

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

JENNY THORNLEY,	)	
	)	
Plaintiff,	)	
	)	Case No.: 21-cv-01922
v.	)	
	)	Judge Sharon Johnson Coleman
STATE OF ILLINOIS, ILLINOIS STATE	)	
POLICE MERIT BOARD, and JACK S.	)	
GARCIA, individually,	)	
	)	
Defendants.	)	
	)	

**OPPOSITION TO MOTION TO STAY**

For over eighteen months, Jack Garcia has had to live with the stigma of a federal lawsuit accusing him of insidious conduct. Although many defendants have to endure as much, this case is remarkable for two reasons: (1) a detailed, independent internal investigation—resulting in a 130-page investigative report—already examined Plaintiff Jenny Thornley’s allegations and found no evidence supporting them; and (2) the case stagnated in the pleadings phase because the plaintiff—not the defendant—has repeatedly requested stays while she addresses her own criminal issues.

The stay has harmed Mr. Garcia in two ways: (1) his reputation continues to suffer as long as a federal suit falsely alleging insidious conduct remains pending against him; and (2) his ability to collect for the damages he has suffered and to vindicate the truth has been blocked for over a year. Ms. Thornley should be required to test her baseless claims through the litigation process that she initiated. She should not, however, be permitted to use the power of the federal judiciary to hold Mr. Garcia’s reputation hostage indefinitely.

## I. FACTUAL BACKGROUND

This action commenced on April 9, 2021, when Plaintiff Jenny Thornley filed suit against the Illinois State Police Merit Board, the State of Illinois, and Jack Garcia, the former Executive Director of the Illinois State Police Merit Board. (Dkt. 1.) Ms. Thornley asserted seven causes of action relating to conduct that she alleged occurred between June 2017 and July 2020. (*Id.*, ¶¶ 31, 63.) Specifically, Ms. Thornley alleged that Mr. Garcia sexually assaulted her on January 23, 2020 (*Id.*, ¶ 43), that Mr. Garcia engaged in other harassing conduct toward her over a period of years (*id.*, ¶¶ 41), and that the Illinois State Police Merit Board improperly terminated her on July 21, 2020 (*id.*, ¶¶ 80–81.)

On June 15, 2021, Mr. Garcia (in his individual capacity) filed an Answer denying all material allegations and asserted counterclaims for defamation and false light. (Dkt. 18.) The counterclaims referred to a comprehensive, 133-page investigative report produced by the law firm McGuireWoods, as a result of an extensive investigation into Ms. Thornley’s claims of sexual assault. (Dkt. 18-5.) Put simply, the investigative report eviscerated Ms. Thornley’s allegations. The report—citing extensive evidence—demonstrates that Ms. Thornley orchestrated a scheme to steal thousands of dollars in overtime payments from the State of Illinois, forged Mr. Garcia’s signature in doing so, and repeatedly levied baseless accusations of sexual misconduct by Mr. Garcia to obstruct an investigation into her own criminal actions. (Dkt. 18-5 at 1–6.)

But the investigative report was not the factual basis for Mr. Garcia’s counterclaims. That is to say, Mr. Garcia has not countersued for forgery or theft. Instead, he has countersued due to Ms. Thornley’s defamatory statements made to over a dozen people between January 30, 2020, and September 4, 2020. (Dkt. 18 at 57–60.)

Concurrent with and shortly after Mr. Garcia filed the counterclaims, the State of Illinois, the Illinois State Police Merit Board, and Mr. Garcia (in his official capacity) filed partial motions to dismiss Ms. Thornley's Complaint. (Dkt. 15 & 23.)

As of today—more than 15 months later—Ms. Thornley has not answered the counterclaims or responded to the motions to dismiss.

**a. The Stay Begins**

On July 8, 2021, Ms. Thornley filed a motion for an extension of time to answer the counterclaims (Dkt. 26), which the Court granted (Dkt. 29). Less than a week later, Ms. Thornley's counsel filed a motion to withdraw from the case. (Dkt. 30.) The Court granted the motion to withdraw on July 21 and granted Ms. Thornley's oral request "for 30 days to retain new counsel." (Dkt. 33.) In the same order, the Court also set a status hearing for September 8, 2021. (*Id.*)

On August 26, the Court reset the September 8 status to September 15, 2021. (Dkt. 34.) On September 14, the Court reset the September 15 status to October 28, 2021. (Dkt. 36.) On October 18, the Court reset the October 28 status to November 2, 2021. (Dkt. 37.)

