



government's evidence against her. To date, undersigned counsel has not yet seen the government's evidence against Miller, and upon information and belief, believes the evidence has not yet been produced to Miller's criminal defense attorney. Miller has a substantial right and interest in evaluating the government's evidence against her before evaluating whether she will waive her Fifth Amendment rights.

Jenkins' effort to press forward expeditiously would also prevent Miller from meaningfully catching up on what has occurred, let alone conducting her own discovery. For a small vignette on the complexities of this case, on April 8, 2021, Jenkins filed a certificate of service with the Court stating that Jenkins had emailed and mailed copies of Plaintiffs' *written* discovery responses and subpoenas served in the case. (D. 684.) There are over 100 documents listed. That in itself is an impressive number, even assuming it lists all written responses (which does not appear likely and has not yet been confirmed).

In fact, however, Plaintiff did *not* serve the many documents, at least not via email. Instead, Plaintiff conveyed a link to the SPLC's website and a password, where, apparently, those documents were supposed to be found. That link, however, did not provide access to undersigned counsel to most of the listed documents until April 12. Once working properly, the link did *not* contain 112 electronic files (aka documents), but over 5,000. The party written discovery and subpoena folders alone contain 225 files and dozens of sub-folders. Upon initial review, Jenkins' Rule 34 production folder contain 4,995 files, with production numbers concluding at page number 23,632. The point in all this is not to complain, but to point that even the *production* of discovery in this matter is complex, cumbersome and time consuming. Plaintiff did not dispute that the court's docket itself, which now races towards 700 filings, is also a minor monstrosity of

complexity. It is not fair to ask Lisa Miller to rush through these thousands of pages. Neither is it appropriate or necessary.

Regarding her desire for a prompt trial against the current collection of defendants, Jenkins elected to serve Lisa Miller at the conclusion of discovery in this matter. It was an informed decision. This Court even forewarned Jenkins of the likely result of bringing Miller into this proceeding. (*See* D. 682-2, at 8 (“[D]o you really want to have Lisa Miller served, bring her into the litigation, knowing full well that this may stop this litigation in its tracks?”).) Related, Jenkins made no effort to separate Lisa Miller from this proceeding. It was Jenkins’ decision to keep Miller as a named defendant in this lawsuit for the past several years instead of having her separated out.<sup>1</sup>

Jenkins concedes that “the issues in the criminal and civil cases overlap considerably.” (Dkt. 682, at 3.) Jenkins argues this case should go forward anyway, distinguishing *Harris v. Nassau County*, No. 13-cv-4728-NGG-RML, 2014 WL 3491286 (E.D.N.Y. July 11, 2014), on the grounds that the plaintiff’s 42 U.S.C. § 1983 claims in that case depended on the outcome of his criminal trial. Even so, *Harris* is not the only case to conclude that the overlap of the criminal and civil cases is the “most important” factor for issuing a stay. *See, e.g., State Farm Mut. Auto. Ins. Co. v. Beckham-Easley*, No. CIV.A. 01-5530, 2002 WL 31111766, at \*2 (E.D. Pa. Sept. 18, 2002) (“The degree to which issues in simultaneous civil and criminal proceedings overlap is considered the most important threshold issue when determining whether or not to grant a stay.” (staying proceeding)). Given the substantial overlap between the civil and criminal cases, and the significant Fifth Amendment issues raised by having a civil case moving through discovery pending a criminal trial, a stay is warranted.

---

<sup>1</sup> It is noteworthy Jenkins also decided against requesting, let alone pursuing, letters rogatory or apparently otherwise attempting to serve Lisa Miller, while she resided in Nicaragua.

Pushing Jenkins forward to a prompt trial is also not necessary. Jenkins fails to show how or why the other factors weigh against a stay in this case. Jenkins argues that she has waited a long time for a trial. That may be true, but it does not follow that Jenkins' rights have been prejudiced as a result. Jenkins' assertions that Miller was a fugitive from justice are beside the point. Given that the minor subject to the kidnapping case is now a legal adult, the injunctive relief Jenkins sought at one time is no longer available to her in this civil case. Jenkins may pursue damages. Jenkins has not explained how a stay would prevent her from collecting damages plus interest from Miller, who is now in federal custody.

Jenkins efforts to distinguish this Court's grant of a partial stay pending Philip Zodhiates criminal prosecution is, ultimately, confined to pointing out that Zodhiates had a business interest that could be implicated in the criminal proceeding. That is, however, a distinction without a difference. The constitutional implications for Miller are the same as those Zodhiates confronted. In fact, Plaintiff admits that Miller could simply plead the Fifth and "Plaintiff could use those privilege invocations against Defendant ... ." (D. 682, at 2.) That is precisely the dilemma a stay pending criminal prosecution avoids – whether to protect herself from criminal prosecution or defend herself from Jenkins.

With an arguable display of chutzpah in her "fifth factor," Plaintiff argues that in fact this Court too would prefer to move the case forward instead of staying the matter. (*Id.* at 4.) In so arguing, Plaintiff simply ignores from the same transcript this Court's entirely reasonable acknowledgement and forewarning to Jenkins that a stay pending Miller's prosecution would be appropriate, and in fact, should be expected. (*See* D. 682-2, at 4-11.)

Jenkins' arguments that the public interest and judicial economy would be served by proceeding with discovery against Lisa Miller in this case are similarly unavailing. Miller's Fifth

Amendment rights will be burdened if discovery moves ahead. As one court explained, “it is always in the public interest to uphold the Constitution.” *Dixon v. City of St. Louis*, No. 4:19-CV-0112-AGF, 2019 WL 2509792, at \*2 (E.D. Mo. June 17, 2019). Further, from a judicial efficiency perspective, allowing discovery against Miller is sure to raise many Fifth Amendment objections, motions to compel, and oppositions to the same all of which will unnecessarily tax this Court’s limited resources. If anything, resolution of the criminal case will allow for speedier resolution of this case.

Finally, these issues are exigent. Plaintiff is proceeding with noticing depositions, commencing April 13, 2021, and has proceeded to serve discovery requests on Lisa Miller. (*See* D. 681.)

For the foregoing reasons, Lisa Miller prays the Court grant her emergency motion for a stay. Respectfully submitted this the 13<sup>th</sup> day of April, 2021.

/s/ Anthony J. Biller  
Envisage Law  
2601 Oberlin Road, Suite 100  
Raleigh, North Carolina 27608  
Telephone: (919) 755-1317  
Facsimile: (919) 782-0452  
Email: [ajbiller@envisage.law](mailto:ajbiller@envisage.law)  
Counsel for Defendant Lisa Miller

/s/Duncan F. Kilmartin  
P.O. Box 10  
Newport, Vermont 05855  
802-334-7386  
[rexkilvt@together.net](mailto:rexkilvt@together.net)  
Local Counsel for Defendant Lisa Miller