

UNITED STATES DISTRICT COURT FOR THE

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UNITED STATES OF AMERICA,

PLAINTIFF,

CRIMINAL CASE NUMBER: \_\_\_\_\_

VS.

**DEFENDANT’S MOTION TO DISMISS FOR  
LACK OF SUBJECT MATTER JURISDICTION  
AND APPLICATION FOR ISSUANCE OF  
SUBPOENAS**

\_\_\_\_\_

DEFENDANT.

\_\_\_\_\_ /

Defendant \_\_\_\_\_, by and through undersigned counsel, moves to dismiss the indictment upon this Court’s lack of subject matter jurisdiction and for issuance of subpoenas and states:

**I. SUMMARY OF ARGUMENT**

The Fraud Enforcement and Recovery Act of 2009, Public Law 111-21, putatively signed into law by Barack Hussein Obama, II on May 20, 2009, under which Defendant has been indicted/convicted is void as it never was “presented” and signed into law by a legitimate President. As such, Defendant’s indictment/conviction must be declared null and void and the Defendant immediately released from custody.

In support of this contention, Defendant claims his fundamental and constitutional right found in the Sixth Amendment: “to have compulsory process for obtaining witnesses in his favor”. By that right, Defendant demands subpoenas for the documentary evidence describe *infra* which will establish that Barack Hussein Obama is neither: (i) a United States Citizen nor (ii) a “natural born Citizen” as required by Article II, §1 of the Constitution in order to be eligible to be President.

## II. MOTION TO DISMISS

Defendant contends that the Fraud Enforcement and Recovery Act of 2009 (“FERA”), Public Law 111-21 and putatively signed into law by Barack Hussein Obama, II on May 20, 2009 and under which Defendant has been indicted/convicted is void as it never was “presented” to a legitimate President. As such the indictment is void and this Court must dismiss it and immediately release Defendant from custody.

### A. FERA NEVER BECAME LAW

An act of Congress "**does not become a law** unless it follows each and every procedural step chartered in Article I, § 7, cl. 2, of the Constitution." *Landgraf v. USI Film Products*, 511 U.S. 244, 263 (1994) (citing *INS v. Chadha*, 462 U.S. at 946-951 (emphasis added)); *Clinton*, 524 U.S. at 448 (noting requisite "steps" taken before bill may "'become a law'" and holding that a procedurally defective enactment cannot "'become a law' pursuant to the procedures designed by the Framers of Article I, § 7, of the Constitution").

The Constitution requires "three procedural steps": (1) a bill containing its exact text was approved by a majority of the Members of the House of Representatives; (2) the Senate approved precisely the same text; and (3) that text was signed into law **by the President**. "If one paragraph of that text had been omitted at any one of those three stages, [the] law [in question] would not have been validly enacted." *Clinton*, 524 U.S. at 448 (emphasis added). Between the second and third "procedural steps," the bill "... shall ... be presented to the President..." Article I, § 7, Cl. 2. *United States v. Munoz-Flores*, *supra*, 495 U.S. at 391 n. 4. Article. I, §7, mandates that a bill that has passed both Houses "'shall before it becomes a Law, be presented to the President of the United States ...,'" Art. I, § 7, Cl. 2; *INS v. Chadha*, 462 U.S. at 945, which "can only contemplate a

presentment by the Congress in some manner, [because] ... [a]t that point the bill is necessarily in the hands of the Congress." *United States v. Kapsalis*, 214 F.2d 677, 680 (7th Cir. 1954), *cert. denied*, 349 U.S. 906 (1955) (emphasis added). Thus, presentment "to the President" is clearly part of the legislative procedure required as essential to enactment of a bill as law. *INS v. Chadha*, 462 U.S. at 945, 947, 951; *La Abra Silver Mining Co. v. United States*, 175 U.S. 423, 454 (1899) ("After a bill has been presented to the President, no further action is required by Congress in respect of that bill, unless it be disapproved by him. ...")

