

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

**SYLVESTER BUTLER, KELVIN  
FRAZIER, CURT MASSIE, JEREMIAH  
THOMAS, EUGENE ULRATH,  
REGINALD WILLIAMS,**

**Plaintiffs,**

**Case No.: 3:04-cv-917-J-32MMH**

**v.**

**JAMES V. CROSBY, JR., BRADLEY  
CARTER, GEORGE SAPP, STEPHEN  
SIRMONES, JOE LAZENBY, JR., ALLEN  
CLARK, MARK REDD, KEITH  
MUSSELMAN, TONY ANDERSON,  
JAMES WILSON, WILLIAM MUSE,  
COLIN HALLE, STEVEN TRICOCCI,  
TIM CHASTAIN, RODNEY BARNETT,  
RONNIE BARTON, KENNETH LAMPP,  
WENDELL WHITEHURST, STACEY  
GREEN, DAVID REYNOLDS, JOHN  
RIGGS, GLYNN REEDER, JOHN RIZER,  
OSCAR SHIPLEY, DEAN ELLIS,  
JEFFREY LINDSEY, BILLY JARVIS,  
each in his individual capacity,**

**Defendants.**

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**DEFENDANT JAMES WILSON'S MOTION TO STAY DISCOVERY  
AND SUPPORTING MEMORANDUM OF LAW**

COMES NOW Defendant, James Wilson (hereinafter "Wilson"), by and through his undersigned attorneys, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and Rule 3.01 of the Local Rules of the Middle District of Florida, and files his Motion to Stay Discovery and Supporting Memorandum of Law in the above-styled action as follows:

I. Motion.

A. Nature of Plaintiffs' Claims.

1. Although there are six (6) Plaintiffs in this action, only Plaintiff Thomas has attempted to assert a claim against Wilson. See Amended Complaint and Jury Demand, Paragraphs 111 – 139, 182 (Dkt. 96).

2. Plaintiff Thomas brings this action pursuant to 42 U.S.C. Section 1983 (hereinafter “Section 1983”) and in support thereof attempts to allege that he was subjected to excessive uses of force in violation of the Eighth Amendment. In particular, Plaintiff Thomas alleges that five (5) different correctional officers named as Defendants herein sprayed him with chemical agents on eight (8) occasions between September 20 and 26, 2000. See Id. at Paragraphs 116 – 130. Plaintiff Thomas further alleges that the uses of chemical agents were either directed by or approved by ten (10) other individuals named as Defendants herein. Id. In total, Plaintiff Thomas seeks compensatory and punitive damages from a total of fifteen (15) Defendants. Id. at Paragraph 182.D.

3. Plaintiff Thomas attempts to allege that Wilson used excessive force against him on September 20 and 23, 2000, in violation of the Eighth Amendment, by spraying him with chemical agents. Plaintiff Thomas brings this action against Wilson pursuant to Section 1983. See Amended Complaint and Jury Demand, Paragraphs 111 – 139, 182 (Dkt. 96).

B. Wilson's Motion to Dismiss.

4. On May 25, 2005, Wilson filed a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(5) and (6). In support of his Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), Wilson raised the defense of qualified immunity from Plaintiff Thomas' Section 1983 claim. Wilson's Motion to Dismiss remains pending before this Court.

5. For the foregoing reasons and as set forth in the Memorandum of Law that follows, discovery in this matter should be stayed pending resolution of the qualified immunity defense raised by Wilson. Given that discovery is not scheduled to close until April 28, 2006, no prejudice will inure to Plaintiffs if discovery is stayed pending resolution of the qualified immunity issue. Conversely, however, Wilson will be prejudiced if he is needlessly forced to endure the rigors, inconvenience, and expense of discovery only to have the Section 1983 claim against him dismissed on the basis of qualified immunity.

6. Counsel for Wilson, in accordance with Local Rule 3.01(g), certify that they have conferred with opposing counsel regarding this issue. Plaintiffs oppose the relief sought in this Motion.

## **II. Memorandum of Law.**

**A. The Standard for Obtaining a Stay of Discovery** "[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." Landis v. North American Co., 299 U.S. 248, 254, 57 S.Ct. 163, 166 (1936). According to Federal Rule of Civil Procedure 26(c), the court may, "for good cause shown . . . make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense."

According to Federal Rule of Civil Procedure 26(c)(2), such orders may include "that the disclosure or discovery may be had only on specified terms and conditions, including a designation of the time."

**B. Discovery Should be Stayed Pending Resolution of Qualified Immunity** The defense of qualified immunity affords public officials broad protections from the rigors, intrusion, and expense associated with defending against unwarranted civil rights actions. For example,

qualified immunity shields government officials from liability for damages arising from conduct that does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738 (1982).

However, qualified immunity not only provides a defense to liability, but it also gives a public official immunity from suit itself. Mitchell v. Forsyth, 472 U.S. 511, 526, 105 S.Ct. 2806, 2815 (1985).

The defense of qualified immunity also extends to insulate public officials from the burdens associated with engaging in discovery. Behrens v. Pelletier, 516 U.S. 299, 308, 116 S.Ct. 834, 839 (1996); see also Anderson v. Crieghton, 483 U.S. 635, 646 n. 6, 107 S.Ct. 3034, 3042 (1987) ("One of the purposes of the Harlow qualified immunity standard is to protect public officials from . . . discovery . . ."). Until the threshold issue of qualified immunity has been resolved, discovery should not be allowed. See Harlow, 457 U.S. at 818, 102 S.Ct. at 2738; Siegert v. Gilley, 500 U.S. 226, 231, 111 S.Ct. 1789, 1793 (1991). Consequently, a court should stay discovery pending resolution of a public officials qualified immunity defense. See Caraballo-Sandoval v. Honsted, 35 F.3d 521, 524 (11th Cir. 1994); Hargrove v. Henderson, 1996 WL 467516, \*2 (M.D. Fla. 1996); see also, Klein v. Courtwright, No. 96-850-cv-20B (M.D. Fla. April 3, 1997) (order granting stay of discovery pending resolution of qualified immunity defense raised in motion to dismiss).

Wilson will be prejudiced if discovery is not stayed pending appeal of the qualified immunity issue. A fundamental protection afforded by qualified immunity is freedom from the rigors, inconvenience, and expense of discovery and other pretrial proceedings. See Behrens, 516 U.S. at 308, 116 S.Ct. at 839. Absent a stay of discovery, Wilson will lose that protection. Because only Plaintiff Thomas has brought a claim against Wilson in this case, and that claim arises under Section

1983, Wilson's assertion of a qualifiedimmunity defense could bring an end to this litigation against him. Thus, Wilson should not be forced to undergo the rigors and inconvenience of a deposition, or for that matter the expense associated with other forms of discovery, until the threshold issue of qualified immunity has been resolved.

**III. Conclusion.**

WHEREFORE, for the foregoing reasons, Wilson respectfully requests that this Court grant his Motion to Stay Discovery.

DATED this 1st day of June, 2005.

Respectfully submitted,

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Attorneys for Defendant Wilson

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 1<sup>st</sup> day of June, 2005, I electronically filed the foregoing Defendant James Wilson's Motion to Stay Discovery and Supporting Memorandum of Law with the Clerk of the Court by using the CM/ECF system which will send a Notice of Electronic Filing to all counsel of record herein.

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