

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**DEFENDANT KALLATT MOHAMMED'S RESPONSE IN
OPPOSITION TO MOTION TO COMPEL**

Defendant, Kallatt Mohammed ("Mohammed"), by and through one of his attorneys, Special Assistant Corporation Counsel Eric S. Palles of Mohan Groble Scolaro, P.C., in opposition to Plaintiff's Motion to Compel, states as follows: As a part of his Complaint, Plaintiff alleges that he was falsely arrested on June 18, 2024, by Defendant Officers, including Defendant Mohammed.

1. Mohammed submits this response on two-days notice of Plaintiff's Motion to Compel, in light of the Court's order directing that Mohammed make his opposing arguments at the initial presentation tomorrow, December 12, 2024. To the extent the Court believes the parties' submissions on short notice leave any gap in understanding the underlying issues, Mohammed requests that the Court afford the parties a reasonable time to supplement their submissions.

2. On May 7, 2024, Mohammed’s counsel contacted Plaintiff’s counsel to ask whether he would consent to Mohammed’s filing of an amended answer, withdrawing his prior Fifth Amendment invocation. The undersigned offered that Mohammed could be redeposed “about Carter.” Dkt 162-2. Although Plaintiff’s counsel declined the offer and opted to oppose the motion, Mohammed made the offer known to the Court. Id.; Dkt. 165 at p. 3. On October 21, 2024, this

Court granted leave to amend, finding that no unfair prejudice would result, in particular because the question whether the Fifth Amendment invocation could be used to impeach Mohammed could be postponed to a more appropriate time. The Court further directed the parties to report “if any additional discovery is necessary because of this ruling and if so, when that is scheduled to be completed[.]” Dkt. 180. In response, Plaintiff reported he would “take an additional deposition of Kallatt Mohammed.” Dkt. 182.

3. Since then, Plaintiff’s counsel has attempted to leverage the opportunity afforded by the parties’ tacit understanding that any prejudice to Plaintiff resulting from Mohammed’s prior invocation should be ameliorated. Counsel’s overreach first began with the injection of a new issue: costs. Plaintiff’s counsel claimed that Mohammed should be required to pay both reporter and videographic fees for the upcoming deposition. After initially offering to split these costs, the undersigned agreed to pay them entirely as long as there was an agreement on the duration, a proposed five hours, and the scope of the questioning, specific to the *Carter* case. Plaintiff’s counsel immediately rejected any limitations regarding the conduct of the second deposition and announced his intention to file the motion to compel.

4. Counsel’s conduct reveals that, rather than obtaining information to prepare this case to his satisfaction, his principal objective is overreach to obtain discovery that he could have, and should have, obtained during the pendency of the Watts Coordinated Proceedings. Specifically, he contended that, in addition to any questions he had about the subject arrests and prosecutions and Mohammed’s interactions with and knowledge of Plaintiff, Mohammed’s prior invocation entitled counsel to delve into “404(b),” i.e., other-act, evidence. On further inquiry, this evidence falls into two categories: a) his involvement in the prosecutions of as many as 175 plaintiffs and

others who claim they were falsely prosecuted; and b) Mohammed's conduct during a several-years federal prosecution, culminating in his 2012 conviction for theft of government property. .

5. Despite the fact that the undersigned considered the argument that Plaintiff's inquiry into the other-act evidence had been inhibited by Mohammed's previous Fifth Amendment assertion to be spurious, we agreed that Mohammed could be questioned about a reasonable number of other incidents as long as they were identified in advance. Plaintiff's counsel responded by sending a ten-page document prepared by his co-counsel in the coordinated proceedings containing approximately 100 named witnesses represented by the firm of Loevy and Loevy. (Ex. 1). The entire document contains only a handful of Flaxman clients and includes numerous cases filed after November 21, 2019, the sole occasion that Mr. Flaxman conducted a Mohammed deposition prior to the Fifth Amendment waiver, and cases about which Mohammed testified fully in November 2023. Moreover, they include numerous plaintiffs who have no claims against Mohammed.

