IN THE UNITED STATES DISTRICT COURT
DISTRICT COURT OF COLORADO

Civil Action No. 23-cv-01951-SKC-MDB

JACQUELINE ARMENDARIZ and CHINOOK CENTER,

Plaintiffs,

v.

CITY OF COLORADO SPRINGS;

DANIEL SUMMEY, a detective with the Colorado Springs Police Department, in his individual capacity;

B.K. STECKLER, a detective with the Colorado Springs Police Department, in his individual capacity;

JASON S. OTERO, a sergeant with the Colorado Springs Police Department, in his individual capacity;

ROY A. DITZLER, a police officer with the Colorado Springs Police Department, in his individual capacity;

FEDERAL BUREAU OF INVESTIGATION;

and UNITED STATES OF AMERICA,

Defendants.

PLAINTIFFS' COMBINED RESPONSE TO DEFENDANTS' OBJECTIONS (ECF Nos. 73 & 75) TO THE MAGISTRATE JUDGE'S ORDER DENYING A STAY OF DISCOVERY (ECF No. 71)

Plaintiffs respond to "Objections to the Magistrate Judge's Order Denying a Stay of Discovery by the Federal Defendants (ECF No. 71)" (ECF No. 73, filed 1/24/2024) and "Objections to the Magistrate Judge's Order Denying a Stay of Discovery by the City Defendants" (ECF No. 75, filed 1/25/2024).

INTRODUCTION

This case concerns Defendants' use of unconstitutional warrants to rummage through activists' personal communications and associations. Plaintiffs bring claims under Section 1983 and C.R.S. § 13-21-131 against individual Colorado Springs Police Department officers for obtaining unconstitutional warrants following a 2021 housing rights march. Plaintiffs claim that these officers' actions were part of the City of Colorado Springs' custom, policy, or practice of responding to unwelcome political expression with overbroad warrants that violate the particularity requirement and fail to limit searches to evidence of an alleged crime. Plaintiffs also claim that one of the warrants for Plaintiff Chinook Center's Facebook data violated the Stored Communications Act. Finally, Plaintiffs bring a claim for injunctive relief against the City and FBI for retaining copies of Plaintiff Armendariz's digital data, despite offering no justification for doing so.

While denying any wrongdoing in fishing through troves of Plaintiffs' personal information without probable cause, Defendants maintain that Plaintiffs should be barred from obtaining any information relevant to their claims. Magistrate Judge Dominguez Braswell correctly rejected that argument, denying after hearing Defendants' motions to stay all discovery in a thorough, well-reasoned Order. ECF No. 71 (hereinafter "the Order"). Defendants' objections to the Order should be overruled because it reflects Judge Dominguez Braswell's careful application of the governing law and sound

judgement that, despite some Defendants' invocation of qualified immunity as to some of Plaintiffs' claims, discovery should proceed.

LEGAL STANDARD

"When reviewing an objection to a magistrate judge's non-dispositive ruling, the Court must affirm the ruling unless it finds that the ruling is 'clearly erroneous or contrary to law.'" *Yeiser v. DG Retail, LLC*, No. 18-CV-0320-WJM-STV, 2019 WL 3521903, at *3 (D. Colo. Aug. 1, 2019) (quoting Fed. R. Civ. P. 72(a)). "Because a magistrate judge is afforded broad discretion in the resolution of non-dispositive discovery disputes, the court will overrule the magistrate's determination only if [her] discretion is abused." *Ariza v. U.S. West Communs., Inc.*, 167 F.R.D. 131, 133 (D. Colo. 1996). "[T]he magistrate judge's finding should not be rejected merely because the court would have decided the matter differently." *Greeley Publ'g Co. v. Hergert*, No. 05-CV-00980-EWN-CBS, 2005 WL 8177799, at *1 (D. Colo. Oct. 31, 2005).

Defendants contend—without any support—that the Order may be reviewed de novo because it "effectively denies qualified immunity to Defendant Summey" and therefore rules on a dispositive matter. Objections at 10 (citing Fed. R. Civ. P. 72(b)(3)). Defendants are incorrect. *See A.V. v. Douglas Cty. Sch. Dist. RE-1*, 586 F.Supp.3d 1053, 1061-62 (D. Colo. 2022) (order on stay motion subject to clearly erroneous standard); *Hutchinson v. Pfeil*, 105 F.3d 562, 566 (10th Cir. 1997) ("Discovery is a nondispositive matter . . .").

