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Honorable Brian Kemp

Secretary of State of Georgia

214 State Capitol

Atlanta, GA 30334

via e-mail to Vincent R. Russo Jr. ESQ

VRusso@sos.GA.gov and via Federal Express overnight delivery

**EMERGENCY APPEAL**

**PETITION TO SET ASIDE RECOMMENDATION ISSUED BY JUDGE  
MALIHI IN FARRAR V OBAMA OSAH-SECSTATE-CE-1215136-60-  
MALHI, AS RECOMMENDATION WAS MADE IN ERROR, WITH  
GROSS ABUSE OF JUDICIAL DISCRETION AND IN FLAGRANT  
VIOLATION OF ALL LAW, PRECEDENTS AND FACTS OF THE CASE;  
AND FIND CANDIDATE BARACK OBAMA INELIGIBLE TO APPEAR  
ON THE STATE OF GA BALLOT AS A CANDIDATE FOR PRESIDENT  
OF THE UNITED STATES**

Dear Secretary of State Kemp,

As you know, plaintiffs in **Farrar v Obama OSAH-SECSTATE-CE-1215136-60-MALHI** filed an electoral challenge to candidate Barack Obama, asserting him not to be eligible for the position of the Presidential candidate on the ballot.

This case was forwarded to the administrative court judge for administrative hearing and recommendation. When plaintiff's attorney Orly Taitz served defendant Barack Obama (Hereinafter "Obama") with the subpoena to appear in court and produce certified copies of his vital records, Obama filed a motion to quash the subpoena, such motion was denied and Obama was obligated to appear in court and provide his vital records to show, that he has valid vital records and that he is indeed a natural born citizen.

In the last ditch effort to avoid presenting any records Obama wrote to the office of the Secretary of State, demanding to halt the proceedings and threatening to boycott the proceedings. Your Honor responded by advising Obama, that if he does not appear and does not respond properly, he does so at his own peril.

Obama did not show up at the proceedings, his attorney did not show up. Georgia statutes and precedents clearly state, **THAT IT IS ENTIRELY UPON THE CANDIDATE TO PROVE HIS ELIGIBILITY TO THE POSITION SOUGHT.** The case of Haynes v Wells, 538 S.E.2d 430 (GA 2000)

establishes that **a candidate seeking to hold office through an election in the state has the affirmative duty to prove their eligibility.** This holding relied upon O'Brien v Gross OSAH-SECSTATE-CE-0829726-60-MALIHI, at 12 (2008) "The burden of proof is entirely upon Respondent to establish affirmatively his eligibility for office" *id.* Not only Obama did not show up at the proceedings and did not provide any certified copies of his vital records, also, Director of Health of the state of Hawaii, Loretta Fuddy did not show up at the proceedings and did not provide any records. Orly Taitz, Counsel for Plaintiffs, flew to Hawaii 5 times at her own dime and served the director of Health with Federal and state subpoenas. Director of Health refused to cooperate, refused to appear and refused to provide access to any vital records for Obama, even though he posted an alleged copy of his birth certificate on line and privacy considerations no longer applied. Based on the above facts, it is clear that the Director of Health of Hawaii and the Registrar are being complicit in either releasing a forgery or guilty of criminal cover up, whereby they are aware, that

Obama's alleged copy of his birth certificate is a forgery, they have an affirmative duty to speak up and they did not do so.

As Obama did not appear in court and did not provide any records, it became clear that Barack Obama is even more of a fraud than previously thought. Not only there is no valid original long form birth certificate for Obama and no valid SS-5 application for Connecticut Social Security number 042-68-4425, which Obama is fraudulently using, **there are no certified copies of the above documents as well.** It became clear to some hundred spectators, who gathered in the courtroom and representatives of all the media outlets, that **Obama has absolutely nothing to show and no documents to prove his eligibility.**

At that point judge Malihi called attorneys representing clients in three cases, challenging Obama to his chambers and stated, that he can issue default. As your Honor is well aware, default does not equal default judgment. Default can be easily overcome. Additionally 99.9% of default judgments are ultimately overturned, which means, that the default cases are remanded and need to be argued on the merits. All three attorneys stated, that since the decision of the administrative court is not binding, but merely advisory, it is

important to present all the evidence and allow witnesses to provide testimony under the penalty of perjury, so that the Secretary of state can see the full record, sworn testimony, exhibits and rule on the merits. Judge Malihi begrudgingly agreed to allow testimony, however rushed the parties. He refused to allow attorney Taitz to properly present her opening statement, which was designed to lay proper explanation and foundation for the case, he rushed witnesses, it was abundantly clear at that point, that judge Malihi was under an outside pressure to rush the case.

