

**Orly Taitz, ESQ.**  
**29839 Santa Margarita Parkway, Ste. 100**  
**Rancho Santa Margarita, CA 92688**  
**Ph 949-683-5411 F949-766-7603**  
**[Orly.Taitz@gmail.com](mailto:Orly.Taitz@gmail.com)**  
**CA Bar License 223433**  
**Pro Hac Vice GA**  
**Attorney For Plaintiffs**

**FULTON COUNTY SUPERIOR COURT**  
**STATE OF GEORGIA**

**DAVID FARRAR,**  
**LEAH LAX,**  
**CODY ROBERT JUDY**  
**LAURIE ROTH**

**Petitioner,**

**v.**

**BARACK OBAMA,**  
**SECRETARY OF STATE**

**Respondent.**

**:**  
**:APPEAL OF ADMINISTRATIVE**  
**:DECISION**  
**:EMERGENCY APPLICATION**  
**:FOR STAY**

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PETITIONERS HEREIN are filing this petition to reverse or modify the decision by the Secretary of state relating to the challenge of the candidate.

### **ARGUMENT**

**Petitioners filed a challenge to a candidate. Challenge was denied by the Secretary of State Kemp. Under rule 21-2-5 Petitioners have a right to petition Superior Court of Fulton County**

O.C.G.A. 21-2-5

(e) The elector filing the challenge or the candidate challenged shall have the right to appeal the decision of the Secretary of State by filing a petition in the Superior Court of Fulton County within ten days after the entry of the final decision by the Secretary of State. The filing of the petition shall not itself stay the decision of the Secretary of State; however, the reviewing court may order a stay upon appropriate terms for good cause shown. As soon as possible after service of the petition, the Secretary of State shall transmit the original or a certified copy of the entire record of the proceedings under review to the reviewing court. The review shall be conducted by the court without a jury and shall be confined to the record. The court shall not substitute its judgment for that of the Secretary of State as to the weight of the evidence on questions of fact. The court may affirm the decision or remand the case for further proceedings. The court may reverse or modify the

decision if substantial rights of the appellant have been prejudiced because the findings, inferences, conclusions, or decisions of the Secretary of State are:

- (1) In violation of the Constitution or laws of this state;
- (2) In excess of the statutory authority of the Secretary of State;
- (3) Made upon unlawful procedures;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

An aggrieved party may obtain a review of any final judgment of the superior court by the Court of Appeals or the Supreme Court, as provided by law.

Petitioners assert that the decision was:

- (1) In violation of the Constitution or laws of this state;
- (2) In excess of the statutory authority of the Secretary of State;
- (3) Made upon unlawful procedures;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted

Summary of the proceedings before the administrative Court and Secretary of State

1. Secretary of State forwarded the challenge to the candidate at hand to the Administrative Court. Case at hand brought based on O.C.G.A. §21-2-5(a) and (b), O.C.G.A. §21-2-193. O.C.G.A. §21-2-5 states "Every candidate for federal and state office ... shall meet the constitutional and statutory qualifications for holding the office being 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.*

2. Respondent Barack Obama (Hereinafter "Obama") filed a motion to dismiss, which was denied.

3. Attorney for the Petitioners/Plaintiffs issued subpoenas seeking appearance in court and production of vital records. Among those was the subpoena for the Respondent Obama to appear and produce certified copies of his vital records.

4. Respondent filed a Motion to Quash the Subpoena.

5. Judge Malihi denied Motion to Quash.

6. Respondent was obligated to appear and produce certified vital records in order to establish his eligibility in compliance to O.C.G.A. § 21-2-5 and precedents of Haynes v Wells and O'Brien v Gross.

7. In the last ditch effort to avoid production of certified records, a few hours before the scheduled proceedings Respondent filed a letter with the Secretary of State Kemp, seeking to halt the proceedings in Administrative court and demanding to withdraw the appeal from the Administrative Court.

8. Kemp denied such twelfth hour request and advised the Respondent, that he has to appear. Respondent was advised by Kemp, that if he does not appear, he does so at his own peril.

9. Respondent and his attorney did not appear and did not present any identification records. On January 26, 2012 Respondent Obama was in default and in contempt of court as he did not provide any records, showing his eligibility.

10. Petitioners provided testimony of 7 witnesses and 208 pages of exhibits, showing that the Respondent does not have valid identification records. Exhibit 4 Transcript of the proceedings. Per instructions of the court Petitioners submitted proposed summary of fact and law Exhibit 3.

11. Administrative court judge ruled in favor of the Respondent, who did not provide any proof of his eligibility.

12. Respondents filed an Appeal with the Secretary of State, asking to set aside the advisory ruling of the Administrative judge Exhibit 5. On prior occasions Secretary of State set aside decisions of the Administrative court judge, when such decisions were not supported by law and fact.

13. Secretary Kemp denied the elections challenge.

**DECISION BY SECRETARY KEMP AND JUDGE MALIHI  
REPRESENT AN EGREGIOUS ERROR OF LAW AND FACT AND  
REPRESENT FLAGRANT ABUSE OF JUDICIAL DISCRETION**

1. As stated previously secretary Kemp simply rubber stamped the decision by Judge Malihi without any independent analysis or justification.

2. Decision by judge Malihi goes against the known law and precedents and decisions by the same judge Malihi.

There were three cases heard by judge Malihi on January 26, 2012. The first two cases Welden v Obama 121357-60 MALIHI, Swenssen v Obama 1216218 -60 MALIHI, Powell v Obama 1216823-60 MALIHI were separate from Farrar v Obama. Attorneys for the first two cases specifically sought to have those cases heard as separate cases and file motions against consolidation of cases, motions to hear those case separately, as they stated that they do not challenge Obama's place of birth, his birth certificate and his Social security number. They stated, that they challenged only Obama's designation as a natural born citizen. They asked their cases to be heard first. Attorney Irion in his motion to sever specifically stated that his case should take only 10 minutes as he is questioning only one issue. Attorney Hattfield filed similar motion to sever. Both motions were granted. **Any and all**

**assumptions and stipulations related to the cases of Welden, Swenssen and Powell had no connection to Farrar.**

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 his 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 an 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 erroneous.

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 all. 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 is 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 Administration 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 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 Indonesia.

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.

**MALIHI, ALSO, DISREGARDED FOLLOWING ARGUMENTS IN REGARDS TO THE NATURAL BORN STATUS.**

It is defined in the US Constitution Article 2, section 1, clause 5, which states "No person except a natural born Citizen, or a citizen of the United States, at the time of the adoption of the Constitution, shall be eligible to the office of the President".

So, based on the Constitution we have two options:

1. a U.S. citizen at the time the Constitution was adopted or
2. natural born U.S. citizen.

Of course, the first provision was written into the Constitution in order to grandfather in the first Presidents, who obviously were born before the creation of the United States of America and were required to be only "citizens" at the time the Constitution was adopted.

The second part relates to all other Presidents, who were born after the adoption of the Constitution. This means that the defendant needs to be a "natural born citizen". The Constitution does not provide a definition of what a natural born citizen is. Such definition needs to be drawn from multiple extraneous sources, available at the time of the adoption of the Constitution. Just as in a recent case of

U.S. v Heller 554 U.S.570(2008), where the courts had to deduct the meaning of the Second Amendment right to bear arms from the framers intent; the case at hand requires such reconstruction of the framers' intent. To this extent, this is a case of first impression, as no court ever ruled directly on the point of the meaning of 'natural born citizen', as it applies to the U.S. President. The closest the courts came to the determination of natural born, is in a precedent of Minor v Happersett 88 U.S. 163 (1875)

### **MINOR V HAPPERSETT**

Minor states:"The Constitution does not in words say who shall be natural-born citizens. Resort must be had elsewhere to ascertain that. At common law, with the nomenclature of which the framers of the Constitution were familiar, it was never doubted that all children born in a country

of parents who were its citizens became themselves, upon their birth, citizens also. These were natives or natural-born citizens, as distinguished from aliens or foreigners. Some authorities go further and include as citizens children born within the jurisdiction without reference to the citizenship of their parents. As to this class there have been doubts, but never as to the first. For the purposes of this case, it is not necessary to solve these doubts.....” *id.* It is common knowledge and described at length in Defendant Obama's Memoirs, such as *Dreams from my Father*, that Obama's father was a foreigner. Obama Senior was a foreign exchange student who resided in the U.S. for a couple of years while he got his education and he returned to his native Kenya. At the time of Obama's birth, his father, who came from Mombasa, Zanzibar region of Kenya, was a British "protected person". Obama automatically inherited his father's British citizenship upon the British Nationality act of 1948. Upon the declaration of the Independence of Kenya on December 11, 1963, Barack Obama automatically received his Kenyan citizenship on December 12, 1963. As Obama was around five years old his mother remarried one Lolo Soetoro, Indonesian national. According to Obama's memoirs (*Dreams from my Father*) and official biography, it is common knowledge that the family immigrated to Indonesia around 1967. Obama's school records from Indonesia (P trial exhibit 7) show him using last name Soetoro and nationality Indonesian. So, from birth until today, Obama had citizenship of three other countries, he is a son



of a foreign national and a step son of another foreign national, therefore not eligible to be considered a natural born U.S. citizen according to the precedent of *Minor v Happersett*.

### **Wong Kim Ark**

The only case law, that seems to contradict *Minor*, is a precedent of *U.S. v Wong Kim Ark* 169 U.S. 649 (1898). *Wong Kim Ark* is a case, relating to the citizenship of a young man, born to

two Chinese permanent residents. Kim Ark moved back to China and sought to return back to the U.S. as a U.S. citizen. Wong Kim Ark defined U.S. citizenship based on jus solis, based on the place of birth and subject to the jurisdiction of the U.S.