Permitting discovery to move forward before motions to dismiss are resolved is not the same as denying Defendants qualified immunity. Here, far from discounting Defendants' assertion of qualified immunity, Judge Dominguez Braswell expressly

weighed the import of that defense in her consideration of whether to stay discovery. She concluded discovery should proceed because Plaintiffs bring claims to which qualified immunity is *no defense* and on which the evidence is inextricably intertwined. To treat her order as tantamount to a denial of qualified immunity would turn the mere assertion of the defense into an automatic and sweeping suspension of all claims in a case, regardless of whether qualified immunity is even an applicable defense. But "the qualified immunity defense is not absolute." *Sanchez v. Hartley*, No. 13-CV-01945-WJM-CBS, 2016 WL 7176718, at *5 (D. Colo. Apr. 26, 2016). And "because the defense of qualified immunity is limited to particular claims against particular individuals, the corresponding protection against burdensome discovery is also limited." *Rome v. Romero*, 225 F.R.D. 640, 643 (D. Colo. 2004).

Raising a qualified immunity defense does not change the appropriate standard of review. The Order was on a non-dispositive matter and thus should not be set aside unless clearly erroneous or contrary to law. Because it is neither, Defendants' objections should be overruled.

ARGUMENT

Defendants' objections should be overruled because the Order is not clearly erroneous or contrary to law. In her Order, Judge Dominguez Braswell carefully considered the import of Defendants' qualified immunity defenses, but ultimately permitted discovery to proceed, because qualified immunity is relevant to only some of Plaintiffs' claims and discovery for the various claims and defendants is inextricably intertwined. In allowing Plaintiffs to proceed with discovery—a right that "should not be denied except under the most extreme circumstances," *Gold, Inc. v. H.I.S. Juvs., Inc.*, No.

14-CV-02298-RM-KMT, 2015 WL 1650900, at *1 (D. Colo. Apr. 8, 2015) (quoting *Commodity Futures Trading Comm'n v. Chilcott Portfolio Mgmt., Inc.,* 713 F.2d 1477, 1484 (10th Cir. 1983))—Judge Dominguez Braswell did not clearly err or deviate from the law of this District or appellate precedent.

I. Judge Dominguez Braswell Properly Refused to Stay Discovery Solely Because Some Defendants Asserted Qualified Immunity.

Although Defendants suggest that Judge Dominguez Braswell was obligated to stay discovery simply because certain individual Defendants asserted a qualified immunity defense, Defendants fail to cite a single case requiring as much. On the contrary, the Federal Rules of Civil Procedure do not provide for a stay of discovery. *See McKnight v. Brown*, No. 20-CV-03678-PAB-SKC, 2021 WL 3510809, at *1 (D. Colo. Aug. 10, 2021) (Crews, J.). Instead, "[w]hether to stay discovery is a matter left to the sound discretion of the trial court." *LS3 Inc. v. Cherokee Fed. Sols., L.L.C.*, No. 1:20-CV-03555-PAB-NYW, 2021 WL 4947284, at *2 (D. Colo. Aug. 26, 2021). Decisions "about the most efficient, effective, and speedy way to manage [a] case . . . lie[] squarely within the magistrate judge's discretion." *Greeley Publ'g Co.*, 2005 WL 8177799, at *1. Here, Judge Dominguez Braswell properly exercised her discretion consistent with the law of this District, the Tenth Circuit, and the Supreme Court.

A. The Order is Consistent with this District's Disfavor of Discovery Stays.

Judge Dominguez Braswell's Order is consistent with this district's "well-settled" law disfavoring discovery stays. *LS3, Inc.*, 2021 WL 4947284, at *2; *see, e.g.*, *Rocha v. CCF Admin.*, 2010 WL 291966, at *1 (D. Colo. Jan. 20, 2010); *Bustos v. United States*, 257 F.R.D. 617, 623 (D. Colo. 2009); *Love v. Grashorn*, No. 21-cv-02502-RM-NRN, 2022

WL 1642496, at *2 (D. Colo. May 24, 2022); *Gold, Inc.*, 2015 WL 1650900, at *1. Indeed, stays pending dispositive motions to dismiss engender practical and social concerns. *See Gen. Steel Domestic Sales, LLC v. Steel Wise, LLC*, No. 07-CV-01145-DME-KMT, 2009 WL 24982, at *3 (D. Colo. Jan. 5, 2009). Witnesses can relocate or change employment, and their memories fade over time. *See id.*; Order at 19. And delaying resolution of a case can "threaten[] the credibility of the justice system," *id.*, especially where—as here—a plaintiff has alleged an ongoing violation of her constitutional rights. "[A] private citizen is entitled to claim the timely protection of the law." *Sanchez*, 2016 WL 7176718, at *7.

This is true "[e]ven when qualified immunity is raised." *Est. of Ronquillo ex rel. Sanchez v. City & Cnty. of Denver*, No. 16-CV-01664-CMA-NYW, 2016 WL 10842586, at *3 (D. Colo. Nov. 14, 2016). Despite a qualified immunity defense, discovery can occur in "cases alleging official-capacity claims, requests for injunctive (as opposed to monetary) relief, and claims against entities." *Love*, 2022 WL 1642496, at *3.

