, 2016, the Court severs Defendant Philip Zodhiates from Defendant Timothy Miller. Further, pursuant to Rule 14(a), the Court sua sponte severs Defendant Philip Zodhiates from Defendant Lisa Miller. Given the possibility that Defendant Lisa Miller is a fugitive who might never be arrested and extradited, postponing Defendant Zodhiates' trial until Defendant Lisa Miller's trial (if Lisa Miller's trial were to ever occur) would substantially prejudice Defendant Zodhiates. SO ORDERED. Issued by Hon. Richard J. Arcara on September 15, 2016.(DJD) (Entered: 09/15/2016)
09/27/2016		*** MOTIONS TERMINATED *** [20, 27, 32, 47, 48, 66, 67, 69] as to Lisa Miller (1), Timothy Miller (3), Philip Zodhiates (2) resolved. (DAZ) (Entered: 09/27/2016)
09/28/2016	<u>122</u>	Proposed Jury Instructions by Philip Zodhiates as to Lisa Miller, Philip Zodhiates, Timothy Miller (Grable, James) (Entered: 09/28/2016)
11/30/2016	139	TEXT ORDER as to defendant, Lisa Miller (1). A Status Conference/Due Diligence Hearing is scheduled for December 21, 2016 at 9:00 AM before Hon. Richard J. Arcara. The United States is to submit a due diligence affidavit by December 16, 2016. SO ORDERED. Issued by Hon. Richard J. Arcara on November 30, 2016.(DJD) (Entered: 11/30/2016)
12/16/2016	<u>143</u>	Sealed Document as to Lisa Miller, Philip Zodhiates, Timothy Miller. (KM) (Entered: 12/20/2016)
12/21/2016	145	Minute Entry for proceedings held 12/21/2016 before Hon. Richard J. Arcara as to Defendant, Lisa Miller (1). Status Conference is held as to defendant's fugitive status. The Government submitted a Due Diligence Affidavit under seal for the Court's review. A further Status Conference is scheduled for 6/22/2017 at 9:00 AM. Appearances: Govt – Michael DiGiacomo. (Court Reporter Megan Pelka.)(JDK) (Entered: 12/21/2016)
06/19/2017		NOTICE OF RESCHEDULING as to defendant, Lisa Miller (1). The June 22, 2017 due diligence status conference is adjourned by the Court to June 26, 2017 at 9:00 AM before Hon. Richard J. Arcara. (DJD) (Entered: 06/19/2017)
06/26/2017		Set/Reset Hearings as to Lisa Miller: Due Diligence Hearing set for 12/18/2017 09:00 AM before Hon. Richard J. Arcara. (DJD) (Entered: 06/26/2017)
06/26/2017		Minute Entry for proceedings held 6/26/2017 before Hon. Richard J. Arcara as to Defendant, Lisa Miller (1). Status Conference is held as to defendant's fugitive status. The Government submitted a Due Diligence Affidavit under seal for the Court's review. A further Status Conference is scheduled for 12/18/2017 at 9:00 AM. Appearances: Govt – Jonathan Cantil appearing for Michael DiGiacomo (Court Reporter Megan Pelka.)(DJD) (Entered: 06/26/2017)

