

EXHIBIT 3

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

KARIM KOUBRITI,

Plaintiff,

Case No: 07-13678

v

Hon. Marianne O. Battani

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

Defendants.

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FIRST AMENDED COMPLAINT

NOW COMES the Plaintiff, KARIM KOUBRITI, by and through his attorney, BEN M. GONEK, and for his First Amended Complaint states the following:

Jurisdiction Allegations

1. This action is brought pursuant to the Fifth Amendment of the United States Constitution and *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388, 29 L.Ed. 2d 619, 91 S Ct 1999 (1971).
2. Jurisdiction is conferred upon this Court by 28 USC 1331 et. seq.
3. The Plaintiff, Karim Koubriti, is a resident of the City of Detroit, Wayne County, State of Michigan.
4. Upon information and belief, Defendant Richard Convertino, is resident of Wayne County, State of Michigan and all times relevant to this Complaint was employed as an Assistant United States Attorney by the United States Department of Justice.
5. Upon information and belief, Defendant Michael Thomas, is resident of Wayne County, State of Michigan and all times relevant to this Complaint was a Special Agent employed by with the Federal Bureau of Investigation.
6. At the time the events alleged in this Complaint occurred, the individually named Defendants were violating Plaintiff's constitutional rights and their actions were clearly unreasonable. As such, the individual Defendants named in this Complaint are not entitled to the defense of qualified immunity.
7. All the individually named Defendants are being sued in their individual capacities and were acting under color of law at all relevant times to this Complaint.

8. This Court has jurisdiction over all the parties and the amount in controversy exceeds \$75,000.00.

Factual Allegations

9. This lawsuit stems from the violation of the civil rights of the Plaintiff, Karim Koubriti, in connection with Plaintiff's arrest and prosecution for the offense of conspiracy to provide materials for or resources to terrorists contrary to 18 USC 371 and 2339(a). Specifically, Plaintiff is claiming that the named Defendants violated his Fifth Amendment Rights by maliciously and intentionally withholding exculpatory evidence and fabricating evidence contrary to *Brady v. Maryland*, 373 US 83, 87 (1963), prior to and during his prosecution for the offense of conspiracy to provide materials for or resources to terrorists contrary to 18 USC 371 and 2339(e).
10. On or about September 17, 2001, six days after the September 11, 2001 attacks on the United States, a group of task force agents from the Detroit Joint Terrorism Task Force ("JTTF"), searched an apartment on Norman Street in the City of Detroit for subjects on the FBI's Terrorist Watch List. In that apartment, the JTTF team found three of the Koubriti case defendants along with the following items, among others, which became evidence in the Koubriti case: a day planner containing sketches, a videotape and numerous arabic language audio tapes. None of the individuals on this FBI Terrorist Watch List were found at this address.

11. The Plaintiff was arrested when there was no probable cause for his arrest and placed into the custody of the United States Marshall Service. The Plaintiff was initially detained on a complaint for the criminal offense of document fraud. Plaintiff was detained without bail.
12. On September 27, 2001, a grand jury issued an indictment charging Plaintiff with document fraud contrary to 18 USC 1028.
13. That at the time the Indictment was issued charged Plaintiff with document fraud neither the Plaintiff nor any of his co-defendants in the criminal case acknowledged engaging in terrorist activity. There was also no evidence tying Plaintiff or any of his co-defendants in the criminal case to any terrorist group. Before Yousif Hnimssa began cooperating with the prosecution, no witness could testify that either the Plaintiff nor any of this co-defendants in the criminal case had committed or were intending to commit any terrorist acts.
14. After the First Criminal Indictment was issued against Plaintiff, Defendant Convertino with the assistance of Defendant Thomas then began investigating Plaintiff for terrorist related activities.
15. Defendants Convertino and Thomas then knowingly presented false evidence which included perjured testimony to a federal grand jury. Defendants Convertino and Thomas also failed to disclose numerous facts which would have completely undermined the evidence they presented to the Grand Jury. Had accurate and truthful evidence been presented a No Bill would have issued.

16. On or about August 28, 2002, a federal grand jury issued a Second Superseding Indictment charging Plaintiff with terrorist related offenses.
17. The criminal charges against Plaintiff proceeded to trial. On March 26, 2003, a trial commenced on the charges of the Indictment before the Honorable Gerald E. Rosen. The evidence the Government and the Defendants utilized to support the terrorist related charges consisted of what the government characterized as casing materials, testimony of Yousif Hnimssa and other "corroborating" evidence. Special Agent George testified that the casing which he defined as an evaluation of an area for operational use is always used in preparation for a terror attack.
18. The alleged casing materials that the Government relied on at trial consisted of the day planner sketches (The Government alleged that they were sketches of the Queen Alia Jordan and the Incirlik Air Base). The alleged casing materials also consisted of a videotape of tourists at the MGM Grand Casino in Las Vegas, Nevada, Disneyland, and some sites in New York.
19. The Government at the trial on Plaintiff's criminal charges also relied on the testimony Yousif Hnimssa. Hnimssa perjured himself and testified at trial that Plaintiff and other co-defendants were Islamic fundamentalist and involved in terrorist activities.
20. The Government also relied on what they characterized as corroborating evidence. An example of such corroborating evidence included the "Farhat" summary of the audio tape recordings.

21. Based on the so-called “casing” materials, the testimony of Yousif Hnimssa, Plaintiff was convicted of a terrorist related offense.
22. Thereafter, the Plaintiff and his co-defendants in the criminal case filed a series of motion seeking a judgment notwithstanding the verdict, or in the alternative, a new trial. The motions alleged that the prosecution team engaged in a pervasive pattern of outrageous misconduct that deprived them of a fair trial and violated the very integrity of the judicial system. That claim also included specific allegations of knowing use of and deliberate failure to correct false testimony; affirmatively interfering with access to witnesses; improperly concealing evidence, and; improperly vouching and bolstering witness testimony. The Government filed responses and there were evidentiary hearings.
23. At one of the hearings, Judge Rosen found that two previously undisclosed documents clearly contained on their face indication both impeaching and exculpatory material. Judge Rosen also further noted that there was no question that the material should have been turned over. Although the Court declined to decide whether the failure to disclose the material affected the verdict, Judge Rosen opined that these documents should have been disclosed to the defense. The Court also ordered the government to conduct a thorough review of every document in the case to determine if there were any documents that “were even close to being *Brady* or *Giglio* material. The Court also characterized the post-trial proceedings as a “fine kettle of fish” and the most unpleasant task that he had has in almost fourteen years of being a judge. The Court also indicated that it

would not rule on the new trial motions until this review was complete.

24. Several months later, the Government concluded it's review of the case and issued a pleading called the Government's Consolidated Response Concurring in Defendant's Motion for a New Trial and Government's Motion to Dismiss Count I without Prejudice and Memorandum of Law in Support Thereof. (Attached as Attachment 1 to this Amended Complaint and incorporated as if more fully stated in this pleading).
25. In that pleading, the government concluded that there was no reason or probability that it could endure further hearings and emerge with the convictions of Plaintiff intact.
26. The Government also concluded in the pleading, in its best light, the record would show that the prosecution committed a pattern of mistakes and oversights that deprived the defendants of discoverable evidence (including impeachment materials) and created a record filled with misleading inferences that such material did not exist. The Government asked the Court to grant Koubriti a new trial in the criminal case. On June 1, 2006, Judge Rosen entered an Order setting aside the convictions and ordering a new trial.
27. Defendant Convertino while acting in an investigative type role withheld exculpatory evidence or fabricated evidence in the Plaintiff's criminal case by:
 - A. Failing to turn over photographs of the Queen Alia Hospital or ordering that they not be turned over to the Defendant or presented to the Grand Jury;

