

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

JANET JENKINS,

Plaintiff,

v.

No. 2:12-cv-184-WKS

KENNETH L. MILLER, et al.,

Defendants.

**PLAINTIFF'S POST-HEARING MEMORANDUM**

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

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  
Emily J. Joselson  
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  
Email: ejoselson@langrock.com

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

Jessica L. Stone  
Southern Poverty Law Center  
P.O. Box 1287  
Decatur, Georgia 30031  
Phone: (404) 221-5837  
Fax: (404) 221-5857  
Email: jessica.stone@splcenter.org

*Counsel for Plaintiff Janet Jenkins*

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Plaintiff Janet Jenkins submits this memorandum regarding the March 8, 2021 hearing.

**I. Lisa Miller should not further benefit from having been a fugitive for over a decade.**

At the hearing, the Court asked Plaintiff to update the Court on whether she wishes to proceed with adding Lisa Miller as a party, given the Court's concern that doing so could delay the case for at least a year while Lisa is prosecuted. After consideration of the Court's concerns, Plaintiff wishes to proceed with adding Lisa as a defendant to this case. In Plaintiff's view, doing so would not unduly delay this case further, but even if delay ultimately cannot be avoided, she has the right to sue Lisa in this case, along with Lisa's co-conspirators, for kidnapping Isabella to violate Plaintiff's rights.

Plaintiff does not believe Lisa's participation would necessarily delay this case for a year or more, as the Court suggested at the hearing. *First*, it is entirely possible that Lisa would not move to stay this case against her while she is prosecuted. Like Defendant Timothy Miller, she could plead guilty to one or both counts of the indictment in exchange for leniency in sentencing. It also is likely that she would not need a stay to find counsel in this case. Lisa quickly found private counsel in her criminal case. *See, e.g.*, Soto Decl. ¶ 2 (Mar. 10, 2021) (describing that, on January 28, 2021, counsel remotely attended Lisa's initial appearance in Miami and learned she is represented in the criminal case by Dennis Boyle, Esq.); Minute Entry, *United States v. Lisa Miller*, No. 1:14-cr-175 (W.D.N.Y. Feb. 26, 2021), ECF 263 (indicating Lisa is represented by Dennis Boyle, Esq.). Although that attorney does not represent her in this case, that she was able to retain private counsel so quickly in the criminal case suggests she can expeditiously find counsel to represent her in this related, civil case.

*Second*, even if Lisa does move for a stay, her parallel prosecution alone likely would not justify one, and Plaintiff would vigorously oppose such a motion. Lisa's circumstances today are unlike Defendant Philip Zodhiates's in 2015. The Court decided Zodhiates warranted a stay

because his business, Defendant Response Unlimited, Inc., was “also likely a target of investigation,” Op. & Order 3, ECF 192, and because “discovery under the relatively liberal rules of civil procedure, as opposed to the more restrictive rules and procedures governing criminal matters, pose[d] a danger of fundamental unfairness,” *id.* at 3–4. Lisa, however, can invoke her Fifth Amendment privilege against compulsory self-incrimination in response to discovery requests and oral examination in this case—just like her co-defendants Zodhiates, Victoria Hyden, Linda Wall, Kenneth Miller, and Timothy Miller have done and plan to do. Although Plaintiff could use those privilege invocations against Lisa, the government obviously could not. Nor could Lisa justify a stay of discovery pending a motion to dismiss, given the prejudice to the parties and lack of prejudice to Lisa. *See, e.g., Spencer Trask Software & Info. Servs., LLC v. RPost Int’l Ltd.*, 206 F.R.D. 367, 368 (S.D.N.Y. 2002) (“Good cause may be shown where a party has filed a dispositive motion, the stay is for a short period of time, and the opposing party will not be prejudiced by the stay.”); L.R. 26(a)(3) (“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.”).