This case includes a claim for injunctive relief ordering Defendants to return or destroy Plaintiff Armendariz's data, claims against Colorado Springs and the FBI, and claims under the state constitution—none of which can be dismissed on the basis of qualified immunity. And as Judge Dominguez Braswell observed, each of these claims will involve discovery that substantially overlaps with discovery relevant to the Section 1983 claims against the individual officers because all of the claims arise from the same event and issues. *See Rome*, 225 F.R.D. at 644–45 (individual defendants who asserted qualified immunity still had information relevant to *Monell* claim); Order at 14. "In other words, even if the Court issued a blanket stay and the individual § 1983 claims were eventually dismissed by the Court on qualified immunity grounds, substantially similar

discovery still may have to take place." *McGinn v. El Paso Cnty., Colorado*, 640 F. Supp. 3d 1070, 1075 (D. Colo. 2022). And "[e]ven if the Court issued a partial stay only in connection with the § 1983 claims against the Individual County Defendants, the common core of operative facts between those claims and the claims on which discovery would continue would still necessitate the involvement of the Individual County Defendants in discovery—undercutting part of the rationale for a stay in the first place." *Id.*; *see also Est. of Saenz v. Bitterman*, No. 20-CV-00848-NRN, 2020 WL 6870565, at *2 (D. Colo. May 15, 2020) (holding "a stay as to all of Plaintiff's claims would be overreaching" where qualified immunity was not a defense to all claims); *Greeley Publ'g Co.*, 2005 WL 8177799, at *2 ("[T]he fact that Defendant would be entitled to a stay of discovery if it were directed solely to certain claims does not support a stay if the discovery is also relevant to other claims."). The Order correctly concludes that the circumstances of this case do not warrant a stay of discovery.

B. The Order Appropriately Evaluated the *String Cheese* Factors.

Having correctly determined that the law does not require an automatic discovery stay in the face of a qualified immunity defense, Judge Dominguez Braswell carefully weighed the *String Cheese* factors to determine the appropriateness of a stay. *See McGinn*, 640 F. Supp. 3d at 1074 (holding that the Court should weigh the five *String Cheese* factors in determining whether to stay discovery). In so doing, Judge Dominguez Braswell recognized the need to exercise her "discretion in a way that protects the substance of the qualified immunity defense." Order at 13. Judge Dominguez Braswell therefore began her *String Cheese* analysis "with great weight already on the side of a stay." Order at 15. Nonetheless, after a six-page analysis, she concluded that other

factors "weigh so heavily that they alone might overcome the considerations occasioned by Defendants' invocation of qualified immunity." *Id.* at 20.

Defendants argue that the Order gave insufficient weight to the burden on Defendants. Objections at 9. But Magistrate Judge Dominguez Braswell thoroughly considered Defendants' arguments—even noting that, while the burden factor did not favor a stay, "the determination of this single factor d[id] not disturb or diminish the great weight already attributed to Defendants' qualified immunity arguments," Order at 17 n. 6. Moreover, Defendants have failed to articulate the specific burdens they would face in discovery. Order at 17; *see also Peterson v. City & Cnty. of Denver, Colorado*, No. 1:21-cv-01804-RMR-SKC, 2022 WL 1239327, at *2 (D. Colo. Apr. 27, 2022) (Crews, J.) ("Defendants offer no particularized explanation of any burden beyond the case law generally discussing qualified immunity.").

Defendants also argue that the Order placed too much weight or not enough weight on various other interests. Objections at 9. But rather than explaining how the Court erred, Defendants merely state: "The balancing of factors is clearly erroneous." But disagreement with how Judge Dominguez Braswell's weighed appropriate factors does not render her Order erroneous.

C. The Order Comports with the Law of the Supreme Court and Tenth Circuit.

Contrary to Defendants' Objections, the Order is consistent with Supreme Court and Tenth Circuit case law. Objections at 4–9. Defendants cite the same cases they relied on previously without explaining where Judge Dominguez Braswell's analysis of them went wrong. Notably, none of the cases Defendants cite specifically considered whether a stay should issue pending resolution of a motion to dismiss. *See Mitchell v. Forsyth*,

472 U.S. 511, 530 (1985) (considering whether defendant was entitled to immunity at all and whether district court's denial of qualified immunity was appealable as a final decision); *Crawford-El v. Britton*, 523 U.S. 574, 591 (1998) (determining the level of proof required to defeat a motion for summary judgment based on qualified immunity); *Anderson v. Creighton*, 483 U.S. 635, 646 n. 6 (1987) (remanding for further proceedings on whether an officer was entitled to qualified immunity); *Workman v. Jordan*, 958 F.2d 332 (10th Cir. 1992) (considering trial court's decision to postpone resolving qualified immunity issue until trial).