06/26/2017	<u>199</u>	Sealed Document as to Lisa Miller. (KM) (Entered: 06/27/2017)
12/14/2017	<u>200</u>	Sealed Document. (KM) (Entered: 12/15/2017)
12/18/2017	201	Minute Entry for proceedings held 12/18/2017 before Hon. Richard J. Arcara as to Deft, Lisa Miller (1). Status Conference is held as to Deft's fugitive status. The Government submitted a Due Diligence Affidavit under seal for the Court's review. A further Status Conference is scheduled for 6/25/2018 at 9:00 AM. Appearances: Govt – Scott Allen appearing for Michael DiGiacomo (Court Reporter Megan Pelka.) (JDK) (Entered: 12/18/2017)
06/22/2018		Set/Reset Hearings as to Lisa Miller: Due Diligence Hearing set for 6/28/2018 12:30 PM before Hon. Richard J. Arcara. (DJD) (Entered: 06/22/2018)
06/22/2018		NOTICE OF RESCHEDULING as to defendant, Lisa Miller. The June 25, 2018 Due Diligence Hearing is adjourned by the Court to Thursday, June 28, 2018 at 12:30 PM before Hon. Richard J. Arcara. (DJD) (Entered: 06/22/2018)
06/28/2018		Set/Reset Hearings as to Lisa Miller: Due Diligence Hearing set for 12/21/2018 09:00 AM before Hon. Richard J. Arcara. (DJD) (Entered: 07/03/2018)
06/28/2018		Minute Entry for proceedings held 6/28/2018 before Hon. Richard J. Arcara as to Deft, Lisa Miller (1). Status Conference is held as to Deft's fugitive status. The Government submitted a Due Diligence Affidavit under seal for the Court's review. A further Status Conference is scheduled for 12/21/2018 at 9:00 AM. Appearances: Govt – Michael DiGiacomo (Court Reporter Megan Pelka.)(DJD) (Entered: 07/03/2018)
06/29/2018	<u>202</u>	Sealed Document. (KM) (Entered: 06/29/2018)
12/21/2018	<u>205</u>	Sealed Document. (KM) (Entered: 12/28/2018)
12/21/2018		Minute Entry for proceedings held 12/21/2018 before Hon. Richard J. Arcara as to Deft, Lisa Miller (1). Status Conference is held as to Deft's fugitive status. The Government submitted a Due Diligence Affidavit under seal for the Court's review. A further Status Conference is scheduled for 6/28/2019 at 9:00 AM. Appearances: Govt – Michael DiGiacomo (Court Reporter Megan Pelka.)(DJD) (Entered: 01/02/2019)
12/21/2018		Set/Reset Hearings as to Lisa Miller: Due Diligence Hearing set for 6/28/2019 09:00 AM before Hon. Richard J. Arcara. (DJD) (Entered: 01/02/2019)
06/28/2019		Set/Reset Hearings as to Lisa Miller: Due Diligence Hearing set for 12/13/2019 09:00 AM before Hon. Richard J. Arcara. (DJD) (Entered: 07/01/2019)
06/28/2019		Minute Entry for proceeding held 6/28/2019 before Hon. Richard J. Arcara as to Deft, Lisa Miller. Status conference is held on Defts fugitive status. The Govt submitted a due diligence affidavit for filing under seal for the Courts review. A further status conference is scheduled for 12/13/2019 at 9:00 AM. An updated due diligence affidavit is to be submitted by 12/6/2019. Deft remains a fugitive. Appearances: Govt by Michael DiGiacomo (Court Reporter Megan Pelka.)(DJD) (Entered: 07/02/2019)
07/01/2019	<u>211</u>	Sealed Document as to Lisa Miller. (NRE) (Entered: 07/02/2019)
12/13/2019	<u>221</u>	Sealed Document as to Lisa Miller. (SG) (Entered: 12/17/2019)
12/13/2019		Set/Reset Hearings as to Lisa Miller: Due Diligence/Fugitive Status Conference set for 6/18/2020 09:00 AM before Hon. Richard J. Arcara. (DJD) (Entered: 12/17/2019)
12/13/2019		Minute Entry for proceeding held 12/13/2019 before Hon. Richard J. Arcara as to Deft, Lisa Miller. Status conference is held on Defts fugitive status. The Govt submitted a due diligence affidavit for filing under seal for the Courts review. A further status conference is scheduled for 6/18/2020 at 9:00 AM. An updated due diligence affidavit is to be submitted by 6/11/2020. Deft remains a fugitive. Appearances: Govt by Michael DiGiacomo (Court Reporter Megan Pelka.)(DJD) (Entered: 01/06/2020)
02/06/2020	223	TEXT ORDER: the due date of February 20, 2020, for the United States to supplement its earlier response to petitioner Zodhiates' § 2255 motion in light of the petitioner's trial counsels' and the petitioner's supplemental submissions, <i>see</i> 219 , is stayed because petitioner has neither filed his supplemental submission nor sought and obtained an extension of time to do so. If petitioner seeks now to respond to his trial