By November 2, Ms. Thornley had had more than three months since her counsel withdrew to find new counsel—more than three times as long as Ms. Thornley has initially requested and the Court originally permitted. Yet, at the November 2 hearing, Ms. Thornley appeared with no counsel. (Dkt. 38.) Specifically, she claimed in open court that she had counsel despite none appearing or filing any appearance. (*Id.*) The Court thus continued the status hearing to November 16 and thereby permitted Ms. Thornley another two weeks to have counsel appear on her behalf. (*Id.*)

Yet again, on November 16, Ms. Thornley appeared without counsel. The Court thus agreed to "recruit counsel for plaintiff." (Dkt. 39.) At the same time, the Court set a January 18

status hearing and required Ms. Thornley to respond to the counterclaims by then. (*Id.*)

Recruited counsel appeared for Ms. Thornley on November 17. (Dkt. 41.)

On January 13, 2022, Ms. Thornley filed a motion to stay the proceedings. (Dkt. 43.)

The motion asserted: “On or about September 22, 2021, a Sangamon County Grand Jury issued a seven-count indictment against Thornley alleging that she fraudulently obtained overtime by forging Garcia’s name to overtime requests (Counts I – IV), committed theft in connection with her receipt of overtime (Count V), and engaged in official misconduct in connection with the alleged forgery and theft.” (*Id.* at 3.) The motion raised the Court’s discretionary power to stay and *Younger* abstention as bases to “stay these proceedings pending resolution of the criminal case.” (*Id.* at 7.)

The Court granted the motion to stay the day it was filed, before Mr. Garcia had an opportunity to oppose. (Dkt. 45.) The Court extended the stay on March 22 and again on April 27 (Dkt. 49, 53), over Mr. Garcia’s objections (Dkt. 47, ¶ 7; Dkt. 53). At the next status hearing on September 9, Ms. Thornley yet again sought to extend the stay that had formally been in place for eight months since January and informally since the previous July. The Court thus permitted the parties to brief the issue. (Dkt. 54.)<sup>1</sup>

#### **b. Delays in the Criminal Proceedings**

According to the Sangamon County criminal docket (Ex. 1), Ms. Thornley’s conduct in her criminal case has mirrored her conduct in this Court. Specifically, Ms. Thornley’s original counsel in the criminal case—an attorney who has never appeared in this civil matter—withdraw several months after initially appearing. And, notably, Ms. Thornley has requested continuances

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<sup>1</sup> While settlement discussions were ongoing, the parties jointly agreed to extend the briefing schedule on the motion to stay. (Dkt. 57.) This brief is filed timely according to that agreed schedule.

of her trial date five times this year: January 18 (by agreement, less than a week after this Court granted her motion to stay) and on her own motion on April 11, May 23, July 18, and October 11. (Ex. 1 – Criminal Docket as of October 19, 2022.)

Ms. Thornley’s next court date in the criminal case is currently scheduled for November 21. (*Id.*) Mr. Garcia has no way of knowing when a trial will actually be held.

## II. ARGUMENT

The Court should immediately lift the stay and allow this case to proceed.

### a. Discretionary Factors Favor Lifting the Stay

Ms. Thornley appealed to the Court’s inherent power to manage its docket to support the initial stay. (Dkt. 43 at 3.) Every court has the inherent power to stay proceedings as part of managing its docket. *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). This District applies six “guidelines” in evaluating the propriety of a stay:

(1) whether the two actions involve the same subject matter; (2) whether the two actions are brought by the government; (3) the posture of the criminal proceeding; (4) the effect on the public interests at stake if a stay were to be issued; (5) the interest of the plaintiffs in proceeding expeditiously with this litigation and the potential prejudice to plaintiffs of a delay; and (6) the burden that any particular aspect of the proceedings may impose on defendants.

*Cruz v. County of Dupage*, No. 96 C 7170, 1997 U.S. Dist. LEXIS 9220, at \*5–6 (N.D. Ill. June 27, 1997). None of these factors favor Ms. Thornley.