The first two cases heard on January 26, 2012 were Welden v Obama and Swenssen and Powell v Obama. Those two cases were limited to challenging Obama's eligibility based on one point, the fact that his father was not a U.S. citizen and interpretation of "Natural born U.S. citizen" requirement, as it is described in the US Supreme court precedent of Minor v Happersett. 88 U.S. 163(1875). The case at hand, Farrar v Obama, was based both on Minor v Happersett 88 U.S. 163(1875) and on evidence and testimony of 7 witnesses attesting under penalty of perjury, that even if Minor case does not control, and citizenship of Obama's father does not control, Obama is still not eligible, as he did not show any proof of his natural born status and the witnesses showed overwhelming evidence, that an alleged copy of Obama's long form

birth certificate, posted on line on WhiteHouse.gov, constitutes a computer generated forgery, that a Connecticut Social Security number 042-68-4425, is being fraudulently used by Obama, that he does not have a valid Social Security number, that in passport records of Obama's mother, Ann Dunham, Obama is listed under the last name Soebarkah, in his school records from Indonesia he is listed under Soetoro and there is no admissible evidence to conclude, that Obama is his legal name.

Malihi wrote hi advisory opinion and included something, that constitutes a complete fallacy and an embarrassment to the judiciary. He wrote "for the purpose of this analysis, the following facts are considered:

1)Mr. Obama was born in the United States."

This was done in flagrant, outrageous, complete violation of law and facts. The whole point of this challenge, is that Obama never presented any admissible, competent evidence, showing Obama to be born in this country. There is no original birth certificate, there isn't even a certified copy. On what basis did judge Malihi consider Obama to be born in this country? Did he consider him born in this country based on his wild imagination? The only thing Obama provided, was an empty chair. Did the empty chair testify under penalty of

perjury in front of judge Malihi and told him, that Obama was born in this country? Did the empty chair provide Malihi with any evidence, with the original birth certificate or a certified copy?

This behavior of judge Malihi was so outrageous, that not only his advisory opinion needs to be set aside, as not grounded in any fact or law, but state and county grand juries and the Attorney General of Georgia need to launch a criminal investigation into actions of judge Malihi and possible direct or indirect undue influence by Obama. Decision by Malihi reads, as if it was entirely written by Obama's personal attorneys Robert Bauer and Judith Corley of Perkins Coie and rubber stamped by Malihi. It is noteworthy, that both Robert Bauer and Judith Corley need to be criminally investigated as well, as both of them were complicit in aiding and abetting Obama in presenting to the public on April 27, 2011 a computer generated forgery and claiming it to be a true and correct copy of Obama's birth certificate. **Such assumption by Malihi, that Obama was born in the U.S., without any documentary evidence to that extent from Obama, goes beyond an abuse of judicial discretion, it represents judicial misconduct.**

Similarly Malihi's reliance on a decision in Ankeny v Daniels, an obscure case in Indiana, brought by two pro se litigants with zero knowledge of law and without any input of any legal counsel, is a travesty of justice and an embarrassment to the state of Georgia.

Defense did not provide Ankeny v Daniels at the hearing. Malihi was supposed to base his opinion on what is in the record. Ankeny v Daniels was not part of the record. The most basic rules of courtroom decorum and basic fairness, were supposed to preclude Malihi from even entering Ankeny in his opinion. This case was never cited by the defense. Plaintiffs had no opportunity to provide a rebuttal and explain numerous points, as to why Ankeny is erroneous and why it does not apply. A presiding judge cannot suddenly pull out of a hat some case, brought in a circuit court of another state by some truck driver, who could not even afford an attorney, and use this case as the basis of his final ruling in the case at hand, when it was never part of the record in the case at hand.

Malihi abused his judicial discretion in ruling that Obama was born in this country without any evidence to this extent and in bringing some obscure nonbinding case from another state as a basis for his opinion.