And, as the Order explained, "each decision is more nuanced than Defendants suggest." Order at 8; *id.* at 9 (noting that *Anderson v. Creighton* "leaves open the possibility that some discovery may be necessary" even where a qualified immunity defense is raised); *id.* at 9–10 (recognizing that *Ashcroft v. Iqbal* disallowed discovery because the complaint was deficient—not because the qualified immunity defense necessitated a stay); *id.* at 10 ("[T]he *Crawford-El* Court was not prescribing a particular approach for motions to stay, it was determining the necessary level of proof in the face of a qualified immunity defense" in the context of "a 'litigious' prisoner, against the backdrop of 'the very large number of civil rights actions filed by prison inmates'" (quoting *Crawford-El*, 523 U.S. at 578)); *id.* at 10–11 ("[T]he entitlement Defendants speak of when citing *Mitchell*, is an entitlement to immunity from suit, not an entitlement to a stay. It was the prospect of losing that immunity if the case went *all the way to trial*, that underpinned the Court's determination in *Mitchell*."); *id.* at 11 (considering "whether a trial court could postpone—until trial—its decision on the pending motion to dismiss based on qualified immunity.").

Defendants contend that Judge Dominguez Braswell erred in allowing full discovery rather than "discovery that is 'narrow' and 'limited to the issue of qualified immunity.'" Objections at 5 (quoting *Cole v. Ruidoso Mun. Sch.*, 43 F.3d 1373, 1387 (10th Cir. 1994)). But "the interwoven nature of the claims . . . means all discovery must proceed, or all discovery must be delayed." Order at 14–15. The cases cited by Federal Defendants do not dictate that discovery must be delayed; they hold that trial courts did not abuse their discretion by restricting discovery in particular cases. *See Martin v. County of Santa* Fe, 626 Fed. App'x 736, 741 (10th Cir. 2015) ("[T]he district court did not exceed the bounds of rationally available choices by staying discovery in light of the known facts and relevant law."); *Stonecipher v. Valles*, 759 F.3d 1134 (10th Cir. 2014) (district court did not err in granting summary judgment based on qualified immunity without allowing plaintiffs to take discovery); *see also Cole*, 43 F.3d at 1387 (no abuse of discretion in requiring defendants to reimburse discovery costs incurred before untimely motion for summary judgment based on qualified immunity). Indeed, *Cole* emphasizes that "the trial court's determinations on allowing or denying discovery are discretionary." 43 F.3d at 1387.

Defendants cite only one case in which the court held that a magistrate judge's ruling was clearly erroneous because it did not stay discovery as to all defendants. Objections at 7 (citing *A.A. ex rel. Archuletta v. Martinez*, No. 12-cv-00732-WYD-KMT, 2012 WL 5974170 (D. Colo. Oct 9, 2012)). But that case did not involve a claim against the individual defendants' employing entity or a claim for injunctive relief, nor did it involve claims under the Enhance Law Enforcement Integrity Act—to which "[q]ualified immunity is not a defense." C.R.S. § 13-21-131(2)(b). *Cf. Hulse v. Adams County*, No. 14-cv-02531-

RM-NYW, 2015 WL 1740399, at *1 (D. Colo. Apr. 14, 2015) (declining to stay discovery for claims against a municipality because "the doctrine of qualified immunity is not applicable to Plaintiffs' municipal liability . . . claims"); *Love*, 2022 WL 1642496, at *5 (holding that "discovery will proceed against the City, for whom the defense of qualified [immunity] is not available."); *McGinn*, 640 F. Supp. 3d at 1075 (balancing the *String Cheese Incident* factors, as well as other relevant factors, including whether a successful qualified immunity defense would be "dispositive of *all claims* in the proceeding"). Because the Order does not contradict controlling precedent, Defendants' objections should be overruled.

CONCLUSION

Defendants do not—because they cannot—identify any factual or legal basis for this Court to find that Judge Dominguez Braswell's Order was clearly erroneous or contrary to the law. Rather, this case is "less amenable to cabined discovery" than others, and the *String Cheese* factors heavily weigh against a stay. Order at 14, 20. Thus, Defendants' Objections should be overruled.

Respectfully submitted this 7th day of February, 2024.

/s/s Jacqueline V. Roeder

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CERTIFICATION REGARDING THE USE OF A.I.

No portion of this filing was drafted by artificial intelligence.

CERTIFICATE OF SERVICE

I hereby certify that on February 7, 2024, a copy of the foregoing was filed electronically with the Court. In accordance with Fed. R. Civ. P. 5, notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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