

signed an Order on Defendants' Motion for Partial Summary Judgment Based Upon Qualified Immunity, wherein several of the plaintiffs' claims regarding some of the officers were dismissed. On August 24, 1999, Defendants filed their Notice of Interlocutory Appeal of the Court's denial of the Defendants' Motion for Partial Summary Judgment Based on Qualified Immunity, regarding the wrongful death of Pedro Oregon and the arrest of Rogelio Oregon Navarro, Salvador Lopez and Nelly Mejia.

2. It is anticipated that the plaintiffs and the defendant, City of Houston, will be filing interrogatories, requests for admissions and noticing defendants for their depositions in the immediate future. To the extent that said discovery seeks to discover information or testimony regarding the events of July 11-12, 1998, they are objectionable.

Standard of Review

3. The standard of review for court decisions regarding discovery limitations is abuse of discretion. *Landry v. Air Line Pilots Ass'n Int'l*, 901 F.2d 404, 436 (5th Cir.) (on rehearing), *cert. denied*, 498 U.S. 895 (1990).

Controlling Authority

4. When the U. S. Supreme Court published the controlling authority in *Anderson v. Creighton*, 483 U.S. 635, at 646 n.6, 107 S.Ct. 3034, 97 L. Ed. 2d 523 (1987), the court "emphasized that qualified immunity questions should be resolved at the earliest possible stage of a litigation. . .". *Schultea v. Wood*, 47 F. 3d 1427, 1432 (5th Circuit 1995).

5. Four years later, the U.S. Supreme Court in *Seigert v. Gilley*, 500 U.S. 226, at 363, 111 S.Ct. 1789, 114 L. Ed. 2d 277 (1991) significantly "**instructed that until this threshold question was answered, no discovery should be had.**" *Schultea* at 1432.

6. "But avoidance of disruptive discovery is one of the very purposes for the official immunity doctrine, and it is no answer to say that the plaintiff has not yet had the opportunity to engage in discovery. The substantive defense of immunity controls." *Schultea at 1432; Seigert at 236* (Kennedy, J. concurring).

7. Defendants would have to assist in the preparation for and attend any deposition noticed in this cause of action, as well as assist in the preparation of responses to written discovery; while their interlocutory appeal of the Court's ruling regarding their motion for summary judgment based upon qualified immunity is pending.

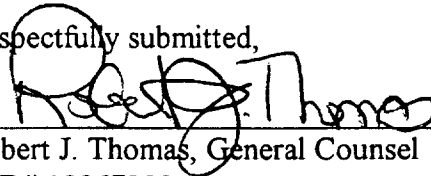
Conclusion

8. There is no justification for this disruptive discovery to proceed. The threshold issue of qualified immunity controls and no additional discovery should be permitted until the defendants' affirmative defense of qualified immunity has been resolved by the Fifth Circuit Court of Appeals.

H. Prayer

9. For these reasons, Defendants, D. R. Barrera, P. A. Herrada, L. E. Tillery, and James R. Willis, petition the court to stay discovery, in all forms, which seeks to discover information regarding the actions of the Defendants on July 11-12, 1998.

Respectfully submitted,



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Attorney For Defendants D.R. Barrera, P. A. Herrada,
L. E. Tillery and James R. Willis

CERTIFICATE OF CONFERENCE

The undersigned counsel has conferred with all counsel of record on days prior to the filing of this motion, by serving each party via facsimile with the following result:

- a. counsel for Defendant, D. H. Strouse, Mr. Fred A. Keys, Jr., joins in this motion;
- b. counsel for Defendant, City of Houston, Mr. Robert L. Cambrice, did not respond to facsimile inquiry;
- c. counsel for Defendant, D. R. Perkins, Mr. Duncan Neblett, III, joins this motion; and
- d. counsel for Plaintiffs, Messrs Richard W. Mithoff and Mr. Michael L. Phifer, opposes this motion.



Robert J. Thomas

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply to Plaintiffs' 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 has been served upon all counsel, by depositing copies in the U.S. Mail, first-class, postage prepaid, addressed as shown below on this 25th day of August, 1999, to the following addresses:

Mr. Richard Warren Mithoff
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Mr. Robert Louis Cambrice
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Robert J. Thomas

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CLAUDIA NAVARRO PINEDA, §
Individually and as representative of the §
Estate of Pedro Oregon Navarro; §
ANA ISABEL LORES, as next friend of §
ASHLEY, Minor daughter of Pedro Oregon §
Navarro; BLANCA LIDIA VIERA, as next §
friend of BELINDA, Minor daughter of §
Pedro Oregon Navarro; ROGELIO OREGON §
NAVARRO; SALVADOR LOPEZ; and §
NELLY MEJIA, §

Plaintiffs §

v. §

CITY OF HOUSTON; D. H. STROUSE; §
D. R. BARRERA; P. A. HERRADA; §
D. R. PERKINS; L. E. TILLERY; §
JAMES R. WILLIS §

Defendants. §

CIVIL ACTION NO. H-98-3877
JURY

**Order on Defendants' Motion to Stay Discovery Pending
Appeal of the Court's Ruling on Qualified Immunity**

On _____, 1999, the court considered defendants, P. A. Herrada, D. R. Barrera, L. E. Tillery and J. R. Willis' motion to Stay Discovery Pending Appeal of the Court's Ruling on Qualified Immunity. After considering the motion and the response, the court:

GRANTS defendants' motion to Stay Discovery Pending Appeal of the Court's Ruling on Qualified Immunity and finds same is necessary to protect defendants from disruptive discovery until the defendants' affirmative defense of qualified immunity has been resolved on appeal.

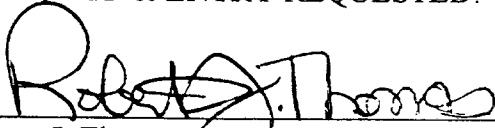
IT IS ORDERED that all discovery, including written discovery and depositions regarding

P. A. Herrada, D. R. Barrera, L. E. Tillery and J. R. Willis, is hereby stayed and shall not be conducted until the threshold issue of qualified immunity with respect to all individual defendants has been resolved on appeal.

SIGNED _____, 1999.

UNITED STATES DISTRICT JUDGE

APPROVED & ENTRY REQUESTED:



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