IN THE SUPREME COURT
OF THE UNITED STATES

United States of America, *ex relator*, Montgomery Blair Sibley, and Montgomery Blair Sibley, Individually,

Petitioner,

vs.

Barack Hussein Obama, II,
Eric H. Holder, Jr., Deputy Marshal John Doe#1, Deputy Marshal John Doe#2, Ronald C. Machen, Jr.,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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Petition for Writ of Certiorari

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Questions Presented For Review

Petitioner filed on January 3, 2012, (i) a *quo warranto* claim against Barack Hussein Obama, II, (ii) *mandamus* claims against the Attorney General and U.S. Attorney and (iii) a declaratory judgment claim regarding access to the Grand Jury.

The dismissal of Petitioner's claims by the District Court and the summary affirmance by the Circuit Court of that dismissal presents for review the following questions:

WHETHER Congress intended or is able to relegate to the "caprice of the executive" the right of Petitioner to bring the ancient writ of *quo warranto* before an Article III court?

WHETHER the judiciary – using Orwellian tactics – can swap the employment by Congress in 18 U.S.C. §3332(a) of the imperative auxiliary verb "shall" with discretionary auxiliary verb "may"?

WHETHER the prohibition against legal indeterminacy prohibits the Circuit Court from employing the tactics of the *Nationalsozialistische Deutsche Arbeiterpartei* of using ambiguous legal terms-of-art to acheive the same goals: a revolutionary transformation of the legal order from that envisioned by the Framers to an alternative order which permits the unregulated exercise of brute power employed to assault the fundamentals of the rule of law to the end of creating a modern federal *Volksgebundenheit* and *Artgleichheit*.

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Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

Petitioner, Montgomery Blair Sibley ("Sibley"), prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the District of Columbia Circuit entered on December 6, 2012.

Review is mandated because that judgment and opinion: (i) has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power and (ii) has decided an important question of federal law that has not been, but should be, settled by this Court, and/or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Opinions Below

The June 6, 2012, opinion of the District Court is reprinted in the appendix hereto, Appendix-2.

The December 6, 2012, opinion of the Circuit Court is reprinted in the appendix hereto, Appendix-14.

Jurisdiction

The jurisdiction of this Court is invoked under Article III and the Ninth and Tenth Amendments to the United States Constitution and 28 U.S.C. §1254(1). Jurisdiction of the Circuit Court was invoked pursuant to 28 USC § 1291. Jurisdiction of the District Court was invoked pursuant to: (i) 28 U.S.C. §1331, (ii) 28 U.S.C. §1343(a), (iii) 28 U.S.C. §2201 and §2202, (iv) 42 U.S.C. §1983 and (v) District of Columbia Code, Division II, Title 16, Chapter 35.

Constitutional Provisions, Treaties, Statutes, Ordinances and Regulations Involved

18 U.S.C.§1504:

Whoever attempts to influence the action or decision of any grand or petit juror of any court of the United States upon any issue or matter pending before such juror, or before the jury of which he is a member, or pertaining to his duties, by writing or sending to him any written communication, in relation to such issue or matter, shall be fined under this title or imprisoned not more than six months, or both.

18 U.S.C. §3332(a):

It shall be the duty of each such grand jury impaneled within any judicial district to inquire into offenses against the criminal laws of the United

States alleged to have been committed within that district. Such alleged offenses may be brought to the attention of the grand jury by the court or by any attorney appearing on behalf of the United States for the presentation of evidence. **Any such attorney receiving information concerning such an alleged offense from any other person shall, if requested by such other person, inform the grand jury** of such alleged offense, the identity of such other person, and such attorney's action or recommendation. (Emphasis added).

D.C. Code §16-3501. Persons against whom issued; civil action:

A quo warranto may be issued from the United States District Court for the District of Columbia in the name of the United States against a person who within the District of Columbia usurps, intrudes into, or unlawfully holds or exercises, a franchise conferred by the United States or a public office of the United States, civil or military. The proceedings shall be deemed a civil action.