Lastly, Malihi erred in his statement, that "none of the testifying witnesses provided persuasive testimony". As stated, Plaintiffs did not need to submit any witness testimony at al. The case of Haynes v Wells, 538 S.E.2d 430 (GA 2000) establishes that **a candidate seeking to hold office through an election in the state has the affirmative duty to prove their eligibility**. This holding relied upon O'Brien v Gross OSAH-SECSTATE-CE-0829726-60-MALIHI, at 12 (2008) "The burden of proof is entirely upon Respondent to establish affirmatively his eligibility for office". As Obama did not provide any documentary evidence of his birth in the U.S. Malihi was supposed to rule in favor of the plaintiffs on the merits. However, Plaintiffs went far and beyond the call of duty. They presented seven witnesses, which testified under oath and have proven, that not only Obama cannot be on the ballot, he needs to be criminally prosecuted for fraud and forgery. Per OCGA SS 24-9-67.1 Expert opinion testimony in civil actions(b) .... a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise, if:(1) The testimony is based upon sufficient facts or data which are or will be admitted into evidence at the hearing or trial;(2) The testimony is the product of reliable principles and methods;

and(3) The witness has applied the principles and methods reliably to the facts of the case.

First, not all of the witnesses needed to be qualified as experts, and ones, that testified as experts, were properly qualified. Malihi's statement, that none of the witnesses provided persuasive testimony, showed nothing but bias.

1. Witness Chris Strunk testified, and authenticated a report he received from the State Department in response to his freedom of information request. This report showed, that in the passport records of Ann Dunham, Obama was listed under the last name Soebarkah. One does not need to be an expert to authenticate a report received by him. Anyone can receive a report based on his freedom of information request. Just this one report, coupled with lack of any vital records, is sufficient to remove Obama from the ballot and launch a criminal investigation of Obama. Malihi never provided any explanation, why Strunk's testimony was not persuasive, and it is clear, that Malihi's statement showed bias against Strunk and Plaintiffs on part of Malihi.

2. Witness Linda Jordan testified that she ran Obama's E-Verify and it showed a mismatch, lack of match between Obama's name and the Social Security number Obama is using. One does not need to be an expert in e-Verify.

Thousands of individuals run E-verify on a daily basis. Malihi never provided any reasoning, why Jordan's testimony was not persuasive.

3. Witness Felicito Papa testified, that when Obama's alleged birth certificate was published and was downloaded and opened, using "Adobe Illustrator" computer program, it showed multiple layers. He also testified, that when Obama's tax records were downloaded and opened, using the same Adobe Illustrator program, the file was not flattened, it showed layers and it showed the full Social Security number used by Obama. Again, one does not need to be an expert to use Adobe Illustrator program. This program is sold to the public at large, anyone can use it. However, Mr. Papa testified, that he also graduated from ITT, Indiana technical institute department of information technology, that he used adobe Illustrator for some 20 years. He clearly showed, that he is an expert based on his education and professional experience. He testified that Obama's birth certificate consisted of layers, that when a document is simply scanned, you will see only one layer. When somebody is using multiple documents, taking parts of different documents, he will get multiple layers in Adobe Illustrator. Papa testified that the stamp, the signatures, parts of the serial number in Obama's birth certificate showed multiple layers, which came from different documents.

Even though one does not need to be an expert, Papa clearly qualified as an expert based on

- a. his degree from Indiana technical institute in information technology
- b. he explained that he used a commercial program "Adobe Illustrator", which is a proper technical method to use
- c. he properly opened Obama's birth certificate with Adobe illustrator and found, that the birth certificate in question was not a copy of a document, which was simply scanned, but that it was concocted using bits and pieces from different documents, which in simple terms is a forgery.

Malihi never provided any explanation, why Papa's testimony was not persuasive. Malihi's ruling in regards to Papa's testimony showed bias and abuse of judicial discretion.

Similarly, Papa testified that he used the same program, Adobe Illustrator, to open Obama's tax returns and saw Obama using the same Connecticut Social Security number 042-68-4425, as what independently confirmed by Licensed investigator Daniels and Senior deportation officer Sampson.

Licensed investigator Susan Daniels.

Daniels properly qualified as an expert.

a. She testified under oath, that she is a licensed private investigator in the state of Ohio, that she was a licensed investigator since 1995, for 17 years. This shows proper training, expertise and work experience. She also testified that she previously testified as an investigator before grand juries

b. Daniels properly explained, what did she check in Obama's Social Security number and she testified that she has experience of checking thousands of Social Security numbers.

c. Daniels testified, why she believed Obama's Social Security number to be fraudulent. Daniels explained that the first three digits signify the state of issuance of the Social security number. 040-049 -are first three digits assigned to CT. Obama never resided in CT.

