

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

LEROY SECHEREST, DAMION LEVY,	)	
TYQWON WALDEN, MARCUS YOUNG,	)	
ARKICA STEWART, COMECHIA RANDLE,	)	
QUARNEESHIA WALDEN, DORNELL	)	Case No: 3:24-cv-34-TSL-MTP
MALONE, JOHN ADAMS, DWAYNE	)	
STEWART, YOLANDA WALLACE, CRYSTAL	)	
WALLACE, LEON LEWIS, FREDERICK	)	
JOHNSON, LEONTAY ELLINGTON,	)	
JAMES BANKHEAD, JR., AND MINNIE	)	
STEWART,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
	)	
CITY OF LEXINGTON, ROBIN MCCRORY,	)	
CHARLES HENDERSON, AARON AGEЕ,	)	
SAM DOBBINS, CORDARIUS EPPS,	)	
CHRIS BURRELL, JUSTIN NEWELL,	)	
LARON SIMPSON, AND SCOTT WALTERS,	)	
	)	
Defendants.	)	

**PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
MOTION TO PARTIALLY LIFT STAY OF DISCOVERY**

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INTRODUCTION

For over twenty months, Defendants have denied Plaintiffs the opportunity to conduct discovery by filing successive qualified immunity motions, each timed on the eve of discovery. All Defendants have now had the opportunity to litigate their qualified immunity defenses. At this stage, more than a dozen claims against individual defendants are not the subject of any pending motion; some survived prior motion practice, while others were never challenged. These claims will be litigated regardless of how this Court rules on the pending motions. As such, these claims are ripe for discovery and permitting them to proceed to discovery would promote judicial efficiency and avoid further unnecessary delay. For the reasons set forth below, this Court should exercise its discretion under Local Rule 16(b)(3)(B) to partially lift its categorical discovery and allow the discrete claims identified herein to proceed to discovery.¹

FACTUAL BACKGROUND

A. Plaintiffs Sue to Address Repeated Instances of Race-Based Police Violence in the City of Lexington.

Plaintiffs filed this litigation because the City of Lexington and the Lexington Police Department (“LPD”) have led a campaign to wrongfully arrest Black residents who have committed no crime and then to brutalize them—in violation of the Fourth Amendment’s protections against unreasonable search and seizure, unlawful arrest, and excessive force and in violation of the First Amendment’s protections against retaliation for free speech and assembly. *See generally* Amended Complaint, Dkt. 60. These violations of the U.S. Constitution—on different dates, at different times, and involving different officers—are corroborated by the accounts of at least 10 eyewitnesses, including many former LPD officers who are not parties to

¹ While Plaintiffs limit this request for discovery to claims against individual defendants, Plaintiffs do not concede their *Monell* claims.

this action. *See, e.g., id.* ¶¶ 132, 134, 137, 157–62, 213–14, 218–20, 244–47, 251–55, 329, 356. The severity and pervasiveness of these violations prompted the U.S. Department of Justice to investigate the City of Lexington and the LPD and issue a report concluding that they both routinely violated the constitutional rights of and deliberately targeted these policies at Black residents. *See id.* ¶¶ 370–71; Dkt. 186 at 1.

B. This Litigation Has Been Pending For Two Years Without Discovery Because Defendants Failed to Comply with Local Rule 16.

1. Local Rule 16 Requires Defendants to File All Immunity Motions as Soon as Practicable.

Discovery scheduling lies within the discretion of the Court. *See JP Morgan Chase Bank, N.A. v. DataTreasury Corp.*, 936 F.3d 251, 255 (5th Cir. 2019). Local Rule 16 is intended to guide this Court in the scheduling of a case management conference—and to ensure that a Rule 26(f) conference is held “as soon as practicable.” *See* L.U. Civ. R. 16(a) (“The Court will issue an Initial Order setting the deadline for the attorney conference required by Fed. R. Civ. P. 26(f) . . . within 60 days of the filing of the first responsive pleading.”); Fed. R. Civ. P. 26(f)(1) (“[T]he parties must confer *as soon as practicable*[.]”) (emphasis added). To promote the efficiency of that proceeding and to ensure that pre-discovery motions do not indefinitely delay access to discovery, Local Rule 16 demands that “motions asserting an immunity defense . . . must be raised . . . *as expeditiously as practicable* after service of process.” L.U. Civ. R. 16(b)(3)(A) (emphasis added). Rather than raise their qualified immunity defenses as expeditiously as practicable, Defendants raised them piecemeal in a series of motions over the course of more than 20 months without any explanation for their delay.

2. Defendants Filed Their First Immunity Motions on the Eve of Discovery.

Plaintiffs filed the complaint in this action on January 20, 2024, and filed an Amended Complaint on July 2, 2024. *See* Dkts. 1, 60. All Defendants filed answers in response to the Amended Complaint by July 16, 2024. *See* Dkts. 64–67. On July 17, 2024—a day after all answers were filed and only fifteen days after the Amended Complaint was filed—this Court scheduled a timely Rule 16(a) case management conference. *See* Dkt. 69.

On August 16, 2024—just one week before the scheduled case conference—Defendants filed a motion asserting qualified immunity on behalf of Lexington Mayor Robin McCrory. *See* Dkts. 71–72. The Court cancelled its case management conference and stayed all discovery in response in accordance with Local Rule 16(b)(3)(B). Dkt. 73. Defendants filed a similar qualified immunity motion on behalf of Officer Aaron Agee shortly thereafter. *See* Dkts. 85–86. As a result of those motions, Defendants obtained their first delay of discovery in this case.