D.C. Code §16-3503. Refusal of Attorney General or United States attorney to act; procedure:

If the Attorney General or United States attorney refuses to institute a quo warranto proceeding on the request of a person interested, the interested person may apply to the court by certified petition for leave to have the writ issued. When, in the opinion of the court, the reasons set forth in the

petition are sufficient in law, the writ shall be allowed to be issued by any attorney, in the name of the United States, on the relation of the interested person on his compliance with the condition prescribed by section 16-3502 as to security for costs.

Statement of the Case

On January 3, 2012, Sibley filed a "Certified Petition for Writs Quo Warranto and Mandamus and Complaint for Damages" against, among others, Barack Hussein Obama, II ("Obama") and Attorney General Eric H. Holder, Jr. ("Holder"), and United States Attorney Ronald C. Machen, Jr. ("Machen").

Pertinent to this Petition, Sibley first sought, as authorized by the Congressionally-enacted D.C. Code, Title 16, §3503, a *writ of quo warranto* preventing Obama from holding the "franchise" of being on the ballot for the office of President in 2012 insomuch as: (i) he is not a "natural born Citizen" of the United States as required by Article II, §1, of the U.S. Constitution and (ii) there is probable cause to believe Obama's claim that he was born within the United States is based solely upon forged documents.

The District Court, ignoring the "franchise" scope of §3501 held: "Yet quo warranto is not a valid mechanism for challenging candidacy in an upcoming election." (Appendix-6). Additionally, the District Court held: "Second, the scope of D.C. Code

§16-3503 has been interpreted narrowly by the D.C. Circuit, which has concluded that only the Attorney General or the United States Attorney has standing to bring a quo warranto action challenging a public official's right to hold office." (Appendix-7).

Last, disposing of Sibley's argument that the Ninth and Tenth Amendments "retained" and "reserved" the right to him to bring a common law *quo warranto* action, the District Court, citing only another federal district court case held: "The 9th and l0th Amendments also do not entitle plaintiff to bring such a claim against a president in federal court." (Appendix-7).

Sibley's <u>second</u> claim pertinent to this Petition sought a *writ of mandamus* to compel Holder and/or Machen to respond to Sibley's §3501 request to institute a *quo warranto* proceeding <u>or</u> refuse to do so. The District Court dismissed this request holding: " [P]laintiff cites no legal requirement for Holder and Machen to answer his request." (Appendix-9).

Sibley's <u>third</u> claim pertinent to this Petition sought, pursuant to 18 U.S.C. §3332, a writ of mandamus to require Machen to inform the grand jury of Sibley's identity and Sibley's allegations of Obama's alleged wire fraud. In response, the District Court denied the mandamus request holding that: "18 U.S.C. §3332 cannot be enforced by private individuals." (Appendix-9).

Finally, Sibley sought a declaration by the District Court that 18 U.S.C. §1504, by criminalizing any attempt to contact the grand jury, violated his First Amendment right to petition and his Fifth Amendment right to present evidence to the grand jury in an effort to seek an indictment or presentment. The District Court held: "The submission of evidence to a grand jury is at the discretion of the prosecuting attorney, and without his or the judge's approval, private individuals have no right to communicate with a federal grand jury." (Appendix-9).

On appeal, the Circuit Court – ignoring both: (i) Sibley's request for full briefing and oral argument and (ii) many of the issues Sibley raised in his Docketing Statement, summarily affirmed the District Court's dismissal of Sibley's claims.

Reason for Granting the Writ

This Petition should be granted because each of the three issues brought to the Court raise the same basic question framed in *Cohens v. Virginia*, 19 U.S. 264 (1821): "If such be the Constitution, it is the duty of the Court to bow with respectful submission to its provisions. If such be not the Constitution, **it is equally the duty of this Court to say so, and to perform that task which the American people have assigned to the judicial department**." (Emphasis added).

