No. _____

In The
Supreme Court of the United States

CONNIE RHODES,
Captain, M.D., F.S.,
and
DR. ORLY TAITZ, ESQ.
Attorney for the Petitioner, Interested Party,
Petitioners,

v.

THOMAS D. MACDONALD, Colonel,
Garrison Commander, Fort Benning,
GEORGE STEUBER, Deputy
Commander, Fort Benning,
ROBERT M. GATES,
Secretary of Defense,
BARACK HUSSEIN OBAMA,
Respondents.

On Petition for Writ of Certiorari
to the Eleventh Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

Dr. Orly Taitz, Esq.
29839 Santa Margarita Parkway
Rancho Santa Margarita, CA 92688
(949) 683-5411

Counsel of Record for Petitioners

LANTAGNE LEGAL PRINTING
801 East Main Street Suite 100 Richmond, Virginia 23219 (800) 847-0477

QUESTIONS PRESENTED FOR REVIEW

1. Does the ruling of the 11th Circuit Court of Appeals in *Rhodes v. MacDonald* violate the First and Fifth Amendments to the United States Constitution?

2. Does the ruling of the 11th Circuit Court of Appeals in *Rhodes v. MacDonald* conflict with the Supreme Court's ruling in *Offutt v. United States,* 348 U.S. 11, 13 (1954).

3. Is a Federal Judge allowed to persecute a Civil Rights attorney and sanction her for merely bringing Civil rights violation cases to his court?

4. Are members of US military reduced to the level of slaves or serfs, if they are refused a hearing on the merits of their grievances in both military and federal courts and their attorneys are harassed and intimidated and verbally assaulted and insulted by a presiding Federal Judge?

5. Can a federal judge arbitrarily decide, what civil Rights violations case he wants to hear and which case he will not hear, and arbitrarily sanction a civil rights defender attorney for bringing to court a case that he doesn't feel like hearing on the merits, as it is not beneficial for his career?

6. Should a federal judge forward a case to the jury for determination on issues of fact and law, when a case involves a president of the United

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States, his legitimacy and eligibility, which by default, affects the career of such judge?

7. Is the whole nation de facto reduced to the level of slaves or serfs, when one without valid vital records, without Social Security number of his own and without a valid long form birth certificate is able to get in the position of the President; and Congress is refusing to hear this issue, claiming that it is for the courts to decide and the courts are refusing to hear this issue, claiming that it is for the Congress to decide?

8. Should there be a decision from the Supreme court, clarifying legitimacy of US president or an order to the lower court to hear the issue on the merits?

9.. What Constitutes "natural born citizen" according to Article 2, Section 1 of the Constitution?

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INTRODUCTION

On September 15, 2010 Steven Breyer, Justice of the Supreme Court, appeared on the CNN Larry King show. When asked whether he will attend future "State of the Union" addresses in light of Barack Obama's verbal attack on the Justices of the Supreme Court during the last "State of the Union Address", Justice Breyer responded, that he will attend because the public needs to know, that they are protected, and that these judges and this court will protect even ones, that are not popular, that the Constitution protects them. He proceeded by reminiscing about his trip to Russia in 1993. He was invited by Yeltsin to a meeting with Russian judges to assist them in building a new fledgling democracy after years of Marxist tyranny. Yeltsin promised those judges, that he will protect them from "telephone justice" and Justice Breyer was on hand to assure them that democracy is possible.

The case at hand is probably the worst form of "telephone justice". The U.S. District Court for the Middle District of Georgia in an ill advised and unconstitutional attempt to shield the President from judicial scrutiny of his eligibility to serve violated the Free Speech Clause of the First Amendment and the Due Process Clause of the Fifth Amendment, as well as the Ninth and Fourteenth amendments. Judge Clay D. Land (hereinafter Land) refused to hear the case on the merits, citing his desire to abstain from the matters of the military and simply decided to intimidate the plaintiff and the counsel for the plaintiff, as well as members of the legal profession at large, keep them silent

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regarding Obama's lack of eligibility for U.S. Presidency and asserted $20,000 in sanctions against counsel for the plaintiff, the Appellant, when she tried to advocate further via motions. The Court of Appeals in upholding the District Court, did not articulate it's reasoning. The District Court's ruling in *Rhodes* undid a fifty year trend in federal case law and is opposite to the position of this Court in *Offutt v. United States,* 348 U.S. 11, 13 (1954) which calls for judicial restraint.

OPINIONS BELOW

The unpublished opinion of the United States Court of Appeal for Eleventh Circuit, *Rhodes v. Macdonald*, 368 Fed. Appx. (11th Cir. 2010) was filed March 15, 2010 [Appendix 1-2]. This Court also denied a Stay Request on August 16, 2010 in *Taitz v. Macdonald*, 79 U.S.L.W. 3091.

BASIS FOR JURISDICTION

This Petition for Certiorari under Rule 10 for federal civil rights questions is timely under Rule 13.1 as less than 90 days from denial by the United States Court of Appeals for the Eleventh Circuit with an extension granted to cure deficiencies pursuant to Rule 14.5. Eleventh Circuit Court of Appeals initially denied the Appeal on March 15th. Appellant filed a Motion for Reconsideration, which was denied on May 14th, 2010. The final order was issued on May 14th, 2010. The mandate was issued on May 24, 2010. Appellant filed a timely Petition for a Writ of Certiorari on August 12, 2010. On August 23, 2010 Appellant got a 60 days extension for

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corrections. Extension was given by Chief Clerk William K. Sutter and signed by clerk S. Elliott. Current submission was made timely within the 60 days provided in the extension.

STATUTORY PROVISION

This appeal is based on the tension between the Eleventh Circuit judicial interpretation of F.R.C.P. Rule Rule 11(c)(3) and the Constitution of the United States.

STATEMENT OF THE CASE

The appellant in this case is Dr. Orly Taitz, Esq, seeking a reversal of the $20,000 Rule 11 sanctions assessed against her by Land.. Rule 11 sanctions are typically applied when the case is not sufficiently investigated by the counsel prior to bringing it to court. The facts of the underlying case *Rhodes v MacDonald* 4:09-CV-106 Middle District of GA were researched for a year. Licensed investigators were used, Taitz has reached the office of the Chairman of the Joint Chiefs of Staff in her investigation of the case. She is seeking a reversal of sanctions, as well as limited rule 11 discovery, to show that her actions were not frivolous, but rather reasonable and justified, that it is the most important case today and possibly most important in US history, as sanctions were asserted to obfuscate illegitimacy of Barack Hussein Obama for US presidency. Land started his order with a statement comparing Taitz to Alice in Wonderland and saying, that just saying so, does not make it so.

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Unfortunately, Land did not think of the underlying case, where **Obama is saying**, that he is a legitimate President and Commander in Chief, however in light of the fact that multiple experts show him using Social Security numbers of others, not having a valid Social Security number of his own, not willing to unseal his original 1961 Long Form birth certificate with the name of the doctor and hospital; **just saying he is legitimate, does not make it so, does not** make him legitimate and discovery is warranted. Taitz was subjected to ridicule and insults on account of Land christening her "Alice in Wonderland". She was even put on the hit list of the Southern Poverty Law Center under the name "Alice in Wonderland". While Taitz appreciates Land's fondness of Lewis Carroll, it is important to point, that US military officers did not fall in the rabbit hole and are not looking for an adventure. It is important for them, as well as the whole nation to know, whether the Commander in Chief is legitimate, and where does his allegiance lie.

BACKGROUND OF THE CASE

Taitz has done extensive research for over a year and provided the court with information, showing that Barack Hussein Obama not only didn't provide any proof of his Natural Born Citizen status, but also used multiple Social Security numbers of deceased individuals, as well as numbers never assigned. Taitz has presented the trial court with an affidavit from Mr. Neil Sankey, a licensed investigator, former Scotland Yard officer, working with the elite anti organized crime and anti communist proliferation units. This report shows,

that according to National databases Choice Point and Lexis Nexis, there are multiple Social Security Numbers connected to the name Barack Obama and Barry Obama. None of these numbers were issued in the State of Hawaii, where Mr. Obama claims to have been born. Selective Service official on line records show Mr. Obama using Social Security number 042-68-4425, which was issued in the state of CT to an individual born in 1890. Even today Mr. Obama is residing in the White House, using this Social Security number, which makes the legal action brought by Taitz, reasonable and not frivolous.

Taitz has brought two cases on behalf of members of the US military, seeking stay of their deployment, pending verification of legitimacy of Mr. Obama's status as the President and Commander in Chief. Both of these cases were heard by Judge Clay D. Land in Columbus GA.

The First Action was brought on behalf of a member of active reserves Major Stefan Cook. Upon revocation of Major Cook's orders, Judge Land has dismissed the case, refusing to consider the fact that Major Cook was **also fired from his position as a defense contractor employee in a clear retaliation for his filing the above legal action against Barack Obama.** The court, also, refused to consider the fact, that two other high ranked officers: a Major General and a Lt. Colonel have joined the above action and an argument was brought forward, that this is a case of a repeated violation of the First Amendment right for redress of grievances, which evades judicial review every time such orders are revoked, as well as an argument, that revocation of

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orders to deploy in light of request to produce documents attesting to Obama's legitimacy indirectly indicate, that the military had nothing to show.

A second case was brought on behalf of an active duty Flight Surgeon Captain Connie Rhodes. While in the first case the military could justify revocation of the orders by the fact that Major Cook was a reservist, this argument would not be justifiable with an active military, so the military and judiciary subjected both the plaintiff and her attorney Taitz to intimidation and retaliation. Initially Captain Rhodes was not allowed to attend her hearing and threatened with court martial. Later Judge Land dismissed the case based on the Doctrine of Abstention, stating that he does not want to get involved in the internal matters of the military and assessed the cost of litigation upon the plaintiff. Potentially such cost of litigation could be tens or hundreds of thousands of dollars, that could have been assessed in fees for the three attorneys, representing the defendants, those fees were used as a leverage against the plaintiff to convince her not to appeal and abruptly withdraw from the case. At the same time Land has assessed $20,000 worth of sanctions against Taitz, claiming violation of Rule 11. Sanctions were appealed to the 11th Circuit Court of Appeals and the appeal denied with one sentence, stating that the appeal was not convincing. No explanation was provided by the 11th circuit, as to what was found to be unconvincing, no oral argument was allowed, no explanation as to why no oral argument was allowed.

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REASONS FOR GRANTING THE PETITION

A. THE 11TH CIRCUIT HAS IMPERMISSIBLY EXPANDED THE SCOPE OF RULE 11 AT THE EXPENSE OF THE DUE PROCESS CLAUSE AND FREEDOM OF SPEECH CLAUSES OF THE UNITED STATES CONSTITUTION

The Eleventh Circuit is mistaken in assuming that Land may *sua sponte* find an attorney in violation of F.R.C.P. Rule 11 and sanction her simply because he does not like her politics. In the infamous words of Land it is clear that Petitioner's speech disagreed with the judge's politics:

> "Instead, she uses her Complaint as a platform for spouting political rhetoric, such as her claims that the President is "an illegal"" *Rhodes v. MacDonald*, 2009 U.S. Dist. LEXIS 84743, *10 (M.D. Ga., September 16, 2009) (Appendix A-9).

> "Finally, it is clear that Plaintiff's counsel seeks to continue to use the federal judiciary as a platform to further her political "**birther agenda**." *Rhodes v. MacDonald,* 2009 U.S. Dist. LEXIS 85485, *7 (M.D. Ga., September 18, 2009).(emphasis added).

Land simply did not like the fact, that Taitz brought forward cases, dealing with the **Natural Born Citizen** requirement of the U.S. Constitution, he used a pejorative term "birther agenda", clearly showing, that he wanted to stop Constitutionally protected dissident speech of a plaintiff and his attorney, as it endangered the position of the sitting

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president.

Though "Congress shall make no law ... abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. ," U.S. Const., Amendment 1, the Eleventh Circuit and Middle District have gone a long way towards eroding this Clause. The Middle District of Georgia went out of its way to repeatedly sanction an attorney whose only crime was to be outspoken about the eligibility of the President to hold office.

The F.R.C.P. Rule 11 Notes of Advisory Committee on 1983 amendments to Rules endorses the application of due process (presumably based on Constitutional concerns) as follows: "The procedure obviously must comport with due process requirements."

It is not even clear what due process procedure the District Court applied. FRCP Rule 11(c)(3) states: "On the Court's Initiative. On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).

There was no hearing by the District's Court own admission, it sanctioned the Petitioner not once but twice after a previous finding without a formal hearing that her underlying pleadings were frivolous (See Appendix A3 et seq.) , shrugging off Due Process concerns as follows:

"Requiring additional procedures would

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> result in an unjustifiable disregard of the Court's interest in efficiently monitoring and using judicial resources, with no measurable benefit to the legitimate interests of counsel." *Rhodes v. MacDonald,* 670 F. Supp. 2d 1363, 1383 (M.D. Ga., October 13, 2009).

Shockingly Land believed that enforcing the U.S. Constitution, particularly as it relates to the President of the United States did not represent "measurable benefit to the legitimate interests"

> "As previously explained, the Court finds that Ms. Taitz is not entitled to that full panoply of rights under the circumstances of this case. The process used in this case protected Ms. Taitz's rights to the extent required by constitutional due process." *Ibid.*

In their zeal to shield President's eligibility from examination, the courts have even ignored the Fifth Amendment of the United States Constitution: "... [N]or shall any ... be deprived of life, liberty, or property, without due process of law..." Petitioner was sanctioned $20,000 and her ability to practice law placed jeopardized without appropriate due process.

The Eleventh Circuit approach is in error. Federal judges who sanction attorneys *sua sponte* should be held to strict scrutiny and not some truncated form of due process set by a judge who simply wanted to silence an attorney, who was a dissident and questioned the legitimacy of the sitting president.

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B. *RHODES V. MACDONALD* CONFLICTS WITH THIS COURT'S RULING IN *OFFUTT V. UNITED STATES*

In their zeal to President's eligibility from examination, the courts have even ignored this Court's own well established case law on the subject. In *Offut v. United States* this Court found:

> "Of course personal attacks or innuendoes by a lawyer against a judge, with a view to provoking him, only aggravate what may be an obstruction to the trial. The vital point is that in sitting in judgment on such a misbehaving lawyer the judge should not himself give vent to personal spleen or respond to a personal grievance. These are subtle matters, for they concern the ingredients of what constitutes justice. Therefore, justice must satisfy the appearance of justice" Offutt *v. United States*, 348 U.S. 11, 13 (1954)

However, the Eleventh Circuit's stubborn blanket refusal to apply the restraint endorsed in *Offutt* to *Rhodes* seriously undermines *Offutt*. **The The *Rhodes* standard now espoused in the Eleventh Circuit permits federal judges to severely punish attorneys simply because such attorney brings a case, that might expose illegal behavior of high ranked governmental officials, or sanctions against an attorney, who is a dissident against the President. This is exactly what this Court ruled against in *Offutt*. The *Rhodes* standard must be struck down as**

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unconstitutional and petitioner Taitz given her day in court. Rhodes is the worst case of "telephone justice", bias and abuse of process this country has ever seen.

C. SANCTIONS ARE INCONSISTENT WITH RULE 11

Typically rule 11th sanctions are assessed when an attorney does not perform sufficient inquiry. In this case Taitz worked around the clock for a year and obtained more information than anyone else in regards to Obama's illegitimacy for the US presidency and in regard to massive fraud perpetrated by Mr. Obama in placing his name on the ballot and obfuscating all of his vital records. Judge Land states in the introduction to his order that "Rule 11 sanctions prohibit a lawyer from asserting claims or legal positions that are not well-founded under existing law or through the modifications, extension, or expansion of existing law". Land failed to point any single claim made by Taitz that would **violate any single law**.

Land stated, that per Rule 11 an attorney should "not clog the court with frivolous motions or appeals", however Land did not point to anything **specifically** frivolous in the motions filed by Taitz. His final ruling in the underlying case was, that he will not proceed with the case for the reason of abstention, as he does not want to get involved in the matters of the military. The doctrine of abstention is used only in certain cases. In a similar case of *Mindes* , 453 F.2d 197 (5th Cir 1971) circuit court of appeals has put forward specific guidelines and a

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three prong test, according to which abstention would not be appropriate. If, as in the case at hand, the plaintiff has

a. exhausted all avenues available in the military,

b. established that the issue relates to violation of fundamental Constitutional rights of the plaintiff

c. and the issue is not technical,

abstention will not be appropriate.

In *Rhodes*

a. Taitz, as an attorney, who is representing over 200 members of the military, reached Captain James Crawford, ESQ, the legal counsel for Admiral Mike Mullins, Chairman of the joint Chiefs of staff, who stated that nothing can be done within the military, as technically the Commander in Chief is considered to be a civilian.

b. The issue violated the plaintiff's Constitutional right of Redress of Grievances

c. The issue was not technical, it was not an issue of using one weapon instead of another, it was an issue of Constitutionality of orders of the Commander in Chief.

Taitz **fully complied with the**

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requirements of the *Mindes* guidelines, and not only sanctions were not appropriate, but an underlying decision by judge Land was inappropriate and unsupported by law, by the Constitution, and by precedents. Moreover, even if assuming arguendo an underlying decision by Land would somehow be considered valid and supported by law, it still does not mean that bringing the case to court was frivolous, as there was a clear possibility of Rhodes falling into same category as Mindes.

He further states that "Rule 11 also prohibits an attorney from using the courts for a purpose unrelated to the resolution of legitimate legal cause of action". Again, Land did not provide an example of anything that Taitz has done that was unrelated to the cause of action. She simply provided evidence that according to National databases Obama used multiple social security numbers, he never unsealed his original birth certificate. Abbreviated Certification of Live Birth, that was produced recently, in 2007, did not have any specific information: no name of the doctor, no name of the hospital, no signatures. Taitz was justified in demanding verification of legitimacy of the Commander in Chief. There was absolutely nothing brought in the pleading and in the hearing in court that justified an assertion by Land that Taitz used the court for purpose unrelated to the litigation.

In his order of sanctions Land intentionally misrepresented each and every fact of the case. Land started by misrepresenting the prior case of Major Cook, a reservist, who was also questioning legitimacy of Barack Obama, and who was also represented by Taitz. Land stated that Taitz tried to

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use the legal process as a "foundation for her political agenda**". It is sad and appalling that a federal judge will consider adherence to US Constitution to be a "political agenda." This is not a political agenda, it is the Supreme law of the land that Land took an oath to defend.** Land stated that "she (Taitz) seeks to use the court's power to compel discovery in her efforts to force the president to produce a birth certificate that is satisfactory to her and her followers". In reality Taitz has presented Judge Land with overwhelming evidence that Obama has never presented his original birth certificate, that is still sealed in the Health Department of the state of Hawaii (if it even existed). This is of particular importance, since the State of Hawaii has statute 338-17, that allows foreign born children of Hawaiian residents to obtain Hawaiian birth certificate; statute 338-5 that allows one to obtain a birth certificate based on a statement of one relative only; statute 338-6 that allows one to get a late birth certificate. Taitz has presented an affidavit from a licensed forensic document expert Sandra Ramsey Lines, who attested to the fact, that abbreviated Certification Of Live Birth, cannot be considered genuine without examining the original birth certificate. All of this information, coupled with Obama's refusal to present any vital records in spite of over a hundred legal actions filed in the courts all over the country, provided reasonable basis to assume Obama's illegitimacy to the US presidency.

Land intentionally misrepresented the ultimate relief, that the plaintiff in that case was seeking. Land stated, that "the Army has revoked

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the deployment orders. As a result Major Cook received the ultimate relief that he purportedly sought in the legal action: a revocation of the deployment order." The plaintiff, major Cook, was a decorated army officer, who has served in the field of battle. He wanted to serve, however he did not want to serve under the illegitimate Commander in Chief. The misrepresentation of these facts was not only intellectually dishonest, but a vicious attack on a decorated Army Officer, calculated to denigrate him in the eyes of the public and negatively affect his prospects for future employment.

Land improperly ignored the fact that reservist Major Cook was also fired from his position as a defense contractor employee as a result of the pressure applied by the military on his employer, pursuant to his filing of the above complaint. There was an outstanding issue of wrongful termination of Major Cook, of violation of whistleblower statutes. **Judge Land ignored large part of the case, where two other high ranking officers a Major General and a Lt. Colonel joined the case, and Taitz argued that this is a an issue of violation of Constitutional rights, that repeats itself, but evades review, akin to *Roe v Wade***

D. CAPTAIN RHODES CASE

Yet again in his order Land misrepresents the facts. As stated previously, Taitz has followed the precedent of *Mindes* and showed the court that she exhausted all *means* of redress within the military, that it was an issue of violation of constitutional rights of a member of the military, it was not a technical issue, and therefore subject to review and

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not subject to abstention. Taitz has provided the court with the argument, whereby the members of the US military are sworn to uphold the Constitution, which includes Article 2, section 1. Demanding the members of the US military to violate the oath of office and serve under the illegitimate Commander in Chief, whose orders will be illegal is a damage in itself. Land has stated, that Taitz has resorted to political rhetoric. In reality, as the pleadings and transcripts have shown, Taitz has provided the court with the reasonable examples of members of the military following illegal orders. Taitz has provided the court with an example of three children, members of her husband's family, who were killed in the Holocaust, when Nazi officers told these three young kids to dig their own graves, shot them and threw them into those graves. Judge Land called those statements "political rhetoric", even though those were appropriate examples of consequences of members of the military following unlawful orders.

Land claimed, that the fact that Capt. Rhodes questioned the deployment order, but not other orders was suspect. In reality this was logical and appropriate. It showed that Rhodes did not act frivolously, but rather acted only when an important order came down the chain of command from Obama, as the Commander in Chief, and when this order related to her personally. Clearly, when one is asked to risk her life pursuant an order, one has standing to bring a legal action to court and seek judicial determination of validity of such order, one can show imminent harm associated with such an order. It was an appropriate action, brought at an

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appropriate time, in an appropriate jurisdiction. The court was respectfully asked for a limited discovery and declaratory relief, which could be accomplished within one day. Instead, Land has chosen to use his position as a pulpit to harass and denigrate the plaintiff and Taitz. While it was clear that Land's actions were calculated to calm down the military in relation to Obama's legitimacy and preserve the scheduled deployment, at the end of the day Land's actions only added disgust towards the actions of the administration and the judiciary. Currently, yet another officer, Lt. Col Terry Lakin is facing a court martial for challenging the same type of order. Other recent events show, that Taitz was correct in her assertions, as the Parliament of Kenya issued a transcript of March 25, 2010 speech of Minister of Lands James Orenga, stating that Obama was born in Kenya. Land believed, that based on his threats Taitz will abandon her client and will not pursue her clients interests. Taitz, was bound by duty of zealous representation of her client and filed proper motions for stay of deployment pending reconsideration. Land sanctioned her $20,000 for filing that motion. As stated, based on the Mindes precedent not only was the action not frivolous, but Land had a duty to intervene.

Land has brought an argument, that Taitz did not show damage to her client and that "if the President were to be found not to be eligible for office, that would not mean that all soldiers in the military would be authorized to disregard their duty as American soldiers and disobey their command." This is an absurd argument. When a member of the US military is forced to violate her oath of office and serve under illegitimate orders, that represents

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damage. If one were to follow Judge Land's logic, than tomorrow somebody like Mahmud Ahmadinejad or Hugo Chavez can buy a Presidential election, and the members of US military will have zero recourse.

Another argument by Land, is his claim that he had no jurisdiction to hear the case. The jurisdiction was proper for hearing the case, as Rhodes was deploying from Fort Benning, GA, she was asking to investigate evidence and ascertain whether fraud was committed. **Even if arguendo Land didn't have jurisdiction, it would have justified transferring the case to another jurisdiction, not sanctioning the attorney.**

Yet another argument by Land "...if the President were elected to the office by knowingly and fraudulently concealing evidence of his constitutional disqualifications, then a mechanism exists for removing him from office. Except for the Chief Justice's role in presiding over the trial in Senate, that mechanism does not involve the judiciary." Again Judge Land intentionally misrepresents the case, as he was never asked to remove the president from office, he was asked to simply examine the evidence and make a declaratory relief. Such discovery would have been sufficient for ascertainment of legitimacy of deployment orders and could have been forwarded to Congress and to the US attorney's office. Yet again, such motion for declaratory relief in no way justifies any sanctions against Counsel.

Another totally absurd argument by Land "Perhaps he looks too young and says that he stopped counting birthdays from age thirty....should Miss. Taitz be

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allowed to file a lawsuit and have a court order him to produce his birth certificate?" Taitz did not bring her law suit based on mere observation. She submitted an affidavit from a forensic document expert and a licensed investigator. Clearly the case was brought not based on something empirical as looks, but based on evidence. This argument brought by Land was unreasonable, it showed bias and misrepresented the facts.

E. MAJOR COOK CASE, EXCEPTION TO MOOTNESS DOCTRINE

Judge Land issued sanctions, referring to Rhodes v MacDonald and Cook v Good . Land claimed that the actions were frivolous and that Cook was moot after military revoked the deployment orders for Cook. Land erred in not considering the fact that injury sustained by the members of the US military falls under a category of cases that are "capable of repetition, yet evading review". In Gerstein v Pugh 420 US 102, 110 n. 11, 95 S.Ct. 854, 43 L.Ed.2d Supreme Court of the US held the exception to mootness doctrine for violations "capable of repetition, yet evading review" applied because the Constitutional violation was likely to be repeated but would not last long enough to be reviewed before becoming moot... In oral argument the undersigned counselor equated this issue to Roe v Wade 410 US 113, 125, 93 S. Ct. 705, 35 L.Ed.2d 147 (1973) and the issue of women being pregnant and not being able to have their case heard, as it was rendered moot after each delivery. I*n Oregon AdvocacyCtr v Mink,* 322 F 3d 1101, 1118(9th Cir 2003) it was held that plaintiffs have standing if

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they are challenging an ongoing governmental policy, even if specific injury no longer exists. Here we have an ongoing policy of concealment of records of the Commander in Chief. To this point DC Circuit court held that when a complaint challenges an acknowledgement or apparent governmental policy, the government cannot prevail by arguing that the controversy became moot when the particular situation at issue resolved itself. Ukranian American Bar Assn'n v Baker, 893 F. 2d 1374, 1377 (DC Cir 1990). Two more officers joined Cook. Thousands of similar orders are issued on a daily basis. Clearly this issue is capable of repetition and evades any meaningful review on the merits.

F. ORDER BY LAND SHOWS CLEAR BIAS.

The decision and order by Land shows clear bias, he used a pejorative term "birther", describing Taitz as the leader of the "birther" movement.

Land acted in a fashion unbecoming a judge, when he rudely tried to ridicule Taitz and assassinate her character. One of his statements was "perhaps an eccentric citizen has become convinced that the President is an alien from Mars, and the court should order DNA testing to enforce the Constitution." Clearly there is a huge difference between actions of some eccentric person and attorney like Taitz **bringing affidavits from licensed investigators and experts**.". Land rudely called Taitz efforts "antics". In reality Land's actions were antics. Massive fraud of American citizens perpetrated by Obama will be punished and history will not look kindly on Land's antics and on any other judge who was aiding and abetting

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Obama's massive fraud.

Land has intentionally misrepresented the facts and attacked both Major Cook and Captain Rhodes. Both plaintiffs clearly stated that they are willing to deploy and serve, provided that they are following legitimate orders. Land intentionally misrepresented them as ones, who do not want to serve.

The order of sanctions issued by Land on 10.13.09 ridicules the fact that Taitz mentioned Justice Thurgood Marshall. In reality there is no difference between what Justice Marshall was doing and what Taitz was doing. Justice Marshall was fighting to uphold the Constitutional rights of African –Americans. **Taitz is fighting to uphold the Constitutional rights of every American citizen, a right of redress of grievances.** If during the career of Thurgood Marshal, he would've encountered a judge like Land, who would've fined him $20,000 for trying to protect the citizens' constitutional rights, this would have put a stop to the civil rights movement of the 50s and the 60s and someone like Obama would have no chance of ever being anywhere near the ballot.

LAND VIOLATED THE FOURTEENTH AMENDMENT PROTECTION TO DUE PROCESS AND EQUAL PROTECTION UNDER THE LAW

Land ridiculed Taitz notion that her clients deserved Fourteenth amendment protection. Ms. Ausprung, attorney for the Department of Defense

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argued that there is a difference between illegal orders and illegitimate President. Her rational was, that even if Obama is not legitimate, it does not make the orders issued by him illegal. Land upheld this logic and attacked Taitz in his order claiming that Taitz cheapened the memory of Marshall by comparing her legal actions to ones of Marshall, because Marshall protected the rights of the black children, who were sent to inferior schools, while Rhodes is an adult, who is refusing deployment based on the speculation that the Commander in Chief is not legitimate.

First of all, Taitz presented legal evidence and not speculation. Second of all, does Land's order mean that the equal protection rights exist only for children and not for adults? Do those rights exist only for Blacks and not for Whites? If that is the case, than we have reverse discrimination, it means that we throw away the notion of equal protection, that we lay it at the altar of political correctness.

Now, let's look at this argument of the order being valid regardless of whether the person giving the order has legitimacy in occupying such franchise, or whether he is an illegitimate usurper.

Let's imagine for a moment that someone, a janitor, decides to play a prank. He puts on a black robe and sits on the bench and signs an order for an officer to be deployed, Let's say, he signs such order when Land is on a brake. Officer brings a complaint, that the order was illegal. Does it mean, that if the order seems to be legal on it's face, it is actually legal, regardless of whether the person, who signed

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it, is actually a judge or a janitor playing a prank? Is an attorney for such officer supposed to be sanctioned $20,000 for merely bringing the claim to court and asking to evaluate it's validity?

Such logic represents complete insanity.

G. SANCTIONS ARE UNCONSTITUTIONAL AS INFRINGEMENT ON FREE SPEECH

Every US citizen has a First Amendment right to free speech. Additionally, attorneys have a right to engage in a practice of law, which represents a form of commercial speech. Actions by Land represented an assault on such protected speech of both Taitz and her clients. **When a Federal Judge uses his gavel as a cane for public flogging of an attorney, who is a Civil rights defender, who works pro bono to protect her clients' First Amendment rights to free speech and for redress of grievances, such federal judge betrays his oath of office and aids and abets an onslaught on the US Constitution, abets conversion of the Constitutional Republic into tyranny**.

SANCTIONS INFRINGE UPON THE RIGHT OF THE CITIZENS AND MEMBERS OF THE MILITARY TO HAVE LEGAL REPRESENTATION.

Members of US military are bound by their oath of office to uphold the Constitution, they have a Constitutionally protected first amendment right for redress of grievances. They have tried to address

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their grievance within the agency, within the military, but were denied such right, when the highest legal authority, Legal Counsel of Admiral Mulin, Chairman of the Joint Chiefs of Staff has written, that the issue of legality of the Commander in Chief cannot be resolved within the military, since Commander in Chief is a civilian. Members of the military are within their right to seek redress of their grievance in Federal Court and use services of an attorney. Federal Judiciary has a Constitutional duty to address those grievances and provide an answer.

H. ACTIONS BY LAND IN DENYING MOTION TO RECUSE AND MOTION FOR ENLARGEMENT OF TIME WERE IMPROPER

a. The language used by Land was rude, unbecoming a judge and clearly showed bias. For example, when Taitz appeared before Land for the second time, representing Capt Rhodes, Land described it "repeated performance". He called her a "birther", which is a term minted by pro-Obama attack dogs in the media, who are not willing to call Obama-gate, for what it is, a legal matter of Obama's illegitimacy to the US presidency.

b. Land **intentionally misrepresented** the reason for withdrawal by the client. Taitz brought to court an affidavit from the client and plaintiff in the case, Capt. Rhodes. In her affidavit Rhodes stated that her commanding officer has threatened her with court martial. (affidavit is part of the docket). Additionally, Land assessed costs of litigation against the client. He never revealed, what was the amount of the costs and there is no record of Rhodes

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ever paying those costs, so it was clear that a deal was made, whereby if Rhodes decides not to pursue the appeal, and if she dismisses Taitz as her counsel, costs against Rhodes would be waived by Land and/or military . Not only this issue of costs showed bias against Taitz, and reason for disqualification under 28 USC §455 (a), it needs to be investigated by an independent counsel as Judicial Misconduct by Land and violation of Taitz civil rights under the color of authority.

c. Assertion by Land, that the Request for withdrawal was not timely, is incorrect, as Taitz has made a §144 request as soon as she learned about bias.
d. Sanctions, is a serious matter, which would require a hearing. Request for enlargement of time and request for Land to recuse himself were reasonable. Just to show impartiality in the matter, it would be reasonable for Land to allow enlargement of time and step aside and let another judge look at the case and the evidence. The fact that Land refused to grant even the most minimal extension of time and refused to recuse himself was further evidence of bias.

I. LAND ERRED IN HIS ASSERTIONS , THAT THE INJURY WAS NOT IMMINENT.

In both cases, viewed by Land, the injury was not hypothetical, but imminent. Both Major Cook and Captain Rhodes are members of US military and were deployed to the military theaters of Afghanistan and Iraq respectively. Both officers were supposed to deploy in the matter of a couple of days. They were required to risk their lives and

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possibly take lives of others, pursuant to Obama's orders. Risking one's life based on an order, that is likely to be illegitimate, or even possibly illegitimate, constitutes an imminent injury and an action asking for a hearing not frivolous. As such, sanctions were not justified.

Decision by Land encouraged more litigation and encouraged revolting by the members of the US military.

J. Actions by Land constituted violation of judicial ethics

Land has deemed Taitz legal actions to be frivolous and sanctionable based on his own judicial misconduct in both Cook and Rhodes cases, where actions of Land constituted violation of Judicial ethics and abuse of judicial discretion.

1. Land violated Judicial ethics and showed bias in not giving Taitz time to respond to the motion to dismiss in Cook v Good. Taitz didn't even have time to read the motion. These actions showed extreme bias and lack of judicial integrity, as well as **abuse of judicial discretion.**

2. Land abused his judicial discretion and violated judicial ethics in not considering two more plaintiffs, who joined the action of the underlying case of Cook v MacDonald.

3. Land abused Judicial discretion by completely disregarding the fact, that the issue of Obama's illegitimacy to US presidency is one that is repeated,

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but continues to evade judicial review.

4. Land abused his Judicial discretion in refusing to consider valid arguments, specifically the fact that the military pressured Simteck, a small defense contractor, employer of Major Cook, to fire him from his $120,000 job in retaliation for the fact that he filed a legal action, questioning Obama's legitimacy to U.S. presidency. Similarly, Land abused his judicial discretion in not considering pressure on Rhodes, applied by the military, in order for her to dismiss her legal action.

K. ACTIONS BY LAND ARE AGAINST PUBLIC POLICY, ENDANGER THE PUBLIC AND ENDANGER NATIONAL SECURITY

Taitz has presented Land information, showing that Obama used multiple Social Security numbers of deceased individuals. Since the Commander in Chief has all of the US weapons arsenal is in his hands, particularly Nuclear arsenal, actions by the military officers and their attorney in ascertaining identity and his legitimacy are reasonable and not frivolous. Actions by a judge in attacking and harassing such members of the military and attacking their attorney with sanctions are unreasonable, go against Public Policy and endanger national security.

L. ACTIONS BY LAND WERE AKIN TO AIDING AND ABETTING FELONY AND MISPRISION OF FELONY.

Exhibits submitted by Taitz showed significant

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likelihood of numerous felonies committed by Obama:

1. Title 42 USC §408(a)(7)(B) misuse of Social Security number punishable under 18 USC by fine or imprisonment of up to five years or both

2. 18 USC §1621 perjury with a penalty of fine or imprisonment of not more than five years or both

3. 18USC§ 371 conspiracy to defraud United States with a penalty of fine or imprisonment of not more then five years or both

4. As well as possibly other offenses, such as elections fraud, IRS fraud and others

The fact that Land refused to review any evidence, and attempted to intimidate Taitz with sanctions, assassinate her character and endanger her law license, means that he intentionally used his authority to aid and abet those crimes

IS A FEDERAL JUDGE ALLOWED TO PERSECUTE A CIVIL RIGHTS ATTORNEY AND SANCTION HER FOR MERELY BRINGING CIVIL RIGHTS VIOLATION CASES TO HIS COURT?

As shown in this brief, Land's order, loaded with insults and personal attacks and $20,000 sanctions amounted to nothing more, than persecution for bringing to his court a Civil Rights

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violation case. Does a federal judge possess power to do so? There is nothing in the Constitution or statutes allowing such persecution. What can an attorney do to combat such persecution? Taitz is appealing to your Honors, Public Integrity Unit of the Department of Justice, as well as Civil rights Commission in Washington DC, Civil Rights defenders Commission with the United Nations and International Criminal Bar with the hope that sanity, civility and respect for Civil Constiututional rights will prevail.

ARE MEMBERS OF US MILITARY REDUCED TO THE LEVEL OF SLAVES OR SERFS, IF THEY ARE REFUSED A HEARING ON THE MERITS OF THEIR GRIEVANCES IN BOTH MILITARY AND FEDERAL COURTS AND THEIR ATTORNEYS ARE HARASSED AND INTIMIDATED AND VERBALLY ASSAULTED BY A PRESIDING FEDERAL JUDGE?

Today United States of America is at war in two enormous military theatres in Iraq and Afghanistan. Lives of our soldiers and officers, as well as civilian,s in those regions are at stake. Today, more than ever those soldiers need to know, that they have a back, that they have a Commander in Chief they can trust and judges, who are fair and decide grievances based on the law and the Constitution and not their narrow personal interest and adherence to the administration no matter what. When members of the military face bias, lack of impartiality and outright personal attacks, they become demoralized. Taitz brought on behalf of her

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clients important and reasonable grievances, and the Constitutional rights of the members of the military were violated.

CAN A FEDERAL JUDGE ARBITRARILY DECIDE, WHAT CIVIL RIGHTS VIOLATIONS CASE HE WANTS TO HEAR, AND WHICH CASE HE WILL NOT HEAR, AND ARBITRARILY SANCTION A CIVIL RIGHTS DEFENDER FOR BRINGING TO COURT A CASE THAT HE DOESN'T FEEL LIKE HEARING ON THE MERITS, AS IT IS NOT BENEFICIAL FOR HIS CAREER?

At the TRO hearing Land lashed out at Taitz, when she brought forward Thurgood Marshal and his fight for civil rights. Land considered the crusade by Marshal to be legitimate, but a crusade on behalf of the members of US military not to be legitimate, to be frivolous. A question arises: Can a Federal judge pick and choose: whose civil rights are important and whose rights are not important. When Federal judges pick and chose, they discriminate. It creates the worst kind of discrimination: not discrimination by an individual, but a discrimination by the government. We witnessed many examples, when policy by the government created legalized discrimination: holocaust, as well as slaughter of Armenian Christians in Turkey, massacres in Sudan and in Obama's native Kenya. Lady Liberty is blind for a reason: military officer ready to be shipped to the Middle East from Fort Benning GA, has as many civil rights and protection, as a school kid starting a school year in Columbus Georgia, or Alabama or

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Mississippi. Justice and adherence to the law and Constitution have to be factually correct and legally correct, not politically correct. If this is not happening, the nation will simply lose trust in the system and will take matters in its own hands.

SHOULD A FEDERAL JUDGE FORWARD A CASE TO THE JURY FOR DETERMINATION ON ISSUES OF FACT AND LAW, WHEN A CASE INVOLVES A PRESIDENT OF THE UNITED STATES, HIS LEGITIMACY AND ELIGIBILITY, WHICH BY DEFAULT, AFFECTS THE CAREER OF SUCH JUDGE?

Not long ago, in January of 2010 a well known judge in Mississippi, Bobby Delaughter ended up pleading guilty and sentenced to 18 months in Federal prison for public corruption, giving a decision to a party, who could help him reach a higher court.

In cases at hand situation was similar and even worse. Taitz represented clients, who challenged legitimacy of the sitting president. Who is in the best position to give a Federal judge a promotion, but the sitting president? For this reason alone, Land had to give the jury an opportunity to decide on the merits. When there was a clear indication of bias and Taitz requested recusal of Land, it was his duty to avoid impartiality or even appearance of impartiality and recuse himself. Moreover, a witness approached Taitz and forwarded to her a sworn affidavit, stating, that he observed Attorney General Eric Holder at the coffee house across the street from the courthouse during Cook v

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Good hearing conducted by Land. Taitz has no ability to ascertain if attorney General Holder was there or not, however it was possible, and in the spirit of zealous representation of her clients she had to raise this issue. Due to all of the above mentioned reasons, Land had to recuse himself. Land did none of the above. As such he violated the rules of judicial ethics.

Is the whole nation de facto reduced to the level of slaves or serfs, when one without valid vital records, without Social Security number of his own and without a valid long form birth certificate is able to get in the position of the President; and Congress is refusing to hear this issue, claiming that it is for the courts to decide and the courts are refusing to hear this issue, claiming that it is for the Congress to decide?

Today the whole nation lives in some type of surreal "No Man's Land." As noted above Mr. Obama has never provided any vital records that would be accepted by any court of law. Over a 100 legal actions were filed. No judge assumed jurisdiction. While judge David O. Carter in Central District of CA initially assumed jurisdiction, he relinquished it after Obama succeeded in placing one of attorneys from his defense firm Perkins-Coie as a law clerk for Carter. Desperate citizens have organized into citizen Grand Juries, those Grand Juries indicted Obama of voter fraud and elections fraud, and in some cases treason, yet no DA, no US attorney no judge assumed jurisdiction to act upon those

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indictments. When an individual can get to the top position of power without providing any vital records and judiciary is evading hearing this issue on the merits, each and every member of the public is de facto reduced to a level of a serf, a slave.

Should there be a decision from the Supreme court, clarifying legitimacy of US president or an order to the lower court to hear the issue on the merits?

When one comes to the realization that there is a need to hear the issue of eligibility of the US president on the merits and that the Nation requires this issue to be heard in the near future, it becomes clear that there has to be a determination of the Supreme court, as to whose obligation is it to verify proper vital records and verify eligibility of the President. It seems that this issue simply fell through the cracks. Different states and federal agencies are playing a game of political football. Secretaries of state are not willing to check the records and point to federal agencies, FBI and US attorneys point to Congress, Congress points to the courts. DNC simply took out the words "eligible according to the Constitution" from the certification of the Candidate in an attempt to get out of their liability in such a manner. There has to be a determination by the Supreme Court, the highest court in the country, whether a person, holding the highest executive position in the land is eligible and legitimate, and what state and federal agencies are supposed to verify such eligibility in the future.

What Constitutes "natural born citizen"

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according to Article 2, Section 1 of the Constitution?

If hypothetically Obama possess a valid original type written birth certificate from Hawaii, with the name of the doctor and the name of the hospital, does that make him a Natural born US citizen, is it sufficient in light of the fact, that his father never was a US citizen and in light of the fact that at birth Obama had a British citizenship based on British Nationality act of 1948, as his father was a British protected person from a British colony of Kenya. Later at age two, on December 11, 1963 Obama became a Kenyan citizen, as Kenya got its Independence, and around age five he got an Indonesian citizenship, as his mother married an Indonesian citizen, and the family immigrated to Indonesia. There has to be a determination by the highest court in the land, whether one with split allegiance at birth and through life can be considered a Natural Born citizen. Many seem to believe, that one is a Natural born citizen, provided he was born in this country, regardless of the citizenship of his parents and regardless of their allegiance. Many point to a definition in the Black Law dictionary, that defines a Natural Born Citizen, as one simply born in the Country.

Not long ago the Supreme Court heard the case of District of Columbia v Heller where it painstakingly reviewed the initial intent of the framers of the Constitution in regards to the second amendment. But what about Article 2, section 1 of the Constitution?

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Some quote the 14th amendment. But what was the intent of the 14th amendment? It did provide citizenship to slaves, who didn't have it at the time, however it is questionable and debatable whether it envisioned granting US citizenship and full benefits of free education and all the welfare benefits to millions of anchor babies of people who are here illegally or even legally for a short time on a tourist visa or a student visa. Even if, arguendo, one comes to a conclusion, that 14th amendment guarantees US citizenship to anyone, regardless of allegiance to other nations, it still does not mention Natural born status, that is needed for the US presidency.

As many of followers of Taitz were sending Black law dictionaries to her, she traced all of the editions and found that the earliest Black Law dictionary was published some 100 years after the Constitution was adopted, so there was a need to find a legal treatise, a legal dictionary used by the framers of the Constitution. Such legal treatise happened to be the Law of Nations by well known Swiss diplomat and attorney Emer De Vatel. French and English versions of the Law of Nations were repeatedly used by Adams, Jefferson and Franklin. Article 1, section 7 of the Constitution mentions the Law of Nations as a reference to source of powers of Congress in case of piracy at seas. Law of Nations defines **"Natural born citizens, are those born in the country, of parents who are citizens"** Les Droit Des Gens ou Principes De Loi Naturelle, 1958. So, Vatelle's answer to the age old question: where does allegience lie, is it in the genes, is it in the blood or is it the soil? The answer: it is both. Vattel is saying that it is "jus solis" and "jus sanguinis". Was this

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definition consistent with the frame of mind of the founders of this Nation? Founders of this Nation were concerned about foreign usurpation. First Chief Justice of the Supreme Court John Jay famously warned George Washington about the danger of foreigners in the position of the Commander in Chief. Framer of the 14th amendment John a Bingham quoted as stating that "natural born citizens are ones, born in the US territory to parents who don't owe allegiance to any other sovereignties". Even if it is found that Mr. Obama somehow miraculously can pass Constitutional muster for US Presidency, questions raised by Taitz were reasonable, appropriate, related to the duties of her clients and important to be resolved for future generations of Americans.

Wherefore the appellant respectfully requests:

1. Reversal of sanctions wrongfully assessed against her by Judge Clay D. Land

2. Rule 11 limited discovery of Mr. Obama' s vital records, to show that the legal action, for which Taitz was sanctioned, was justified.

3. Sua sponte assignment to the Independent Prosecutor the information on the underlying case for purpose of investigation, if indeed a deal was made, where plaintiff Capt. Rhodes dismissed Taitz as her counsel in exchange for waiver of costs, asserted against her by Judge Land and department of Defense.

4. Sua sponte assignment to the independent

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Prosecutor and public integrity unit evidence of Obama's illegitimacy to US presidency, provided in underlying cases of Cook v Good and Rhodes v MacDonald for prosecution under Title 18, §1961.

5. cost and reasonable fees of appeal.

CONCLUSION

If the ruling in *Rhodes* is permitted to stand, all attorneys who take a politically inconvenient stance against the eligibility of a sitting President will be potentially subjected to F.R.CP. Rule 11 sanctions. This is tantamount to state sponsored repression of political dissent and violates the First, Fifth and Ninth Amendments. *Rhodes* also directly conflicts with the spirit of this Court's ruling in *Offutt v. United States* which calls for restraint by the judiciary in sanctioning attorneys *sua sponte* not because of contumacious behavior, but because of their zealous speech and representation.

Therefore, petitioner requests that this Court grant this Petition for Writ of Certiorari.

Respectfully submitted,

Dr. Orly Taitz, ESQ
29839 Santa Margarita Pkwy
Rancho Santa Margarita, CA 92688
Tel. 949-683-5411

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APPENDIX

APPENDIX

Filed: March 15, 2010

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 09-15418
Non-Argument Calendar
D. C. Docket No. 09-00106-CV-CDL-4

CONNIE RHODES,
Captain, M.D., F.S.,
Plaintiff,

DR. ORLY TAITZ,
Interested Party-Appellant,

Versus

THOMAS D. MACDONALD, Colonel,
Garrison Commander, Fort Benning,
GEORGE STEUBER, Deputy,
Commander, Fort Benning,
ROBERT M. GATES,
Secretary of Defense,
BARACK HUSSEIN OBAMA,
Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Georgia
(March 15, 2010)

Before TJOFLAT, CARNES and KRAVITCH, Circuit Judges.
PER CURIAM:

Orly Taitz appeals the district court's imposition of a monetary sanction against her in the sum of $20,000 pursuant to Rule 11(c)(3) of the Federal Rules of Civil Procedure. Taitz argues that (1) the district court was required to recuse after she challenged the procedure the court was employing to determine whether to sanction her under Rule 11 and (2), assuming that recusal was not required, the court failed to afford her the due process Rule 11(c)(3) requires.

We have fully considered Taitz's arguments. We find them unpersuasive and therefore affirm the district court's sanctions judgment.
AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

CONNIE RHODES,
Plaintiff,

vs.

THOMAS D. MACDONALD, Colonel,
Garrison Commander, Fort
Benning; et al.,
Defendants.

CASE NO. 4:09-CV-106 (CDL)
O R D E R

(FILED SEPTEMBER 16, 2009)

Plaintiff, a Captain in the United States Army, seeks a temporary restraining order to prevent the Army from deploying her to Iraq in support of Operation Iraqi Freedom. Plaintiff alleges that her deployment orders are unconstitutional and unenforceable because President Barack Obama is not constitutionally eligible to act as Commander in Chief of the United States armed forces. After conducting a hearing on Plaintiff's motion, the Court finds that Plaintiff's claims are frivolous. Accordingly, her application for a temporary restraining order (Doc. 3) is denied, and her Complaint is dismissed in its entirety. Furthermore, Plaintiff's counsel is hereby notified that the filing of

any future actions in this Court, which are similarly frivolous, shall subject counsel to sanctions. See Fed. R. Civ. P. 11(c).

BACKGROUND

Plaintiff's counsel is a self-proclaimed leader in what has become known as "the birther movement." She maintains that President Case 4:09-cv-00106-CDL Document 13 Filed 09/16/2009 Page 1 of 14 Article II, Section 1, Clause 4 of the United States Constitution 1 provides in relevant part that "No Person except a natural born Citizen. . . shall be eligible to the Office of President." This Court dismissed an earlier action filed by Plaintiff's counsel 2 on behalf of a military reservist based upon that plaintiff's lack of standing. See Cook v. Good, No. 4:09-CV-82 (CDL), 2009 WL 2163535 (M.D.Ga. Jul. 16, 2009).

Barack Obama was not born in the United States, and, therefore, he is not eligible to be President of the United States. See Dr. Orly Taitz, Esquire, http://www.orlytaitzesq.com (last visited Sept. 15, 2009). Counsel has filed numerous lawsuits in various parts of the country seeking a judicial determination as to the President's legitimacy to hold the office of President. The present action is the second such action filed in this Court in which counsel pursues her "birther claim." Her modus operandi is to use military officers as parties and have them allege that they should not be required to follow deployment orders because President Obama is not constitutionally qualified to be President.

Although counsel has managed to fuel this "birther movement" with her litigation and press conferences, she does not appear to have prevailed on a single claim.

In fact, Plaintiff previously filed the present action in the United States District Court for the Western District of Texas. That Court summarily dismissed her complaint upon finding that Plaintiff "has no substantial likelihood of success on the merits." Rhodes v. Gates, 5:09-CV-00703-XR, Order Den. Mot. for TRO 3 (W.D. Tex. Aug. 28, 2009). Counsel then re-filed the same action in this Court.

The Court observes that the President defeated seven opponents in a grueling campaign for his party's nomination that lasted more than eighteen months and cost those opponents well over $300 million. See Federal Election Commission, Presidential Pre-Nomination Campaign Disbursements Dec. 31, 2008, http://www.fec.gov/press/press2009/20090608Pres/3_2008PresPrimaryCmpgnDis.pdf (last visited Sept. 15, 2009).

Then the President faced a formidable opponent in the general election who received $84 million to conduct his general election campaign against the President. Press Release, Federal Election Commission, 2008 Presidential Campaign Financial Activity Summarized (June 8, 2009), available at http://www.fec.gov/press/press2009/20090608PresStat.shtml

It would appear that ample opportunity existed for discovery of evidence that would support any contention that the President was not eligible for the office he sought. Furthermore, Congress is apparently satisfied that the President is qualified to serve. Congress has not instituted impeachment proceedings, and in fact, the House of Representatives in a broad bipartisan manner has rejected the suggestion that the President is not eligible for office. See H.R. Res. 593, 111th Cong. (2009) (commemorating, by vote of 378-0, the 50th anniversary of Hawaii's statehood and stating, "the 44th President of the United States, Barack Obama, was born in Hawaii on August 4, 1961").

Plaintiff's counsel speculates that President Obama was not born in the United States based upon the President's alleged refusal to disclose publicly an "official birth certificate" that is satisfactory to Plaintiff's counsel and her followers. She therefore seeks to have the judiciary compel the President to produce "satisfactory" proof that he was born in the United States. Counsel makes these allegations although a "short-form" birth certificate has been made publicly available which indicates that the President was born in Honolulu, Hawaii on August 4, 1961.

To press her "birther agenda," Plaintiff's counsel has filed the present action on behalf of Captain Rhodes. Captain Rhodes entered the Army in March of 2005 and presently serves as a medical doctor. The

American taxpayers paid for her third and fourth years of medical school and financially supported her during her subsequent medical internship and residency program. In exchange for this valuable free medical education, Captain Rhodes agreed to serve two years in active service in the Army. She began that term of active service in July of 2008 and had no concerns about fulfilling her military obligation until she received orders notifying her that she would be deployed to Iraq in September of 2009.

Captain Rhodes does not seek a discharge from the Army; nor does she wish to be relieved entirely from her two year active service obligation. She has not previously made any official complaints regarding any orders or assignments that she has received, including orders that have been issued since President Obama became Commander in Chief. But she does not want to go to Iraq (or to any other destination where she may be in harm's way, for that matter). Her "conscientious objections" to serving under the current Commander in Chief apparently can be accommodated as long as she is permitted to remain on American soil.

Captain Rhodes is presently stationed at Ft. Benning, Georgia awaiting deployment to Iraq. This deployment is imminent and will likely occur absent an order from this Court granting Plaintiff's motion for a temporary restraining order.

DISCUSSION

I. Jurisdiction and Abstention

Plaintiff seeks to have this Court declare a deployment order issued by the United States Army void and unenforceable. It is well settled that judicial interference in internal military affairs is disfavored. As the Supreme Court has explained:

[J]udges are not given the task of running the Army. The responsibility for setting up channels through which such grievances can be considered and fairly settled rests upon the Congress and upon the President of the United States and his subordinates. The military constitutes a specialized community governed by a separate discipline from that of the civilian. Orderly government requires that the judiciary be as scrupulous not to interfere with legitimate Army matters as the Army must be scrupulous not to intervene in judicial matters. Orloff v. Willoughby, 345 U.S. 83, 93-94 (1953), quoted with approval in Winck v. England, 327 F.3d 1296, 1302-03 (11th Cir. 2003). The limitation on the judiciary's involvement in military affairs does not mean that such interference is never appropriate. However, "'a court should not review internal military affairs in the absence of (a) an allegation of the deprivation of a constitutional right, or an allegation that the military has acted in violation of applicable statutes or its own regulations, and (b) exhaustion of available intraservice corrective measures.'" Winck, 327 F.3d at 1303 (quoting Mindes v. Seaman, 453 F.2d 197, 201 (5th Cir. 1971)). Moreover, mere allegations of a constitutional violation unsupported by a reasonable

factual foundation are insufficient to warrant judicial review. To hold otherwise would be to create chaos within the military decision-making process and chain of command. As explained below, the Court must balance several factors to determine whether judicial review of a military decision is authorized.

Typically, the first issue to be resolved in cases seeking judicial review of a military decision is whether the soldier has exhausted all intraservice administrative remedies. See Winck, 327 F.3d at 1304. In the present case, Defendants do not contend that Plaintiff was required to exhaust her intraservice administrative remedies, presumably because no procedure is in place for a soldier to contest the qualifications of the Commander in Chief. Defendants do argue, however, that the dispute presented by Plaintiff's complaint is not justiciable in the courts. Even if a soldier has exhausted her intraservice administrative remedies, the Court must decline to review the military decision if the review would constitute an inappropriate intrusion into military matters. Id. at 1303 & n.4 (citing Mindes, 453 F.2d at 201). It has long been the law in this Circuit that in determining whether judicial review of a military decision should be undertaken, the reviewing court 'must examine the substance of that allegation in light of the policy reasons behind nonreview of military matters,' balancing four factors: (1) 'The nature and strength of the plaintiff's challenge to the military determination'; (2) 'The potential injury to the plaintiff if review is refused'; (3) 'The type and

degree of anticipated interference with the military function'; and (4) 'The extent to which the exercise of military expertise or discretion is involved.'

It is not always clear whether the analysis of the appropriateness of judicial review of military decisions involves subject matter jurisdiction or abstention principles based on comity and respect for the unique military decision-making process. The Court finds that the proper analysis in this case requires an evaluation of the deployment order using principles of abstention. See Winck, 327 F.3d at 1299-1300 (distinguishing subject matter jurisdiction from abstention principles). Winck, 327 F.3d at 1303 n.4 (quoting Mindes, 453 F.2d at 201).

Although certain aspects of the Mindes decision have been eroded through the years, the Eleventh Circuit has relatively recently reaffirmed the "unflagging strength of the principles of comity and judicial noninterference with, and respect for, military operations that informed" the analysis in Mindes. Winck, 327 F.3d at 1304. 4 Using the Mindes factors as an analytical framework, the Court finds that it is not authorized to interfere with Plaintiff's deployment orders. First, Plaintiff's challenge to her deployment order is frivolous. She has presented no credible evidence and has made no reliable factual allegations to support her unsubstantiated, conclusory allegations and conjecture that President Obama is ineligible to serve as President of the United States. Instead, she uses her Complaint as a platform for spouting political rhetoric, such as her claims that the President is "an illegal usurper, an

unlawful pretender, [and] an unqualified imposter." (Compl. ¶ 21.)

She continues with bare, conclusory allegations that the President is "an alien, possibly even an unnaturalized or even an unadmitted illegal alien . . . without so much as lawful residency in the UnitedStates." (Id. ¶ 26.) Then, implying that the President is either a wandering nomad or a prolific identity fraud crook, she alleges that the President "might have used as many as 149 addresses and 39 social security numbers prior to assuming the office of President." (Id. ¶ 110 (emphasis added).) Acknowledging the existence of a document that shows the President was born in Hawaii, Plaintiff alleges that the document "cannot be verified as genuine, and should be presumed fraudulent." (Id. ¶ 113 (emphasis added).) In further support of her claim, Plaintiff relies upon "the general opinion in the rest of the world" that "Barack Hussein Obama has, in essence, slipped through the guardrails to become President." (Id. ¶ 128.) Moreover, as though the "general opinion in the rest of the world" were not enough, Plaintiff alleges in her Complaint that according to an "AOL poll 85% of Americans believe that Obama was not vetted, needs to be vetted and his vital records need to be produced." (Id. ¶ 154.)

Finally, in a remarkable shifting of the traditional legal burden of proof, Plaintiff unashamedly alleges that Defendant has the burden to prove his "natural born" status. (Id. ¶¶ 136-138, 148.) Thus, Plaintiff's counsel, who champions herself as a defender of liberty and freedom, seeks to use the power of the

judiciary to compel a citizen, albeit the President of the United States, to "prove his innocence" to "charges" that are based upon conjecture and speculation. Any middle school civics student would readily recognize the irony of abandoning fundamental principles upon which our Country was founded in order to purportedly "protect and preserve" those very principles.

Although the Court has determined that the appropriate analysis here involves principles of abstention and not an examination of whether Plaintiff's complaint fails to state a claim under Federal Rule of Civil Procedure 12(b)(6), the Court does find the Rule 12(b)(6) analysis helpful in confirming the Court's conclusion that Plaintiff's claim has no merit. To state a claim upon which relief may be granted, Plaintiff must allege sufficient facts to state a claim to relief that is "plausible on its face." Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009) (internal quotation marks omitted). For a complaint to be facially plausible, the Court must be able "to draw the reasonable inference that the defendant is liable for the misconduct alleged" based upon a review of the factual content pled by the Plaintiff. Id. The factual allegations must be sufficient "to raise a right to relief above the speculative level." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). Plaintiff's complaint is not plausible on its face. To the extent that it alleges any "facts," the Complaint does not connect those facts to any actual violation of Plaintiff's individual constitutional rights. Unlike in Alice in Wonderland, simply saying something is so does not make it so. The weakness of Plaintiff's

claim certainly weighs heavily against judicial review of the deployment order, and in fact, would one piece of "evidence" Plaintiff's counsel relies upon deserves further discussion. Counsel has produced a document that she claims shows the President was born in Kenya, yet she has not authenticated that document. She has produced an affidavit from someone who allegedly obtained the document from a hospital in Mombasa, Kenya by paying "a cash'consideration' to a Kenyan military officer on duty to look the otherway, while [he] obtained the copy" of the document. (Smith Decl. ¶ 7,Sept. 3, 2009.) Counsel has not, however, produced an original certificate of authentication from the government agency that supposedlyhas official custody of the document. Therefore, the Court finds that the alleged document is unreliable due to counsel's failure to properlyauthenticate the document. See Fed. R. Evid. 901. 10 authorize dismissal of Plaintiff's complaint for failure to state a claim.

Examining the second Mindes factor, the Court further finds that the risk of potential irreparable injury to Plaintiff as a result of the Court's refusal to review the deployment order is minimal. Plaintiff has not sought to be excused from all military service. She does not seek a discharge from the Army. She does not even seek to avoid taking military orders under President Obama's watch. She simply seeks to avoid being deployed to Iraq. As observed by the Eleventh Circuit, one "cannot say that military deployment, in and of itself, necessarily entails [irreparable harm], even if to volatile

regions." Winck, 327 F.3d at 1305 n.9. "Holding otherwise could unduly hamper urgent military operations during times of crisis." Id. Thus, the lack of potential irreparable harm to Plaintiff weighs against judicial review.

Finally, the "type and degree of anticipated interference with the military function" that judicial review would cause is significantly burdensome. Any interference with a deployment order injects the Court directly into the internal affairs of the military. This type of interference has serious implications. For example, it would encourage other soldiers who are not satisfied with their deployment destination to seek review in the courts. It also will have an adverse effect on other soldiers who honorably perform their duties. Presumably, some other military doctor, who does not resort to frivolous litigation to question the President's legitimacy as Commander in Chief, would be required to go to Iraq in Plaintiff's place. Similarly, the doctor who Plaintiff is being sent to relieve and who has likely been there for months would be delayed in receiving his well deserved leave because his replacement seeks special treatment due to her political views or reservations about being placed in harm's way. "It is not difficult to see that the exercise of such jurisdiction as is here urged would be a disruptive force as to affairs peculiarly within the jurisdiction of the military authorities." Orloff, 345 U.S. at 94-95. Based on an evaluation of all of these factors, the Court concludes that it must abstain from interfering with the Army's deployment orders. Accordingly, Plaintiff's motion for a

temporary restraining order is denied, and her complaint is dismissed in its entirety.

II. Failure to Satisfy Elements for Temporary Restraining Order

Even if the Court did not abstain from deciding the merits of Plaintiff's claim, the Court finds that Plaintiff has failed to establish her entitlement to a temporary restraining order.

Plaintiff must establish the following to obtain a temporary restraining order:

(1) [Plaintiff] has a substantial likelihood of success on the merits;

(2) irreparable injury will be suffered unless the injunction issues;

(3) the threatened injury to [Plaintiff] outweighs whatever damage the proposed injunction may cause the opposing party; and

(4) if issued, the injunction would not be adverse to the public interest. Schiavo ex rel. Schindler v. Schiavo, 403 F.3d 1223, 1231 (11th Cir. 2005).

As explained previously, Plaintiff has demonstrated no likelihood of success on the merits. Her claims are based on sheer conjecture and speculation. She alleges no factual basis for her "hunch" or "feeling" or subjective belief that the President was not born in the United States. Moreover, she cites no legal

authority supporting her bold contention that the alleged "cloud" over the President's birthplace amounts to a violation of her individual constitutional rights. Thus, for these reasons alone, she is not entitled to a temporary restraining order.

Second, as previously noted, the Court's refusal to interfere with Plaintiff's deployment orders does not pose a substantial threat of irreparable injury to her. Plaintiff does not seek to be discharged and apparently is willing to follow all orders from her military command except for any order that deploys her to Iraq. Although close proximity to any combat zone certainly involves personal danger, Plaintiff, somewhat disingenuously, claims that fear is not her motivation for avoiding her military duty. She insists that she would have no qualms about fulfilling her duties if President George W. Bush was still in office. The Court cannot find from the present record that deployment to Iraq under the current administration will subject Plaintiff to any threat of harm that is different than the harm to which she would be exposed if another candidate had won the election. A substantial threat of irreparable harm related to her desire not to serve in Iraq under the current President simply does not exist. Third, any potential threatened injury that may be caused to Plaintiff by the denial of the temporary restraining order certainly does not outweigh the harm that will result if the injunction is granted. As mentioned previously, the threatened injury to Plaintiff is not substantial; yet if the temporary restraining order was granted, the harmful interference with military operations would be significant.

Finally, Plaintiff has failed to establish that the granting of the temporary restraining order will not be adverse to the public interest. A spurious claim questioning the President's constitutional legitimacy may be protected by the First Amendment, but a Court's placement of its imprimatur upon a claim that is so lacking in factual support that it is frivolous would undoubtedly disserve the public interest. For all of these reasons, the Court finds that Plaintiff's motion for a temporary restraining order should be denied.

CONCLUSION

For the reasons previously stated, Plaintiff's motion for a temporary restraining order is denied and Plaintiff's complaint is dismissed in its entirety. Defendants shall recover their costs from Plaintiff. See Fed. R. Civ. P. 54(d).

IT IS SO ORDERED, this 16th day of September, 2009.

S/Clay D. Land
CLAY D. LAND
UNITED STATES DISTRICT JUDGE

August 23, 2010 Time extension letter for the Petition in Writ of Certiorari for *Rhodes v MacDonald* from the Supreme Court.

May 14, 2010 *Rhodes v MacDonald* final order from the Eleventh Circuit Court of Appeals, denying

reconsideration.

May 24, .2010 *Rhodes v MacDonald* Mandate from the Eleventh Circuit Court of Appeals.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

August 23, 2010

Orly Taitz
29839 Santa Margarita Pkwy
Suite 100
Rancho Santa Margarita, CA 92688

RE: Rhodes v. McDonald
Motion for Reconsideration
No: 10

Dear Ms. Taitz:

The above-entitled petition for a writ of certiorari was postmarked August 12, 2010 and received August 23, 2010. The papers are returned for the following reason(s):

Your case must first be reviewed by a United States court of appeals or by the highest state court in which a decision could be had. 28 USC 1254 and 1257.

Enclosed is check #1191 for $300.

Please correct and resubmit as soon as possible. Unless the petition is received by this office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5.

Sincerely,
William K. Suter, Clerk
By:

S. Elliott
(202) 479-3025

Enclosures

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 09-15418-BB

CONNIE RHODES,
Captain, M.D., F.S.,

Plaintiff,

DR. ORLY TAITZ,

Interested Party -Appellant,

versus

THOMAS D. MACDONALD, Colonel,
Garrison Commander, Fort Benning,
GEORGE STEUBER, Deputy
Commander, Fort Benning,
ROBERT M. GATES,
Secretary of Defense,
BARACK HUSSEIN OBAMA,

Defendants-Appellees.

On Appeal from the United States District Court for the
Middle District of Georgia

BEFORE: TJOFLAT, CARNES and KRAVITCH, Circuit Judges.

PER CURIAM:

The petition(s) for rehearing filed by Appellant is DENIED.

ENTERED FOR THE COURT:

UNITED STATES CIRCUIT JUDGE

ORD-41

United States Court of Appeals

For the Eleventh Circuit

No. 09-15418	FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT
District Court Docket No. 09-00106-CV-CDL-4	Mar 15, 2010 JOHN LEY CLERK

CONNIE RHODES,
Captain, M.D., F.S.,

Plaintiff,

DR. ORLY TAITZ,

Interested Party -Appellant,

versus

THOMAS D. MACDONALD, Colonel,
Garrison Commander, Fort Benning,
GEORGE STRUBER, Deputy
Commander, Fort Benning,
ROBERT M. GATES,
Secretary of Defense,
BARACK HUSSEIN OBAMA,

Defendants-Appellees.

A True Copy - Attested
Clerk U.S. Court of Appeals,
Eleventh Circuit
By: Deputy Clerk
Atlanta, Georgia

Appeal from the United States District Court
for the Middle District of Georgia

JUDGMENT

It is hereby ordered, adjudged, and decreed that the attached opinion included herein by reference, is entered as the judgment of this Court.

ISSUED AS MANDATE
MAY 24 2010
U.S. COURT OF APPEALS
ATLANTA GA

Entered: March 15, 2010
For the Court: John Ley, Clerk
By: Gilman, Nancy