*Third*, although Lisa could object to Plaintiff’s use against her of deposition testimony taken before she joined the case, *see* Fed. R. Civ. P. 32(a)(1), that would only require re-opening depositions for which Lisa wishes to ask additional questions. If Plaintiff sues Lisa separately and Lisa defends herself, Plaintiff would have to entirely re-depose not only every single nonparty already deposed in this case, but also all Defendants in this case, who have not yet been deposed and who certainly would prefer not to testify three times—twice in depositions and once at trial. Plaintiff would then have to take Lisa to trial, empanel a new jury, and repeat the same presentation of evidence. In short, failing to add Lisa to this case could necessitate repeating

*everything*. The Court and the public's strong interest in carefully and efficiently using scarce judicial resources "to secure the just, speedy, and inexpensive determination of" Plaintiff's claims leans heavily in favor of keeping all defendants in this proceeding. Fed. R. Civ. P. 1.

Even if the Court stays the case pending Lisa's criminal prosecution, Plaintiff has the right to sue Lisa in this case along with her co-conspirators. Lisa repeatedly violated state-court orders requiring her to allow Plaintiff visitation with Isabella. When it became clear not only that no court would reverse those orders, but also that the family court would transfer custody of Isabella to Plaintiff, Lisa, with Defendants' help, fled the country, took Isabella with her, and successfully hid Isabella for over a decade. The kidnapping was always aimed at keeping Lisa and Isabella out of the reach of this state's courts long enough for Isabella to become an adult, thus preventing Plaintiff from exercising any parental rights over her. Lisa achieved that end when Isabella turned eighteen years old last year. Plaintiff does not wish to allow Lisa to further benefit from her decade-long evasion of federal authorities by proceeding without her as a co-defendant with her co-conspirators in this case just because Lisa reappeared when this case nearly reached the end of discovery. Moreover, Plaintiff fears being unfairly prejudiced before the jury in this case by Lisa's conspicuously empty chair at defense counsel's table because Lisa lies at the very center of the kidnapping in which Defendants deny any involvement.

For these reasons, after consideration of the Court's concerns, Plaintiff wishes to proceed with making Lisa a party because she believes Lisa can and should face accountability to her in *this* case along with those who helped Lisa plan, execute, and cover up that kidnapping—not a separate case.

**II. If the Court sets a new discovery deadline, it should afford at least the 61 days lost because of Defendants' motion to disqualify Plaintiff's counsel.**

Plaintiff has asked the Court to order the parties, including Lisa Miller, to confer and propose a new discovery schedule/order considering all the circumstances as they exist now that Lisa has reappeared and Isabella voluntarily dismissed herself from the case. *See* Reply in Supp. of Pl. Janet Jenkins's Mot. to Stay All Disc. Schedule/Order Deadlines ("Stay Mot. Reply") 1, 7, ECF 647. If the Court instead decides to set a schedule itself, Plaintiff would ask the Court to afford the parties no less than the 61 days that remained in discovery when, on January 29, 2021, the parties received Isabella's affidavits and Defendants objected to counsel continuing to represent Plaintiff. *See* Emergency Mot. for Hr'g ¶ 5, ECF 635 (explaining counsel received Isabella's affidavits on January 29, 2021); *see also* Mot. to Disqualify Pls.' Counsel, ECF 636 (filed Feb. 1, 2021); Stay Mot. Reply, ECF 647 (explaining how Isabella's affidavits and Defendants' objections stalled the case).<sup>\*</sup> Plaintiff would also ask the Court to afford additional time to account for the time it will take Plaintiff to propose terms for the Liberty Counsel Defendants' search of their AT&T records and the time it will take for Defendants to produce those records.

**III. The Liberty Counsel Defendants should be compelled to search their AT&T records for all phone numbers Plaintiff provides, not just those for whom Plaintiff can associate a name.**

At the hearing, the Court indicated it would grant in part and deny in part Plaintiff's motion to compel the Liberty Counsel Defendants to produce their AT&T records in their

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<sup>\*</sup> At the hearing, Plaintiff's counsel mistakenly miscalculated the remaining amount of time as 51 days. There are 61 days between January 29, 2021, and March 31, 2021. Moreover, on January 29, the parties had 19 days, until February 17, to serve interrogatories and requests for production; Plaintiff would ask the Court to afford at least that amount of time for those discovery requests.

entirety and instead allow Plaintiff to propose search terms and Defendants to produce only those responsive portions. In describing its anticipated order, the Court seemed to suggest that Plaintiff would be limited to proposing names of persons as search terms. Plaintiff does not believe that limitation is necessary or warranted to avoid the Court's concern for the privacy of the Liberty Counsel Defendants' clients.