Here, that well known task of this Court (and

the inferior courts) to "say what the law is" has been relegated to the Court's cuspidor in the same fashion – and for the same reason – as did the Nationalsozialistische Deutsche Arbeiterpartei starting in 1933: To ensure that individual rights were <u>never</u> acknowledged so they could be ignored towards the end of creating a Volksgericht to permit persecution and encourage intimidation of opponents of the post-World War II, massively inflated, constitutionally-impermissible federal state.

I. Congress Can <u>Not</u> Consign to the "Caprice of the Executive" the Right of Sibley to Bring a *Quo Warranto* suit

It is nonsense to hold – as the District and Circuit Courts now have – that Congress created a statutory right for Sibley to bring a *quo warranto* suit pursuant to §16-3503 while vesting in the Executive to discretion to prohibit Sibley from exercising that right by refusing to respond to his "request".

Moreover, the first-impression question of whether "retained" and "reserved" in the Ninth and Tenth Amendments respectively is the right of any individual to bring a common law *quo warranto* suit was intellectually <u>ignored</u> by both the District and Circuit Courts.

What granted power to the federal government found in the Constitution <u>denies</u> a

citizen the right to challenged the usurpation by an unqualified individual to the presidency? Where in the Constitution did the People give up the right to challenge the illegal behavior of their government? Where in the Constitution did the People grant to the government the sole authority to challenge the government's alleged illegal activities.

Such propositions are simply inane: Did the Framers create a government which the People could not control? Plainly, the Ninth and Tenth Amendments surely say the opposite.

II. The Judiciary Is Not Delegated Authority to Hold That the Auxiliary Verb "Shall" Means "May"

Indisputably, 18 U.S.C. §3332 requires the U.S. Attorney when "receiving information concerning such an alleged offense from any other person shall, if requested by such other person, inform the grand jury of such alleged offense . . ." (Emphasis added). Yet, to prevent this expressly Congressionally-granted right, the District Court cited *Sargeant v. Dixon*, 130 F.3d 1067, 1069-70 (D.C. Cir. 1997), which held that: "Section 3332 says on its face that the U.S. Attorney "shall" present to the grand jury information provided by "any person," . . . In our view, however, Mohwish does not have standing to enforce the statute."

This holding creates a conflict with the express rationale for §3332 found at 2 *U.S. Code*

Cong. & Adm. New, House Report No. 91-1549, 91st Cong. 2d Sess. (1970) at 4015 ("Any such attorney who receives information of an alleged offense from any person <u>**must**</u>, if requested by the person, inform the grand jury of the alleged offense, the identity of the person who conveyed the information, and his own action or recommendation") and the holding of the District Court in *Matter of In re Grand Jury Application*, 617 F. Supp. 199 (S.D.N.Y. 1985).

Moreover, Justice Brewer in *Frisbie v. United States,* 57 U.S. 160, 163 (1895) described a system relying on an energetic grand jury: "[I]n this country the common practice is for the grand jury to investigate any alleged crime, **no matter how or by whom suggested to them**, and after determining that the evidence is sufficient to justify putting the party suspected on trial, to direct the preparation of the formal charge or indictment." Here, the Executive in tandem with the Judiciary has worked to prevent the grand jury from hearing the "suggestion" of an alleged crime by criminalizing any attempt to so "suggest".

Such a result is a ludicrous construction of the Grand Jury system particularly where – as here – Sibley's allegations related to alleged criminal behavior of not <u>only</u> the alleged wire fraud of Obama but of other criminal acts of federal actors in the District of Columbia – including without limitation members of the District Court and the U.S. Attorney's office.

Plainly, one of the historical purposes of the Grand Jury was to investigation government corruption. For example, although the infamous Tweed Ring in New York City was attacked by many well intentioned reformers, it took a New York City grand jury to actually break the Ring in 1872. The grand jury members conducted their own investigation, independent of the district attorney's office. *See*: United States District Attorney George Z. Medalie, *Grand Juries Value,* The Panel, Mar.-Apr. 1931, at 185.

Accordingly, the noxious doctrine of "standing" judicially-birthed in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992) <u>cannot</u> be expanded to denigrate the clear fundamental, Constitutional and statutory right of Sibley to properly "suggest" for investigation by the Grand Jury the alleged criminal behavior of federal actors.

