

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

SAMUEL JOSEPH WURZELBACHER,	)	
	)	
Plaintiff,	)	Civil Action No.: 2:09-CV-162
	)	Judge Marbley
v.	)	Magistrate Judge King
	)	
HELEN JONES-KELLEY, et al.,	)	
	)	
Defendants.	)	
_____	)	

**PLAINTIFF’S MEMORANDUM IN OPPOSITION TO DEFENDANTS’  
MOTION TO STAY PROCEEDINGS**

Plaintiff Samuel Joseph Wurzelbacher, by counsel, respectfully submits this opposition to Defendants’ Motion to Stay Proceedings. For the reasons discussed herein, Defendants belated motion should be denied.

Relying on *Harlow v. Fitzgerald*, 457 U.S. 800 (1982) and the general principle that discovery should follow resolution of a qualified immunity claim, Defendants seek to close down discovery in this case. Neither *Harlow* nor any of the other cases cited by Defendants are pertinent to the situation in this case, in which discovery has already commenced. Defendants had ample opportunity to bring their motion to stay previously, but waited until after the preliminary pretrial conference was held (September 24, 2009), after initial disclosures had been exchanged (November 1, 2009), and after discovery was underway. Moreover, at least one defendant, Helen Jones-Kelley, served with the Complaint on March 12, 2009, waited more than eight months before asserting a qualified immunity defense. In fact, Defendants strategically delayed filing their motion until three days after the first document requests and interrogatories were served on Defendant Jones-Kelley.

Many of the factors typically weighing in favor of a stay of discovery also are not present in this case. There is minimal risk of interference with government business as all three defendants are now former officials, with representation amply provided by the Office of the Ohio Attorney General. On the other hand, the harm to Plaintiff is substantial if discovery is indefinitely stayed – because as time goes by, witnesses’ memories will fade and documents will be misplaced, significantly impeding Plaintiff’s ability to prove his case.

The protection granted to government officials in *Harlow* is not intended to be used to seek litigation advantage. The Court has entered a discovery schedule and Plaintiff has limited time to complete the necessary tasks. Any stay will severely prejudice Plaintiff by preventing the completion of discovery within the scheduled time.

For the reasons stated above, Defendants’ Motion to Stay Proceedings must be denied.

December 14, 2009

Respectfully submitted,

/s/ Paul J. Orfanedes  
(Admitted Pro Hac Vice)

/s/ James F. Peterson  
(Admitted Pro Hac Vice)

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Plaintiff's Memorandum in Opposition to Defendants' Motion to Stay Proceedings was served on December 14, 2009 via the ECF system (or electronic mail) to the following:

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