## **WONG KIM ARK IS NOT A CONTROLLING PRECEDENT FOR FARRAR**

Kim Ark is not a controlling precedent for a number of reasons.

- a. Kim Ark dealt only with citizenship in general. It never dealt with the definition of natural born citizenship.
- b. Kim Ark never dealt with the issue of the U.S. Presidency and heightened requirements of the natural born status as it relates to the President and Commander-in-Chief.
- c. In Kim Ark both parents of the Defendant were permanent U.S. residents, who intended to reside in the U.S. Obama's father was never a permanent resident, at the time of Obama's birth he was in the U.S. on a student visa only, intending to return to Kenya.
- d. Kim Ark was not an unanimous decision. Chief Justice Melville Fuller and Associate Justice John Harlan dissented, pointing out that since the Declaration of the Independence, U.S. parted from the British Common Law doctrine of jus solis

and followed the international doctrine of jus sanguinis, with offspring inheriting the nationality and allegiance of their fathers.

e. British common law doctrine of jus solis relates to allegiance to the crown, to the sovereign, which of course was abandoned in the U.S. since the adoption of the Constitution.

f. The majority opinion in *Kim Ark* was drafted by the associate justice Horace Gray, appointee of President Chester Arthur. It was rumored, that Gray's commission and subsequent decision in *Kim Ark* was done to sanitize Arthur's own lack of eligibility. William Arthur, Chester Arthur's father was an Irish citizen and there is no clear evidence, that he became a U.S. citizen prior to

Chester Arthur's birth. Reportedly Chester Arthur burned his identification papers and his eligibility is covered in mystery. Chester Arthur is the only other U.S. President, whose eligibility is questioned. Just because Arthur burned his documents, does not give Obama green light to disrespect the court and the nation and show a contempt to the judiciary and refuse to produce any verifiable documents, any evidence of his natural born status.

Due to all of the above Plaintiffs believe that Kim Ark does not represent a binding authority.

## **INTENT OF THE FRAMERS**

At the time of the adoption of the U.S. Constitution a treatise, most commonly used by the framers, was the Law of Nations by a well known Swiss diplomat and jurist Emer de Vattel. Written in 1758, it was well known to the framers and often used as a template for the U.S. Constitution. Book 1, Chapter 19, part 212 of the Law of Nations says: "The natives, or natural born citizens, are those born in the country, of parents who are citizens". It states "parents" in plural, not at least one parent in singular. Moreover, at the time of the adoption of the Constitution, the controlling citizenship was one of a father and Obama's father was never a U.S. citizen. The framers knew the meaning of natural born and that might be the reason, why there is no definition in the Constitution. Based on Vattel and Minor

Obama does not qualify as a natural born, due to his foreign citizenship and foreign allegiance at birth.

One of the framers of the Constitution, first Chief Justice of the Supreme Court, John Jay, wrote in his well known July 25, 1787 letter to George Washington: 'Permit me to hint, whether it would be wise and reasonable to provide a strong check to admission of foreigners into the administration of the National government; and to declare expressly that the Commander-in-Chief of the American Army shall not be given to, nor devolve on any but a natural born citizen.'"(the Federalist Papers Alexander Hamilton, James Madison and John Jay.

Bantam Dell

2003) Clearly Jay's construction of natural born clause was- one without allegiance to foreign nations, which disqualifies Obama.

Lastly, during the Congressional debate on the 14th amendment John A. Bingham, framer of the 14th Amendment defined the natural born citizen as follows "every human being born within the jurisdiction of the United States not owing allegiance to any foreign sovereignty". As at the time of Obama's birth, his father owed allegiance to a foreign nation, Obama does not qualify as natural born citizen according to Bingham's construction.

Based on the above precedent of Minor and definitions provided by the framers of the Constitution natural born citizen, is one born in the country to parents, who don't owe allegiance to foreign sovereignties. Since at the time of Obama's birth his father owed allegiance to the British crown, Obama does not qualify as a natural born citizen.

## CONCLUSION

**Advisory opinion by the Administrative Court judge Malihi, which was adopted by Secretary of State Kemp, was made in error, in clear violation of law and precedents, established by the same judge, and represents an abuse of judicial discretion. Above decision to deny the elections challenge needs to be reversed. Petitioners are seeking a stay on the decision by the Secretary of State and seeking a stay on placement of Obama's name on**

**the ballot or alternatively a stay of counting any and all votes for Obama pending ruling by this court, whether Obama proved to this court and the State of Georgia, that he is qualified as a Presidential Candidate on the ballot.**

Respectfully submitted,

/s/ Dr. Orly Taitz, ESQ

02.10.2012

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

Vincent Russo, counsel for secretary of State Brian Kemp at VRrusso@sos.ga.gov