3. Immediately After the Court Ruled on the Outstanding Qualified Immunity Motions, Defendants Filed Another Such Motion.

Seven months later—on March 18, 2025—this Court issued an order rejecting Defendant Agee’s qualified immunity motion in part and ordered that a number of Plaintiffs’ claims could proceed to discovery. *See* Dkt. 122 at 39–40.² Three days later, Defendants filed another motion for summary judgment, this time asserting qualified immunity for Officer Cordarius Epps. Dkts. 123–124. Defendants offered no explanation as to why they had not raised these qualified immunity arguments when they filed their first motions more than seven months earlier, or at any time within the seven-month stay of discovery. The Court noted that discovery was set to commence following the Court’s ruling on Defendants’ prior immunity motions—but again stayed

² The Court granted Mayor McCrory’s motion for judgment on the pleadings the same week. *See* Dkt. 125.

all discovery in light of Defendants’ newest motion in accordance with Local Rule 16(b)(3)(B). *See* Dkt. 126 at 1 n.2 (noting that “the stay was due to be lifted.”). Defendants thus obtained their second delay of discovery in the case.

4. The Court Rules on the Pending Immunity Motion Yet Again—Only for Defendants to File Another Such Motion on the Eve of Discovery.

Three months later, this Court resolved Defendants’ sole pending immunity motion on June 17, 2025. *See* Dkt. 152. The Court then lifted the discovery stay in this action and rescheduled the initial case management conference for July 25, 2025. *See* Dkt. 153. Once again, just a week before the scheduled conference, Defendants filed a series of summary judgment motions—none fully dispositive—raising a third round of qualified immunity defenses to a subset of claims. Defendants filed this additional round of arguments mere *minutes* before the initial case management conference, while both parties were already on the conference line. *See* Dkts. 153, 155–59 (the “Pending Motions”). Defendants’ latest immunity motions challenged more of the allegations they were put on notice of by the Amended Complaint over one year before. *Compare* Dkt. 60 *with* Dkts. 155–59. No new facts had been asserted; no new claims had been raised. *Id.* Again, Defendants offered no explanation for failing to raise all qualified immunity claims at the same time. Nonetheless, this Court reimposed a stay of discovery and cancelled the case management conference pursuant to Local Rule 16(b)(3)(B). Dkt. 162. Now, seven months later, those motions are pending and the discovery conference has yet to be rescheduled. No discovery has taken place to date because Defendants manufactured a third delay of discovery in this case.

C. These Unjustified Delays Create a Genuine Risk of Spoliation.

Defendants’ strategy of staggering qualified immunity motions has effectively delayed discovery for more than twenty months, creating a genuine risk of spoliation of critical evidence. The Amended Complaint references sworn testimony that at least two of the individual defendants

in this case have previously destroyed evidence of their own misconduct. Dkt. 60 ¶¶ 218–20, 366 (“[F]ormer LPD Officer Maytrice Shields testified that she watched Defendants Agee and Henderson [...] deleting incriminating bodycam footage that showed them brutally dragging a Black woman out of her car during a traffic stop[.]”); *see also Harris v. Dobbins*, No. 22-cv-479, Dkt. 126-1 ¶ 21 (S.D. Miss. 2022) (testimony of Maytrice Shields) (“I personally witnessed Investigator Agee throw the only copy of her report in the trash.”). This misconduct violates even the City of Lexington’s own document retention policies. *Id.*, Dkt. 61-5 at 31 (“Officers shall record enforcement related contact which include: traffic stops, pedestrian stops, detentions and radio calls”). Although Defendants Agee and Henderson are no longer employed by LPD, the culture of corruption they nurtured remains embedded within the Department. That culture is evidenced by the findings of the Department of Justice following an in-depth investigation into the policies and practices of LPD. *See generally* U.S. Dep’t of Just., Investigation of the Lexington Police Department and the City of Lexington, Mississippi (2024). The more time that passes before the commencement of discovery, the more opportunity Defendants have to continue their pattern of obscuring evidence of their misdeeds.

D. Various Discrete Incidents of Clearly Alleged Constitutional Violations Are Not Currently Challenged on Qualified Immunity by Any Defendant—or Challenged by Motion Practice at All.

All Defendants have now raised immunity defenses and one thing is certain: this case will proceed to discovery regardless of the outcome of the pending motions. The Pending Motions challenge only a subset of the claims against Defendants. *See* Dkts. 156, 160. Other claims have already survived Defendants’ assertions of qualified immunity. *See* Dkts. 122, 152. And still more claims have never been challenged by Defendants at all in the two years of this litigation. The claims that are not implicated by the Pending Motions or have survived Defendants’ prior assertions of qualified immunity (the “Ripe Claims”) are ripe—and indeed overdue—for

discovery. *See* Ex. A (chart identifying the Ripe Claims). At this time, Plaintiffs seek discovery only from the individual defendants; they do not seek discovery from the City of Lexington on their *Monell* claims. The Ripe Claims are listed in Exhibit A and summarized here:

1. John Adams — June 2023 False Arrest Claim. Mr. Adams asserts a false arrest claim against Agee for a June 2023 incident. Dkt. 60 ¶¶ 498–504. This claim has already survived Agee’s prior motions. Dkt. 122 at 14–16; *id.* at 39 (“Agee’s motions to dismiss and for summary judgment are denied as to the false arrest claims of . . . John Adams[.]”). No other Defendant is involved in this claim, and it is not the subject of any Pending Motion. *See* Dkts. 156, 160.