	<p>counsels' supplemental submission, he shall file his proposed supplemental submission on or before February 17, 2020, and he shall also provide to the Court facts necessary for the Court to determine whether the Court should exercise its discretion to excuse his failure to comply with the Court's earlier Order 219 and grant him leave to file late by February 17, 2020. Failure to comply with the requirements of this Text Order may result in summary dismissal of the petitioner's § 2255 motion as a sanction or on the ground that the § 2255 motion is abandoned. A copy of this Text Order is being mailed to petitioner at his address listed in the docket. Issued by Hon. Richard J. Arcara on February 6, 2020. (WJG) (Entered: 02/06/2020)</p>
--	---



missingkids.org

# MISSING

## HELP BRING ME HOME

### Isabella Miller-jenkins

Age Progressed



Missing Since: Jan 1, 2010  
 Missing From: Bedford, VA  
 DOB: Apr 16, 2002  
 Age Now: 18  
 Sex: Female  
 Race: White  
 Hair Color: Sandy  
 Eye Color: Blue  
 Height: 4'0"  
 Weight: 70 lbs



Isabella's photos is shown age-progressed to 15 years. She was allegedly abducted by her mother, Lisa Miller, on January 1, 2010. A federal warrant for Kidnapping was issued for Lisa on September 19, 2014. They may have traveled to Nicaragua or Costa Rica. Isabella has a birthmark on her abdomen.

## DON'T HESITATE!

ANYONE HAVING INFORMATION SHOULD CONTACT

**CALL 911 OR**  
 1-800-8435678 (1-800-THE-LOST®)

United States Marshals Service 1-800-336-0102

Follow us [twitter.com/missingkids](https://twitter.com/missingkids) [facebook.com/missingkids](https://facebook.com/missingkids)

EXHIBIT  
2

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

JANET JENKINS, et al.,

Plaintiffs,

v.

No. 2:12-cv-184-WKS

KENNETH L. MILLER, et al.,

Defendants.

**PLAINTIFF JANET JENKINS’S STATEMENT OF DISPUTED MATERIAL FACTS IN  
SUPPORT OF HER RESPONSE IN OPPOSITION TO DEFENDANTS LIBERTY  
COUNSEL AND RENA M. LINDEVALDSEN’S MOTION FOR PARTIAL SUMMARY  
JUDGMENT AS TO ALL CLAIMS PLAINTIFF JANET JENKINS PURPORTS TO  
BRING AS NEXT FRIEND OF ISABELLA MILLER**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Rule 56(b), Plaintiff Janet Jenkins, through undersigned counsel, hereby submits the following statement of disputed material facts in response to Defendants Liberty Counsel, Inc. and Rena Lindevaldsen’s (collectively, “Liberty Counsel Defendants”) statement of undisputed material facts. ECF 494.

**STATEMENT OF DISPUTED FACTS**

1. Jenkins disputes that, “[i]n her initial Complaint, [she] only purported to bring her next friend claims by virtue of Isabella’s status as a minor.” Liberty Counsel Defs.’ Statement of Undisputed Material Facts ¶ 1. Jenkins also disputes that her prior purported reasons for bringing claims as next friend of Isabella are material to whether she can continue to bring claims as next friend of her daughter Isabella, who remains missing. In the initial Complaint, Jenkins brought claims as next friend of Isabella because Isabella was her *missing kidnapped* minor child. *See* Compl. 1, ECF 1 (“NOW COME Plaintiffs ... and complain against Defendants for intentionally kidnapping and conspiring to kidnap Isabella Miller-Jenkins on or about September 21, 2009, and intentionally causing her continued detention outside the State of Vermont to the present

day.”); *id.* ¶ 6 (“Plaintiff Isabella Miller-Jenkins, a/k/a/ [sic] Isabella Miller, is a minor child and daughter of Plaintiff Janet Jenkins and Defendant Lisa Miller. By order of the Vermont Family Court, she is currently supposed to reside in Fair Haven, County of Rutland, State of Vermont, but is currently outside the United States as the victim of kidnapping.”); *id.* ¶ 7 (“Defendant Lisa Miller ... continues to abduct Plaintiff Isabella Miller-Jenkins ...”); *id.* ¶ 21 (“Since January 2010 Isabella has been listed as missing by the National Center for Missing and Exploited Children, the victim of family abduction.”); *id.* ¶ 40 (“Lisa Miller did not return Isabella for the September 2009 visit, and Janet Jenkins has not seen or heard from Lisa Miller or Isabella since that time.”); *id.* ¶ 55 (“It is not known if Isabella is still with Lisa Miller since this time, or with others who are keeping her in hiding.”); *id.* ¶ 62 (“[A]ll of the Defendants named herein ... are liable for conspiring with Lisa Miller and with each other to ... assure [Isabella’s] continued detention outside the State of Vermont ....”); *id.* ¶ 63 (“Plaintiffs also allege that Lisa Miller intentionally held Isabella Miller-Jenkins outside of the United States, specifically, in Nicaragua, to interfere with Janet Jenkins’ lawful custody of Isabella between the dates of January 1, 2010 and the present ....”); *id.* ¶ 81 (“Plaintiff Isabella Miller-Jenkins has also suffered the loss of emotional and financial support from her mother, Janet Jenkins. ... This deprivation continues today and is expected to continue indefinitely into the future.”); *id.* at 17 (“Plaintiffs request ... [a]n order that the Defendants cease their unlawful activities immediately and return Isabella Miller-Jenkins to the United States ....”).

