

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

AMY PICKETT,

Plaintiff,

v.

TEXAS TECH UNIVERSITY HEALTH
SCIENCES CENTER (TTUHSC), *et al.*,

Defendants.

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CIVIL ACTION NO. 5:20-CV-232-H-BQ

ORDER GRANTING MOTION TO STAY DISCOVERY

This Order addresses Defendants Texas Tech University Health Sciences Center (TTUHSC), Barbara Cherry, and Michael Evans's (Defendants) Motion to Stay Discovery. ECF No. 22. For the reasons explained below, the Court hereby **GRANTS** the motion.

In their Motion to Dismiss and accompanying brief, filed January 22, 2021, Defendants Cherry and Evans (Individual Defendants) assert the defense of qualified immunity. ECF Nos. 11, 12. The United States Supreme Court has emphasized that "qualified immunity questions should be resolved at the earliest possible stage of a litigation." *Anderson v. Creighton*, 483 U.S. 635, 646 n.6 (1987) (citation omitted). "One of the most salient benefits of qualified immunity is protection from pretrial discovery, which is costly, time-consuming, and intrusive." *Zapata v. Melson*, 750 F.3d 481, 484–85 (5th Cir. 2014) (citation omitted).

In determining whether limited discovery is appropriate, the Court must follow the careful two-step procedure outlined in *Zapata*. *Id.* at 485. The "court must first find that the plaintiff[']s pleadings assert facts which, if true, would overcome the defense of qualified immunity." *Id.* (internal quotation marks omitted). Then, "if the court remains unable to rule on the immunity defense without further clarification of the facts, it may issue a discovery order narrowly tailored

to uncover only those facts needed to rule on the immunity claim.” *Id.* (internal quotation marks omitted); *see Hinojosa v. Livingston*, 807 F.3d 657, 670 (5th Cir. 2015) (providing that “a district court may elect the defer-and-discover approach when the defendant’s immunity claim turns at least partially on a factual question that must be answered before a ruling can issue” (internal quotation marks omitted)). A discovery order on the issue of qualified immunity should “identify any questions of fact it need[s] to resolve before it [can] . . . determine whether the defendants [are] entitled to qualified immunity.” *Zapata*, 750 F.3d at 485; *see also Zanitz v. Seal*, 602 F. App’x 154, 163 (5th Cir. 2015) (“Even a limited discovery order does not satisfy the second step if” the court “does not identify the questions of fact that need[] to be resolved before the qualified immunity issue [can] be addressed.” (internal quotation marks omitted)).

Here, Pickett opposes Defendants’ request for a stay of discovery. *See* ECF No. 25. Pickett argues that a stay is not appropriate because “evidence will prove [a] violation of constitutional rights [that] were ‘clearly established.’” *Id.* at 4. In Pickett’s view, a stay would be “unjust” and would permit Defendants to “circumvent accountability for their actions and delay progress of the case.” *Id.* at 3.

Under Fifth Circuit precedent, however, the Court cannot order discovery—even limited discovery on the issue of qualified immunity—until it has determined whether Pickett’s pleadings assert facts that, if true, would overcome Individual Defendants’ defense of qualified immunity. *See, e.g., Erp v. City of Baton Rouge*, CIVIL ACTION NO. 17-323-JWD-EWD, 2018 WL 2208218, at *4 (M.D. La. May 14, 2018) (“Although discovery on the issue of qualified immunity is possible, such discovery must not proceed until the district court *first* finds that the plaintiff’s pleadings assert facts which, if true, would overcome the defense of qualified immunity.” (internal quotation marks omitted) (quoting *Wicks v. Miss. State Emp. Servs.*, 41 F.3d 991, 994 (5th Cir.

1995)). Individual Defendants seek dismissal of Pickett's § 1983 claims on the basis of qualified immunity—i.e., Individual Defendants assert that Pickett has not pleaded facts overcoming the defense. The Court therefore finds that Defendants have shown good cause for the imposition of a stay of discovery pending the Court's decision on Defendants' motion to dismiss.¹

For the reasons set forth above, Defendants' Motion to Stay Discovery is **GRANTED** and discovery in this action is **STAYED** pending resolution of the issues raised in the Motion to Dismiss.

SO ORDERED.

Dated: April 17, 2021.



D. GORDON BRYANT, JR.
UNITED STATES MAGISTRATE JUDGE

¹ Pickett's claims against Individual Defendants, who have raised the defense of qualified immunity on Pickett's § 1983 claims, are factually derivative of those against TTUHSC. *See* Compl. 13, 16, 18, ECF No. 1. The Court must therefore stay discovery as to all Defendants until the Court addresses Individual Defendants' qualified immunity claims under the *Zapata* framework. *See Waller v. City of Fort Worth*, No. 4:15-cv-670-Y, 2015 WL 5836041, at *6-7 (N.D. Tex. Oct. 2, 2015) (staying all discovery because claims against city were predicated on actions of individual defendants and the court found that any discovery as to claims against the city would circumvent individual defendants' assertion of qualified immunity).