

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

Annabel Melongo,)	
)	
Plaintiff,)	No. 13 C 4924
)	
v.)	Judge John Z. Lee
)	
)	Magistrate Judge Finnegan
Robert Podlasek, et al.,)	
)	
Defendants.)	

CERTAIN DEFENDANTS’ MOTION TO STAY AND FOR EXTENTION OF TIME

Defendants, Assistant State’s Attorney Robert Podlasek (“ASA Podlasek”), Investigator Kate O’Hara, Investigator Antonio Rubino, and Cook County, by and through their counsel, respectfully move this Court to stay these proceedings pending the ongoing underlying criminal prosecution of Plaintiff, including the time to answer or otherwise plead, stating as follows in support:

1. In this matter, Annabel Melongo (“Plaintiff”) purports to bring claims under a variety of theories premised on the alleged actions of defendants in connection with two underlying state criminal prosecutions of Plaintiff: for computer tampering, *People v. Melongo*, 08 CR 10502, and for violation of the Illinois eavesdropping statute, *People v. Melongo*, 10 CR 80920. (*See* First Amended Complaint (“FAC”) [Dkt. 24] at ¶¶ 1, 19.) Several of the defendants named by Plaintiff in this matter are prosecutors involved in the underlying criminal prosecutions and all are connected with the prosecutions in some way.

2. Plaintiff initially filed her lawsuit *pro se* on July 10, 2013. (Dkt. 1.)

3. On August 16, 2013, this Court entered an order dismissing Plaintiff’s initial complaint, without prejudice, and appointing counsel to represent her with leave to file an

amended complaint within 60 days. This Court also ordered that summonses not issue at that time. (Dkt. 8.)

4. Only recently, on June 5, 2014, after several different attorneys were successively appointed to represent Plaintiff, Plaintiff filed her First Amended Complaint. (Dkt. 24.) That complaint drops some defendants and adds several new defendants.

5. On June 17, 2014, a status was held and this Court set a date of July 3, 2014, for defendants to answer or otherwise respond to Plaintiff's First Amended Complaint. (Dkt. 26.) However, the docket indicates that summons issued for the first time on June 24, 2014.

6. The undersigned counsel has appeared on behalf of those defendants who are known to have been served and would be represented by the Cook County State's Attorney's Office. Not all of the defendants remain employed by the Cook County State's Attorney's Office, or even reside in Illinois. Also, certain of the named defendants would be represented by other counsel.

7. Additional time will be required in order to determine the representation status of those defendants who would be represented by the State's Attorney's Office, as well as to meet with those defendants for the purpose of preparing defendants' response to Plaintiff's First Amended Complaint. Certain other state defendants would be represented by other counsel.

8. Furthermore, the matter of *People v. Melongo*, 08 CR 10502, which involves the prosecution of Plaintiff for computer tampering, remains pending in the Circuit Court of Cook County and is presently set for trial on July 28, 2014. (*See* Declaration of ASA Nancy Zarkos, attached hereto as Exhibit A.)

9. Plaintiff's claims in this matter are premised on the alleged conduct of defendants in connection with the underlying criminal prosecutions of Plaintiff and raise constitutional

issues which may also be involved in the underlying state court prosecution. It is evident from the facts asserted in the First Amended Complaint that the allegations of Plaintiff are intertwined with both of the underlying prosecutions.

10. Under *Younger v. Harris*, 401 U.S. 37 (1971), therefore, plaintiff's federal civil rights claims should be stayed pending the disposition of the underlying state criminal prosecution. *See also Simpson v. Rowan*, 73 F.3d 134, 138-39 (7th Cir. 1995) (holding *Younger* abstention applies to §1983 damages claim pending the outcome of state court criminal proceedings and is appropriate while the case works its way through the state appellate process); *Majors v. Engelbrecht*, 149 F.3d 709, 714 (7th Cir. 1998) ("In this circuit, abstention from damages suit is proper."); *Fox v. Sheriff of Will County*, 2005 U.S. Dist. Lexis 7980 *6 (N.D. Ill. 2005) (Darrah, J.) (applying *Younger* abstention to stay federal civil rights claims related to criminal charges while state criminal proceedings are pending).

11. The Seventh Circuit recently reiterated that under *Younger* federal courts should stay a plaintiff's federal civil rights claims arising out of the defendants' alleged conduct in investigating and prosecuting his underlying criminal matter, so as not to interfere with ongoing state criminal proceedings. *Gakuba v. O'Brien*, 711 F.3d 751, 753 (7th Cir. 2013).

WHEREFORE, defendants ASA Podlasek"), Investigator Kate O'Hara, and Investigator Antonio Rubino move that the proceedings in this matter be stayed, including any responsive pleading to Plaintiff's First Amended Complaint, pending the disposition of the underlying state criminal court proceedings in the matter of *People v. Melongo*, 08 CR 10502.

Respectfully submitted,

ANITA ALVAREZ
State's Attorney of Cook County

By: s/Stephen L. Garcia
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EXHIBIT A

DECLARATION OF ASA NANCY ZARKOS

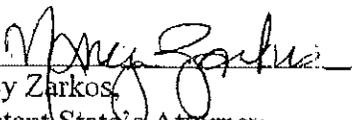
I, Assistant State's Attorney Nancy Zarkos, under penalty of perjury, depose and say:

1. I am an attorney currently licensed to practice law in the State of Illinois. I am presently employed by the Cook County State's Attorney's Office.

2. I am one of the Assistant State's Attorneys assigned to the prosecution of the matter of *People v. Melongo*, 08 CR 10502, which is currently pending in the Circuit Court of Cook County.

3. The matter of *People v. Melongo* is currently set for trial on July 28, 2014.

4. I declare under penalty of perjury, pursuant to 28 U.S.C. §1746, that the foregoing is true and correct.



Nancy Zarkos,
Assistant State's Attorney

Executed on July 2, 2014.