

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

KARIM KOUBRITI,

Plaintiff,

Case No: 07-13678

v

Hon. MARIANNE O. BATTANI

RICHARD CONVERTINO,  
MICHAEL THOMAS and  
HARRY RAYMOND SMITH,  
Jointly and Severally  
and in their Individual Capacities,

Defendants.

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**PLAINTIFF KARIM KOUBRITI'S RESPONSE TO DEFENDANT  
HARRY RAYMOND SMITH'S MOTION TO DISMISS**

NOW COMES the Plaintiff, KARIM KOUBRITI, by and through his attorney, BEN M. GONEK, and in response to Defendant Harry Raymond Smith's Motion to Dismiss states as follows:

1. Plaintiff admits the allegations contained in paragraph one of Defendant Harry Raymond Smith's Motion to Dismiss.

2. Plaintiff admits the allegations contained in paragraph two of Defendant Harry Raymond Smith's Motion to Dismiss. However, Plaintiff should be allowed to proceed with his Fourth and Fourteenth Amendment claims for the reasons set forth in Plaintiff's Motion for Leave to File a First Amended Complaint.

3. Plaintiff denies the allegation contained in paragraph three of Defendant Harry Raymond Smith's Motion to Dismiss for the reason they are untrue. Plaintiff would further state that the proposed First Amended Complaint adequately sets forth causes of action for a violation of the Fourth Amendment for the malicious prosecution of Karim Koubriti for terrorist related offenses and for the Fourteenth Amendment for the fabrication of evidence and the failure to provide exculpatory evidence to the Plaintiff through Defendant Convertino while his criminal charges were pending.

4. Plaintiff admits the allegations contained in paragraph four of Defendant Harry Raymond Smith's Motion to Dismiss and will not be proceeding with a conspiracy count at this time.

5. This paragraph does not require a response.

6. Plaintiff admits the allegations contained in paragraph six of Defendant Harry Raymond Smith's Motion to Dismiss. Plaintiff would further reserve the right to supplement this pleading in the event the Court grants Plaintiff's motion to hold this motion in abeyance until Judge Tarnow rules on Plaintiff's Motion to Unseal Record and Transcript.

WHEREFORE, Plaintiff Karim Koubriti respectfully requests that this Honorable Court deny Defendant Harry Raymond Smith's Motion to Dismiss for the reasons stated above and in the accompanying brief.

Respectfully submitted,

s/ Ben M. Gonek  
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Dated: January 28, 2008

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
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KARIM KOUBRITI,

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Hon. MARIANNE O. BATTANI

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**BRIEF IN SUPPORT OF**  
**PLAINTIFF KARIM KOUBRITI'S RESPONSE TO DEFENDANT**  
**HARRY RAYMOND SMITH'S MOTION TO DISMISS**

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## STATEMENT OF QUESTIONS PRESENTED

- I. Should this Court dismiss Plaintiff Karim Koubriti's claims under 42 USC 1983 where he complains only of the conduct of federal officials and fails to allege state action, a necessary element of such claims?

Defendant Smith says: YES

Plaintiff Koubriti says: YES

- II. Should this Court dismiss Plaintiff Karim Koubriti's claims for malicious prosecution under the Fourth, Fifth and Fourteenth Amendments where he complains only of post-arrest conduct and has failed to challenge the existence of probable cause at the time of his arrest, a necessary element of such claims?

Defendant Smith says: YES

Plaintiff Koubriti says: NO

- III. Should this Court dismiss Plaintiff Karim Koubriti's claims under 42 USC 1985 where he failed to allege a qualifying conspiracy to obstruct justice?

Defendant Smith says: YES

Plaintiff Koubriti says: YES

## INTRODUCTION

Plaintiff Karim Koubriti initially filed a three count Complaint against the named Defendants asserting causes of actions under the Fourth, Fifth and Fourteenth Amendments as well as 42 USC 1983. The complaint stemmed from misconduct by the Defendants in the case of *United States v Karim Koubriti*, United States District Court Case No. 01-80778.<sup>1</sup> Defendant Smith has filed a Motion to Dismiss pursuant to Federal Civil Rules of Procedure 12(b)(6). Plaintiff has filed a Motion to Amend his Complaint. (See Docket Entry 24). Defendant Harry Raymond Smith's Motion to Dismiss should be denied because any deficiency in the pleadings are cured by Plaintiff's Proposed First Amended Complaint.

## ARGUMENT I

Defendant Smith's Argument that Plaintiff's 1983 Claims Must be Dismissed Are Moot Because Plaintiff is Abandoning Those Claims

Plaintiff agrees to withdraw his claims pursuant to 42 USC 1983. (See Plaintiff's Proposed First Amended Complaint).

## ARGUMENT II

Defendant Smith's Argument that Plaintiff's Fourth and Fourteenth Amendment Claims Must be Dismissed are Without Merit<sup>2</sup>

Defendant Smith argues that his claims must be dismissed because Plaintiff has not

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<sup>1</sup>Mr. Koubriti was initially convicted of the charged offenses. His convictions were reversed when the Government concurred in his Motion for a New Trial. (See Exhibit A).

<sup>2</sup>Plaintiff Karim Koubriti is abandoning his Fifth Amendment claim.



alleged that there was not probable cause to arrest him. Plaintiff submits this claim is without merit because Plaintiff was under no obligation to allege such. Notwithstanding that fact, in Plaintiff's Proposed First Amended Complaint, Plaintiff has alleged that there was not probable cause to arrest or prosecute him.

In Plaintiff's Proposed First Amended Complaint, Plaintiff has stated a Fourteenth Amendment violation for Defendant's fabrication of evidence and for his failure to turn over exculpatory evidence to the Plaintiff through Defendant Convertino. For such a claim, probable cause is irrelevant. *Stemler v City of Florence*, 126 F.3d 856, 872 (6<sup>th</sup> Cir. 1997).

### **ARGUMENT III**

Defendant Smith's Argument that Plaintiff's 42 USC 1983 Claim Must Be Dismissed is Moot.

Plaintiff has filed a Motion to File a First Amended Complaint. (See Docket Entry ). In that Complaint, Plaintiff abandons his 42 USC 1983 claim.

### **CONCLUSION**

WHEREFORE, for the above stated reasons, Plaintiff Karim Koubriti respectfully requests that this Honorable Court deny Defendant Harry Raymond Smith's Motion to Dismiss.

Respectfully submitted,

s/ Ben M. Gonek  
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Dated: January 28, 2008

**CERTIFICATE OF SERVICE**

BEN M. GONEK hereby states that on the 28<sup>th</sup> day of January 2008, he caused the foregoing *Response to Defendant Harry Raymond Smith's Motion to Dismiss* to be filed electronically with the United States District Court and that copies of said response were forwarded to all counsel of record using the ECF system.

s/ Ben M. Gonek  
BEN M. GONEK (P43716)