

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS SEP 10 1999 TC
HOUSTON DIVISION

MICHAEL N. MURRY, CLERK OF COURT

CLAUDIA NAVARRO PINEDA, et al. §
Plaintiffs §
vs. §
THE CITY OF HOUSTON, et al. §
Defendants §

Civil Action: H:98-3877

**PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION TO STAY
DISCOVERY PENDING INTERLOCUTORY APPEAL**

TO THE HONORABLE SIM LAKE, UNITED STATES DISTRICT JUDGE:

Plaintiffs respectfully file this response to Defendants, D.R. Barrera, P.A. Herrada, L.E. Tillery, and James R. Willis' motion to stay discovery pending appeal of the Court's ruling on qualified immunity.

Nature and Stage of the Proceeding

This is a civil rights action arising out of the shooting of Pedro Oregon Navarro. On July 29, 1999, this Court granted in part and denied in part the individual Defendants' motions to dismiss and motions for summary judgment on the basis of qualified immunity. Defendants ask the Court to stay all discovery pending their interlocutory appeal.

Issue Presented and Standard of Review

Despite the fact that this Court has already ruled on the qualified immunity motions and found that material issues of fact preclude summary judgment—which will divest the

#102

Fifth Circuit of jurisdiction over Defendants' interlocutory appeal—should the Court stay all discovery pending Defendants' interlocutory appeal?

An order refusing to stay discovery will be reviewed only for an abuse of discretion. *See, e.g., Brandley v. Keeshan*, 64 F.3d 196, 200 (5th Cir. 1995).

Argument

Defendants urge this Court to stay all discovery pending their interlocutory appeal, despite the fact that the Court has already found they are not entitled to qualified immunity as a matter of law. Under these circumstances, the Court is not required to stay discovery. Defendants have offered no persuasive justification for their motion to stay all discovery, which is motivated simply by their desire to delay this proceeding.

I. Because the District Court Has Already Ruled on the Qualified Immunity Motions, Defendants' Authorities Are Inapposite.

Defendants rely on cases holding that a district court should stay discovery pending the *district court's* resolution of the qualified immunity question—not pending the *appeal*. *See, e.g., Siegert v. Gilley*, 500 U.S. 226, 232-33, 111 S.Ct. 1789, 1793-94 (1991); *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738 (1982); *Schultea v. Wood*, 47 F.2d 1427, 1432 (5th Cir. 1995) (en banc). Defendants cite no authority for their contention that a district court, having determined that qualified immunity is improper, must stay all discovery while the defendants seek review of that ruling.

Furthermore, Defendants have not shown themselves entitled to a stay of discovery. Permitting discovery to continue will not impose unreasonable burdens on the Defendants, nor will it impede their exercise of any law enforcement duties or otherwise offend the policies underlying qualified immunity—all these Defendants have been fired from the Houston Police Department. Thus, there is no need to stay discovery. On the other hand, this Court has entered a docket control order requiring the completion of all discovery by February 25, 2000. Plaintiffs are prepared to comply with that docket control order, but if the Court stays discovery pending the outcome of Defendants' interlocutory appeal, it will be impossible to complete all discovery within the time allotted. Consequently, Defendants' motion will disrupt this Court's docket and will cause needless delay in the disposition of this case.

Finally, a stay of discovery would be especially fruitless because Defendants' appeal will be dismissed for want of jurisdiction by the Fifth Circuit. This Court's denial of the qualified immunity motions recognized that factual disputes preclude summary judgment. In these circumstances, the Fifth Circuit has no jurisdiction over an interlocutory appeal. *See Johnson v. Jones*, 515 U.S. 304, 313, 115 S. Ct. 2151, 2156 (1995). Accordingly, the Fifth Circuit will be compelled to dismiss the appeal for want of jurisdiction. Thus, a stay of discovery will serve no purpose except delay.

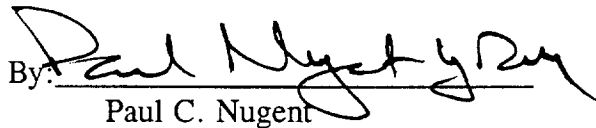
For all these reasons, Defendants' motion to stay discovery should be denied.

II. Alternatively, The Court Should Allow Discovery to Proceed On All Matters Unrelated to the Qualified Immunity Motions.

At a minimum, even if the Court determines that some discovery should be stayed, it should permit the parties to pursue discovery on all matters not directly related to the individual defendants' qualified immunity defense. In particular, Plaintiffs should be able to pursue discovery from the City of Houston concerning its official policies and practices, which is relevant only to Plaintiffs' claims against the City. There is no reason why the interlocutory appeal should bring this entire case to a grinding halt; any delay in discovery will inevitably allow evidence to deteriorate and will permit witnesses' memories to erode. The individual Defendants have no justifiable reason to stay discovery unrelated to their qualified immunity defense, and they will not be prejudiced by such discovery. Therefore, at a minimum, this Court should allow discovery on all issues unrelated to the qualified immunity defense pending the disposition of the interlocutory appeal.

Prayer

Plaintiffs respectfully ask that this Court deny Defendants' motion to stay discovery, or alternatively, limit any such stay to permit discovery concerning all matters unrelated to the qualified immunity defense. Plaintiffs also request all other relief to which they may be entitled.

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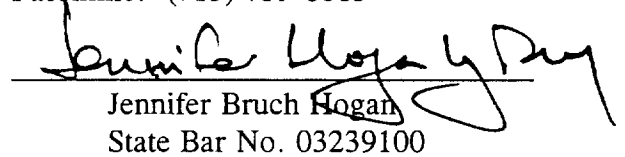
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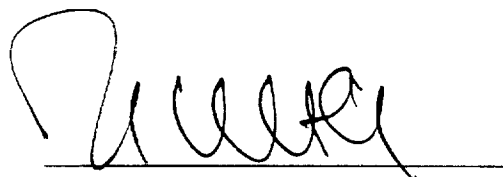

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CERTIFICATE OF SERVICE

I served a copy of this document on counsel of record by certified mail return receipt requested and in accordance with Federal Rules of Civil Procedure.



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Date: September 10, 1999

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ORDER

The court has considered Defendants' Motion to Stay Discovery Pending Interlocutory Appeal, the responses on file and the arguments of counsel, if any, and is of the opinion that the motion should be DENIED.

It is hereby ORDERED, ADJUDGED AND DECREED that D.R. Barrera, P.A. Herrada, L.E. Tillery, and James R. Willis' motion to stay discovery pending appeal of the Court's ruling on qualified immunity is DENIED.

SIGNED at Houston, Texas this _____ day of _____, 1999.

UNITED STATES DISTRICT JUDGE