

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

|   |          |                                    |
|---|----------|------------------------------------|
| <b>ELIZABETH GOODWIN,</b>                     | <b>:</b> | <b>Case No. 1:15-cv-0027</b>       |
| <b>Administrator of the Estate of Tanisha</b> | <b>:</b> |                                    |
| <b>Anderson, Deceased</b>                     | <b>:</b> |                                    |
|   | <b>:</b> | <b>Judge Donald C. Nugent</b>      |
| <b>Plaintiff,</b>                             | <b>:</b> |                                    |
|   | <b>:</b> |                                    |
| <b>v.</b>                                     | <b>:</b> | <b>PLAINTIFF'S MOTION TO END</b>   |
|   | <b>:</b> | <b>STAY OF PROCEEDINGS AGAINST</b> |
| <b>CITY OF CLEVELAND, et al.</b>              | <b>:</b> | <b>DEFENDANTS ALDRIDGE AND</b>     |
|   | <b>:</b> | <b>MEYERS AND FOR STATUS</b>       |
| <b>Defendants.</b>                            | <b>:</b> | <b>CONFERENCE</b>                  |

Plaintiff moves for a scheduling order requiring Defendants Aldridge and Meyers to answer the Complaint no later than April 25, 2016, and permitting full discovery against these Defendants. This lawsuit was filed against them on January 7, 2015. For the past 14 months the Court has permitted these Defendants to avoid answering the complaint or participating in discovery because of an alleged pending criminal investigation. Meanwhile the family members have waited patiently for justice. No indictments have been issued, and no end is in sight for the criminal investigation. Therefore this Court should order the Defendants to answer the complaint and participate in discovery.

As some of the relevant facts underlying this motion are subject to a protective order Plaintiff suggests that a prompt status conference would help resolve this matter.

**MEMORANDUM**

This case involves the death of Tanisha Anderson after Defendants Aldridge and Meyers used force on her. They were at her residence on November 12, 2014 to assist the unarmed woman go to the hospital for mental health treatment. She was not a criminal. She was simply

in need of medical treatment. Tanisha's death was ruled a homicide by the Cuyahoga County Coroner on January 2, 2015. Depo Ex. 4: Autopsy Report, RE 40-1, PageID 154. This lawsuit was filed on January 7, 2015. For the past 14 months this Court has permitted Defendants Aldridge and Meyers to avoid answering the complaint because of a pending criminal investigation. When it appeared that the criminal investigation would be timely concluded the stay for the officers did not impose a severe burden since the entity discovery could proceed. Entity discovery is more than half done and case discovery should enter its final phase. That means the officers must now get engaged. The criminal investigation has been repeatedly delayed and it is simply unfair to force the family to hold up their civil case waiting for a criminal investigation that simply does not end.

A stay of a case is an "extraordinary remedy." *F.T.C. v. E.M.A. Nationwide, Inc.*, 767 F.3d 611, 627 (6th Cir. 2014), and generally, pre-indictment requests for a stay in proceedings are denied. *Id.* at 628 ("courts generally do not stay proceedings in the absence of an indictment"). See also, *United States v. Private Sanitation Indus. Ass'n*, 811 F.Supp. 802 (2d Cir. 1992) (noting that the lack of an indictment can be the sole grounds for denial of a motion to stay proceedings). The Sixth Circuit has identified certain factors to balance in deciding whether a stay of civil proceedings is appropriate. This includes:

"1) the extent to which the issues in the criminal case overlap with those presented in the civil case; 2) the status of the case, including whether the defendants have been indicted; 3) the private interests of the plaintiffs in proceeding expeditiously weighted against the prejudice to plaintiffs caused by the delay; 4) the private interests of and burden on the defendants; 5) the interests of the courts; and 6) the public interest."

*Id.* at 627. These factors all weigh against continuing the stay.