*First*, AT&T's records contain phone numbers, not names, *see, e.g.*, Lindevaldsen AT&T Logs, ECF 582-3, so it would be unhelpful for Plaintiff to propose names as search terms. Moreover, by requiring Plaintiff to propose only names, the Court would merely shift to the Liberty Counsel Defendants the task of determining what phone numbers to search for all listed persons. Neither Plaintiff nor presumably the Liberty Counsel Defendants would prefer that the Liberty Counsel Defendants take on that task entirely by themselves.

*Second*, not even the Liberty Counsel Defendants proposed limiting Plaintiff to a list of names. Their initial proposal would have required Plaintiff to provide "a list of *phone numbers* and persons" and they "would then search the records for *the numbers* ... provide[d]." Soto-Mihet Emails \*12, ECF 582-1 (emphasis added); *accord* Resp. 18, ECF 600 ("Liberty Counsel offered to search the AT&T Records for any *telephone numbers* connected to the case that Jenkins provides." (emphasis added)). But they did not object to Plaintiff proposing numbers for which she could not associate a name. They proposed that, "[i]f [Plaintiff] know[s] the names associated with the numbers," she should "provide them so [they] can confirm the broad connection with this case." Soto-Mihet Emails \*7. But the Liberty Counsel Defendants agreed that, "[i]f [Plaintiff] do[es]n't have a name associated with a particular number," she should "let [them] know the connection that number has to this case." *Id.* There are many phone numbers within the records Plaintiff has for other Defendants and nonparties that, because of their timing

for example, appear potentially connected to the conspiracy but for which Plaintiff is unable to associate a name through, for example, a reverse lookup website. The Liberty Counsel Defendants did not “anticipate disagreement on this front.” *Id.*

*Third*, Plaintiff should also be permitted to propose names for individuals and entities for which she cannot identify any or all associated phone numbers. There are persons and entities that undoubtedly have a connection to this case but for whom Plaintiff does not have a phone number or for whom she does not know all phone numbers. For example, Plaintiff might know a person’s cell phone number but not her home phone number, and she might know an entity’s main line, but not all of its extensions. The Court should require the Liberty Counsel Defendants to search for all phone numbers for each listed person and entity after reasonable inquiry of information within their possession, custody, or control, such as their paper and electronic contact lists.

Respectfully submitted.

March 10, 2021

/s/ Frank H. Langrock  
Frank H. Langrock  
Emily J. Joselson  
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  
Email: ejoselson@langrock.com

Sarah Star  
Sarah Star, PC  
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

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

Jessica L. Stone  
Southern Poverty Law Center  
P.O. Box 1287  
Decatur, Georgia 30031  
Phone: (404) 221-5837  
Fax: (404) 221-5857  
Email: jessica.stone@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 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*

Michael R. Hirsh  
Hirsh & Heuser, LLC  
*Counsel for Defendants Philip Zodhiates, Victoria Hyden, and Response Unlimited, Inc.*

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*

March 10, 2021

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

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

JANET JENKINS,

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v.

KENNETH L. MILLER, et al.,

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No. 2:12-cv-184-WKS

**DECLARATION OF DIEGO A. SOTO IN SUPPORT OF  
PLAINTIFF'S POST-HEARING MEMORANDUM**

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. On January 28, 2021, I remotely attended, as a member of the public, Defendant Lisa Miller's initial appearance hearing in the Southern District of Florida in Miami and learned from Lisa's public defender that she is represented in the criminal case by Dennis Boyle, Esq.

Executed on March 10, 2021

/s/ Diego A. Soto

Diego A. Soto

*Counsel for Plaintiff Janet Jenkins*