First Factor: Same Subject Matter. Ms. Thornley argues that the criminal matters and Mr. Garcia’s counterclaims “involve the same underlying allegations of fact.” (Dkt. 43 at 4.) But defamation and false light (the counterclaims) share nothing in common with forgery, theft, and official misconduct, the crimes with which Ms. Thornley is charged (Dkt. 43-3). Ms. Thornley continues by arguing that “paragraphs 33 through 186 [of the counterclaims] allege in great detail the underlying facts allegedly in support of notion that Thornley committed the

crimes for which she has been indicted.” (Dkt. 43 at 4.) On its face, this is extreme hyperbole—dozens of the paragraphs Ms. Thornley cites directly address the fabricated allegations of sexual misconduct that she raises here, with no mention of the criminal conduct of which she is charged. (See, e.g., Dkt. 18, ¶¶ 90–111, 119–32.) But more importantly, Ms. Thornley’s criminal conduct is independent of the core facts that Mr. Garcia must prove. That is to say, Mr. Garcia must prove that Ms. Thornley made harmful, false statements. Her criminal conduct provides important context for why she made those statements, but it is ultimately not the heart of Mr. Garcia’s case.

Second Factor: Whether the Two Actions Are Brought by the Government. Ms. Thornley’s argument misconstrues the second factor. The purpose of the second factor is to avoid the possibility that “the government may use civil discovery to obtain evidence for its criminal prosecution.” *Bank of Am. v. Veluchamy*, No. 09 C 5109, 2010 U.S. Dist. LEXIS 43706, \*12 (N.D. Ill. Apr. 26, 2010). Here, this is obviously not an effort by the government to bypass criminal discovery rules because the private individual Jenny Thornley brought this civil suit. Even the counterclaim was brought only by Jack Garcia in his individual capacity. Further, the criminal case is being prosecuted by the State’s Attorneys Appellate Prosecutor’s Office in Sangamon County court (Dkt. 43-3 at 9.) The only governmental entities in this civil case are an administrative agency (the Illinois State Police Merit Board) and the State of Illinois as represented by the Attorney General. These distinctions between the governmental entities in the civil and criminal cases weigh against a stay. See *Chagolla v. City of Chicago*, 529 F. Supp. 2d 941, 946 (N.D. Ill. 2008) (holding that this factor weighs against a stay even if a governmental entity is involved in the civil action, so long as it is not the same entity as in the criminal action).

Third Factor: Posture of the Criminal Proceedings. The third factor also favors lifting the stay. Although Ms. Thornley is currently under indictment, the procedural history of the criminal proceedings suggest that the case is unlikely to come to trial any time soon. *See id.* at 947 (“[T]he likelihood of significant delay before the charges reach final disposition” weighs against a stay). In fact, it has been Ms. Thornley’s seriatim motions that have enabled her to repeatedly stall the criminal case and, by extension, this one.

Fourth Factor: Public Interests. The public interest strongly favors lifting the stay. “The public has an interest in the prompt disposition of civil litigation.” *Teamsters Local Union No. 727 Pension Fund v. Capital Parking*, No. 19-cv-00837, 2021 U.S. Dist. LEXIS 157812, at \*11 (N.D. Ill. Aug. 20, 2021). An exception is “ensuring that the criminal process can proceed untainted by civil litigation.” *Id.* Here, there is no risk that the criminal proceedings will be tainted by the civil litigation, as there is no basis to think that the civil discovery will be produced in the criminal proceeding or interfere with a criminal investigation. Further, the harm of Ms. Thornley’s false allegations will persist as long as this litigation remains unresolved. *Cf. id.* at \*12 (“The key inquiry is ‘whether a stay would enable the defendants to engage in some continuing wrong.’”).

Fifth Factor: Interests of Ms. Thornley. The only interest Ms. Thornley asserted in support of a stay is having to avoid making a decision regarding self-incrimination. (Dkt. 43 at 5–6.) But Ms. Thornley fails to explain why she would have to invoke her Fifth Amendment so extensively in the civil litigation. That is to say, there is “no reason why the defendant[] cannot participate in this case while also selectively invoking their Fifth Amendment right against self-incrimination to specific questions during discovery if necessary.” *Wiltgen v. Webb*, No. 9 C

5352, 2011 U.S. Dist. LEXIS 103604, at \*7 (N.D. Ill. Sept. 13, 2011). This factor thus does not favor Ms. Thornley.

