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**Subject:** Activity in Case 1:23-cv-01951-SKC-MDB Armendariz et al v. City of Colorado Springs et al Order on Appeal of Magistrate Judge Decision to District Court  
**Date:** Thursday, February 8, 2024 4:52:00 PM

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**U.S. District Court - District of Colorado**

**District of Colorado**

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**Case Name:** Armendariz et al v. City of Colorado Springs et al

**Case Number:** [1:23-cv-01951-SKC-MDB](#)

**Filer:**

**Document Number:** 90(No document attached)

**Docket Text:**

**ORDER** overruling [73] and [75] **APPEALS OF MAGISTRATE JUDGE DECISION** to District Court; granting in part [86] and [87] **Motions to Stay**.

**Before the Court are Defendants' respective second motions to stay (Dkts. 86 and 87) and for expedited ruling, directed to the District Judge under Local Rule 30.2(b). The Court rules on these motions without awaiting responses under Local Rule 7.1(d).**

**The second motions to stay implicate the motions to dismiss (Dkts. 49-52) that are pending before this Court. Since this Court has not referred the motions to dismiss to the magistrate judge, this Court had an opportunity not reasonably available to the magistrate judge when she considered the Defendants' original motions to stay--that being the ability to take a preliminary peek at the motions to dismiss. See, e.g., *Warden v. Tschetter Sulzer, P.C.*, No. 22-CV-00271-WJM-NRN, 2022 WL 1487576, at \*4 (D. Colo. May 11, 2022) ("some courts have also adopted a 'preliminary peek' approach in deciding whether to stay a case pending resolution of a dispositive motion"); *Bacote v. Fed. Bureau of Prisons*,**

No. 17-CV-03111-RM-NRN, 2019 WL 5964957, at \*2 (D. Colo. Nov. 13, 2019) (no controlling law precludes a preliminary peek).

This Court has taken that peek and finds the motions to dismiss raise colorable arguments regarding the applicability of qualified immunity that are not discovery dependent under the circumstances alleged in the First Amended Complaint. (Dkt. 12.) See, e.g., *Messerschmidt v. Millender*, 565 U.S. 535, 546 (2012) ("The validity of the warrant is not before us. The question instead is whether Messerschmidt and Lawrence are entitled to immunity from damages, even assuming that the warrant should not have been issued."). Moreover, the motions to dismiss seek dismissal of all claims in some shape or form, and one raises subject matter jurisdiction over at least one Defendant (although the latter argument may be premature depending on the status of the United States as a party).

It is not this Court's usual practice to take a preliminary peek at the relative merits of motions to dismiss when considering a motion to stay. But having done so here, the Court finds good cause to partially grant the second motions to stay in consideration of Fed. R. Civ. P. 1 and the Court's own convenience. For example, rulings on the motions to dismiss have the potential to narrow the claims and issues for discovery purposes and trial. And while not all Defendants may claim qualified immunity here, under the circumstances of this case, the Court finds a stay of all discovery is warranted. See generally *A.A. ex rel. Archuletta v. Martinez*, No. 12-CV-00732-WYD-KMT, 2012 WL 5974170, \*2 (D. Colo. Oct. 9, 2012) (finding discovery should not be stayed only as to one defendant, but as to all); see also *Griffith v. El Paso Cnty., Colorado*, No. 21-CV-00387-CMA-NRN, 2022 WL 20286303, at \*2 (D. Colo. Nov. 2, 2022) (disfavoring piecemeal discovery). It is ORDERED that the Second Motions to Stay are PARTIALLY GRANTED. Discovery shall be stayed pending a ruling on the motions to dismiss; however, any ongoing or necessary discovery to the Westfall Act issues shall proceed. The parties are ORDERED to contact the Chambers of Magistrate Judge Dominguez Braswell to set a discovery schedule and discovery limitations in this regard, to the extent this discovery hasn't already been set.

The Court FURTHER OVERRULES the Objections (Dkts. 73 and 75) to the magistrate judge's non-dispositive order at Dkt. 71, as MOOT. To be clear, however, the magistrate judge is patently correct that raising qualified immunity does not trigger an automatic stay of discovery, as Defendants argue. The Court finds nothing clearly erroneous or contrary to law in the magistrate judge's Order denying the original motions to stay, but the matter is ultimately now mooted by this Court granting the second motions to stay.

SO ORDERED by U.S. District Judge S. Kato Crews on 2/8/2024.  
Text Only Entry (skclc1)

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