III. The Prohibition Against Legal Indeterminacy Prohibits the Circuit Court from Sweeping under the Rug Sibley's Statement of Issues to Be Raised

The fundamental legitimacy of the courts is founded upon the assumption that the courts are populated by men and women of "conscience and intellectual discipline, capable of judging a particular controversy fairly on the basis of its own circumstances." *United States v. Morgan*, 313 U.S. 409, 421 (1941). When that "presumption" falls away, the legitimacy of the Court's falls with it.

Here, Sibley raised seven (7) issues in his Docketing Statement which the Circuit Court ignored in granting summary affirmance by simply stating: “Petitioner's remaining claims are likewise without merit for the reasons stated by the district court.” (Appendix-17).

To allow such treatment of Sibley’s significant claims mimics the same legal indeterminacy tactics employed by the *Nationalsozialistische Deutsche Arbeiterpartei* to acheive the revolutionary transformation of the liberal Weimar Republic’s constitutionally-based legal order to an alternative order which ultimately permitted the creation of the Volksgericht with its odious legacy. So too here, by allowing Article III actors to ignore legal issues which seek to preserve individual rights vis-a-vis the government and consign – as here – the resulting opinions to “do not publish” status travels the same road to the Volksgericht.

IV. Conclusion

Accordingly, to reimpose legal determinacy and legitimacy back into the federal judicial system, this Court must issue a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit in this matter.

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Contents of Appendix

Opinions Below

The June 6, 2012, opinion of the District Court A-2

The December 6, 2012, opinion of the Circuit Court A-14

United States District Court
for the District of Columbia

Case No.:1:12-cv-00001-JDB

Montgomery Blair Sibley,

Plaintiff,

v.

Barack Obama, et al.,

Defendants.

MEMORANDUM OPINION

Plaintiff is a United States citizen who has filed with the District of Columbia Board of Elections and Ethics to qualify as a write-in candidate for the office of United States President. Plaintiff asserts so-called “birther” claims against President Barack Obama, aiming to have him ousted from office and to have his name removed from the ballot in November 2012 because he supposedly was not born in the United States. Plaintiff also sues Attorney General Eric Holder and United States Attorney for the District of Columbia Ronald Machen. Finally, plaintiff sues the United States Department of Justice, its sub-agency the United States Marshals Service, and two "John Doe" marshals who once escorted him around the federal

courthouse in Washington, DC. Plaintiff claims these marshals chilled his rights to access court and petition the government, retaliated against him, and used excessive force.

Now before the Court are miscellaneous motions filed by plaintiff, as well as a motion to dismiss filed by defendants. In addition to seeking to oust President Obama from office and to bar him from the ballot, plaintiff has also petitioned for two writs of mandamus: the first requiring that Attorney General Holder and U.S. Attorney Machen answer his quo warranto request, and the second requiring that the grand jury be informed that President Obama may have committed wire fraud in disseminating his allegedly falsified birth certificate. Plaintiff seeks a declaratory judgment that 18 U.S.C. §1504 and Rule 6 of the Federal Rules of Criminal Procedure are unconstitutional, so that he can write directly to sitting grand jurors about Obama's alleged federal crime. Plaintiff also moves to be granted a CM/ECF password and the opportunity for pre-service discovery to identify the unnamed deputy marshals, and requests to present his case by oral argument. Finally, plaintiff seeks damages against the Department of Justice and its agents - the U.S. Marshals Service and the two deputies -for their alleged violations of his rights.

For the reasons described below, the Court will deny plaintiff’s motions. The Court will also grant defendants' motion to dismiss with respect to each of plaintiffs myriad unmeritorious claims. As

Chief Judge Lamberth recently stated with respect to a similar suit, "[tlhis Court is not willing to go tilting at windmills." *Taitz v. Obama*. 707 F. Supp. 2d 1, 3 (2011).