2. Dwayne Stewart — December 2023 Excessive Force Claim. Mr. Stewart asserts an excessive force claim against Agee and Simpson for a December 2023 incident. *See* Dkt. 60 ¶¶ 455–59. This claim has already survived Agee’s prior motions. *See* Dkt. 122 at 21 (“Agee’s motion as to Stewart will be denied.”); *id.* at 39. It is not the subject of any Pending Motion. *See* Dkts. 156, 160.

3. Crystal Wallace — May 2021 Excessive Force Claim. Ms. Wallace asserts an excessive force claim against Dobbins from a May 28, 2021 incident. *See* Dkt. 60 ¶¶ 435–46. No other Defendant is involved in this claim, and it is not the subject of Dobbins’s pending motion. *See* Dkt. 160.

4. Frederick Johnson — Four Claims Not Subject to Any Pending Motion. Mr. Johnson asserts four separate claims that are not the subject of any pending motion and/or have survived prior challenges.

- a. First, Mr. Johnson asserts an excessive force claim against Dobbins for a July 2021 incident. *See* Dkt. 60 ¶¶ 483–84. No other Defendant is involved

in this claim, and it is not the subject of Dobbins’s pending motion. *See* Dkt. 160.

- b. Second, Mr. Johnson asserts an excessive force claim against Epps for an October 6, 2022 incident. *See* Dkt. 60 ¶¶ 485–87. That claim was not challenged in Epps’s prior motion. *See* Dkt. 152 at 20 (“Johnson has asserted an excessive force claim against Epps relating to an October 6, 2022 incident . . . Epps has not moved for summary judgment on that claim.”). It is not the subject of any Pending Motion. *See* Dkts. 156, 160.
- c. Third, Mr. Johnson asserts a false arrest claim against Epps for a February 27, 2023 incident. *See* Dkt. 60 ¶¶ 625–27. This claim has already survived Epps’s prior motion. *See* Dkt. 152 at 20–23. It is not the subject of any Pending Motion. *See* Dkts. 156, 160.
- d. Fourth, Mr. Johnson asserts an excessive force claim against Walters for an incident that occurred on June 22, 2023 or July 9, 2023. *See* Dkt. 60 ¶¶ 491–97, 624. That claim is not the subject of a Pending Motion. *See* Dkt. 156 at 14 (challenging only false arrest claim from this incident); Dkt. 160.³

5. Leontay Ellington — Three Claims Not Subject to Any Pending Motion. Mr. Ellington asserts three separate claims that are not the subject of any pending motion and/or have survived prior challenges.

³ Walters’s pending motion challenged Mr. Johnson’s false arrest claim stemming from this arrest solely on *Heck* grounds. Dkt. 156 at 14. Plaintiffs conceded that *Heck* likely bars Mr. Johnson’s false arrest claim. Dkt. 186 at 26. That determination does not have any impact on Mr. Johnson’s excessive force claim, because proof of a valid conviction does not invalidate an excessive force claim. *Cf. Heck v. Humphrey*, 512 U.S. 477, 486–87 (1994) (explaining that the conviction underlying an arrest must be invalidated to recover for false arrest).

- a. First, Mr. Ellington asserts an excessive force claim against Henderson, Epps, and Newell for a September 2022 incident. *See* Dkt. 60 ¶¶ 470–82. This excessive force claim was not the subject of Epps’s prior motion. *See* Dkt. 152 at 2–3 n.2 (describing this claim and noting that “Epps has not argued for summary judgment on either the false arrest or excessive force claims . . . related to this alleged incident”). It is not the subject of a Pending Motion. *See* Dkts. 156, 160.
- b. Second, Mr. Ellington asserts a false arrest claim against Henderson, Epps, and Newell for the September 2022 incident described above. Dkt. 60 ¶ 582. This false arrest claim was not the subject of Epps’s prior motion. *See* Dkt. 152 at 2–3 n.2. It is not the subject of any Pending Motion. *See* Dkts. 156, 160.
- c. Third, Mr. Ellington asserts a false arrest claim against Agee for a June 22, 2023 incident. *See* Dkt. 60 ¶¶ 583–90. This claim has already survived Agee’s prior motion. *See* Dkt. 122 at 11–14. No other Defendant is involved in this claim, and it is not the subject of a Pending Motion. *See* Dkts. 156, 160.

6. Marcus Young — Two Claims Not Subject to Any Pending Motion. Mr. Young asserts two separate claims that are not the subject of any pending motion and/or have survived prior challenges.

- a. First, Mr. Young asserts a false arrest claim against Dobbins for a March 2021 incident. *See* Dkt. 60 ¶¶ 523–26. This claim is not the subject of Dobbins’s pending motion. *See* Dkt. 160.⁴
- b. Second, Mr. Young asserts an excessive force claim against Epps for a May 2023 incident. *See* Dkt. 60 ¶¶ 408–17. This claim has already survived Epps’s prior motion. *See* Dkt. 152 at 12–13. No other Defendant is involved in this claim, and it is not the subject of any Pending Motion. Dkts. 156, 160.

7. Tyqwon Walden — Late 2021 False Arrest Claim. Mr. Walden asserts a false arrest claim against Dobbins stemming from an incident in late 2021. *See* Dkt. 60 ¶¶ 592–98. No other Defendant is involved in this claim, and it is not the subject of Dobbins’s pending motion. *See* Dkt. 160; *see also* Dkt. 184 at 9–10 (“Tyqwon Walden has asserted false arrest claims against Dobbins relating to two incidents. Dobbins has moved for summary judgment only as to Walden’s claim based on [the late 2021 incident described in paragraph 591 of the Amended Complaint].”).

8. Damion Levy — September 2023 False Arrest Claim. Mr. Levy asserts a false arrest claim against Henderson stemming from an incident in September 2023. *See* Dkt. 60 ¶¶ 580–81. It is not the subject of a Pending Motion. *See* Dkts. 156, 160.

ARGUMENT

Discovery is the default mechanism by which parties proceed in litigation—and the law presumes that litigants are entitled to it. *See Ruiz v. Fiesta Mart, L.L.C.*, No. 22-20489, 2023 WL 5031489, at *2 (5th Cir. Aug. 7, 2023) (“[T]he rules start with the presumption that parties will at least be given an *opportunity* to conduct discovery.”); *U.S. ex rel. Magee v. Lockheed Martin Corp.*,

⁴ Epps challenged this claim in his prior motion, Dkt. 124 at 11, but the Court clarified that Dobbins is the only individual defendant for this claim. Dkt. 152 at 12–13 n.9.

No. 1:09CV324-HSO-JMR, 2010 WL 2816658, at *3 (S.D. Miss. July 16, 2010) (noting the “strong presumption in favor of discovery”) (citing *United States v. Gieger Transfer Serv.*, 174 F.R.D. 382, 385 (S.D. Miss. 1997)). Discovery stays prompted by a defendant’s invocation of qualified immunity are a limited exception to that rule. *See Carswell v. Camp*, 54 F.4th 307, 310 (5th Cir. 2022); *see also Knoth v. Sw. Miss. Reg’l Med. Ctr.*, No. 18-CV-49, 2019 WL 6110056, at *1 (S.D. Miss. Aug. 9, 2019) (explaining that stays of discovery are “the exception rather than the rule”). But “whether to permit any portion of the case to proceed pending resolution of the [qualified immunity] motion” is a decision “committed to the discretion of the court,” L.U. Civ. R. 16(b)(3)(B), and courts routinely exercise that discretion to permit discovery on claims and issues that are unrelated to pending qualified immunity motions. Given Defendants’ history of needlessly delaying discovery in this case through the piecemeal filing of qualified immunity motions, the Court should, in its discretion, partially lift its stay of discovery and permit discovery on the Ripe Claims.

I. The Court Should Lift the Discovery Stay as to the Ripe Claims to Promote Judicial Efficiency and Prevent Further Gamesmanship by Defendants

The Federal Rules of Civil Procedure contemplate that parties advance to discovery as a matter of course following the pleadings stage. This promotes judicial efficiency and guards against the risk that evidence will grow stale with the passage of time. Stays of discovery pending resolution of dispositive motions are the exception rather than the rule. *See Knoth v. Sw. Miss. Reg’l Med. Ctr.*, No. 18-CV-49, 2019 WL 6110056, at *1 (S.D. Miss. Aug. 9, 2019) (“Had the Federal Rules contemplated that a motion to dismiss under Fed. R. Civ. P. 12(b) [] would stay discovery, the Rules would contain a provision to that effect[.]”) (citation modified); *see also James J. Flanagan Shipping Corp. v. Port of Beaumont*, No. 20-CV-191, 2020 WL 4365595, at

*1–2 (E.D. Tex. July 29, 2020) (acknowledging that such stays are “unlikely to improve efficiency with respect to the volume or focus of discovery”) (collecting cases).

District courts have discretion to advance discovery notwithstanding any pending motions, including motions that raise a qualified immunity defense. *See* L.U. Civ. R. 16(b)(3)(B) (“[W]hether to permit any portion of the case to proceed pending resolution of the [qualified immunity] motion [is a] decision[] committed to the discretion of the court, upon a motion by any party seeking relief.”). In deciding whether to exercise that discretion to order a stay of discovery pending resolution of a dispositive motion, courts must balance “the harm produced by the delay in discovery against the possibility that the motion will be granted and entirely eliminate the need for such discovery.” *Shenzhen Tange Li'an E-Com. Co. v. Drone Whirl LLC*, No. 1:20-CV-00738-RP, 2021 WL 1080795, at *2 (W.D. Tex. Mar. 19, 2021); *see also Landry v. Air Line Pilots Ass'n Int'l AFL-CIO*, 901 F.2d 404, 436 (5th Cir. 1990) (cautioning that a stay is warranted only where a pending motion “might preclude the need for the discovery altogether thus saving time and expense”).

Where a pending motion would not dispose of an entire case, courts should—and routinely do—permit discovery on unrelated claims. *See, e.g., Harris v. DeSoto Cnty.*, No. 24-CV-289, 2025 WL 262443, at *2 (N.D. Miss. Jan. 22, 2025) (“Only Thompson has asserted a lack of jurisdiction, and although that is a threshold issue as to the claims against her, if successful it would not dispose of the entire case or eliminate the need for discovery.”); *Smith v. Hyundai Motor Am.*, No. 23-cv-604, 2024 WL 1020572 at *1 (S.D. Miss. Mar. 8, 2024) (denying motion to stay discovery because “it is not certain that the resolution of the pending [m]otion for [s]ummary [j]udgment will dispose of the entire case”); *see also N. Miss. Med. Ctr., Inc. v. Quartiz Techs.*, No. 23-cv-00003, 2024 WL

2262684, at *6 (N.D. Miss. May 17, 2024) (weighing the fact that “[t]he limited issue on appeal will not fully resolve this case” against a discovery stay).

The equities here favor lifting the discovery stay as to the Ripe Claims. There is *no possibility* that the Ripe Claims could be limited or dismissed by the Pending Motions—because they stand unchallenged or have already survived challenge. *See supra* Section D (describing the Ripe Claims); *see also* Exhibit A (cataloguing the relevant procedural history for each Ripe Claim). As such, there is no chance that the pending motions would limit the discovery ultimately available to Plaintiffs on the Ripe Claims. In fact, partially lifting the discovery stay would promote judicial efficiency because the Ripe Claims are guaranteed to go forward to discovery regardless of the outcome of the Pending Motions. *See, e.g., St. Martin v. Jones*, No. 08-1047, 2008 WL 4534398, at * 3 (E.D. La. Oct. 2, 2008) (noting that a “partial stay is better for [both] judicial efficiency and economy” so that “the remaining defendants and the plaintiff may still have a meaningful exchange of discovery”). Because Defendants will have to engage in discovery on the Ripe Claims regardless, they are not prejudiced by beginning that discovery now.

On the other hand, any further delay is inherently prejudicial to Plaintiffs—who have been forced to wait more than twenty months to begin discovery in this action. “Delay can lead to the loss of evidence and duly frustrate a Plaintiff’s ability to put on an effective case . . . With the passage of time, witnesses become unavailable, memories of conversations and dates fade, and documents could be lost or destroyed.” *Alcala v. Tex. Webb Cnty.*, 625 F. Supp. 2d 391, 405 (S.D. Tex. 2009); *see also McGirt v. Oklahoma*, 591 U.S. 894, 971 (2020) (Roberts, J., dissenting) (explaining that the odds of successfully prosecuting a claim “are hampered by the passage of time,

stale evidence, fading memories, and dead witnesses”).⁵ The twenty-month discovery delay in this case is entirely the product of Defendants’ gamesmanship; rather than raise all of their qualified immunity arguments “as expeditiously as practicable” as required by Local Rule 16(b)(3)(A), they raised them in a series of motions, each filed on the eve of discovery. *See supra* Section B. This risk of evidence degradation caused by Defendants’ intentional delay alone justifies lifting the discovery stay as to the Ripe Claims.

The prejudice to Plaintiffs is particularly severe here, because Plaintiffs have alleged that Defendants’ spoliation may compromise their ability to put on an effective case. A risk of spoliation weighs strongly in favor of permitting discovery. *See Allstate Ins. Co. v. Hineman*, No. H-17-1794, 2017 WL 7596917, at *2–3 (S.D. Tex. Oct. 11, 2017) (granting motion for expedited discovery given risk of spoliation); *Liberty Access Techs. Licensing LLC v. Wyndham Hotels & Resorts, Inc.*, No. 24-CV-00125, 2024 WL 4729750, at *3 (E.D. Tex. Nov. 8, 2024) (denying discovery stay because “a stay would not mitigate Plaintiff’s concerns about spoliation of evidence, which is a reasonable risk with any delay.”). Plaintiffs’ concerns that Defendants may destroy relevant evidence prior to discovery are well-founded because Defendants have previously destroyed video and paper evidence in a related case. *See supra* Section C. Additionally, several Defendants have either quit or have been forced to leave LPD—further limiting Plaintiffs’ ability to seek evidence of their misconduct. *See id.*

⁵ Body camera footage, use-of-force reports, internal communications, and personnel records are categories of evidence that degrade or disappear with time, particularly in a department that has demonstrated active willingness to destroy them. However, even absent any malfeasance, the degrading nature of memories begs for prompt discovery in a case such as this one, where public officers who interact with numerous citizens daily will be forced to answer with specificity as to several of those distinct interactions. *See supra* Section C; *see also Alcala*, 625 F. Supp. 2d at 406–07 (“[C]onsiderable time has already elapsed since the alleged events that gave rise to this suit took place . . . After considering the various interests in this case, the Court finds that a stay of the entire case is not warranted.”).

Their departure does not mitigate spoliation risk. Instead, it compounds it. These officers leave behind a culture of, at best, shoddy record-keeping practices, and at worst, training on how to manufacture misleading or incomplete evidence. *See* U.S. Dep’t of Just., Investigation of the Lexington Police Department and the City of Lexington, Mississippi at 39 (2024) (“[LPD’s] storage and record-keeping are haphazard and insufficient. Officers are poorly trained. And supervisors fail to hold officers—or themselves—accountable for violating people’s rights.”); *see also* Dkt. 70-1 ¶ 38 (“LPD has been trained to manipulate and/or manufacture false traffic stops and manufacture false warrants, falsifying reports.”). Given Defendants’ well-documented history of failing to maintain adequate records and intentionally destroying some of the records they do maintain, spoliation concerns provide further reason to partially lift the discovery stay in this case.

The balancing test resolves entirely in favor of allowing Plaintiffs to proceed with discovery on the Ripe Claims. Given Plaintiffs’ overarching right to proceed to discovery, the fact that the Ripe Claims are not challenged by any pending dispositive motion, and Plaintiffs’ well-founded concerns regarding potential spoliation and degradation of witness memory and other key evidence, the Court should lift its stay of discovery as to the Ripe Claims.

