

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION**

Case No. 4:10-cv-142-D

<p>MARK DANIEL LYTTLE,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>UNITED STATES OF AMERICA, et al.,</p> <p style="text-align: center;">Defendants.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>CONSENT MOTION FOR A STAY OF PRETRIAL PROCEEDINGS</p> <p>Fed. R. Civ. P. 6(b) Local Civil Rule 6.1</p>
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CONSENT MOTION FOR A STAY OF PRETRIAL PROCEEDINGS

All parties to this action respectfully request that the Court stay all pretrial proceedings, including the Rule 26(f) planning meeting and conference report, pending the Court’s resolution of the Federal Defendants’ motions to dismiss. *See* Docket Nos. 49-52.

OVERVIEW

Plaintiff, Mark Daniel Lyttle, has sued the United States, Dashanta Faucette, Dean Caputo, and Robert Kendall (collectively referred to as the “Federal Defendants”), and Mary Hines and Marilyn Stephenson (the “North Carolina Defendants”) in connection with his allegedly unlawful detention and removal to Mexico. *See* First Amended Complaint, Docket No 44. On June 27, 2011, the individual Federal Defendants filed a motion to dismiss that raised, among other defenses, qualified immunity. Docket Nos. 51-52. On that same date, the United States filed its own motion to dismiss raising, among other defenses, sovereign immunity. Docket Nos. 49-50. On October 17, 2011, the Court issued what appears to be a standard order directing the parties to conduct a Rule 26(f) planning conference by November 18, 2011, and to

submit a planning report within 14 days of that meeting. Docket No. 69. However, in light of the pending motions to dismiss, the parties respectfully request that the Court stay all pretrial proceedings until it has resolved the Federal Defendants' motions to dismiss.¹

DISCUSSION

In this case, the individual Federal Defendants have raised qualified immunity in a motion to dismiss. *See* Docket Nos. 51-52. When an official raises qualified immunity, pretrial proceedings should not go forward until that question is resolved. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1953 (2009) (The “basic thrust” of qualified immunity is “to free officials from the concerns of litigation”); *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985) (“Unless the plaintiff’s allegations state a claim of violation of clearly established law, a defendant pleading qualified immunity is entitled to a dismissal before the commencement of discovery.”) (citing *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). Here, all the parties have consented to a stay of pretrial proceedings pending the Court’s resolution of the Federal Defendants’ motions to dismiss.

CONCLUSION

For the foregoing reasons, the parties respectfully request a stay of all pretrial proceedings until the Court has resolved the Federal Defendants’ motions to dismiss.

¹ The North Carolina Defendants expect to file within the next few weeks a motion for judgment on the pleadings raising, among other defenses, qualified immunity. At that time, the parties may then request a similar stay, as the present motion requests a stay of all pretrial proceedings only until the Court has decided the motions filed by the Federal Defendants.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of October, 2011, I electronically filed the foregoing “Consent Motion For a Stay of Pretrial Proceedings” with the Clerk of Court using the Court’s CM/ECF system, which will send notification of such filing to all parties of record.

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