The first two factors weigh against continuing the stay because there has been no indictment. Thus there is no criminal case, it remains unclear what crimes the defendants might

be charged with, if any. Without an indictment, there is no basis to determine if the issues presented in a potential, future criminal case will overlap with those in the civil case. The second factor also weighs against a stay because “courts generally do not stay proceedings in the absence of an indictment.” *Id.* at 628. Courts have stated that without an indictment, there tends to be uncertainty in how long a criminal investigation will take and if an indictment will ever occur. See *State Farm Mut. Automobile Ins. Co. v. Beckham-Easley*, 2002 WL 31111766 at \*2 (E.D. Penn.) (unpublished opinion); *Prudential Ins. Co. of America v. Blanton*, 118 F.Supp.3d 980, 984 (N.D. Ohio 2015) (denied stay because there was no indictment and “the ultimate charge and conviction [were] far from certain”); *McCullough v. Krendick*, 2009 WL 2929306 (N.D. Ohio) (denied stay because the criminal case was only in the investigatory stage with no indictment).

Plaintiff will be unduly prejudiced by a continued stay on discovery against the officers as she has a right to pursue her claim in an expedient and just manner. Moreover, courts have stated that “it would be perverse if plaintiffs who claim to be the victims of criminal activity were to receive slower justice than other plaintiffs because the behavior they allege is sufficiently egregious to have attracted the attention of the criminal authorities.” *Sterling National Bank v. A-1 Hotes International, Inc.*, 175 F.Supp. 2d. 573, 575 (2d Cir. 2001). Not only does Tanisha’s family, including her daughter, have permanent emotional distress from her violent and tragic death, but the family should not be punished further for the acts of Defendants by having to wait an unknown period of time for the criminal investigation to conclude before they receive justice.

The burden on the Defendant Officers will be insignificant if the stay is ended. As of now, Defendants Aldridge and Meyers have not been indicted and they are currently back to work as police officers. “Blanket assertions of the privilege against self-incrimination are

generally insufficient to justify a stay, particularly where, as here, the parties seeking the stay have not been indicted.” *Rothstein v. Steinberg*, 2008 WL 5716526, 3 (N.D. Ohio 2008), citing *Koester v. Am. Republic Investments, Inc.*, 11 F.3d 818, 823 (8th Cir. 1993); and *SEC v. Dresser Indus., Inc.*, 628 F.2d 1368, 1376 (D.C.Cir) (en banc), *cert denied*, 449 U.S. 993, 101 S.Ct. 529, 66 L.Ed.2d 289 (1980). They remain free to assert the Fifth Amendment privilege in this civil case if they feel a need to do so.

The interest of the court and the public interest are best served by proceeding with this case. Civil rights cases are often the only way police officers are held accountable. Indeed here, 17 months after using force and causing the death of Tanisha Anderson, the individual officers are facing no criminal charges, all discipline is on hold, and the claims against them in this case have so far gone unanswered. That is not fair to the family or the public and is causing unnecessary delay for the court.

The next round of entity depositions will end on April 21, 2016. Plaintiff therefore requests that the officers be required to answer and participate in all discovery commencing April 25, 2016. As additional facts related to this motion are subject to a protective order Plaintiff suggests a status conference at the earliest convenience of the Court.

Respectfully submitted,

/s/ Alphonse A. Gerhardstein  
Alphonse A. Gerhardstein (0032053)  
Trial Attorney for Plaintiff  
Jennifer L. Branch (0038893)  
Attorney for Plaintiffs  
Gerhardstein & Branch Co. LPA  
432 Walnut Street, Suite 400  
Cincinnati, Ohio 45202  
Tel (513) 621-9100

/s/ David B. Malik  
David B. Malik (0023763)  
Trial Attorney for Plaintiff  
Sara Gedeon (0085759)  
Attorney for Plaintiff  
8437 Mayfield Road, Suite 103  
Chesterland, OH 44026  
(440) 729-8260  
(440) 729-8262 fax

Fax (513) 345-5543  
agerhardstein@gbfirm.com  
jbranch@gbfirm.com

dbm50@sbcglobal.net

**CERTIFICATE OF SERVICE**

I hereby certify that on April 7, 2016, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. I further certify that a copy of the foregoing pleading and the Notice of Electronic Filing has been served by ordinary U.S. mail upon all parties for whom counsel has not yet entered an appearance electronically.

s/ Alphonse A. Gerhardstein  
Attorney for Plaintiff