II. Qualified Immunity Does Not Preclude Discovery for *All Claims* Against *All Defendants*—Only Those Claims That Specifically Implicate the Qualified Immunity Defense.

The mere fact that certain Defendants have belatedly asserted qualified immunity in the Pending Motions—long after this Court resolved their initial qualified immunity motions and sought to commence discovery—is irrelevant to the discovery Plaintiffs now seek. *See* Dkts. 156, 160. Plaintiffs are seeking to lift this Court’s stay of discovery *solely* as to claims that are unchallenged by Defendants’ outstanding motions or that have already survived every Defendant’s assertion of qualified immunity. *See supra* Section D; Ex. A.

A. No Governing Authority Requires a Stay of Claims Unrelated to Pending Qualified Immunity Defenses.

No authority requires a blanket stay of *all* claims in a case simply because one defendant has filed a motion invoking qualified immunity as a defense to *some* claims. To the contrary, courts expressly note that discovery should proceed against defendants who have not asserted qualified immunity or whose immunity defenses have already been resolved by the court. *See, e.g., Davis v. Matagorda Cnty.*, No. 18-CV-00188, 2019 WL 1924532, at *2 (S.D. Tex. Apr. 30, 2019) (“Because a district court retains jurisdiction to proceed on unrelated claims, it is fully within a judge’s discretion to permit discovery to continue on . . . claims brought against parties who have not moved for dismissal based on qualified immunity.”); *Harris v. City of Balch Springs*, 33 F. Supp. 3d 730, 734 (N.D. Tex. 2014) (“[T]here simply is no reason to delay discovery . . . Waiting to allow discovery on issues not related to qualified immunity unnecessarily delays resolution of this case.”); *Terwilliger v. Stroman*, No. 16-CV-599, 2020 WL 3490222, at *3 (W.D. Tex. June 26, 2020) (“*Iqbal* does not stand for the idea that all discovery for all defendants must be stayed while waiting for resolution of qualified immunity.”).⁶

These authorities make clear that—in line with Plaintiffs’ overarching right to proceed on their claims—district courts routinely permit ordinary discovery to proceed unless implicated by the qualified immunity defense. Where a defendant has not asserted the defense—or where the Court has already denied it and no appeal was noticed—that defendant stands in the same position as any other civil litigant, entitled to neither the protections the doctrine affords nor the discovery shield that attaches to its invocation. *See Williams v. Biggs*, No. CV 21-333, 2022 WL 834781, at

⁶ In fact, *many* courts in the Fifth Circuit and beyond have held the same. *See, e.g., Rhoten v. Stroman*, No. 16-CV-00648, 2020 WL 3545661, at *2 (W.D. Tex. June 30, 2020); *Saenz v. City of El Paso*, No. 14-CV-244, 2015 WL 4590309, at *2 (W.D. Tex. Jan. 26, 2015); *Eaton v. Stroman*, No. 16-CV-00871, 2020 WL 3545736, at *3 (W.D. Tex. June 30, 2020); *Montoya v. Cty. & Cnty. of Denver*, No. 16-cv-01457, 2021 WL 8087380, at *4 (D. Colo. July 27, 2021).

*3 (E.D. La. Mar. 21, 2022) (“The government official who does not raise qualified immunity in a motion to dismiss cannot be said to be unduly burdened if he foregoes an opportunity to address the issue.”) (citation modified). As to the Ripe Claims, Defendants have either failed to assert a qualified immunity defense or had such a defense denied by this Court. *See supra* Section D. As the docket reflects, Defendants have not noticed any interlocutory appeal of prior denials of qualified immunity on the Ripe Claims, and the deadlines for filing such appeals have since passed. *See* Fed. R. App. P. 4(a)(1)(A). Accordingly, Defendants cannot use failed or unasserted immunity defenses to shield themselves from discovery.

B. *Carswell* Reaffirms this Principle—and Encourages a Close Examination of Claims for Genuine Interference with the Immunity Defense.

The Fifth Circuit’s decision in *Carswell v. Camp*, 54 F.4th 307 (5th Cir. 2022), reaffirms this approach to qualified immunity and discovery by requiring district courts to specifically analyze all pending claims for *genuine* interference with a particular defendant’s immunity defense. In *Carswell*, the plaintiff sought discovery, including the deposition of government officials, while motions in which those defendants asserted qualified immunity on related claims were not yet resolved. *See Carswell*, 54 F.4th at 310. In that context, “the Court ruled out even ‘minimally intrusive discovery’ against official defendants before a ruling that plaintiff had met his burden to overcome the qualified immunity defense at the pleading stage.” *See id.* at 313.

Carswell’s holding rested on a specific and narrow concern: the unique strategic burdens that deposition discovery imposes on a dual-capacity defendant—a person who is simultaneously a fact witness and a defendant with a pending immunity claim. The Fifth Circuit reasoned that such a defendant “must be particularly careful in a deposition about how its answers can be used against him in not one but two ways,” and that “[t]he stakes differ substantially.” *Id.* Where the dual-capacity burden that *Carswell* identified does not exist, *Carswell* does not apply.

