

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

AWAD M. OMARMUSTAFA,
(SPN #02087223)
Plaintiff,

vs.

HARRIS COUNTY DISTRICT
ATTORNEY'S OFFICE

Defendant.

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CIVIL ACTION H-15-1437

MEMORANDUM AND OPINION

Awad M. Omarmustafa, an inmate of the Harris County Jail ("HCJ"), sued in May 2015, alleging civil rights violations resulting from a denial of due process. Omarmustafa, proceeding pro se and in forma pauperis, sues the Harris County District Attorney's Office.

The threshold issue is whether Omarmustafa's claims should be dismissed as frivolous. The court concludes that Omarmustafa's claims lack merit and should be dismissed for the reasons stated below.

I. Plaintiff's Allegations

Omarmustafa asserts that he was arrested on March 8, 2015, and charged with murder. He claims that his arrest was not based on probable cause, and he was denied the opportunity to appear before the grand jury. Omarmustafa states that the grand jury of the 179th Judicial District Court of Harris County, Texas, entered a void indictment on March 17, 2015. Omarmustafa claims that the

Harris County District Attorney's Office concealed relevant facts tampered with governmental reports, and maliciously prosecuted Omarmustafa.

Omarmustafa seeks \$10,000,000.00 in compensatory damages.

II. Standard of Review

Under 28 U.S.C. § 1915A, federal courts are authorized to review, before docketing, if feasible, or in any event as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. The court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint is frivolous, malicious, or fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. Section 1915A governs this suit by a prisoner against a prison official.

A complaint is frivolous if it lacks an arguable basis in law or fact. *See Denton v. Hernandez*, 504 U.S. 25, 31 (1992); *Richardson v. Spurlock*, 260 F.3d 495, 498 (5th Cir. 2001)(citing *Siglar v. Hightower*, 112 F.3d 191, 193 (5th Cir. 1997)).

"A complaint lacks an arguable basis in law if it is based on an indisputably meritless legal theory, such as if the complaint alleges the violation of a legal interest which clearly does not exist." *Davis v. Scott*, 157 F.3d 1003, 1005 (5th Cir. 1998)(quoting *McCormick v. Stalder*, 105 F.3d 1059, 1061 (5th Cir. 1997)).

III. The Claim Based on Prosecutorial Misconduct

Omarmustafa seeks damages against the Harris County District Attorney for conduct in the prosecution of the criminal case. Absolute immunity precludes his claim. Prosecutors have absolute immunity from such damages claims. *Beck v. Texas State Bd. Of Dental Examiners*, 204 F.3d 629, 637 (5th Cir. 2000)(citing *Burns v. Reed*, 500 U.S. 478, 491 (1991)). Prosecutorial immunity applies to a prosecutor's actions in initiating a prosecution and in handling the case through the judicial process. *Id.* Prosecutorial immunity extends to activities "intimately associated with the judicial phase of the criminal process." *Kerr v. Lyford*, 171 F.3d 330, 336 (5th Cir. 1999)(quoting *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976)). The actions Omarmustafa complains of are related to the judicial process and were undertaken in furtherance of the attorney's advocacy function in his representation of the government. The Harris County District Attorney's Office is entitled to absolute immunity from Omarmustafa's suit and the damages claims against the Harris County District Attorney's Office are dismissed.


IV. Conclusion

The action filed by Awad M. Omarmustafa (SPN #02087223) lacks an arguable basis in law. His claims are DISMISSED with prejudice under 28 U.S.C. § 1915A(b)(1). Omarmustafa's motion to proceed *in forma pauperis*, (Docket Entry No. 3). Is GRANTED. Any remaining pending motions are DENIED as moot.

The Clerk is directed to provide a copy to the parties; the TDCJ - Office of the General Counsel, P.O. Box 13084, Austin, Texas, 78711, Fax Number (512) 936-2159; and the District Clerk

for the Eastern District of Texas, 211 West Ferguson, Tyler, Texas 75702, Attention: Manager of the
Three-Strikes List.

SIGNED at Houston, Texas, on June 9, 2015.



VANESSA D. GILMORE
UNITED STATES DISTRICT JUDGE