While on the stand, Daniels was shown a sworn affidavit, that she provided for the defense earlier. Attorney Taitz pointed to the attachment to the affidavit, which showed a printout from the database search performed by Daniels. The search printout showed not only a Connecticut Social security number 042-68-4425 fraudulently being used by Obama, who never lived in Connecticut and lived in Hawaii, when this Social Security number was issued

to a resident of CT, she also printed out on the same printout, that the same Social Security number was connected to the date of birth 1890 and 08.04.1961 and 04.08.1961. She testified that in her opinion as a licensed investigator, the Social Security number used by Obama was fraudulent: she believed that it was originally assigned to an individual born in 1890 and that it is being currently fraudulently used by Obama. She also testified, that 08.04.1961 and 04.08.1961 can be explained by the fact, that Obama's date of birth was written in an European style in one of the documents. She testified that she checked the phone records for Obama and those intermittently showed the date of birth of 1890. She also stated, that she got from the Social Security handwritten applications for the SSN of several individuals, who had Social Security numbers before and after Obama's. All of them came back as Connecticut Social Security numbers issued around 1977 in to individuals applying in Connecticut. Daniels performed an investigation, which is routinely performed by licensed investigator. Malihi did not explain why wasn't she persuasive. For the investigation performed by Daniels she was not supposed to be an expert in Social Security. Any licensed investigator like Daniels can perform the same investigation. Malihi's ruling that Daniels was not persuasive shows his bias and abuse of judicial discretion.

Taitz provided oral testimony in court and part of her testimony was provided as an affidavit, attached to the first amended complaint and to the proposed summary of facts and law.

Taitz stated that she personally ran through the official on line Selective service records Connecticut Social Security number 042--68-4425, which according to Papa, Sampson and Daniels is used by Obama. It showed, that in yet another governmental official database, there is evidence of Obama using this Connecticut Social Security number, even though he was never a resident of Connecticut.

One does not need to be an expert to go an official website of the Selective service [www.sss.gov](http://www.sss.gov), enter the name, Social Security number and date of birth and check a record.

Taitz provided the court with a clip from "inside Edition"/CBS report, showing Obama's school registration in Assisi school in Indonesia, showing him registered there under his step father's last name Soetoro and using Nationality Indonesian. Obama never provided any evidence to refute the fact that he went by the last name Soetoro and that he does not have Indonesian citizenship.

Taitz, also, testified that she personally checked on line official records of the Illinois attorneys' bar and saw evidence of Obama committing fraud and possibly perjury, if he filed our his bar application under the penalty of perjury. In his application Obama stated that his name is Barack Hussein Obama and he answered a question in regards to any other names used, as "none". One does not need to be an expert, to see, that this statement by Obama constituted fraud, in light of the fact, that in his mother's passport records Obama is listed under the last name Soebarkah and in his school records from Indonesia, Obama is listed under the last name Soetoro. Taitz testified, that she complained about fraud and consequently Obama's inactive record was changed to not eligible to practice law. Taitz, also, testified that she requested Obama's school attendance records from "Student clearing house." Those records showed Obama attending Columbia university for 9 months only, which shows a pattern of fraud and inconsistency between his official records and what he claims in his memoirs. Taitz, also testified that there is a discrepancy between Obama's published pictures from the Noelani school in Hawaii and his school record in Indonesia, as there is a an overlap of two years, whereby in 1968, 1969 he is listed as studying in the Noelani school in Hawaii



under the name Barry Obama and during the same two years he is listed under the name Barry Soetoro in the Assisi school in Hawaii.

One does not need to be an expert to obtain evidence, which was obtained by Taitz. Malihi never provided any explanation, why Taitz testimony was not persuasive.

Douglas Vogt testified as an expert in scanning and typesetting.

Vogt qualified as an expert, as he has 13 years of experience running a company "Archive Index Systems", where he is selling imaging scanners and document imaging systems. Prior to that he ran a typesetting company.

He authenticated an affidavit provided by him earlier.

Vogt testified to a number of areas and indicators of fraud in relation to Obama's alleged copy of his birth certificate, posted by Obama on line on WhiteHouse.gov.

a. he testified that there was a halo effect, meaning white shadows around lines and letters, which shows computer manipulation of the image, called 'unsharp mask". He testified, that when a document is simply scanned, there is no halo effect.

b. He testified that in two alleged copies of the document the date stamp was in exactly the same spot, while one would expect it to be in slightly different area, as it is supposed to be placed by hand

c. He testified, that the date stamp would be slightly slanted, if it were to be placed by hand

d. He testified, that the stamp of the registrar would be clearly visible. The fact, that the stamp was a latent image, meant that it was an image copied many times, not a freshly stamped document.

