

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

JOHN I. MCALLISTER,

Plaintiff,

v.

PAUL M. SCHULTZ, et al.,

Defendants.

CASE NO. 1:06-cv-00082-OWW-YNP PC

ORDER GRANTING DEFENDANTS’ MOTION  
TO STAY DISCOVERY

(Doc. 27.)

Plaintiff John I. McAllister (“Plaintiff”) is a federal prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388, 91 S.Ct. 1999 (1971), which provides a remedy for violation of civil rights by federal actors. Before the Court is Defendants’ motion to stay discovery pending a ruling on their assertion of the defense of qualified immunity in a motion for summary judgment that Defendants intend to file within 45 days. (Doc. #27.) Plaintiff has not opposed Defendants’ motion to stay discovery.<sup>1</sup> The issue of qualified immunity should be resolved before permitting discovery. Crawford-El v. Britton, 523 U.S. 574, 597-98 (1998); Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982).

///

---

<sup>1</sup>Plaintiff has filed an opposition to Plaintiff’s assertion of qualified immunity. (Doc. #29.) In the opposition, Plaintiff specifically states that he “would not hav[e] no objection to the AUSA to the stay[ ]of discovery.” (Pl.’s Opp’n to Def.’s Mot. for Qualified Immunity and Pl.’s Mem. of P. & A. 2:25-26.) The Court also advises Plaintiff that his opposition is premature, as Defendants have not yet filed their motion for summary judgment based on the defense of qualified immunity, they have only filed a motion to stay discovery based on their intention to assert the defense in the near future.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Accordingly, IT IS HEREBY ORDERED that:

1. Defendants' motion to stay discovery until resolution of the issue of qualified immunity is granted;
2. Within **forty-five (45)** days of the date this order is filed, Defendants shall file with the Court and serve on Plaintiff their motion for summary judgment; and
3. Plaintiff shall file an opposition within **twenty-one (21)** days of the date of service the motion for summary judgment is filed. Failure to file an opposition may be deemed a waiver of any opposition and may result in the imposition of sanctions.

IT IS SO ORDERED.

**Dated:** November 17, 2009

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE