IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 18-cv-00217-REB-KLM

WILLIAM MONTGOMERY,

Plaintiff,

v.

MATTHEW CHERNAK, *et al.*,

Defendants.

DEFENDANTS' MOTION TO STAY PROCEEDINGS AND TO VACATE SCHEDULING CONFERENCE

Defendants Matthew Chernak, Mike Howard and Matthew Brough, through their counsel, Thomas J. Lyons, Esq. and Christina S. Gunn, Esq. of Hall & Evans, L.L.C., respectfully submit this Motion to Stay Proceedings and to Vacate Scheduling Conference, as follows:

Certificate of Compliance: Pursuant to D.C.Colo.LCivR 7.1(a), the undersigned counsel conferred with counsel for Plaintiff prior to filing the instant Motion. Counsel for Plaintiff stated Plaintiff opposes these Defendants' request for a stay, but did not provide any reasons for Plaintiff's opposition. (Exhibit A, correspondence between counsel.)

INTRODUCTION

Defendants Chernak, Howard and Brough filed a Motion to Dismiss all of Plaintiff's claims against them on April 4, 2018. In their Motion to Dismiss, Defendants asserted they are entitled to qualified immunity for the each of the claims asserted against them. The law is clear qualified immunity determinations must be made at the earliest possible

stage of litigation, including at the pleading stage. Because qualified immunity is immunity from suit, a defendant asserting the defense should not be required to undergo the burdens of litigation, including the discovery process or any other pretrial proceedings, when the qualified immunity issue can be resolved as a matter of law. Therefore, Defendants respectfully request this Court stay all further proceedings in this matter including the scheduling conference set for June 26, 2018.

ARGUMENT

DEFENDANTS' ENTITLEMENT TO QUALIFIED IMMUNITY MUST BE DECIDED BY THE COURT BEFORE ANY FURTHER PROCEEDINGS

The doctrine of qualified immunity was created to permit the resolution of claims against government officials at the earliest possible stage of litigation. "The central purpose of affording public officials qualified immunity from suit is to protect them 'from undue inference with their duties, and from potentially disabling threats of liability.'" ***Elder v. Holloway,*** 510 U.S. 510, 513 (1994) (quoting ***Harlow***, 457 U.S. at 806). Qualified immunity is not only a mere defense to liability; it is an immunity to suit. ***Mitchell,*** 472 U.S. at 526-27; ***Moody v. Ungerer,*** 885 P.2d 200, 202 (Colo. 1994). Qualified immunity is both an entitlement not to stand trial and from the burdens of pretrial discovery. ***Workman v. Jordan,*** 958 F.2d 332, 336 (10th Cir. 1992); ***Pueblo Neighborhood Health Centers, Inc. v. Losavio,*** 847 F.2d 642, 645 (10th Cir. 1988). "[W]hen a case can be dismissed on the pleadings or in an early pre-trial stage, qualified immunity also provides officials with the valuable protection from 'the burdens of broad-ranging discovery.'" ***Johnson v. Fankell,*** 520 U.S. 911, 915 n. 2 (1997) (quoting ***Harlow,*** 457 U.S. at 818)). As ***Harlow*** noted***,*** "[u]ntil this threshold immunity question is resolved, discovery should

not be allowed." ***Harlow,*** 457 U.S. at 818; *see also* ***Siegert v. Gilley,*** 500 U.S. 226, 232 (1991); ***Moody,*** 885 P.2d at 202 ("The purpose of qualified immunity is to shield a government employee from the burdens associated with trial which include distraction from governmental responsibilities, inhibiting discretionary decision making, and the disruptive effects of discovery.").

As a result of the underlying purpose of the qualified immunity doctrine, the Supreme Court has repeatedly stressed the "importance of resolving immunity questions at the earliest possible stage in the litigation." ***Hunter v. Bryant,*** 502 U.S. 224, 227 (1991) (per curiam) (collecting cases). "Where the defendant seeks qualified immunity, a ruling on that issue should be made early in the proceedings so that the costs and expenses of trial are avoided where the defense is dispositive." ***Saucier v. Katz,*** 533 U.S. 194, 197 (2001). Indeed, the Supreme Court has consistently stressed qualified immunity is designed "to permit the resolution of many insubstantial claims on summary judgment." ***Mitchell,*** 472 U.S. at 526. Ultimately, "'[t]he Court is obligated to 'exercise its discretion so that officials [properly asserting qualified immunity] are not subjected to unnecessary and burdensome discovery or trial proceedings.'" ***Doe v. Woodard,*** 15-cv-01165-KLM, 2015 U.S. Dist. LEXIS 123616 at *5 (D. Colo. Sept. 16, 2015) (quoting ***Crawford-El v. Britton,*** 523 U.S. 574, 597-98 (1998) (alteration in original)). The plaintiff's complaint must adequately state a claim of violation of clearly established law; if not, a defendant pleading qualified immunity will be entitled to dismissal before discovery commences. ***Mitchell,*** 472 U.S. at 526.