5. He testified that the serial number would be sequential.

6. Vogt testified as an expert in typesetting and scanning, that there could not be kerning on a document, created on a typewriter. As kerning is an encroachment of one letter into the space of another, it is impossible, when one is using a typewriter. This is yet another evidence of a computer generated forgery.

Malihi never provided any explanation, why Vogt's testimony was not persuasive.

Lastly, recently retired deportation officer John Sampson testified

Sampson qualified as an expert in deportation. He testified that he has educational background in psychology and law. He testified, that he worked for the Immigration and Naturalization service since 1981. He has some 30 years of experience. He received on job training from Kennedy airport intelligence officer, who specialized in fraudulent documents and immigration fraud. He was a senior deportation officer since 1985. He has experience testifying as an expert in deportation before grand juries and administrative judges.

Sampson properly testified in the area of his expertise: document fraud and deportation.

a. he testified that Obama's alleged copy of his birth certificate was suspicious, since the serial number was out of sequence, it was higher, than numbers issue later, while it was supposed to be lower

b. he testified that the certification paragraph in Obama's alleged copy of his birth certificate was different from known certification paragraphs on the birth certificates issued at the same time

c. he testified that the name of the registrar on Obama's alleged birth certificate was different from the name of the registrar on the birth certificates

issued in the same hospital within 24 hours of Obama's alleged birth certificate.

d. he testified that he ran Obama's Social Security number through "Locate Plus", a commercial database, which showed that this number was assigned in 1977 to a person residing in Connecticut, while at a time Obama resided in Hawaii.

e. Sampson also testified in regards to the immigration file of Obama's stepfather, Lolo Soetoro, stating that it contained multiple redactions, which would not be present in a file of a deceased individual. Sampson testified, that Soetoro and Obama's mother, Stanley Ann Dunham were deceased and Obama's step sister, Maya Soetoro was not born at the time the application in question was filed out by Soetoro. By process of elimination the only person, who could be listed in Lolo Soetoro's file, was Barack Obama. If Barack Obama had been a natural born U.S. citizen and did not lose his U.S. citizenship while residing in Indonesia, there was no reason to list him in Soetoro's immigration file. Sampson testified that all the evidence he has on Obama warrant forwarding the case to the U.S. attorney for criminal investigation. If the U.S.

attorney would not prosecute, an alternative would be seeking a warrant for Obama's arrest and deportation.

Malihi never provided any explanation, why a testimony of a Senior deportation officer with 30 years of experience would not be persuasive to him. Malihi's ruling shows an unprecedented level of bias and abuse of judicial discretion.

## **CONCLUSION**

Advisory opinion by judge Malihi is erroneous and represents a gross abuse of judicial discretion. Advisory opinion by judge Malihi was made in complete contradiction of all the facts of the case, state law, U.S. Constitution and known precedents and decisions by judge Malihi himself. It appears that the advisory opinion by judge Malihi was made as a result of some undue pressure from the defendant Obama, who as a sitting President has vast abilities to apply undue pressure on judges.

Advisory opinion by judge Malihi needs to be set aside. Obama should be prevented from appearing on the ballot, as he did not present any evidence to prove that he is a natural born citizen. No original identification and birth records were provided by defendant Obama, no certified copies were provided. No defense was

provided whatsoever. Obama was in contempt of court. Obama should be excluded from the ballot in the state of GA.

Case file with exhibits and court transcripts need to be forwarded to the County, State and Federal grand juries for criminal prosecution of Obama and any and all accomplices of Obama for elections fraud, uttering of forged and altered documents, obstruction of justice, wire fraud, Social Security fraud and conspiracy to commit aforementioned felonious acts.

Criminal investigation of any undue influence on judge Malihi need to be launched by the investigative unit of the office of the Secretary of State and all of the above grand juries, as well as Attorney General of GA. Additionally, criminal investigation of actions of Director of Health of Hawaii Loretta Fuddy, Registrar Alvin Onaka, Deputy Attorney General Jill Nagamine, Commissioner of Social Security Michael Astrue and others involved in this matter, should be launched by the aforementioned grand juries and Attorney General of GA.

Respectfully submitted,

/s/ Dr. Orly Taitz, ESQ

02.04.2012

cc Michael Jablonski, counsel for Barack Obama MJablonski@comcast.net

## Attachments

1. Proposed summary of facts and law submitted by Orly Taitz, Plaintiff's counsel in Farrar
2. Trial transcript
3. Case file of exhibits
4. as some of the exhibits in the Court Case File were not clear due to scanning, clear copies were added
5. as sometimes there is limitation in the number of pages accepted by government servers, appeal at hand was submitted twice: with and without attachments