

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 15-60968-CIV-COHN/SELTZER

JENNIFER YOUNG, as the administratrix and  
personal representative of the estate of  
JERMAINE McBEAN,

Plaintiff,

v.

PETER PERAZA, BRAD OSTROFF,  
RICHARD LACERRA, and SCOTT ISRAEL,

Defendants.

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**ORDER STAYING CASE**

**THIS CAUSE** is before the Court upon Defendants' Renewed Motion to Stay Proceedings [DE 46] ("Motion"). The Court has reviewed the Motion, Plaintiff's Response [DE 53], and the record in this case, and is otherwise advised in the premises. For the reasons discussed herein, the Court will grant the Motion and stay this case.

**I. BACKGROUND**

This action arises from the fatal shooting of Jermaine McBean by Defendant Peter Peraza. On July 7, 2015, Defendants filed a motion to stay all proceedings in this case pending a parallel criminal investigation concerning matters underlying this lawsuit. DE 22. The Court denied the motion to stay proceedings without prejudice, finding that Defendants had failed to sufficiently demonstrate "special circumstances" requiring such action. DE 32. The Court noted that Defendants could "renew their request at a later stage in the proceedings upon a material change in circumstances." Id. at 5.

On December 10, 2015, a Broward County grand jury returned an indictment against Defendant Peraza, charging him with first degree felony manslaughter with a firearm for the death of Jermaine McBean. See DE 46-1. Subsequently, Defendants filed their Renewed Motion to Stay Proceedings, asserting that “special circumstances” now exist to warrant a stay of the instant civil action. DE 46 at 3–8. Plaintiff agrees that a stay of this matter is appropriate. DE 52 at 2; DE 53 at 6–7. In her Response to the Motion, Plaintiff acknowledges that, although the decision to stay the proceeding is ultimately within the Court’s discretion, “the facts now attending this matter would appear to arise to ‘special circumstances’ justifying a stay.” Id.

## II. DISCUSSION

A district court has the inherent and discretionary power to stay a case before it. See Landis v. N. Am. Co., 299 U.S. 248, 254–55 (1936). Where a defendant moves for a stay of a civil case because of parallel criminal proceedings, a district court may deny the motion unless the defendant shows that “special circumstances” require a stay. United States v. Lot 5, Fox Grove, Alachua Cnty., Fla., 23 F.3d 359, 363–35 (11th Cir. 1994). The mere pendency of a parallel criminal case does not give rise to “special circumstances.” Id. at 364. Instead, a defendant must show that his invocation of the Fifth Amendment privilege will result in “certain loss by automatic summary judgment” in the civil case. Court-Appointed Receiver of Lancer Mgmt. Grp. LLC v. Lauer, No. 05-60584, 2009 WL 800144 at \*2 (██████ Fla. Mar. 25, 2009) (citing United States v. Two Parcels of Real Property, 92 F.3d 1123, 1129 (11th Cir. 1996)). In deciding whether a stay is mandated under this standard, a court may examine a number of factors, but most critically: “the degree and severity of overlap between the civil and criminal proceedings; whether the criminal charges are hypothetical or, by contrast, whether an

indictment or its equivalent has been issued; and the specificity of the invocation of the Fifth Amendment privilege relative to the civil proceeding.” Gonzalez v. Israel, No. 15-60060, 2015 WL 4164772 at \*3 (██████, Fla. July 9, 2015).

With these principles in mind, the Court concludes that “special circumstances” now exist to warrant a stay of the instant action. First, an overwhelming degree of overlap exists between the civil and criminal proceedings. The charge of manslaughter with a firearm against Defendant Peraza is based upon the same acts that give rise to Plaintiff’s claims of civil liability. Second, Defendant Peraza’s exposure to criminal penalties is no longer hypothetical, but actual and existing. Finally, Defendants intend to invoke their Fifth Amendment rights against self-incrimination when questioned, in discovery and at trial, about the facts critical to nearly all of Plaintiff’s claims. DE 46 at 6. Although some third parties may have witnessed various aspects of the underlying case, the deputy Defendants appear to be the primary eye-witnesses to their interaction with the deceased and the witnesses most capable of providing exculpatory testimony in support of their defense. Accordingly, Defendants would likely face certain loss of the instant civil proceeding absent the requested stay.

### III. CONCLUSION

In light of the recent indictment of Defendant Peraza, the Court determines that a stay is appropriate pending the state-court criminal action. Accordingly, the Court will grant the Motion and stay this case until the final disposition of the criminal proceeding. It is accordingly

**ORDERED AND ADJUDGED** as follows:

1. Defendants’ Renewed Motion to Stay Proceedings [DE 46] is **GRANTED**.

2. This action is hereby **STAYED** pending the resolution of the parallel criminal proceeding.
3. Defendants shall submit status reports regarding the progress of the criminal case every 60 days from the date of this Order.
4. At the time the stay is lifted, a new schedule will be set in this case providing additional time for fact discovery. However, a party may move the Court during the stay period to take a deposition of a witness (or other discovery) whose availability at a later date is uncertain or for other good cause shown.
5. The Court **DEFERS** ruling on all other outstanding motions until such time as the above stay has been lifted.
6. The Clerk of Court is directed to **CLOSE** this case for administrative purposes.

**DONE AND ORDERED** in Chambers at Fort Lauderdale, Broward County,  
Florida, this 14th day of January, 2016.



JAMES I. COHN  
United States District Judge

Copies provided to:  
Counsel of record via CM/ECF