Subject-matter jurisdiction means "'the courts' statutory or constitutional power to adjudicate the case,'" *United States v. Cotton*, 535 U.S. 625, 630 (2002), quoting *Steel Co. v. Citizens For A Better Environment*, 523 U.S. 83, 89 (1998); *Rhode Island v. Massachusetts*, 37 U.S. (12 Pet.) at 718 ("Jurisdiction is the power to hear and determine the subject-matter in controversy between parties to a suit, to adjudicate or exercise any judicial power over them."); *Reynolds v. Stockton*, 140 U.S. 254, 268 (1891) ("Jurisdiction may be defined to be the right to adjudicate concerning the subject matter in a given case."). "Subject-matter limitations on federal jurisdiction serve institutional interests by keeping the federal courts within the bounds the Constitution and Congress have prescribed." *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999).

"Without jurisdiction the court cannot proceed at all in any cause ... and when it ceases to exist, the only function of the court is that of announcing the fact and dismissing the cause." *Steel Co. v. Citizens*, 523 U.S. at 94, quoting *Ex parte McCardle*, 74 U.S. (7 Wall.) 506, 514 (1869); *Willy v. Coastal Corp.*, 503 U.S. 131, 137 (1992) ("lack of subject-matter jurisdiction ... precludes further adjudication"). "The requirement that jurisdiction be established as a threshold matter 'spring[s] from the nature and limits of the judicial power of the United States' and is 'inflexible and without

exception." *Steel Co.*, 523 U.S. at 94-95, quoting *Mansfield, C. & L.M.R. Co. v. Swan*, 111 U.S. 379, 382 (1884); *See also Insurance Corp. of Ireland, Ltd.*, 456 U.S. at 702.

When a district court did "not have subject-matter jurisdiction over the underlying action ... [its] process[es] [are] void and an order of [punishment] based [thereupon] ... must be reversed." *United States Catholic Conf.*, 487 U.S. at 77; *Willy v. Coastal Corp.*, 503 U.S. at 139 ("[T]he [punishment] order itself should fail with a showing that the court was without authority to enter the decree."); *Ex parte Fisk*, 113 U.S. 713, 718 (1885) ("When ... a court of the United States undertakes, by its process ... to punish a man ... [respecting] an order which that court had no authority to make, the order itself, being without jurisdiction, is void, and the order punishing ... is equally void."). *Accord: Marbury v. Madison*, 5 U.S. 137, 180 (1803) ("a law repugnant to the constitution is void; and ... courts, as well as other departments, are bound by that instrument").

Therefore, because "the offense[s] charged ... [were] placed by the law under [the] jurisdiction," of this District Courts pursuant to Public Law 111-21, which is unconstitutional, and "void, the court was without jurisdiction and the prisoner[s] must be discharged." *Yarbrough*, 110 U.S. at 654.

Since Public Law 111-21 has never been enacted as required by Article I, Section 7, Clause 2 thereof, it is *void ab initio*. Thus for this Court to proceed would be an act "*ultra vires*," *Ruhrgas AG*, 526 U.S. at 583 (quoting *Steel Co.*, 523 U.S. at 101-102), and "*coram non iudice*." *Rhode Island v. Massachusetts*, 37 U.S. (12 Pet.) at 720.

## **B. BARACK HUSSEIN OBAMA, II IS NOT PRESIDENT**

Defendant maintains that Barack Hussein Obama, II, is not President of the United States under two theories: Obama is neither: (i) a United States Citizen nor (ii) a "natural born Citizen",

both of which are conditions precedent to holding the office of President of the United States according to Article II, §1, of the U.S. Constitution which is “the supreme Law of the Land” according to Article VI, §2, of the U.S. Constitution.

**1. OBAMA IN NOT A CITIZEN**

“[C]itizenship by birth is established by the mere fact of birth under the circumstances defined in the Constitution. Every person born in the United States, and subject to the jurisdiction thereof, becomes at once a citizen of the United States, and needs no naturalization.” *United States v. Wong Kim Ark*, 169 U.S. 649, 702 (1898). Congress has first defined the circumstances that qualify for U.S. Citizenship-by-birth at 8 U.S.C. §1401(a) – “Nationals and citizens of United States at birth” which states: “The following shall be nationals and citizens of the United States at birth: (a) a person born in the United States, and subject to the jurisdiction thereof.” In the case of Obama as alleged below, there is a substantial question of whether Obama was “born in the United States” and thus whether Obama is a U.S. Citizen-by-birth by action of §1401(a).