I. Petition for Writs Quo Warranto

Plaintiff has filed a petition for writs "quo warranto" to remove President Obama from his current office and, also or alternatively, to bar him from running for the office of president again in the upcoming November election. Quo warranto is a "common-law writ used to inquire into the authority by which a public office is held." Black's Law Dictionary 1371 (9th ed. 2009). Plaintiff claims President Obama is not qualified to serve as president, now or in the future, because he is not a "natural born Citizen" of the United States per Article II, §1 of the Constitution. That assertion is based mainly on alleged indications of fraud in the Certificates of Live Birth that President Obama released publicly to prove he was born in Hawaii. See PI. Pet., Ex. F (Jan. 31, 2012) [Docket Entry 5]. Before this Court may evaluate the merits of his claims, plaintiff must demonstrate that he has the requisite standing to bring this lawsuit, and that the Court may grant the relief he seeks. Federal courts have jurisdiction over a case or controversy under Article III of the U.S. Constitution only if the plaintiff has standing to sue. *Kerchner v. Obama*, 612 F.3d 204, 207 (3d Cir. 2010) (citing *Friends of the Earth, Inc. v. Laidlaw Envtl. Sews. (TOC), Inc.*, 528 U.S. 167, 180-81 (2000)). Standing under Article

III requires: (1) violation of a legally protected interest that is personal to the plaintiff and actual or imminent, not conjectural or hypothetical; (2) a causal relation between the injury and the defendant's challenged conduct; and (3) likelihood that a decision for the plaintiff will compensate for the injury. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). A generalized interest of all citizens in constitutional governance does not suffice to confer standing on one such citizen. *Drake v. Obama*, 664 F.3d 774,779 (9th Cir. 2011) (citing *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208,217 (1974)). To establish standing in a case, the plaintiff must show that he has a "personal stake" in the alleged dispute, and that the injury is "particularized" as to him. *Raines v. Byrd*, 521 U.S. 811, 819 (1997).

Plaintiff lacks standing to challenge President Obama's current tenure in office, just as others who have made similar claims contesting President Obama's eligibility for the presidency were found to lack standing. The injury plaintiff asserts is not particular to him. *See Kerchner*, 612 F.3d at 207 (citing *Berg v. Obama*, 586 F.3d 234, 238-39 (3d Cir. 2009)).

Self-declaration as a write-in candidate in the upcoming presidential election does not enable plaintiff to challenge President Obama's present position. See Pl.'s Pet., Ex. A (Jan. 31, 2012) [Docket Entry 5]. A public official's title to office is an injury particularized to an individual only if that individual

has "an interest in the office itself' - if he or she sought the office at the same time as the current officeholder. *Newman v. United States ex rel. Frizzell*, 238 U.S. 537, 550 (1915). Since Sibley was not a candidate in the 2008 presidential election, the injury he faces from President Obama's current tenure in office is generalized. It "seek[s] relief that no more directly and tangibly benefits him than it does the public at large [, so] does not state an Article III case or controversy." *Lujan*, 504 U.S. at 573-74. The Court will dismiss plaintiffs claim for lack of standing, because "the defect of standing is a defect in subject matter jurisdiction." Fed. R. Civ. P. 12(b)(l); *Haase v. Sessions*, 835 F.2d 902, 906 (D.C. Cir. 1987).

Furthermore, as a matter of statute, plaintiff is not entitled to institute a quo warranto proceeding himself. Under Chapter 16, §3503 of the District of Columbia Code, an "interested person" may institute such a proceeding only if the Attorney General and the United States Attorney for the District of Columbia refuse to institute one on his request. Plaintiff submitted a request to Holder and Machen for them to begin a quo warranto action in November 2011, but he has not received an answer from them. Plaintiff has cited no law to support his assertion that a lack of response in this context should be considered a refusal. Since the refusal condition of D.C. Code §16-3503 has not been met, plaintiffs quo warranto petition is not ripe.

