

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-7090  
Conference Calendar

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ARTHUR LEVERTON ET AL.,

Plaintiffs-Appellees,

versus

THE CITY OF GALVESTON  
POLICE DEPARTMENT ET AL.,

Defendants,

J. TREVINO, Officer, Individually and  
Officially as a Police Officer for the City  
of Galveston, and J. JENNINGS, Officer,  
Individually and Officially as a Police  
Officer for the City of Galveston,

Defendants-Appellants.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. CA-G-92-418  
- - - - -  
(December 15, 1993)

Before GARWOOD, JOLLY, and BARKSDALE, Circuit Judges.

PER CURIAM:\*

Officers Trevino and Jennings appeal the limited discovery order entered by the district court pursuant to Fed. R. Civ. P. 16. Ordinarily, discovery orders are interlocutory and not appealable within the ambit of the final judgment rule. 28

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\* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

U.S.C. § 1291; Gaines v. Davis, 928 F.2d 705, 706 (5th Cir. 1991). There is an exception. Orders which deny "a substantial claim of qualified immunity are immediately appealable under the Cohen collateral order doctrine." Gaines, 928 F.2d at 706 (citing Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 546, 69 S.Ct. 1221, 93 L.Ed. 1528 (1949)). However, the affirmative defense of qualified immunity "does not shield government officials from all discovery but only from discovery which is either avoidable or overly broad." Lion Boulos v. Wilson, 834 F.2d 504, 507-08 (5th Cir. 1987).

Discovery is permitted prior to a ruling on a defendant's motion to dismiss when it:

does not encroach upon his qualified immunity claim. Discovery orders entered when the defendant's immunity claim turns at least partially on a factual question; when the district court is unable to rule on the immunity defense without further clarification of the facts; and which are narrowly tailored to uncover only those facts needed to rule on the immunity claim are neither avoidable nor overly broad. Such orders are not immediately appealable.

Id. at 507-08.

The district court's discovery order was designed to elicit only the identity of all possible defendants, what they allegedly did, and was "narrowly tailored." Id. The discovery order was not an appealable interlocutory order within the ambit of Mitchell v. Forsyth. We are thus without jurisdiction. The appeal is DISMISSED.

IT IS FURTHER ORDERED that the appellants' motion to strike the appendix to the appellees' opening brief is DENIED as unnecessary.