Carswell also focused on the unique strategic complications posed by depositions of municipal officials who were simultaneously litigating *Monell* issues and qualified immunity. Nothing in the opinion suggests that these concerns map neatly onto written discovery, particularly requests for production, which do not require any real-time testimonial exposure. *See id.* (barring plaintiff from “proceed[ing] with discovery on her *Monell* claim . . . by noticing depositions for all eight of the individual defendants asserting qualified immunity”). And to avoid any such concern, Plaintiffs do not currently seek discovery on their pending *Monell* claims.⁷ Notably, *Carswell* says nothing about individual co-defendants who do not have dual-capacity status—meaning their claims should proceed absent demonstrated interference with a specific defendant’s assertion of qualified immunity. *See id.*

Properly understood, *Carswell* requires courts to assess whether discovery into non-qualified immunity claims or non-qualified immunity defendants would necessarily implicate the same facts, events, or testimony as any pending qualified immunity motion. This is precisely the test that several courts in the Fifth Circuit have now adopted. *See Miller v. LeBlanc*, No. 21-353, 2022 WL 17490971, at *4 (M.D. La. Dec. 7, 2022) (staying discovery because, under the facts of the case, it was impracticable “to allow discovery to proceed against a co-defendant that has not raised a defense of qualified immunity without prejudicing the defendants who have raised the defense of qualified immunity”) (citation omitted). As such, courts continue to authorize discovery

⁷ Plaintiffs do not seek *Monell*-related discovery at this time. They seek discovery only from individual defendants for their personal involvement in constitutional violations for which neither they nor any other defendant have mounted a qualified immunity challenge—or any challenge at all. *See supra* Section D. *Carswell* does not bar discovery in this context. *Cf. Harris v. Dobbins*, No. 22-CV-479, 2022 WL 17159441, at *2 (S.D. Miss. Nov. 22, 2022) (rejecting request for discovery pending a qualified immunity determination because “Plaintiffs propose pursuing evidence related to the Municipal Defendants’ customs, training, and patterns of misconduct as well as taking 30(b)(6) depositions on these topics”).

that is not related to the qualified immunity defense even after *Carswell*. See, e.g., *Greenwald v. Cantrell*, No. CV 22-2371, 2024 WL 5043080, at *1 (E.D. La. Dec. 9, 2024) (“[A] district court retains jurisdiction to proceed on unrelated claims . . . as well as those claims brought against parties who have not moved for dismissal based on qualified immunity . . . In light of this, the Court will permit Plaintiff to proceed only with written discovery”).

Even cases that seem to impose a categorical discovery stay after *Carswell* are in fact applying its functional test. They conclude that discovery cannot move forward because the facts relevant to the non-qualified-immunity claims are inseparable from those underlying the qualified-immunity claims. See, e.g., *Educ. Explosion, Inc. v. La. Bd. of Elementary & Secondary Educ.*, No. 25-163, 2026 WL 105017, at *3, 4 (M.D. La. Jan. 14, 2026) (“Consistent with *Carswell*, the undersigned has stayed all discovery where a defendant has alleged qualified immunity and there was no practical manner to allow discovery to proceed against a co-defendant that has not raised a defense of qualified immunity without prejudicing the defendants who have raised the defense of qualified immunity.”).

Categorical stay cases generally involve a single-day or single-transaction incident in which discovery into any one claim or against any one defendant would inevitably implicate the defense of a qualified-immunity-asserting official for the very same incident. See, e.g., *Clark v. Hotard*, No. 22-326, 2024 WL 2741221, at *1 (M.D. La. May 28, 2024) (denying discovery where the “underlying incident” was a single May 2022 stop “after exiting a gas station”); *Varnado v. Carboni*, No. 24-133, 2024 WL 4314794, at *1 (M.D. La. 2024) (denying discovery into constitutional claims against several police officers in connection with an incident occurring in plaintiff’s home); *Nevarez v. Coleman*, No. 21-1855, 2023 WL 5034645, at *1 (E.D. La. Aug. 8, 2023) (denying discovery into “case aris[ing] out of the tragic fatal shooting of Miguel Nevarez

on the lawn of his own home [on October 13, 2020]”); *Miller*, 2022 WL 17490971, at *1 (denying discovery into conduct on a single day related to “apparent drug overdose”); *see also Asante-Chioke v. Dowdle*, 103 F.4th 1126, 1127 (5th Cir. 2024) (approving discovery stay into claims arising from shooting of “visibly distressed” man).

In each of the cases discussed above, the courts did not mechanically stay all discovery because *Carswell* required it—they stayed discovery because the underlying facts were inseparable from the facts on which the qualified immunity defense rested. *See Asante-Chioke*, 103 F.4th at 1131 (approving discovery stay because “there were multiple alleged shooters from at least two different law enforcement agencies, thirty-six rounds fired, and a dispute as to whether a single defendant (Dowdle) used deadly force [...and so] the district court’s failure to limit discovery was tantamount to the denial of qualified immunity”); *Miller*, 2022 WL 17490971, at *4 (“The underlying factual allegations are so intertwined that allowing discovery to proceed solely against McMullen would inherently, and inappropriately, require LeBlanc and Vannoy to participate in the discovery process.”). Where discovery into other defendants or other claims would have no bearing on any defendant’s pending assertion of qualified immunity, there simply is no barrier to discovery as to those claims. That is true for the Ripe Claims.

C. Plaintiffs Seek Discovery on Claims That Have Nothing to Do with Defendants’ Assertion of Qualified Immunity, and Thus the Ripe Claims Should Proceed to Discovery Under *Carswell*.

While this case alleges a continuous series of similar violations by LPD and its officers against Black residents of Lexington, this is a multi-year, multi-plaintiff, multi-incident case. The Ripe Claims arise from incidents that share no transaction or occurrence with any claim currently subject to a pending immunity motion. *See supra* Section D. *Carswell* therefore weighs for a partial lift of the discovery stay, not against it. The Pending Motions asserting qualified immunity are for Defendants Burrell, Henderson, Newell, Simpson, Walters, Dobbins, and the City of Lexington.