- B. Failing to disclose that none of the Defendants could not establish which site or sites the sketches established (if either) after their respective trips to Jordan;
 - C. Ordering or directing Defendant Thomas not to memorialize any of the ten to twenty interviews of Yousif Hnimssa prior to the Second Superseding Indictment being issued; and
 - D. Failing to disclose the Opinion of Air Force OSI SA Goodnight to the Grand Jury or Plaintiff concerning the alleged Incirlik Air Base sketches.
28. Had Defendant Convertino not presented fabricated evidence and/or presented the exculpatory evidence to Plaintiff, the Grand Jury and/or to Mr. Koubriti's lawyers, Plaintiff would not have been charged or convicted of any criminal offense.
29. Defendant Thomas also willfully and intentionally withheld exculpatory evidence or fabricated evidence in the following manner:
- A. By failing to turn over photographs he received of the Queen Alia Hospital to Defendant Convertino;
 - B. Failing to disclose e-mails to Defendant Convertino. The e-mails undermined Defendant Thomas' or the testimony of Harry Raymond Smith concerning the sketches of the Queen Alia Hospital;
 - C. Failing to disclose to Defendant Convertino that Nassa Ahmad told him his mentally unstable brother might have been doodling in the day planner in question;

- D. Failing to disclose to Defendant Convertino that Air Force OSI SA Goodnight stated that the alleged sketch of the Incirlik Air Base was not accurate;
 - E. Failing to disclose the names of witnesses who could testify that the sketches did not represent the Incirlik Air Base;
 - F. Failing to disclose a 9/11/2007 e-mail where Defendant Thomas admitted that there was difficulty transcribing the audio portions of the videotape due to among other things, the Tuniuisei or Algeria dialect speech;
 - G. Failing to record by way of 302, the contents of the ten interviews with Yousif Hnimssa;
 - H. Failing to disclose to Defendant Convertino that Yousif Hnimssa made many different statements.
30. Had Defendant Thomas not presented fabricated evidence and/or presented the exculpatory evidence to Defendant Convertino and the Grand Jury, Plaintiff would not have been charged or convicted of any criminal offense.

COUNT ONE

Violation of the Fifth Amendment - All Defendants

- 31. Plaintiff by this reference incorporates all previously pled paragraphs.
- 32. That as a result of their unlawful, malicious, reckless and indifferent acts or omissions, the Defendants alone and in concert, conspired to and acted under color or law but contrary to law and did deprive Plaintiff of his rights, privileges,

or immunities secured under the Constitution and laws of the United States, including his right to due process of law and to a fair trial, as guaranteed by Amendment V of the United States Constitution, by knowingly or recklessly fabricating evidence against him; by failing to disclose exculpatory evidence in his favor; and by obfuscating or misrepresenting the facts to the Grand Jury and at his trial.

33. That as a direct and proximate result of the conduct of the Defendants, referred to more fully above, Plaintiff suffered loss of liberty; incarceration, and imprisonment. He further suffered and continues to suffer embarrassment; indignation; anxiety, mental anguish; emotional distress; humiliation; outrage; shame; fear; loss of income; damage to reputation; denial of constitutional rights; and other injuries, damages or consequences related to the incident.

THEREFORE, for all the above reasons, Plaintiff demands judgment against Defendants jointly and severally for whatever amount the jury may determine for compensatory damages. Further, Plaintiff demands judgments against each Defendant individually for punitive damage in whatever amount the jury may determine, plus costs, interest and actual attorney fees and whatever other relief is deemed reasonable and just under the circumstances.

Relief Requested

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grant the following relief against Defendants:

- a. Compensatory damages in the amount of \$9,000,000.00;
- b. Punitive and/or exemplary damages in an amount which is fair, just and reasonable;

c. Such other and further relief as this Court may deem appropriate, including costs, interest and reasonable attorney fees pursuant to 42 U.S.C. § 1983.

Respectfully submitted by:

s/ Ben M. Gonek
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Dated: April 17, 2008

CERTIFICATE OF SERVICE

BEN M. GONEK hereby states that on the 17th day of April 2008, he caused the foregoing First Amended Complaint to be filed electronically with the United States District Court and that copies of said First Amended Complaint were forwarded to all counsel of record using the ecf system.

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