Sixth Factor: Interests of Mr. Garcia. Mr. Garcia has two interests: clearing his name of the taint of Ms. Thornley's false allegations and vindicating his rights through his defamation claims. The longer the stay persists, the longer and more calcified the taint becomes. And the longer the stay persists, the more witnesses' memories fade and the harder it becomes for Mr. Garcia to prove his defamation claims. The same fading of witness memory impairs Mr. Garcia's defense, effectively granting Ms. Thornley an unearned extension of her statute of limitations. This case has already been delayed for fifteen months, and there is no reason to believe that the criminal case will be resolved soon. This long delay strongly favors lifting the stay. *See Chagolla*, 529 F. sup. 2d at 947 (noting that a delay in allowing a claimant to obtain resolution of his "claims and compensation" is "an important consideration weighing against a stay," particularly when the delay "may be substantial").

In sum, not a single factor strongly favors Ms. Thornley. And the public interest and Mr. Garcia's interests strongly favor lifting the stay.

**b. *Younger* Has No Application in this Situation**

In addition to seeking a discretionary stay, Ms. Thornley argued that the Court should stay the proceedings under *Younger v. Harris*, 401 U.S. 37 (1971). Simply put, the *Younger* is completely inapplicable here.

"The *Younger* doctrine requires federal courts to abstain from taking jurisdiction over federal constitutional claims that seek to interfere with or interrupt ongoing state proceedings." *SKS & Assocs. v. Dart*, 619 F.3d 674, 677 (7th Cir. 2010). Here, no party has asserted any federal constitutional claim and no party has asked this Court to interfere with any state court

proceedings. Mr. Garcia simply asks that this Court allow the earlier-filed civil case to proceed wholly independent from the later-filed criminal one.

In fact, this situation is the obverse of *Younger*. The “original core of *Younger* abstention--from *Younger* itself--requires federal courts to abstain when a criminal defendant seeks a federal injunction to block his state court prosecution on federal constitutional grounds.” *Id.* at 678. Here, however, no one seeks any injunction and the criminal defendant is not the one seeking the aid of the federal court—instead, it is the criminal defendant invoking *Younger* and asking the federal court to completely avoid addressing the merits of a case so that she can prioritize her criminal case (despite having done nothing but continue that criminal case all year).

Ms. Thornley cites only two cases in support of this being a *Younger* situation. But those cases only demonstrate, once more, that *Younger* plainly has no relevance here. In *Fick v. Parker*, No. 20 CV 50070, 2020 U.S. Dist. LEXIS 148756, at \*2 (N.D. Ill. Aug. 18, 2020), the plaintiff brought a federal suit asserting Fourth and Fourteenth Amendment claims three months after being criminally charged in state court. The civil defendants—i.e., not the criminal defendant—invoked *Younger*. *Id.* Similarly, in *Simpson v. Rowan*, 73 F.3d 134, 135 (7th Cir. 1995), a criminal defendant appealing his conviction in state court filed a federal civil action alleging deprivation “of various constitutional rights.” He filed the civil action nine months after his arrest. *Id.* The district court dismissed under *Younger*, and the criminal defendant appealed to oppose that judgment. *Id.*

Here, by contrast, the criminal defendant is invoking *Younger* and no one is asserting a constitutional claim. Further, the criminal proceedings post-date the civil action. Invocation of *Younger* here is nothing more than grasping at straws.

### III. CONCLUSION

For the reasons stated above, the Court should immediately lift the stay, require Ms. Thornley to Answer the counterclaims within twenty-one days, and order the parties to hold a Rule 26(f) conference within ten days thereafter.

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Respectfully submitted,

By: /s/ Jeremy D. Margolis

Jeremy D. Margolis

Neil G. Nandi

Loeb & Loeb LLP

321 N. Clark Street, Suite 2300

Chicago, IL 60654

Tel: (312) 464-3100

Fax: (312) 464-3111

[jmargolis@loeb.com](mailto:jmargolis@loeb.com)

[nnandi@loeb.com](mailto:nnandi@loeb.com)

*Attorneys for Jack S. Garcia, in his individual capacity*