See Dkts. 156, 160. Neither of the Pending Motions assert qualified immunity premised on the same events as the Ripe Claims—which occurred at different times, on different dates, at different locations, and with different underlying facts. *Compare* Dkts. 156, 160, *with* Ex. A.

By way of example, Mr. Stewart has asserted an excessive force claim against Agee and Simpson stemming from an incident in December 2023. *See* Dkt. 60 ¶¶ 455–59. This claim has already survived Agee’s qualified immunity motion. *See* Dkt. 122 at 21 (“Agee’s motion as to Stewart will be denied.”). And Simpson did not challenge Mr. Stewart’s claim in his current motion. *See* Dkt. 156 at 3–20 (raising no challenge to this claim). As such, there is no pending qualified immunity motion pertaining to this claim, and no risk of unduly burdening Simpson with unwarranted discovery. *See Williams*, 2022 WL 834781, at *3 (“The government official who does not raise qualified immunity in a motion to dismiss cannot be said to be unduly burdened[.]”) (citation modified).

Similarly, Ms. Wallace has asserted an excessive force claim against Dobbins for his conduct on May 28, 2021. *See* Dkt. 60 ¶¶ 435–46. This claim is not the subject of Dobbins’s qualified immunity defense. *See* Dkt. 160 (raising no challenges to the claim raised by Ms. Wallace). No other Defendant is involved in this claim. *See* Dkt. 60 ¶¶ 435–46. Instead, Dobbins’s qualified immunity defense focuses on different episodes with different Plaintiffs, dates, times, and factual and legal circumstances. *Compare* Dkt. 60 ¶¶ 435–46 (Ms. Wallace alleging that she suffered a miscarriage because Dobbins intentionally tripped her on May 28, 2021, in a residential driveway while she was pregnant) *with* Dkt. 160 (Dobbins’s pending motion). The same is true for all other Ripe Claims on which Plaintiffs seek discovery. *See supra* Section D.

These discrete factual and temporal landscapes establish that the discovery Plaintiffs seek is appropriate. *Williams*, 2022 WL 834781, at *3 (permitting discovery where qualified immunity did not apply to all claims against all defendants in multi-defendant action).

CONCLUSION

Defendants have filed three rounds of successive qualified immunity motions—holding each until the eve of discovery—in order to extend this Court’s stay of discovery indefinitely and prevent Plaintiffs from accessing the evidence necessary to prove their claims. This gamesmanship is contrary to the ordinary course of litigation and flouts this Court’s requirement that government defendants raise immunity defenses as soon as practicable. For the foregoing reasons, Plaintiffs respectfully request that the Court (1) lift its stay of discovery in part to allow discovery as to the Ripe Claims, and (2) schedule a case management conference to establish deadlines for discovery on those claims.

SUBMITTED this the 20th day of
March, 2026.

Respectfully Submitted,
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CERTIFICATE OF SERVICE

I, Soumya Dayananda, do hereby certify on this day, I filed the foregoing MOTION using the Court's CM/ECF system, which sent notification to all counsel of record in this matter.

THIS 20th day of March, 2026.

/s/ Soumya Dayananda

Soumya Dayananda

EXHIBIT A

Plaintiff	Defendant(s)	Claim Type	Incident Date	Amended Complaint	Claim Status	Notes
Crystal Wallace	Dobbins	Excessive Force	May 28, 2021	435–46	Never Challenged	
Damion Levy	Henderson	False Arrest	September 2023	580–81	Never Challenged	
Dwayne Stewart	Agee, Simpson	Excessive Force	December 2023	455–59	Survived Challenge	Survived prior motion practice. Dkt. 122 at 21.
Frederick Johnson	Dobbins	Excessive Force	July 2021	483–84	Never Challenged	
Frederick Johnson	Epps	Excessive Force	October 6, 2022	485–47	Never Challenged	
Frederick Johnson	Walters	Excessive Force	June 22, 2023 or July 9, 2023	491–97, 624	Never Challenged	
Frederick Johnson	Epps	False Arrest	February 27, 2023	625–27	Survived Challenge	Survived prior motion practice. Dkt. 152 at 20–23.
John Adams	Agee	False Arrest	June 2023	498–504	Survived Challenge	Survived prior motion practice. Dkt. 122 at 14–16.
Leontay Ellington	Henderson, Epps, Newell	False Arrest	September 2022	582	Never Challenged	
Leontay Ellington	Henderson, Epps, Newell	Excessive Force	September 2022	470–82	Never Challenged	
Leontay Ellington	Agee, Henderson	False Arrest	June 22, 2023	583–90	Survived Challenge	Survived prior motion practice. Dkt. 122 at 11–14.
Marcus Young	Dobbins	False Arrest	March 2021	523–26	Never Challenged	Epps challenged this claim in a prior motion, <i>see</i> Dkt. 124 at 11, but the Court clarified that Epps is not a defendant for this claim. Dkt. 152 at 12–13 n.9. It has not been challenged by Dobbins, the only individual defendant.
Marcus Young	Epps	Excessive Force	May 2023	408–17	Survived Challenge	Survived prior motion practice. Dkt. 152 at 12–13.
Tyqwon Walden	Dobbins	False Arrest	Late 2021	592–98	Never Challenged	