Alternatively, Congress at 8 U.S.C. §1401(g) recognizes Citizenship-by-birth which, at the time of Obama’s birth in 1961, in pertinent part stated: “The following shall be nationals and citizens of the United States at birth: (g) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years.” Obama’s mother, Stanley Ann Dunham was born on November 29, 1942. When her son, Barack Hussein Obama, II was born on August 4, 1961, Stanley Ann Dunham was 6,823 days or 18.69 years old. In so much as §1401(g) in 1961 required that the

United States citizen parent must have been a U.S. Citizen for five years “after attaining the age of fourteen years”, i.e., nineteen (19) years old, Obama cannot qualify for U.S. Citizenship under §1401(g) as his mother was less than nineteen (19) when Obama was born.

Obama’s father was not a United States citizen when Obama was born. In his two books, *Dreams from My Father* (1995) and *The Audacity of Hope* (2006), Obama states that his father was Barack Hussein Obama, Senior, and that he was a British subject at the time Obama was born.

In an attempt to demonstrate that he is a citizen of the United States by being born in the United States, Obama has only released two putative “Certificates of Live Birth” (“COLB”) from the State of Hawaii. Expert document examiners have examined copies of each of the COLBs and found significant indications of forgery raising the very real specter that Obama was not born in the United States and thus is not a United States Citizen.

As to Obama’s Short Form COLB the following anomaly is present: The text in the image bears the signs of being graphically altered after the image had been created. Specifically, given that the text in the Short Form COLB is printed on a green background, there should be green dots, or pixels, visible in between the black letters that comprise the text. Yet there is a total absence of any green pixels. In their place, there are gray and white pixels. These pixel patterns are significant because they would never be found in a genuine color document scan.

As to Obama’s Long Form COLB, the following anomalies are present:

- a. The Hawaiian State seal on the COLB is the wrong size.
- b. The hand-stamped State Seal on the two “certified” copies of the COLB are in exactly the same location, an improbable event.
- c. The COLB has two different type of scans contained in it, binary and grayscale, an impossibility in one scanned object.

d. The parallax of the type reveals that there has been tampering. For example, on the COLB: “the word *Name* drops down 2 pixels, but the typed hospital name, *Kapiolani*, does not drop down at all, and again the line just below drops down 2 pixels, but not the name *Kapiolani*.”

e. There is white “haloing” around all the type on the form, an indication of tampering with the image.

f. The typewritten letters were “cut” and “pasted” into place.

g. The “Bates Stamped” sequential number is out of sequence.

h. There are two different colors in Box 20 and Box 22, an impossibility on an originally scanned document.

i. The Rubber Stamp contains an “X” rather than an “H” in the work “the” when other contemporaneous COLBs with the same stamp do not contain the “X”.

j. There are nine “layers” to the Adobe Portable Document File COLB, an indication of a forgery.

k. The typewritten letters change size and shape, an impossibility on 1961 typewriters.

l. Even a teenager can see that the long form COLB is a forgery. *See*: “Obama Birth Certificate Faked In Adobe Illustrator – Youtube – 14 year old’s analysis”.<sup>1</sup>

Additionally, other relevant documentary evidence which would qualify as “ancient documents” under Rule 901(b)(8), Federal Rules of Evidence, are publically available (or readily obtainable through this Court’s compulsory process) which lend credence to the significant concern that Obama: (i) is not who he says he is and (ii) was not born in the United States:

a. Obama has refused to release copies of his college applications and transcripts from Occidental College, Columbia University and Harvard Law – each of which would provide relevant evidence of Obama’s name, place of birth and citizenship as such documents regularly solicit that information.

b. Obama has refused to permit release of his U.S. Passport application. That application requires proof of U.S. citizenship as part of the application process.

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<sup>1</sup> Viewable at: <http://www.youtube.com/watch?v=7s9StxsFIY&feature=youtu.be>

c. In 1991 Obama's then-literary agency, Acton & Dystel, published a booklet, which was distributed to the publishing industry. The booklet includes a brief biography of Obama among the biographies of eighty-nine other authors represented by Acton & Dystel. Along with other factually accurate information about Obama, that biography lists Obama's place of birth as: Kenya.

d. In 2010, Obama posted online on "WhiteHouse.gov" his 2009 tax returns and thus his Social Security number – 042-xx-xxx – became visible to the public. Social Security numbers starting with "042" were issued only to those residing in Connecticut.<sup>2</sup> A SS-5 application for a Social Security number shows basic information including "Place of Birth". When Obama's Social Security number was issued, *circa* 1977, Obama was living in Hawaii and if he had at that time applied for his Social Security number it should have started with "575", "576", "750" or "751"<sup>3</sup>, not "042".

e. A publically released copy of Obama's Selective Service registration form SS-1 shows that the cancellation date-stamp by the Post Office bears the anomaly of a year date "80" when contemporary cancellation stamps all show "1980" as the year. A detailed explanation of this anomaly – which might well be the year "2008" with the "20" removed and the "08" inverted to make it appear it was stamped in "1980" – can be viewed on-line.<sup>4</sup> Obviously, failure to timely register with the Selective Service precludes as a matter-of-law Obama's employment as President. *See*: 5 U.S.C. § 3328(a).

As such, as a *prima facie* matter, it appears that Obama is not a citizen of the United States and thus is ineligible to be President.

## 2. OBAMA IS NOT A "NATURAL BORN CITIZEN"

Regardless of the authenticity of the COLBs, one fact is indisputable: Obama's Father was never a United States Citizen. Defendant assumes solely for the sake of argument here that Obama's COLBs are genuine and that Obama was born in the State of Hawaii, on August 4, 1961, to Stanley Ann Dunham, a citizen of the United States and Barrack Hussein Obama, Senior.

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<sup>2</sup> Retrieved from: <http://socialsecuritynumerology.com>

<sup>3</sup> Retrieved from: <http://socialsecuritynumerology.com>

<sup>4</sup> See: <http://www.westernjournalism.com/sheriff-joe-arpaiio-cold-case-po-sse-video-on-obama-selective-service-fraud/>



At the time of Obama's birth in 1961, his Father was British subject admitted into the United States on a temporary student visa, with the express condition that he was a "non-immigrant student". Obama's Father never became a U.S. citizen; never applied for U.S. citizenship; never declared an intention to become a U.S. citizen; and never became a resident alien. Accordingly, *a priori*, Obama is not a "natural born Citizen" as required to be eligible to be President of the United States under Article II, §1, clause 5 of the U.S. Constitution as he is not the child of two United States citizen parents.

The phrase "natural born Citizen" is an 18<sup>th</sup> Century legal-term-of-art with a definite meaning well known to the Framers of the Constitution. At the time of the adoption of the Constitution, that phrase was defined as: "The natives, or natural-born citizens, are those born in the country, of parents who are citizens." (*The Law of Nations*, Emerich de Vattel, 1758, Chapter 19, § 212). Notably, there are two requirements: (i) born in the United States and (ii) of two parents, both of whom must be United States citizens. Clearly, Obama fails to qualify for this level of citizenship and thus is ineligible to be President.

Significantly, Congress exercised its authority to expand beyond de Vattel's definition of "natural born Citizen" in the Act of 1790, stating: "**the children of citizens of the United States**, that may be born beyond sea, or out of the limits of the United States, shall be considered as **natural-born citizens**: Provided, that the right of citizenship shall not descend to persons whose fathers have never been resident in the United States." 1 Stat. 104. (Emphasis added). Thus, until the act of 1790 was replaced by subsequent statutes regarding citizenship, if both parents were citizens, then the place of birth was immaterial and the resulting offspring was a "natural born Citizen" and thus eligible to be President. Notably, Congress subsequently removed the legal-term-

of-art “natural born Citizen” from all citizenship statutes post-1790 and now solely confers “citizenship”. *See*: 8 U.S.C. §1401 – “Nationals and citizens of the United States at birth”, *supra*.

Moreover, Obama is not a “natural-born Citizen” of the United States as defined by the United States Supreme Court in *Minor v. Happersett*, 88 U.S. 162 (1874):

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.

*Minor v. Happersett* at 168 (Emphasis added). Therefore, the “natural-born Citizen” clause only pertains to a requirement for holding the highest public office, that of President and requires both parents to be U.S. Citizens. Thus, as a matter of law, Obama is ineligible to be President as his Father was not a U.S. Citizen.