2. Jenkins disputes that, “[i]n her Amended Complaint, [she] continued to bring her purported next friend claims ONLY by virtue of Isabella’s status as a minor.” Liberty Counsel Defs.’ Statement of Undisputed Material Facts ¶ 2. Jenkins also disputes that her prior purported reasons for bringing claims as next friend of Isabella are material to whether she can continue to

bring claims as next friend of her daughter Isabella, who remains missing. In the Amended Complaint, Jenkins brought claims as next friend of Isabella because Isabella was her *missing kidnapped* minor child. *See* Am. Compl. 1, ECF 59 (“NOW COME Plaintiffs ... and complain against Defendants for intentionally kidnapping and conspiring to kidnap Isabella Miller-Jenkins on or about September 21, 2009, and intentionally causing her continued detention outside the State of Vermont to the present day.”); *id.* ¶ 6 (“Plaintiff Isabella Miller-Jenkins, a/k/a/ [sic] Isabella Miller, is a minor child and daughter of Plaintiff Janet Jenkins and Defendant Lisa Miller. By order of the Vermont Family Court, she is currently supposed to reside in Fair Haven, County of Rutland, State of Vermont, but is currently outside the United States as the victim of kidnapping.”); *id.* ¶ 7 (“Defendant Lisa Miller ... continues to abduct Plaintiff Isabella Miller-Jenkins ....”); *id.* ¶ 21 (“Since January 2010 Isabella has been listed as missing by the National Center for Missing and Exploited Children, the victim of family abduction.”); *id.* ¶ 40 (“Lisa Miller did not return Isabella for the September 2009 visit, and Janet Jenkins has not seen or heard from Lisa Miller or Isabella since that time.”); *id.* ¶ 55 (“It is not known if Isabella is still with Lisa Miller since this time, or with others who are keeping her in hiding.”); *id.* ¶ 62 (“[A]ll of the Defendants named herein ... are liable for conspiring with Lisa Miller and with each other to ... assure [Isabella’s] continued detention outside the State of Vermont ....”); *id.* ¶ 63 (“Plaintiffs also allege that Lisa Miller intentionally held Isabella Miller-Jenkins outside of the United States, specifically, in Nicaragua, to interfere with Janet Jenkins’ lawful custody of Isabella between the dates of January 1, 2010 and the present ....”); *id.* ¶ 81 (“Plaintiff Isabella Miller-Jenkins has also suffered the loss of emotional and financial support from her mother, Janet Jenkins. ... This deprivation continues today and is expected to continue indefinitely into

the future.”); *id.* at 17 (“Plaintiffs request ... [a]n order that the Defendants cease their unlawful activities immediately and return Isabella Miller-Jenkins to the United States ....”).

