

In the United States District Court
for the Western District of Texas
San Antonio Division

Martin Victor Hill,
Plaintiff,

v.

TDPS, *et al.*,
Defendants.

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Civil Action No. 5:12-CV-0827

Jury

**Defendants' Opposed Motion
for Protective Order with Brief in Support**

Defendants Kevin Marmor and Yolanda Aguinaga file this Opposed Motion for Protective Order With Brief in Support pursuant to FEDERAL RULES OF CIVIL PROCEDURE 26(c)(1), asking the Court to limit discovery pending a determination of their entitlement to qualified immunity.

Statement of the Case

Hill brings a civil rights action for damages arising under the United States Constitution via 42 U.S.C. § 1983, alleging illegal search and seizure, illegal demand to produce identification without reasonable suspicion or probable cause and retaliation. [D.E. 12, paragraphs 34-42]. Hill's claims are based upon his interaction with the Defendants on November 10, 2010, at a weigh station in Devine, Texas. [Id.]

On June 4, 2013, Defendants served Plaintiff with their initial disclosures. (See Exhibit B). On August 10, 2013, Plaintiffs served Defendants with request for production. (See Exhibit A). Defendants pled their entitlement to qualified immunity in their answer. [D.E. 18-19]. Defendants now file this motion for protective order based upon that immunity.

Brief in Support

The standard of review for a protective order is abuse of discretion. *Heat & Control, Inc. v. Hester Indus., Inc.*, 785 F.2d 1017, 1022 (Fed. Cir. 1986).

Qualified immunity is an affirmative defense to all federal law claims. *Harlow v. Fitzgerald*, 457 U.S. 800, 815 (1982). Under the doctrine of qualified immunity, government officials are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Harlow v. Fitzgerald*, 457 U.S. at 818 (1982). Qualified immunity is a threshold legal question to be decided by the court. *Mitchell v. Forsyth*, 472 U.S. 511, 527-529 (1985).

Plaintiff served 58 request for production upon Defendants (See Exhibit A). Defendants object to any discovery requests by Plaintiffs on the ground that they prematurely require them to engage in discovery before the Court has ruled upon their entitlement to immunity from suit, which includes such incidents to suit as discovery. *Harlow* ,457 U.S. 800 at 818; *Mitchell v. Forsyth*, 472 U.S. at 526 (1985). “[T]he issue of qualified immunity is a threshold question, and ‘[u]ntil this threshold immunity question is resolved, discovery should not be allowed.’ ”*Brown v. Texas A & M Univ.*, 804 F.2d 327, 333 (5th Cir.1986) (citing *Harlow*, 457 U.S. at 818). See also *Jacquez v. Procunier*, 801 F.2d 789 (5th Cir.1986).

Defendants have already disclosed relevant records and information to Plaintiff in their initial disclosures. (See Exhibit B). Plaintiff’s 58 request for production are overly burdensome and are beyond the scope of discovery. Also, many of Plaintiff’s request are nothing more than pure harassment by the Plaintiff. (See Exhibit A, request for production numbers 44-47, 51-54). For example,

Plaintiff requested all verbal and written admissions, medical records and documentation that exists of any alcoholism, illicit drug use, drug abuse treatment, alcoholism treatment, mental health treatment, hospitalization, or care received by Yolanda Aguinaga and Kevin Marmor from 2008-2013 and Plaintiff requested copies of all details of any training Defendants have had pertaining to The Anti-Defamation League, The Anti-Defamation League's Advanced Training School, The Anti-Defamation League's Advanced Training School (ATS) course on Extremist and Terrorist Threats, The Southern Poverty Law Center, The American Civil Liberties Union. (See Exhibit A, request for production numbers 46-47, 51).

Requests of this nature are only for harassment and will not lead to the discovery of admissible evidence. Also, Defendants have already disclosed documents to Plaintiff pertaining to request for production nos. 1, 7, 9, 17-22. (See Exhibit A). Also, Plaintiff has requested items that are beyond the scope of qualified immunity. For instance, Plaintiff requested timecard/ sign in sheet and documentation of hourly wages of Defendants, Defendants complete criminal records and all organizations that Defendants are members of since they were employed in law enforcement. (See Exhibit A, request for production numbers 24, 25, 38, 39, 44, 45). These request for production are way beyond the scope of discovery and are unlikely to lead to admissible evidence at trial.

Furthermore, Defendants have engaged in discussions with Plaintiff to conduct depositions. Defendants are amicably discussing dates with Plaintiff to schedule the depositions of five people who Plaintiff wants to depose. Defendants are more than willing to engage in discovery with Plaintiff for the limited issue of qualified immunity until the Court has ruled on their Motion for Summary Judgment.

Conclusion

Defendants Marmor and Aguinaga ask the Court to grant this motion for protective order and limit discovery to only issues of qualified immunity pending a determination of Defendants entitlement to qualified immunity.

Respectfully submitted,

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Attorneys for Defendants

CERTIFICATE OF CONFERENCE

Counsel for Plaintiff has complied with the meet and confer requirement in Local Rule CV-7(i) by conferring with Plaintiff, *pro se* counsel and the motion is opposed.

/s/ Seth Byron Dennis

SETH BYRON DENNIS
Assistant Attorney General

Notice of Electronic Filing

I, Seth Byron Dennis, Assistant General of Texas, do hereby certify that I have electronically submitted for filing, a true and correct copy of the above and foregoing **Defendants' Motion for Protective Order with Brief in Support** in accordance with the Electronic Case Files System of the Western District of Texas, on this the ____th day of August, 2013.

/s/ Seth Byron Dennis
SETH BYRON DENNIS
Assistant Attorney General

Certificate of Service

I, Seth Byron Dennis, Assistant Attorney General of Texas, do hereby certify that a true and correct copy of the above and foregoing **Defendants' Responses and Objections to Plaintiff's First Request for Production** has been served via e-mail to mhill.losangeles@live.com, clpc75@live.com on this ____th day of August, 2013.

/s/ Seth Byron Dennis
SETH BYRON DENNIS
Assistant Attorney General