

IN THE UNITED STATES DISTRICT COURT SEP 17 1999  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

Michael N. Milby, Clerk of Court

CLAUDIA NAVARRO PINEDA, *et al.*, §  
Plaintiffs, §  
v. §  
CITY OF HOUSTON, *et al.*, §  
Defendants. §

Civil Action No. H-98-3877  
JURY DEMANDED

**RESPONSE OF DEFENDANT, CITY OF HOUSTON,  
TO MOTION TO STAY DISCOVERY PENDING APPEAL  
OF THE COURT'S RULING ON QUALIFIED IMMUNITY OF DEFENDANTS  
HERRADA, WILLIS, BARRERA, AND TILLERY**

Defendant, City of Houston, files its response to the Motion to Stay Discovery Pending Appeal of the Court's Ruling on Qualified Immunity of Defendants Herrada, Willis, Barrera, and Tillery:

**BACKGROUND**

1. At this Court's scheduling conference held on Friday, August 13, 1999, this Court, with plaintiffs' agreement, acknowledge that the scheduling deadlines imposed on February 19, 1999, would remain in force. Thus, the discovery deadline in this case remains February 25, 2000, approximately 161 days from September 17, 1999.

2. Defendants Strouse, Barrera, Herrada, Tillery, and Willis have filed notices of appeal to challenge this Court's order regarding their claim of qualified immunity.

3. The appeal filed by Defendants Barrera, Herrada, Tillery, and Willis was not docketed as Appeal Number 99-20836 until August 30, 1999, by the United States Court of Appeals for the Fifth Circuit. The appeal filed by Defendant Strouse was not docketed as Appeal Number 99-20847

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until September 2, 1999. The Court of Appeals requested this Court's record on September 13, 1999. As of September 17, 1999, the Court of Appeals had not issued its briefing notices.

4. Even if the Court of Appeals were to issue its briefing notice today, the appellants' brief of Defendants Barrera, Herrada, Tillery, and Willis and Defendant Strouse would not be due until October 27, 1999, and the appellees' brief of plaintiffs would not be due until November 26, 1999. Thus, the appeal would not be ripe for submission until November 26, 1999, at the very earliest. Assuming that Court of Appeals issued its opinion immediately upon the completion of briefing, approximately 90 days would remain before the discovery deadline.

5. Ryan Eric Baxter is a non-party witness to the events made the basis of this lawsuit. The City of Houston has served subpoenas on Ryan Eric Baxter three times, beginning in June 1999. The City served its most recent Notice of Intention to Take Deposition on August 24, 1999. Each time, Mr. Baxter has set aside time from his schedule to testify.

#### **ARGUMENT**

6. Should this Court stay discovery, the City will not have sufficient opportunity to develop its defense by the February 25, 2000, discovery deadline and will be prejudiced in prosecution of the trial scheduled for June 2000. The City has continued to seek to litigate this case to meet this Court's deadlines but has been prevented from conducting discovery by the other parties.

#### **PRAYER**

7. For these reasons, defendant, City of Houston, requests that the Motion to Stay Discovery Pending Appeal of the Court's Ruling on Qualified Immunity of Defendants Herrada, Willis, Barrera, and Tillery be denied, and that defendant, City of Houston, be awarded all other relief to which it is entitled.

Respectfully submitted,

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City Attorney

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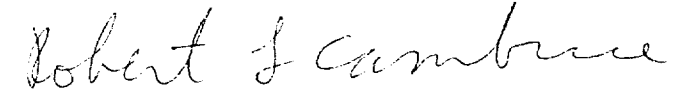
713/247-2000

713/247-1017 (fax)

ATTORNEYS FOR DEFENDANT,  
CITY OF HOUSTON

CERTIFICATE OF SERVICE

I certify I mailed a copy of the RESPONSE OF DEFENDANT, CITY OF HOUSTON, TO THE MOTION TO STAY DISCOVERY PENDING APPEAL OF THE COURT'S RULING ON QUALIFIED IMMUNITY OF DEFENDANTS HERRADA, WILLIS, BARRERA, AND TILLERY to all counsel of record listed below on September 17, 1999, pursuant to the Federal Rules of Civil Procedure.

  
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HOUSTON DIVISION**

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Civil Action No. H-98-3877  
JURY DEMANDED

**ORDER ON  
THE MOTION TO STAY DISCOVERY PENDING APPEAL  
OF THE COURT'S RULING ON QUALIFIED IMMUNITY OF DEFENDANTS  
HERRADA, WILLIS, BARRERA, AND TILLERY**

Came on to be considered the Motion to Stay Discovery Pending Appeal Of the Court's Ruling on Qualified Immunity of Defendants Herrada, Willis, Barrera, and Tillery. After considering the motion and response, the motion is DENIED.

Signed \_\_\_\_\_, 1999, Houston, Texas.

\_\_\_\_\_  
United States District Judge

Approved:

by: \_\_\_\_\_



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