3. Jenkins disputes that, “[i]n her [Revised Second Amended Complaint], Jenkins only purports to bring her next friend claims by virtue of Isabella’s status as a minor.” Liberty Counsel Defs.’ Statement of Undisputed Material Facts ¶ 3. Jenkins also disputes that her prior purported reasons for bringing claims as next friend of Isabella are material to whether she can continue to bring claims as next friend of her daughter Isabella, who remains missing. In the Revised Second Amended Complaint, Jenkins brought claims as next friend of Isabella because Isabella was her *missing kidnapped* minor child. *See* Revised Second Am. Compl. 1, ECF 223 (“NOW COME Plaintiffs ... and complain against Defendants for intentionally kidnapping and conspiring to kidnap Isabella Miller-Jenkins on or about September 21, 2009, and intentionally causing her continued detention outside the State of Vermont to the present day.”); *id.* ¶ 6 (“Plaintiff Isabella Miller-Jenkins, a/k/a/ [sic] Isabella Miller, is a minor child and daughter of Plaintiff Janet Jenkins and Defendant Lisa Miller. By order of the Vermont Family Court, she is currently supposed to reside in Fair Haven, County of Rutland, State of Vermont, but is currently outside the United States as the victim of kidnapping.”); *id.* ¶ 7 (“Defendant Lisa Miller ... continues to abduct Plaintiff Isabella Miller-Jenkins ....”); *id.* ¶ 20 (“Since January 2010 Isabella has been listed as missing by the National Center for Missing and Exploited Children, the victim of family abduction.”); *id.* ¶ 42 (“Lisa Miller did not return Isabella for the September 2009 visit, and Janet Jenkins has not seen or heard from Lisa Miller or Isabella since that time.”); *id.* ¶ 58 (“It is not known if Isabella is still with Lisa Miller since this time, or with others who are keeping her in hiding.”); *id.* ¶ 64 (“Plaintiffs also allege that Lisa Miller intentionally held Isabella Miller-Jenkins outside of the United States, specifically, in Nicaragua, to interfere with

Janet Jenkins' lawful custody of Isabella between the dates of January 1, 2010 and the present ..."); *id.* ¶ 71 ("Plaintiff Isabella Miller-Jenkins has also suffered the loss of emotional and financial support from her mother, Janet Jenkins. ... This deprivation continues today and is expected to continue indefinitely into the future."); *id.* at 14 ("Plaintiffs request ... [a]n order that the Defendants cease their unlawful activities immediately and return Isabella Miller-Jenkins to the United States ....").

4. Jenkins disputes that, "[i]n her pleadings in this matter, Jenkins has confirmed her position that her status as next friend of Isabella was based solely on her status as a minor," Liberty Counsel Defs.' Statement of Undisputed Material Facts ¶ 4, and that her use of the phrase "Jenkins, for herself and as next friend of Isabella" in any context "confirmed her position that her status as next friend of Isabella was based solely on her status as a minor." *Id.* Jenkins also disputes that her prior purported reasons for bringing claims as next friend of Isabella are material to whether she can continue to bring claims as next friend of her daughter Isabella, who remains missing. In her pleadings in this matter, Jenkins confirmed that she brought claims as next friend of Isabella because Isabella was her *missing kidnapped* minor child. *See, e.g.*, Pls.' Mem. in Opp'n to Defs. Philip Zodhiates, Victoria Hyden, and Response Unlimited, Inc.'s, Liberty University's, Liberty Counsel, Mathew D. Staver, and Rena M. Lindevaldsen's and Linda M. Wall's Mots. to Dismiss 1–2, ECF 261 ("What is important is this: Janet Jenkins has not seen her daughter since well prior to the 2009 abduction. About that fact there is no dispute. Nor is there any dispute about whether Isabella was kidnapped, or whether at least some Defendants played a role in the kidnapping, or whether Isabella remains abroad."); *id.* at 6 ("Since January 2010, Isabella has been listed as missing by the National Center for Missing and Exploited Children—the victim of a family abduction."); *id.* at 16 ("Plaintiffs have a continuing

cause of action against all Defendants because their actions jointly and severally contribute to the ongoing tort from which Plaintiffs suffer daily injury: their forced separation due to Lisa Miller’s kidnapping of Isabella.”); *id.* at 18 (“Therefore, until Isabella is returned to the United States and allowed to resume normal contact under the authority of the Rutland Family Court, both Plaintiffs maintain their cause of action against all Defendants.”); *id.* (“Plaintiffs allege that Lisa Miller continues to move Isabella to unknown locations, and remains in hiding with the Beachy Amish Mennonite Brotherhood.”).

5. Jenkins disputes that “[t]his Court has likewise confirmed that Jenkins has brought her claims on behalf of Isabella by virtue of her status as a minor child,” and that, “[i]n its September 29, 2017 order on Defendants’ motions to dismiss, this Court likewise noted that Jenkins was *only* bringing her claims on behalf of Isabella by virtue of her status as an ‘infant’ or minor.” Liberty Counsel Defs.’ Statement of Undisputed Material Facts ¶ 5 (emphasis added). Jenkins also disputes that the Court’s “confirmation” or “notation” of Jenkins’s prior purported reasons for bringing claims as next friend of Isabella are material to whether she can continue to bring claims as next friend of her daughter Isabella, who remains missing. In the September 29, 2017 order, this Court held that in the next-friend claims brought for Isabella by Jenkins, Isabella remained the real party in interest, and dismissed Isabella’s claim for the Vermont tort of custodial interference because the tort could not be committed against the child but only against the parent whose parental rights had been interfered with. *See* Op. & Order 30–31, ECF 277 (“Since Isabella was not a parent, and did not have custody, she cannot make out this claim herself”). This Court never held, confirmed, or noted that the only basis on which Jenkins did or could bring next-friend claims for Isabella was Isabella’s then-status as a minor child. *See id.*