In ***Siegert v. Gilley,*** 500 U.S. 226 (1991), the Supreme Court explained the importance of early resolution of immunity issues:

> In ***Harlow*** we said that "[u]ntil this threshold immunity question is resolved, discovery should not be allowed." ***Harlow,*** supra, at 818, 102 S.Ct., at 2738 (emphasis added). A necessary concomitant to the determination of whether the constitutional right asserted by a plaintiff is "clearly established" at the time the defendant acted is the determination of whether the plaintiff has asserted a violation of a constitutional right at all. Decision of this purely legal question permits courts expeditiously to weed out suits which fail the test without requiring a defendant who rightly claims qualified immunity to engage in expensive and time consuming preparation to defend the suit on its merits. One of the purposes of immunity, absolute or qualified, is to spare a defendant not only unwarranted liability, but unwarranted demands customarily imposed upon those defending a long drawn out lawsuit.

Id. at 233; *see also* ***Crawford-EL v. Britton***, 523 U.S. 574, 598 (1998) ("[I]f the defendant does plead the immunity defense, the district court should resolve that threshold question before permitting discovery."); ***Workman***, 958 F.2d at 336 (same, citing ***Siegert***).

The important policies behind qualified immunity will be subverted here if any pretrial proceedings or discovery are held before Defendants' Motion to Dismiss raising the important threshold immunity issue has been determined by this Court. Standard judicial practice is to halt all further proceedings until the legal determination of a defendant's qualified immunity is made by this Court in the first instance.[1] ***Thompson v.***

[1] *See also* ***String Cheese Incident, LLC v. Stylus Shows, Inc.***, 05-CV-01934-LTB-PA, 2006 U.S. Dist. LEXIS 97388, 2006 WL 894955, at *2 (D. Colo. March 30, 2006) (noting factors for consideration of stay of discovery absent assertion of qualified immunity as (1) the plaintiffs' interests in proceeding expeditiously with the civil action and the potential prejudice to the plaintiffs of a delay; (2) the burden on the defendants; (3) the convenience to the court; (4) the interests of persons not parties to the civil litigation; and (5) the public interest).

McCullar, No. 08-cv-2000-REB-KLM, 2009 U.S. Dist. LEXIS 22688 (D. Colo. March 11, 2009). No basis exists for this Court not to similarly stay these proceedings while the Defendants' qualified immunity is determined here. Plaintiff chose to sue Defendant police officers under 42 U.S.C. § 1983, and federal law affords them qualified immunity from those claims. Until qualified immunity is decided, there is no basis to allow Plaintiff to engage in pretrial proceedings or discovery until these important threshold issues are resolved by this Court, and if necessary and appropriate, by the appellate courts pursuant to an interlocutory appeal. Although a scheduling conference has been scheduled for June 26, 2018 [ECF 5], the parties have not begun conferral regarding a proposed

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Plaintiff did not provide any basis for prejudice in response to these Defendants' request for conferral. In contrast, these Defendants have detailed the cause and extent of prejudice to defendants if forced to proceed with discovery before ruling on their Motion to Dismiss. This is especially true in this case, as there are no parties or claims which are not subject to the assertion of qualified immunity in Defendants' Motion to Dismiss. Although Plaintiff may point to prejudice due to passage of time on witnesses' memory or evidence, this Court has previously found the fundamental prejudice to a Defendant who has presented a case-dispositive qualified immunity defense overrides these generalized concerns. ***Williams v. Aragon***, No. 13-cv-2377-REB-KMT, 2014 U.S. Dist. Lexis 6396, *6-7 (D. Colo. Jan. 17, 2014) ("[T]he court finds that any potential prejudice to Plaintiff is outweighed by the burden on the CDOC Defendants if they [sic] forced to proceed with discovery in spite of well-established precedent supporting a stay when qualified immunity is raised as a defense.")

This Court has previously recognized "[w]ith regard to the third factor, it is certainly more convenient for the Court to stay discovery unitl it is clear that the case will proceed." ***Carty-Mauk v. Elliott***, No. 12-cv-2117-REB-KLM, 2013 U.S. Dist. LEXIS 63669, *5-6 (D. Colo. May 3, 2013). These Defendants are not aware of any nonparties who would be negatively affected by a stay of discovery. Finally, regarding the fifth factor, "[t]he public's only interest in this case is a general interest in its efficient and just resolution. Avoiding wasteful efforts by the Court and litigants serves this interest." ***Frasier v. Evans,*** No. 15-cv-1759-REB-KLM, 2015 U.S. Dist. LEXIS 150300, *6 (D. Colo. Nov. 5, 2015). Thus, as this Court determined in ***Frasier, Williams***, ***Thompson*** and ***Carty-Mauk,*** the ***String Cheese*** factors weigh in favor of a stay.

scheduling order and no other discovery parameters or case management deadlines have been set. Accordingly, in the interest of judicial economy and the avoidance of waste of resources for all parties concerned, and to comply with the important policies underlying qualified immunity, this Court must stay all further proceedings herein pending the Court's disposition of Defendants' Motion to Dismiss.

Dated: April 18, 2018.

Respectfully submitted,

s/ *Christina S. Gunn*

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CERTIFICATE OF SERVICE (CM/ECF)

I HEREBY CERTIFY that on the 18th day of April, 2018, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

Raymond K. Bryant
raymond@rightslitigation.com

s/ Nicole Marion, Legal Assistant of
Hall & Evans, L.L.C.