

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-02817-REB-MEH

JUSTIN JOSEPH RUEB,

Plaintiff,

v.

ARISTEDES ZAVARAS, *et al.*,

Defendants.

ORDER GRANTING DEFENDANTS' MOTION TO STAY

Michael E. Hegarty, United States Magistrate Judge.

Pending before the Court is Defendants' Motion to Stay Discovery and Vacate Preliminary Scheduling Conference Based on Qualified Immunity [[filed April 21, 2010; docket #52](#)]. The motion is referred to this Court for adjudication. (Docket #52.) Based on clearly established law, the Court decides this matter without reviewing a response from Plaintiff. For the following reasons, the Court **GRANTS** Defendants' Motion to Stay Discovery and Vacate Preliminary Scheduling Conference Based on Qualified Immunity.

Defendants, through the Colorado Attorney General, filed a Motion to Dismiss contemporaneously with this Motion to Stay, seeking to dispose of Plaintiff's entire Amended Complaint for lack of subject matter jurisdiction and for failure to state a claim. (Dockets #51.) Defendants assert entitlement to qualified immunity, as they contend Plaintiff fails to allege any constitutional claims and attempts to establish new law through the filing of his Amended Complaint. (*Id.* at 29-30.) In light of this argument, Defendants filed this Motion to Stay. (Docket #52.)

The Supreme Court established that evaluating the defense of qualified immunity is a threshold issue, and “[u]ntil this threshold immunity question is resolved, discovery should not be allowed.” *Siegert v. Gilley*, 500 U.S. 226, 233 (1991) (citing *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)); *Workman v. Jordan*, 958 F.2d 332, 336 (10th Cir. 1992) (same); *see also Behrens v. Pelletier*, 516 U.S. 299, 308 & 310 (1996) (noting that discovery can be particularly disruptive when a dispositive motion regarding immunity is pending). As stated, Defendants raise qualified immunity as a defense in the pending Motion to Dismiss. Therefore, the Court must follow Supreme Court precedent regarding staying discovery until resolution of the immunity question.

Accordingly, the Court **GRANTS** Defendants’ Motion to Stay Discovery and Vacate Preliminary Scheduling Conference Based on Qualified Immunity [filed April 21, 2010; docket #52]. The proceedings are hereby stayed pending a determination on the Motion to Dismiss by the District Court;

The Preliminary Status/Scheduling Conference set for May 10, 2010, is hereby **vacated**; and Defendants’ Motion for Leave to Exceed Page Limitation [filed April 21, 2010; docket #49] is **GRANTED**. Defendants are permitted to file excess pages with their Motion to Dismiss.

Dated at Denver, Colorado, this 23rd day of April, 2010.

BY THE COURT:



Michael E. Hegarty
United States Magistrate Judge