6. Isabella Miller-Jenkins, also known as Isabella Miller, remains a missing victim of international kidnapping. *See, e.g.*, Def. Timothy Miller’s Answer to Pls.’ Revised Second Am. Compl. and Demand for Trial by Jury ¶ 38, ECF 510 (“Timo admits that he met Lisa Miller and Isabella in Nicaragua.”); *id.* ¶ 40 (“Timo admits that, starting in September 2009, Lisa Miller and Isabella lived openly near or among the Beachy Amish-Mennonite Community in Nicaragua.”); Def. Rena M. Lindevaldsen’s Unopposed Verified Mot. for Leave to Submit Potentially Privileged Communication for *In Camera* Review ¶ 1, ECF 477 (“As previously sworn by Lindevaldsen under oath, the last communication from her former client Lisa Miller was on September 12, 2009, after which Lisa Miller suddenly ceased all communications and disappeared, without any warning or hint to Lindevaldsen or Liberty Counsel.”); *id.* ¶ 7(a), (c) (acknowledging Lisa Miller’s fugitive status); Aff. of Rena M. Lindevaldsen in Supp. of Defs. Mathew Staver, Rena Lindevaldsen, and Liberty Counsel’s Mot. to Dismiss Pls.’ Revised Second Am. Compl. ¶ 7, ECF 238-3 (“I lost contact with Lisa Miller sometime in late September 2009. At no time after mid-September did I directly or indirectly communicate with Lisa Miller. . . . Lisa Miller did not communicate with me, directly or indirectly . . . .”); Aff. of Rena M. Lindevaldsen in Supp. of Def.’s Mot. to Dismiss ¶ 9, ECF 66-5 (“I had no knowledge that Lisa Miller would flee and continue to have no knowledge of her whereabouts.”); Dep. Tr. 37, ECF 470-1 (Timothy Miller testifying that he picked up Lisa and Isabella at the airport in Managua, Nicaragua); *id.* at 55 (Timothy Miller testifying that Lisa and Isabella left Managua and returned to Jinotega on April 27, 2010); *Kenneth L. Miller* Judgment, ECF 439-10 (adjudicating Defendant Kenneth Miller guilty of aiding and abetting international kidnapping); *Timothy Miller* Plea Agreement 3, ECF 439-16 (admitting that Lisa and Isabella departed Canada in September 2009 and arrived in Managua, Nicaragua, and that he continued to assist Lisa Miller

through May 2010); *Zodhiates* Judgment, ECF 439-22 (adjudicating Defendant Philip Zodhiates guilty of international parental kidnapping); *accord Lisa Miller* Docket Report 4, Ex. 1 (minute entry of Dec. 13, 2019, scheduling status conference for June 18, 2020, ordering updated due diligence affidavit by June 11, 2020, and noting Lisa remains a fugitive); NCMEC Page, Ex. 2 (*Isabella Miller-Jenkins*, NAT'L CTR. FOR MISSING & EXPLOITED CHILDREN, <https://www.missingkids.org/poster/NCMC/1138096/1/screen> (last visited May 18, 2020)). *But compare* Revised Second Am. Compl. ¶ 6 (alleging Isabella “is currently outside the United States as the victim of kidnapping”), *with* Def. Timothy Miller’s Answer to Pls.’ Revised Second Am. Compl. and Demand for Trial by Jury ¶ 6, ECF 510 (denying because of asserted insufficient knowledge or information to form a belief as to the truth of the allegation); Liberty Counsel Defs.’ Answer and Defenses to Pl.’s Revised Second Am. Compl. ¶ 6, ECF 502 (same); Answer and Affirmative Defenses of Victoria Hyden to Pls.’ Revised Second Am. Compl. ¶ 6, ECF 290 (same); Answer and Affirmative Defenses of Response Unlimited, Inc., to Pls.’ Revised Second Am. Compl. ¶ 6, ECF 289 (same); Answer and Affirmative Defenses of Philip Zodhiates, Individually, to Pls.’ Revised Second Am. Compl. ¶ 6, ECF 288 (same); Answer and Defenses of Def. Linda M. Wall to Pls.’ Revised Second Am. Compl. ¶ 6, ECF 279 (same).

Respectfully submitted.

May 18, 2020

/s/ Frank H. Langrock  
Frank H. Langrock  
Langrock Sperry & Wool, LLP  
111 S. Pleasant Street  
P.O. Drawer 351  
Middlebury, Vermont 05753-0351  
Phone: (802) 388-6356  
Fax: (802) 388-6149  
Email: [flangrock@langrock.com](mailto:flangrock@langrock.com)

Sarah Star  
Sarah Star, PL

P.O. Box 106  
Middlebury, Vermont 05753  
Phone: (802) 385-1023  
Email: srs@sarahstarlaw.com

Scott D. McCoy  
Southern Poverty Law Center  
P.O. Box 10788  
Tallahassee, Florida 32302  
Phone: (850) 521-3042  
Fax: (850) 521-3001  
Email: scott.mccoy@splcenter.org

J. Tyler Clemons  
Southern Poverty Law Center  
201 St. Charles Avenue, Suite 2000  
New Orleans, Louisiana 70170  
Phone: (504) 526-1530  
Fax: (504) 486-8947  
Email: tyler.clemons@splcenter.org

Diego A. Soto  
Maya G. Rajaratnam  
Southern Poverty Law Center  
400 Washington Avenue  
Montgomery, Alabama 36104  
Phone: (334) 956-8200  
Fax: (334) 956-8481  
Email: diego.soto@splcenter.org  
Email: maya.rajaratnam@splcenter.org

*Counsel for Plaintiff Janet Jenkins*

**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  
Integrity Law Firm, PLLC  
*Counsel for Defendant Linda M. Wall*

Anthony R. Duprey  
Neuse, Duprey & Putnam, PC  
*Counsel for Defendants Liberty Counsel, Inc. and Rena M. Lindevaldsen*

Roger K. Gannam  
Liberty Counsel  
*Counsel for Defendants Liberty Counsel, Inc. and Rena M. Lindevaldsen*

Adam S. Hochschild  
Hochschild Law Firm, LLC  
*Counsel for Defendant Linda M. Wall*

Brooks G. McArthur  
Jarvis, McArthur & Williams, LLC  
*Counsel for Defendant Kenneth L. Miller*

Horatio G. Mihet  
Liberty Counsel  
*Counsel for Defendants Liberty Counsel, Inc. and Rena M. Lindevaldsen*

Daniel Joseph Schmid  
Liberty Counsel  
*Counsel for Defendants Liberty Counsel, Inc. and Rena M. Lindevaldsen*

Norman C. Smith  
Norman C. Smith, PC  
*Counsel for Defendant Linda M. Wall*

Michael J. Tierney  
Wadleigh, Starr & Peters, PLLC  
*Counsel for Defendant Timothy D. Miller*

Defendant Philip Zodiates

May 18, 2020

/s/ Diego A. Soto  
Diego A. Soto  
*Counsel for Plaintiff Janet Jenkins*

**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 PLAINTIFF JANET JENKINS'S RESPONSE IN OPPOSITION TO  
DEFENDANTS LIBERTY COUNSEL AND RENA M. LINDEVALDSEN'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT AS TO ALL CLAIMS PLAINTIFF JANET  
JENKINS PURPORTS TO BRING AS NEXT FRIEND OF ISABELLA 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 Plaintiff Janet Jenkins in this case.
2. Exhibit 1 is a true and correct copy of the docket report of *United States v. Lisa Miller*, No. 1:14-cr-175 (W.D.N.Y), which I downloaded from PACER on May 18, 2020.
3. Exhibit 2 is a true and correct copy of the National Center for Missing and Exploited Children's poster for Isabella Miller-Jenkins, which I downloaded from <https://www.missingkids.org/poster/NCMC/1138096/1/screen>, on May 18, 2020.

Respectfully submitted.

Executed on May 18, 2020

/s/ Diego A. Soto

Diego A. Soto

*Counsel for Plaintiff Janet Jenkins*