Second, the scope of D.C. Code §16-3503 has

been interpreted narrowly by the D.C. Circuit, which has concluded that only the Attorney General or the United States Attorney has standing to bring a quo warranto action challenging a public official's right to hold office. See *Taitz*, 707 F. Supp. 2d at 3 (citing *Andrade v. Lauer*, 729 F.2d 1475, 1498 D.C. Cir. 1984)). This Court is bound by the D.C. Circuit's decisions, which are based on the notion that challenges to a public official's authority concern a right of the entire public that only a public representative can protect. See *Taitz*, 707 F. Supp. 2d at 3 (citing *United States v. Carmody*, 148 F.2d 684, 685 D.C. Cir. 1945)). Therefore, this Court cannot grant plaintiff a writ of quo warranto to challenge President Obama's current presidency. The 9th and l0th Amendments also do not entitle plaintiff to bring such a claim against a president in federal court. *See Smith v. Anderson*, 2009 U.S. Dist. LEXIS 108220, at *6 (D. Col. 2009). The separation of powers doctrine expressed in the Constitution places the duty to select and remove the President not with individual citizens, but rather with the Electoral College and with the Congress, respectively. See U.S. Const. art. II, §4 1, 4; *id.* amend. XII. The judiciary is not empowered to implement or review such actions, as has been noted in prior opinions responding to the same challenge. See *Kerchner*, 612 F.3d at 208; *Barnett v. Obama*, 2009 U.S. Dist. LEXIS 101206, at '40, *48 (C.D. Cal. 2009).

Plaintiff also seeks a writ of quo warranto preventing President Obama from appearing on the

2012 ballot. Yet quo warranto is not a valid mechanism for challenging candidacy in an upcoming election. Courts have permitted the writ of quo warranto to be used to challenge only current tenures in office, lest a suit arise - contrary to the doctrine of standing - from a future potential injury rather than a real, imminent one. *Broyles v. Commonwealth*, 309 Ky. 837, 839 (1949) ("[Wlhen a quo warranto proceeding is commenced . .. [tlhe term must have begun and the defendant have assumed, usurped or taken possession of the office.") The statutory authority for the writ also limits its scope to challenges regarding a current officeholder. A quo warranto writ may only be issued "against a person who within the District of Columbia usurps, intrudes into, or unlawfully holds or exercises, a franchise conferred by the U.S. or a public office of the U.S." D.C. Code §16-3501 (emphasis added).

Hence, the Court will deny plaintiffs petition for writs quo warranto, as it has no jurisdiction to evaluate the merits of plaintiffs claim regarding President Obama's eligibility now or in the future - for the presidency.

II. Mandamus Requests

Plaintiffs first mandamus request is for Attorney General Holder and U.S. Attorney Machen to be compelled to respond by either instituting a quo warranto proceeding or refusing to do so. The

Court will dismiss this request for failure to state a claim upon which relief may be granted. Mandamus is an overly severe remedy for the situation at hand; it is to be utilized only for duties that are "indisputable" and "ministerial," and plaintiff cites no legal requirement for Holder and Machen to answer his request. *See 13th Regional Corp. v. US. Dep't of Interior*, 654 F.2d 758,760 (D.C. Cir. 1980). Moreover, granting mandamus would have no bearing on the outcome of plaintiffs effort: even if his request were formally refused, D.C. Circuit precedent bars his bringing a quo warranto action himself. *Andrade*, 729 F.2d at 1498.

Citing 18 U.S.C. §3332, Sibley also seeks mandamus to require Machen to inform the grand jury of plaintiffs identity and President Obama's alleged wire fraud, as well as to reveal what action or recommendation was taken regarding this entreaty. The Court will deny the mandamus request, in keeping with prior decisions that 18 U.S.C. §3332 cannot be enforced by private individuals. See, e.g., *Wagner v. Wainstein*, 2006 U.S. App. LEXIS 16026, at *2 (D.C. Cir. June 22, 2006). Per §3332, an individual may request that the U.S. Attorney present evidence of alleged offenses to the grand jury; but that does not directly benefit plaintiff, so it does not create Article III standing to enforce particular action by the U.S. Attorney. *Sargeant v. Dixon*, 130 F.3d 1067, 1069-70 (D.C. Cir. 1997).