### **III. THE REQUESTED DOCUMENTS**

Federal Rules of Criminal Procedure, Rule 17(c) “Producing Documents and Objects” permits the Court to order a witness to “produce the designated items in court before trial or before they are to be offered in evidence.” Defendant recognizes that the standard for securing pretrial document production under Federal Rule of Criminal Procedure 17(c) is that the information is relevant, admissible, and specific. *United States v. Nixon*, 418 U.S. 683, 700 (1974). Defendant’s request for documents meets this standard for each category of documents as detailed *infra*:

1. The original COLBs from Obama to allow Defendant’s Expert Document Examiners to evaluate and testify pursuant to Rule 702, Federal Rules of Evidence, as to the authenticity of those documents;

2. All records of Obama’s birth in the possession of the State of Hawaii

Department of Health and Kapi'olani Maternity Home – which is now named the Kapi'olani Maternity & Gynecological Hospital – the hospital where Obama claims he was born.

3. Authenticated copies of Obama's college applications and transcripts from Occidental College, Columbia University and Harvard Law School – documents Obama has refused to reveal. Pursuant to Rule 901(b)(8), Federal Rules of Evidence, those documents would qualify as Ancient Documents. Defendant believes they will provide relevant evidence of Obama's place of birth and citizenship as such documents regularly solicit that information.

4. Authenticated copies of Obama's U.S. Passport application. That application requires proof of U.S. citizenship as part of the application process. Significantly, in 1991 Obama's then-literary agency, Acton & Dystel, published a booklet, which was distributed to the publishing industry. The booklet includes a brief biography of Obama among the biographies of eighty-nine other authors represented by Acton & Dystel. Along with other factually accurate information about Obama, that biography lists Obama's place of birth as: Kenya.

5. All information regarding Obama's Social Security number in the possession of the United States Social Security Administration. In 2010, Obama posted online on "WhiteHouse.gov" his 2009 tax returns and thus his Social Security number – 042-xx-xxx – became visible to the public. Social Security numbers starting with "042" were issued only to those residing in Connecticut.<sup>5</sup> When Obama's Social Security number was issued, circa 1977, Obama was living in Hawaii and when he applied for his Social Security number it should have started with "575", "576", "750" or "751"<sup>6</sup>, not "042". The Social Security Administration will have on microfilm a copy of Obama's original SS-5 application attached to his particular Social Security Number.

6. All information regarding Obama's Selective Service registration information in the possession of the United States Selective Service System Data Management Center in Palatine, Illinois. Noteworthy on Obama's publicly released Selective Service card is the cancellation stamp by the Post Office which bears the anomaly of a year date "80" when contemporary cancellation stamps all show "1980". A detailed explanation of this anomaly – which might well be the year "2008" with the "20" removed and the "08" inverted to make it appear it was stamped in "1980" – can be viewed on-line.<sup>7</sup> Obviously, failure to timely register with the Selective Service precludes

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<sup>5</sup> Retrieved from: <http://socialsecuritynumerology.com>

<sup>6</sup> Retrieved from: <http://socialsecuritynumerology.com>

<sup>7</sup> See:

<http://www.westernjournalism.com/sheriff-joe-arpaiio-cold-case-po-sse-video-on-obama-selective-service-fraud/>

as a matter-of-law one's employment as President. *See*: 5 USC § 3328(a)<sup>8</sup>.

WHEREFORE Defendant prays that the Court direct its Clerk to immediately issue subpoenas duces tecum as requested by Defendant for the above-referenced documents and thereafter find that in so much as Barack Hussein Obama, II, is not eligible to be President, Public Law 111-21 was never "presented" to a legitimate President and signed into law. Thus Defendant must immediately be released from custody.

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Drafted by:

Montgomery Blair Sibley  
Voice/Fax: 202-478-0371  
E-Mail: [mbsibley@gmail.com](mailto:mbsibley@gmail.com)

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<sup>8</sup> "An individual—who was born after December 31, 1959, . . . and who is not so registered or knowingly and willfully did not so register before the requirement terminated or became inapplicable to the individual, shall be ineligible for appointment to a position in an Executive agency."