6. The undersigned also insisted that questions concerning the federal investigation be deferred to a later date and in accordance with protocols set forth in the consolidated proceedings. Some context is required. The Court is likely aware that the deluge of federal reversed-conviction cases previously consolidated for pretrial proceedings resulted from the federal convictions of Ronald Watts and Mohammed. As far back as 2017, the parties to these proceedings (other than Watts and Mohammed) have grappled with the federal government to obtain over 100 recordings, many of which involve Watts or Mohammed, taken over approximately four years. In May 2022, the FBI produced to defendants one disk of consensual recordings; in July 2023, DEA produced 9 disks of consensual recordings; in August 2023, the FBI produced 40 disks of consensual recordings; in June 2024, the FBI produced 35 disks of consensual recordings; in response to

Plaintiffs' requests for 35 disks after review at the FBI Offices; finally, defendants expect to receive a final 24 discs of previously-reviewed recordings from the FBI today, December 11, 2024.

7. Additionally, it should be noted that, consistent with the goals of promoting efficiency, the parties long ago agreed that the defendant officers would be deposed on several occasions, answering questions about numerous cases in a single day with advance notice of which cases would be discussed. As the coordinated proceedings concluded, plaintiffs insisted upon final depositions of Watts and Mohammed after they had reviewed and analyzed the recordings. This remains an unfinished piece of business as reflected in numerous court orders. See No. 19 C 1717, Dkt. 684 at p. 3; Dkt. 188-2.

8. To be clear, Mohammed does not object to being deposed about the federal investigation *once*, as contemplated by Judge Finnegan and the parties. Nor does he object to being deposed at an agreeable time in early 2025, in advance of this trial. That deposition should, at the least, take place in collaboration with Loevy and Loevy, who represent 2-3 times as many plaintiffs as does the Flaxman firm,

9. It must be noted that fact discovery in *Carter* is closed and the opportunity to question Mohammed concerning this case does not justify widening the permissible scope of this exercise. Plaintiff's counsel could have questioned Mohammed about the circumstances surrounding his conviction at any previous time. Mohammed has no fifth amendment privilege regarding conduct for which he has already been convicted, sentenced and discharged. Plaintiff's argument that he would have explored this area had Mohammed not claimed privilege regarding the Carter arrests rather than first pursuing the evidence from the federal investigation is disingenuous, let alone nonsensical.

10. Mohammed's proposal, rather than Plaintiff's (that questions regarding the federal investigation be bifurcated over two depositions, one involving recordings and one not) is consistent with the letter, spirit and established practice in the consolidated proceedings. In addition to unjustifiably imposing additional time (and costs) upon Mohammed, proceeding in Plaintiff's fashion would allow Plaintiff to formulate questions derived solely from a self-serving interpretation of the recordings' content.

11. In addition, Mohammed had an additional ask: before questioning regarding the recordings, that Plaintiffs identify the recordings and provide rough transcripts of them. Quite simply, the bulk of the recordings are largely inaudible or unintelligible. Listening to them for the first time in a deposition is certain to result in numerous replays, disagreements over the content and a garbled transcript. Rather than an exercise in "gotcha" litigation, Mohammed's approach will result in fairness and efficiency. Although conceding that working from transcripts is "good practice," Plaintiff's counsel nonetheless refused to commit to do so. Dkt 188-1 at p. 2.

WHEREFORE, for the foregoing reasons, Defendant Mohammed respectfully requests that the Motion to Compel be denied and that the Court enter an order limiting the scope of the deposition to matters relating to William Carter and excluding, for now, inquiry into the federal investigation. In the event that the Court allows questioning regarding so-called "404(b)

witnesses" Mohammed requests that Plaintiff's counsel identify no more than five such witnesses no less than five days prior to the scheduled deposition.

Respectfully submitted,

/s/ Eric S. Palles #2136473
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CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2024, I caused the foregoing Response in Opposition to Motion to Compel to be served on all counsel of record using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Eric S. Palles
Special Assistant Corporation Counsel
One of the attorneys for Kallatt Mohammed