III. Demand for Declaratory Relief

Plaintiff seeks a declaration that he may communicate directly with members of the grand jury regarding alleged criminal behavior by President Obama and other federal actors. He contends that 18 U.S.C. §1504 and Rule 6 of the Federal Rules of Criminal Procedure, by forbidding his doing so, violate his First Amendment right to petition and his Fifth Amendment right to present evidence to the grand jury in an effort to seek an indictment or presentment.

Controlling precedent forecloses plaintiffs request. The grand jury's independence in the American legal system is intended not to allow individuals to present material to that body at will, but rather to protect those accused from oppression by the prosecutor or court. *Gaither v. United States*, 413 F.2d 1061, 1065 (D.C. Cir. 1969). The submission of evidence to a grand jury is at the discretion of the prosecuting attorney, and without his or the judge's approval, private individuals have no right to communicate with a federal grand jury. *In re New Haven Grand Jury*, 660 4. Supp. 453,460 (D. Conn. 1985); *Baranoski v. United States Att'y Office*, 2006 U.S. Dist. LEXIS 2240, at *9 (D.N.J. 2006). The First Amendment right "to petition the Government for a redress of grievances," U.S. Const. amend. I, does not inherently include a right to communicate directly with the grand jury, and the Fifth Amendment right to "presentment or indictment of a Grand Jury" prior to being punished for a serious crime, U.S. Const. amend. V, simply does not mean (as plaintiff alleges) that any

individual must be entitled to bring related accusations before that body.

There is, moreover, nothing unconstitutional about the federal rule or the statute at issue. Rule 6 eliminates the role of historical presentments, in line with judicial practice in this circuit. *Gaither*, 413 F.2d at 1065. And 18 U.S.C. §1504, in conjunction with Rule 6, criminalizes direct communication of accusations by individuals to the grand jury. As described above, protection of the rights of those accused of crimes fully justifies these measures; they are consistent with, not violative of, our constitutional structure. Plaintiffs argument that long established federal rules and statutes are unconstitutional merely because they prevent him from accomplishing his aims is unavailing.

III. Request for Damages

Plaintiffs request for damages for alleged violations of his constitutional rights during his September 2009 visit to the federal courthouse in Washington, DC, will also be denied. Plaintiff suffered no harm, as his constitutional freedoms were not actually violated. Standing to support a claimed violation of an individual's right to access court requires demonstration of "actual injury." *Lewis v. Casey*, 518 U.S. 343,351-52 (1996). Yet plaintiff was merely required to be accompanied during his time in the building. See Pl.'s Compl. §9. He was never denied the ability to come into the courthouse and conduct his business, so there was

no abrogation of any constitutional rights.

Moreover, plaintiffs citation of the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2401(b), 2671, et seq., in support of his claim is misguided, as there is no evidence that the marshals acted wrongfully or negligently in their actions during the incident at issue. The marshals were executing their established duty to protect the security of the federal building, for which they are permitted to impose restrictions on members of the public as necessary. See *United States v. Heldt*, 668 F.2d 1238, 1273-74 (D.C. Cir. 1981). Plaintiff cites *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388,388-90 (1971), in support of his claim for damages, but the marshals have discretion to act reasonably in order to ensure the security of the courthouse. See *Klarfeld v. United States*, 944 F.2d 583 (9th Cir. 1992). That plaintiff's escort was armed does not constitute use of excessive force; the weapon is a necessary implement of the deputy marshal's job and was kept bolstered in plaintiffs presence. Plaintiff simply fails to state a claim upon which relief can be granted based on the fairly routine actions alleged, which caused plaintiff no apparent injury. Hence, the Court agrees with the administrative decision of the U.S. Marshals to deny plaintiffs request for damages.

V. Motion for Pre-Service Discovery and Password

Plaintiffs motion for pre-service discovery to identify the John Doe deputy marshals involved in the September 2009 "incident" at the courthouse will also be denied. As discussed above, plaintiff has failed to state a claim against these defendants upon which relief can be granted, so there is no legal justification for pursuing such discovery.

As this Court has previously held, the Clerk's decision not to provide plaintiff with a password for the Court's CM/ECF system will be respected. Plaintiff is able to submit his filings in person, and has given no good reason why he must do so electronically (which requires the password). See *Sibley v. Obama*, 819 F. Supp. 2d 45, 51 (D.D.C. 2011). In any event, this decision terminates plaintiff's action in this Court.

VI. Request for Oral Hearing

Because plaintiffs claims will be dismissed for lack of standing and failure to state a claim, there is no need for - and in any event no right to - oral argument. There are no justiciable issues of fact or law warranting further consideration here, so plaintiffs insistence on a hearing is unpersuasive.

VII. Conclusion

For the reasons stated above, defendants' motion to dismiss will be granted and plaintiff's motions will be denied. A separate order has been issued on this date.

September Term 2011
Case No.: 12-5198
Filed on December 6, 2012

Montgomery Blair Sibley,

Appellant,

v.

Barack Obama, et al.,

Appellees.
______________________________/

BEFORE: Rogers, Garland, and Brown, Circuit Judges

ORDER

Upon consideration of the motion for summary affirmance, the opposition thereto, and the reply, it is

ORDERED that the motion for summary affirmance be granted. The merits of the parties' positions are so clear as to warrant summary action. See *Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam).

With respect to plaintiff's petition for writs quo warranto, the district court was correct that, under this court's precedent, "actions against public

officials (as opposed to actions brought against officers of private corporations) can only be instituted by the Attorney General." *Andrade v. Lauer*, 729 F.2d 1475, 1498 (D.C. Cir. 1984) (emphasis in original). Moreover, the court was also correct that plaintiff is also ineligible for such a writ because he "does not set up any claim to the office" held by President Obama, *Newman v. United States ex rel. Frizzell*, 238 U.S. 537, 547 (1915). As the district court said, "self declaration as a write-in candidate" is insufficient, *Sibley v. Obama*, 866 F. Supp. 2d 17, 20 (D.D.C. 2012), – both because if it were sufficient any citizen could obtain standing (in violation of Article III of the U.S. Constitution) by merely "self declaring," and because the writ is only available for someone who would obtain the office if the incumbent were ousted, *see Newman*, 238 U.S. at 544, 547, 550-51.

With respect to plaintiff's petition to mandamus the Attorney General to act on his request to seek a quo warranto writ, the district court was correct to deny the writ because it is only available if "the plaintiff has a clear right to relief [and] the defendant has a clear duty to act." *Baptist Memorial Hospital v. Sebelius*, 603 F.3d 57, 62 (D.C. Cir. 2010). The statute is phrased in the permissive ("the Attorney General . . . may institute a proceeding . . . on his own motion or on the relation of a third person," D.C. Code § 16-3502) (emphasis added)), and there is no law or case requiring the Attorney General to respond, one way or the other, to a request from a third person. Hence, there can

be no "clear duty." Moreover, as the district court also noted, even if the Attorney General were to respond by formally refusing plaintiff's request, "precedent bars his bringing a quo warranto action himself." *Sibley v. Obama*, 866 F. Supp. 2d at 21 (*citing Andrade*, 729 F.2d at 1498).

The district court was also correct in rejecting plaintiff's claim that statutes and rules that bar him from communicating his evidence directly with members of the grand jury violate the First and Fifth amendments. *See Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 9-10 (1986) (noting the grand jury as a "classic example" of a proceeding as to which there is no First Amendment "right of access"); *Wagner v. Wainstein*, No. 06-5052, 2006 U.S. App. LEXIS 16026, at *2 (D.C. Cir. June 22, 2006) (granting summary affirmance because a private citizen "lacks standing to force presentation of his alleged evidence to a grand jury"); *Sargeant v. Dixon*, 130 F.3d 1067, 1069-70 (D.C. Cir. 1997) (denying plaintiff's request to have his evidence presented to grand jury because the interest "in seeing that the laws are enforced [is] not legally cognizable within the framework of Article III").

Petitioner's remaining claims are likewise without merit for the reasons stated by the district court.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein

until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. *See* Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam