

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

PHILIP J. BERG, ESQUIRE, <i>pro se</i> , on his own	:	
BEHALF and on BEHALF of the	:	
GOVERNMENT OF THE UNITED STATES	:	
OF AMERICA	:	Case No. 08-cv-1933
	:	
Relator,	:	
	:	
vs.	:	
	:	
BARACK HUSSEIN OBAMA,	:	
	:	
Defendant.	:	

**RELATOR’S BRIEF IN SUPPORT OF HIS RESPONSE
IN OPPOSITION TO THE UNITED STATES MOTION TO DISMISS**

TO BE FILED UNDER SEAL

Philip J. Berg, Esquire, on his own behalf and as Relator on behalf of the Government of the United States [hereinafter “Relator”] in this matter files the within Brief in Support of his Response in Opposition to the Government of the United States [hereinafter “Government”] Motion to Dismiss the Relator’s Complaint pursuant to the False Claims Act.

I. BACKGROUND

The False Claims Act is aimed at establishing a law enforcement “partnership” between federal law enforcement offices and private citizens who learned or have the knowledge of fraud against the Government.

When the amendments to the False Claims Act were introduced in 1985, Senator Charles Grassley explained the purpose behind the Act:

“The government needs help – lots of help – to adequately protect the Treasury against growing and increasingly sophisticated fraud...Part of the solution – something I consider essential to any meaningful improvements in cutting down fraud – is the establishment of a solid partnership between public law enforcers...The Federal government has a big job on its hands as it attempts to ensure the integrity of the nearly \$1 trillion we spend each year on various programs and procurement. That job is simply too big if government officials are working alone”

Congress’s intent in amending the qui tam section in 1986 was to “encourage” more private enforcement suits. S. Rep. No. 99-345 at 23-24 (1986) U.S.C.C.A.N. 5266, 5288-89.

As better explained below, the Relator has reason to believe Barry Soetoro a/k/a Barack H. Obama was born in Mombosa, Kenya and his birth was registered in Hawaii, see **EXHIBIT “1”**¹ and **EXHIBIT “2”**². Barry Soetoro a/k/a Barack Obama’s birth father was a Kenyan citizen, a British subject and his mother, although a U.S. Citizen, was not old enough to confer United States “natural born” citizenship status to her son as she did not meet the residency requirements at the time of this birth. Relator further discovered when Barry Soetoro a/k/a Barack H. Obama was approximately four (4) years old, his mother married Lolo Soetoro, M.A. an Indonesian citizen and relocated with his mother to Jakarta, Indonesia. During the investigation into these matters, Relator learned Barry Soetoro a/k/a Barack H. Obama attended public school in Jakarta, Indonesia, which only citizens of Indonesia could attend. It was further discovered by Barry Soetoro a/k/a Barack H. Obama’s school record that he attended school under the name of Barry

¹ Exhibit “1”, Affidavit of Bishop Ron McRae regarding interview with Sarah Obama, Barry Soetoro a/k/a Barack H. Obama’s Kenyan Grandmother;

² Exhibit “2”, Affidavit of Kweli Shuhubia, regarding personal interview of Sarah Obama, Barry Soetoro a/k/a Barack H. Obama’s Kenyan Grandmother and his discussions with staff of the Kenyan Hospital where Barry Soetoro a/k/a Barack H. Obama was born and with the Provincial Civil Registrar regarding the records on file confirming the birth of “Barack H. Obama” in Mombasa, Kenya on August 4, 1961.

Soetoro, an Indonesian Citizen. See **EXHIBIT “3”**³. The Indonesian public schools verified with the Indonesian Government the name and citizenship status of all enrolled children. The only way Barack H. Obama could have been enrolled in the public school system in Jakarta, Indonesia is if his step-father, Lolo Soetoro, M.A. adopted him and/or signed an Indonesian Government “Acknowledgement” form legally acknowledging Barack H. Obama as his son. In Indonesia the child takes the surname of the father. At this point, it did **not** have matter where Barry Soetoro a/k/a Barack H. Obama was born or the citizenship status of his birth parents. Once adopted and/or his birth was “acknowledged” by Lolo Soetoro, M.A., Barry Soetoro a/k/a Barack H. Obama became a “natural citizen” of Indonesia.

No records have been located where Barry Soetoro a/k/a Barack H. Obama went through immigration upon his return to the United States, which would be required to assume United States “naturalized” citizenship status. In addition, absolutely no records have been located showing where Barry Soetoro legally changed his name back to Barack H. Obama.

Even if Barry Soetoro a/k/a Barack H. Obama could have regained any United States Citizenship status upon his eighteenth (18th) birthday, he would have been required to file a sworn Affidavit with the Indonesian Government relinquishing his Indonesian citizenship, and taking the oath of allegiance in the United States, which would be recorded.

Indonesia did not recognize dual citizenship and required the relinquishment of any other citizenship status upon becoming an Indonesian citizen. The United States would not interfere with the citizenship status of any foreign citizen.

³ Exhibit “3”, Barry Soetoro a/k/a Barack H. Obama’s Indonesian School Record.

As a result, as the records in possession of the Relator suggest, Barry Soetoro a/k/a Barack H. Obama is still an Indonesian citizen and his legal name is Barry Soetoro and not Barack H. Obama.

In response to the citizenship questions of Barry Soetoro a/k/a Barack Obama, Barry Soetoro a/k/a Barack H. Obama has released on the internet a copy of a Hawaiian Certification of Live Birth (COLB). The only party who claims to have seen this original document is factcheck.org, who is owned by the Annenberg Foundation. No other party has been allowed access. Even if this COLB is a legitimate document, which there is reason to believe it is not, it is not proof of “natural born” citizenship status. A Hawaiian COLB is issued to births which occurred in Hawaii and births of children born abroad. In fact, the Hawaii Department of Home Lands will not accept a COLB to even prove Hawaiian heritage for the purchase of Hawaiian lands much less citizenship status. See **EXHIBIT “4”**⁴.

The Relator believes when Barry Soetoro a/k/a Barack H. Obama was born in Kenya his birth was registered in Hawaii, at which time a COLB would have been issued. However, that COLB became moot when Barry Soetoro a/k/a Barack H. Obama became an Indonesian Citizen.

In order to assume the position of a United States Senator, the party must be a “naturalized” citizen for nine [9] years and be at least thirty [30] years old, Article I, Section 3 of the U.S. Constitution. and must use his/her legal name. For the above reasons, again, which are better outlined below, Barry Soetoro a/k/a Barack H. Obama did not qualify to hold the office of United States Senator for Illinois, he was aware of his

⁴ The Hawaii Department of Home Lands manual providing the requirements and documents required to prove Hawaiian heritage. This document has been reduced down to the section which provides the requirements to prove ones Hawaiian heritage.

citizenship status and the fact his name was not legally Barack H. Obama. Despite this, Barry Soetoro a/k/a Barack H. Obama defrauded the United States by filing claims he was qualified to hold this seat and filing false statements with the Department of Treasury for his salary and expenses.

On or about March 30, 2009, the government moved to dismiss the Relator's False Claims Action. The Government does have broad discretion to dismiss a False Claims Act; however, they must meet the "rational relation" standard which is the substantive due process analyses requirement, which they have not done here.

The Government in their Motion to Dismiss claims in their first [1st] footnote on page one [1] of their Motion "Relator appears to have then breached the seal by posting on his website a list of his...lawsuits against President Obama, which states in part: "Berg v. Obama, U.S. District Court, Case filed under seal on 11/07/08". This does not violate any type of seal, the Relator has never discussed the type of case, where the case is filed other than the United States District Court, and instead the Relator has clearly stated this case cannot be discussed. The False Claims Act does not specifically prohibit the complaint-related disclosures during the period the complaint is under seal. Relator and his office received calls as a result of this action being accidentally being placed in PACER upon its filing, by the U.S. District Court, District of Columbia. Relator immediately contacted this very Court and spoke with Mrs. Brown in the Clerk's Office, when it was discovered the case was in PACER, and had the case immediately removed out of PACER.

The Government has a duty to investigate the allegations outlined in a False Claims Act filed by a Relator. Exactly what investigation has the Government done in the case herein?

For the above aforementioned reasons, Relator requests this Court to deny the Government's Motion to Dismiss and allow the Relator to litigate his False Claims Action.

II. ARGUMENT

A. EVIDENCE SHOWS BARRY SOETORO a/k/a BARACK H. OBAMA WAS BORN IN KENYA

There are serious questions into the citizenship status of Barry Soetoro a/k/a Barack H. Obama. Evidence points to the fact Barry Soetoro a/k/a Barack H. Obama was born in Kenya to one (1) United States Citizen Mother, Stanley Ann Dunham Obama and a Kenyan National father, Barack Obama, Sr. Barry Soetoro a/k/a Barack H. Obama's mother was not old enough to confer her United States "natural born" citizenship status to her son, Barry Soetoro a/k/a Barack H. Obama. The Nationality Act of 1940, revised June 1952 states in pertinent part:

"Birth Abroad to One Citizen and One Alien Parent in Wedlock: A child born abroad to one U.S. citizen parent and one alien parent acquires U.S. citizenship at birth under Section 301(g) INA provided the citizen parent was physically present in the U.S., for a birth between December 24, 1952 and November 13, 1986, a period of ten years, five after the age of fourteen are required for physical presence in the U.S. to transmit U.S. citizenship to the child."

Barry Soetoro a/k/a Barack H. Obama's mother was only eighteen (18) and not old enough to meet the residency requirements to register his birth in Hawaii as "natural

born” United States Citizen. Nationality Act of 1940, revised June 1952; United States of America v. Cervantes-Nava, 281 F.3d 501 (2002), Drozdz v. I.N.S., 155 F.3d 81, 85-88 (2d Cir.1998), United States v. Gomez-Orozco, 188 F.3d 422, 426-27 (7th Cir. 1999), Scales v. Immigration and Naturalization Service, 232 F.3d 1159 (9th Cir. 2000), Solis-Espinoza v. Gonzales, 401 F.3d 1090 (9th Cir. 2005). The law that applies to a birth abroad is the **law in effect at the time of birth**, Marquez-Marquez a/k/a Moreno v. Gonzales, 455 F. 3d 548 (5th Cir. 2006), Runnett v. Shultz, 901 F.2d 782, 783 (9th Cir.1990) (holding that "the applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth").

Obama’s Kenyan grandmother, Sarah Obama has repeatedly stated Obama was born in Kenya and she was present during his birth. Bishop Ron McRae, who oversees the Anabaptists Churches in North America, and Reverend Kweli Shuhubia, had the opportunity recently to interview Sarah Obama. Reverend Kweli Shuhubia went to the home of Sarah Obama located in Kogello, Kenya. Reverend Kweli Shuhubia called Bishop McRae from Ms. Obama’s home and placed the call on speakerphone. Bishop McRae asked if it was okay to tape the conversation, which permission was granted. Because Ms. Obama only speaks Swahili, Reverend Kweli Shuhubia and another grandson of Ms. Obama’s, translated the telephone interview. Bishop McRae asked Ms. Obama where Obama was born; Ms. Obama answered in Swahili and was very adamant that Obama was born in Kenya. Bishop McRae asked Ms. Obama if she was present during her grandson’s birth and Ms. Obama answered, “Yes.” A copy of Bishop McRae’s affidavit is attached hereto as **EXHIBIT “1”**.

Reverend Kweli Shuhubia left Kisumu City and traveled to Mombosa, Kenya. After the interview of Sarah Obama In October 2008 Reverend Kweli Shuhubia interviewed personnel at the hospital where Ms. Obama said Obama was born in Kenya. Reverend Kweli Shuhubia then immediately thereafter had meetings with the Provincial Civil Registrar. Reverend Kweli Shuhubia learned there were records of Ann Dunham giving birth to Barack Hussein Obama, Jr. in Mombosa, Kenya on August 4, 1961. Reverend Kweli Shuhubia spoke directly with an Official, the Principal Registrar, who openly confirmed that the birthing records of Senator Barack H. Obama, Jr. and his mother were present; however, the file on Barack H. Obama, Jr. was classified. The Official explained Barack Hussein Obama, Jr.'s birth in Kenya is top secret. Reverend Kweli Shuhubia was further instructed to go to the Attorney General's Office and to the Minister in Charge of Immigration if he wanted further information. See the Affidavit of Reverend Shuhubia, attached hereto as **EXHIBIT "2"**.

Obama continues to verbally deny he was born in Kenya and states he was born in Hawaii. Upon investigation into the alleged birth of Obama in Honolulu, Hawaii, Obama's birth is reported as occurring at two (2) separate hospitals, Kapiolani Hospital and Queens Hospital. The Rainbow Edition News Letter, November 2004 Edition, published by the Education Laboratory School, attached as **EXHIBIT "5"**, did a several page article of an interview with Obama and his half-sister, Maya. The Rainbow Edition News Letter reports Obama was born August 4, 1961 at Queens Medical Center in Honolulu, Hawaii. In February 2008, Obama's half-sister, Maya, was again interviewed in the Star Bulletin, attached as **EXHIBIT "6"**. There Maya stated that Obama was born August 4, 1961 in Kapiolani Medical Center for Women & Children.

Two [2] Hawaii newspapers, the Honolulu Advertiser and the Star Bulletin contain birth announcements of Barry Soetoro a/k/a Barack H. Obama. Both articles state “*Mr. and Mrs. Barack H. Obama, 6085 Kalanianaʻole Highway, son, August 4.*” Neither article states who reported the birth. Any one can report a birth in a newspaper, there is absolutely no investigation done, no verification of the actual birth, etc. A Senior Investigator, Jorge L. Baro, interviewed Beatrice Arakaki, who lived at 6075 Kalanianaʻole Highway, Honolulu, Hawaii. Ms. Arakaki’s residence is located next door to the alleged residence of Stanley Ann Dunham and Barack H. Obama Sr. at 6085 Kalanianaʻole Highway, the address used in the birth announcements. Ms. Arakaki told the Investigator that she had owned and lived in her house located at 6075 Kalanianaʻole Highway, Honolulu, Hawaii since before the August 4, 1961 birth of Barry Soetoro a/k/a Barack H. Obama. Ms. Arakaki told the investigator that she had knowledge of the family living in Waikiki and not on Kalanianaʻole Highway. See **EXHIBIT “7”**⁵. In addition, the investigators went to the Newspaper’s office and were unable to confirm who placed the birth announcement pertaining to Barry Soetoro a/k/a Barack H. Obama.

Relator has been unable to locate any legal records showing where Barry Soetoro a/k/a Barack H. Obama went through United States Immigration to obtain “naturalized” United States Citizenship. For this reason, Barry Soetoro a/k/a Barack H. Obama was not qualified to hold the office of United States Senator or legally obtain funds from the United States and/or the Treasury Department for holding said office.

Barry Soetoro a/k/a Barack H. Obama is a lawyer who claims to be a “Constitutional” lawyer and was well aware he was not qualified to hold the office of the

⁵ Affidavit of Senior Investigator, Jorge L. Baro filed in the case of *Thomas, et al v. Hosemann*, United States District Court, District of Mississippi, Case No. 08-00241.

United States Senator of Illinois. Furthermore, he signed governmental paperwork to obtain his position and obtain the pay and related expenses for said position claiming to be a naturalized U.S. citizen and constitutionally qualified for the position. He obtained money from the United States Government and the Treasury Department based on his false claims.

The Government herein has received the above Exhibits. What has the Government done to investigate these issues?

B. REGARDLESS OF WHERE BARRY SOETORO A/K/A BARACK H. OBAMA WAS BORN, HE LOST ANY CITIZENSHIP STATUS HE MAY HAVE HAD WHEN HE BECAME AN INDONESIAN CITIZEN

Even if Barry Soetoro a/k/a Barack H. Obama was, in fact, born in Hawaii, which he was not, he lost his U.S. citizenship when his mother re-married and moved to Indonesia with her Indonesian husband. In or about 1967, when Barry Soetoro a/k/a Barack H. Obama was approximately four (4) years old, his mother, Stanley Ann Dunham, married Lolo Soetoro, a citizen of Indonesia, and moved to Indonesia with Barry Soetoro a/k/a Barack H. Obama.

Barry Soetoro a/k/a Barack H. Obama would have lost his U.S. citizenship, when his mother married Lolo Soetoro, and took up residency in Indonesia. Loss of citizenship, in these circumstances, under U.S. law (as in effect in 1967) required that foreign citizenship be achieved through “application.” Such type of naturalization occurred, for example, when a person acquired a foreign nationality by marriage to a national of that country. Nationality Act of 1940, Section 317(b). A minor child follows

the naturalization and citizenship status of their custodial parent. A further issue is presented that Obama's Indonesian stepfather, Lolo Soetoro.

Barry Soetoro a/k/a Barack H. Obama was enrolled by his parents in a public school, Fransiskus Assisi School in Jakarta, Indonesia. Attached hereto as **EXHIBIT "3"**, is the school record of Barry Soetoro a/k/a Barack H. Obama. It clearly states his name is "Barry Soetoro" and lists his citizenship as Indonesian. His father is listed as Lolo Soetoro, his date of birth and place of birth are listed as August 4, 1961 in Hawaii, and his Religion is listed as Islam. This document was verified by Inside Edition, whose reporter, Matt Meagher took the actual footage of the school record. At the time Barry Soetoro a/k/a Barack H. Obama was registered the public schools obtained and verified the citizenship status and name of the student through the Indonesian Government. All Indonesian students were required to carry government identity cards, or *Karty Tanda Pendudaks*, as well as family card identification called a *Kartu Keluarga*. The *Kartu Keluarga* is a family card which bears the legal names of all family members.

The only way Barry Soetoro a/k/a Barack Obama could have obtained the name of Barry Soetoro and the citizenship of Indonesian is if his step-father, Lolo Soetoro adopted him or legally "acknowledged" Barry Soetoro a/k/a Barack H. Obama as his son. Either way, he became a "natural citizen" of Indonesia.

Under the laws of Indonesia, whether a child is adopted or legally acknowledged, it changes the citizenship status of the child to an Indonesian State Citizen of Indonesia. See the Constitution of Republic of Indonesia, Law No. 62 of 1958 concerning Immigration Affairs and Indonesian Civil Code (Kitab Undang-undang Hukum Perdata) (KUHPer) (Burgerlijk Wetboek voor Indonesie)

Barry Soetoro a/k/a Barack H. Obama could not have attended the public school system in Indonesia, which he did unless he was an Indonesian citizen. Whenever a child was enrolled in a public school in Indonesia, as Barry Soetoro a/k/a Barack H. Obama was, the school contacted the Indonesia Government and verified the child's name and citizenship status. See Constitution of Republic of Indonesia (*Undang-Undang Dasar Republik Indonesia 1945*), Chapter 13, Law No. 62 of 1958 (all citizens of Indonesia have a right to education)

The Indonesian citizenship law was designed to prevent apatride (stateless) or bipatride (dual citizenship). Indonesian regulations recognize neither apatride nor bipatride citizenship.

In addition, the Nationality Act of 1940 provided for the loss of citizenship when a child became naturalized in a foreign country upon the naturalization of his or her parent having custody of such child.

In or about 1971, Barry Soetoro a/k/a Barack H. Obama's mother sent Barry Soetoro a/k/a Barack H. Obama back to Hawaii. Barry Soetoro a/k/a Barack H. Obama was ten (10) years of age upon his return to Hawaii. At this time, Barry Soetoro a/k/a Barack H. Obama would have had to go through immigration to become a naturalized citizen of the United States. Even if Barry Soetoro a/k/a Barack H. Obama could have regained any citizenship status which he may have held, which he could not, he would have had to go through the United States State Department, which there would be record.

Relator has been unable to locate any record of Barry Soetoro legally changing his name from Barry Soetoro to Barack H. Obama. Therefore, Barry Soetoro a/k/a Barack H. Obama's legal name is still today, Barry Soetoro. Moreover, Relator has been

unable to locate any immigration records for Barry Soetoro and/or Barack H. Obama. To this date, Barry Soetoro a/k/a Barack Obama is still an Indonesian Citizen and an illegal Alien.

If Barry Soetoro a/k/a Barack H. Obama could have regained any U.S. citizenship, he may have had and lost upon his mother's re-marriage and relocation to Indonesia and the adoption and/or legal acknowledgement of Lolo Soetoro acknowledging him as his son, when he reached eighteen (18) years of age, he would have had to file a sworn Affidavit with the Indonesian Government relinquishing his Indonesian Citizenship and go through the United States State Department, take the Oath of Allegiance, which would have had to be done by age twenty-one [21]. In order to regain any U.S. citizenship status, if entitled, he would have had to make application to the U.S. State Department to regain his citizenship status, if granted, he would bear a Certificate of Citizenship. Same if he would have gone through Immigration and became a "naturalized" U.S. Citizen.

The Relator is also informed, believes and thereon alleges Barry Soetoro a/k/a Barack H. Obama attended Occidental College in California and Columbia University wherein he claimed to be a foreign student. The Relator has been unable to verify this with the Universities as the records have since been sealed. Has the Government investigated this issue?

Relator has been unable to locate where Barry Soetoro a/k/a Barack H. Obama has ever done this. Relator has also been unable to locate a legal name change wherein Barry Soetoro legally changed his name to Barack H. Obama. Therefore, Barry Soetoro is still his legal name and his legal citizenship status is Indonesian. Hence, Barry Soetoro

a/k/a Barack H. Obama usurped the Office of United States Senator for Illinois, knowing he was ineligible, and filed false claims with the United States Government claiming to be constitutionally qualified and to obtain payment from the United States and the Treasury Department for his salary and expenses to which he was not entitled.

The Government was supplied with this information as well as Barry Soetoro a/k/a Barack H. Obama's Indonesian School Record. Barry Soetoro a/k/a Barack H. Obama has admitted he attended school in Indonesia and talked about his life in Indonesia on national Television. What investigation has the Government done into these issues?

As stated above, Barry Soetoro a/k/a Barack H. Obama is a lawyer who claims to be a "Constitutional" lawyer and was well aware he was not qualified to hold the office of the United States Senator of Illinois. Furthermore, he signed governmental paperwork to obtain his position and obtain the pay and related expenses for said position claiming to be a naturalized U.S. citizen and constitutionally qualified for the position. He obtained money from the United States Government and the Treasury Department based on his false claims.

C. THE GOVERNMENT HAS NOT MET THEIR BURDEN TO HAVE THE RELATOR'S FALSE CLAIM ACTION DISMISSED AND THEREFORE, THE GOVERNMENT'S MOTION SHOULD BE DENIED AND THE RELATOR SHOULD BE ALLOWED TO PROSECUTE HIS ACTION.

A *Qui Tam* complaint may be dismissed pursuant to a motion filed by the Government. The Government rarely moves to dismiss a *qui tam* complaint; it can simply decline to intervene in the action, thereby limiting expenditure of governmental

prosecutorial resources while preserving the outside chance the action may be successfully pursued by the Relator⁶.

The Government may move under Section 3730(c)(2)(A), to dismiss a *qui tam* action, as they have done here, however, the Court must provide the Relator with an opportunity for a hearing on the motion. The Relator requests a hearing on the Government's Motion and requests to be heard on the matter, 31 U.S.C. § 3730(c)(2)(A).

The Government has taken the position herein that the dismissal is mandatory, that they have "virtually 'unfettered' discretion to dismiss a *qui tam* suit and that 31 U.S.C. § 3730(c)(2)(A) gives the Relator the chance to try and convince the United States to change their mind but gives the Court no role in second-guessing the United States exercise of its prosecutorial discretion. This is not accurate.

There are absolutely no guidelines for the Court contained in 31 U.S.C. § 3730(c)(2)(A) for the Court to consider if the Government makes a Motion to Dismiss as they have here.

What the Government has failed to inform this Court is there is a standard of Review for Dismissal of a Quit Tam Case by the Government under Section 3730(c)(2)(A). In *United States ex rel. Sequoia Orange County v. Sunland Packing Company*, 912 F. Supp 1325, 1340 (E.D. Cal. 1995) aff'd, 151 F.3d 1139 (9th Cir. 1998), a case of first impression, it was held that the government's right to dismiss *qui tam* actions is subject to judicial review. The *Sequoia* case established what is called the "Sequoia test" which has been adopted by the District of Columbia Courts and although

⁶ Two commentators argue that the inactivity of the Government in a declined *qui tam* case may constitute a violation of the government's contractual duty of good faith and fair dealing. See John Chierichella & Louis Victorino. *A Qui Tam Conundrum; When Relator's Suit Lacks Merit, What is Government's Duty to the Contractor?* Legal Times (February 28, 2000), at 30-31.

giving substantial deference to the government's discretion to dismiss a declined case, the court did not hold that the government has an absolute right to dismiss such cases. See Swift v. United States, 318 F.3d 250 (D.C. Cir. 2003).

Under Sequoia, the Ninth Circuit upheld the use of a two-step analysis applied by the District Court. The Court held that the standard of review that applies to a Government's Motion to Dismiss under Section 3730(c)(2)(A) is the "rational relation" standard, the standard that applies to substantive due process analyses. The Court shall consider (1) whether the government has identified a valid government purpose for the dismissal; and (2) whether there is "a rational relation between dismissal and accomplishment of the purpose", Sequoia, 151 F.3d 1139, 1145.

The Government herein has not given any basis for their requested dismissal except they claim the Relator's allegations lack merit and concluded they therefore should not be pursued on the United States behalf. The Government went on further and listed other cases the Relator is involved in to simply prejudice the Relator. The Relator is involved with other litigation which is still active in the Court's. The Relator's other litigation has nothing to do with the false claims presented by Barry Soetoro a/k/a Barack H. Obama while sitting as United States Senator for Illinois. The government's Motion clearly lacks a valid government purpose for the dismissal; and there is absolutely no rational relation between dismissal and accomplishment of the purpose. In fact, the Government has done nothing more than attempt to prejudice the Relator, they have not offered any reasons for dismissal that are rationally related to a legitimate government interest in order to justify this Court to dismiss the qui tam action. Sequoia, 151 F.3d 1139, 1147.

As stated herein, there are many questions as to the citizenship status of Barry Soetoro a/k/a Barack H. Obama. Based on the evidence presented to this Court and to the Government, Barry Soetoro a/k/a Barack H. Obama is still an Indonesian Citizen and his legal name is Barry Soetoro. Thus, he was never qualified to serve as a United States Senator for Illinois, he usurped said office and obtained money from the United States based on false claims.

D. THE RELATOR IS ENTITLED TO DISCOVERY REGARDING THE GOVERNMENT'S PROSECUTORIAL DECISION

Relator has furnished the Government and this Court with the following information as to Barry Soetoro a/k/a Barack H. Obama's legal name which is Barry Soetoro and his citizenship status as Indonesian. None of which has been refuted by the Government. Relator has furnished sworn affidavits showing Barry Soetoro a/k/a Barack H. Obama was born in Mombosa, Kenya, again which the Government has not refuted. Relator has presented evidence to the Government and this Court that the Certification of Live Birth presented on the internet by Barry Soetoro a/k/a Barack H. Obama has been deemed a forged and altered document, which has not been refuted by the Government; Relator has presented evidence that the birth announcement filed in the Hawaiian newspapers on or about August 13, 1961 could not be verified, which has not been refuted by the Government; Relator has presented evidence Barry Soetoro a/k/a Barack H. Obama never resided in the address on the birth announcement, which has not been refuted by the Government. Furthermore, Relator has raised the issue pertaining to Barry Soetoro a/k/a Barack H. Obama's college records wherein Relator is informed, believes

and therefore alleges Barry Soetoro a/k/a Barack H. Obama attended Occidental College in California and Columbia University as a foreign student.

What has the Government investigated? Has the Government located Barry Soetoro a//k/a Barack H. Obama's "vault (long version)" birth certificate? Has the Government located any citizenship records for Barry Soetoro a/k/a Barack H. Obama? Has the Government located any legal documents legally changing Barry Soetoro's name to Barack H. Obama?

Relator has clearly shown a substantial threshold entitling him to discovery relating to the Government's prosecutorial decision to seek dismissal of the Relator's False Claim Action. See *Swift v. United States*, 318 F.3d 250, 254. (D.C. Cir. 2003)

Information filed or gathered by the Government relating to its decision whether to intervene has been held non-exempt from disclosure. In *United States ex rel. Mikes v. Strauss*, 846 F.Supp. 21 (S.D.N.Y. 1994) the Court denied the Government's motion to retain the documents filed in relation to the Government's investigation of a *qui tam* complaint under seal.

For the above aforementioned reasons, Relator requests for the discovery from the Government relating to their decision to file the within Motion to Dismiss.

E. CONCLUSION

For the above aforementioned reasons, Relator respectfully requests this Court to deny the Government's Motion to Dismiss, unseal the Case and allow the Relator to prosecute his False Claims Act action. In addition, Relator requests this Honorable Court to grant his request for Discovery relating to the Government's decision to file the within

Motion to Dismiss. Relator is also requesting a hearing on the Government's Motion to Dismiss.

Respectfully submitted,

Dated: April 18, 2009

s/ Philip J. Berg

Philip J. Berg, Esquire, Relator
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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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BEHALF and on BEHALF of the	:	
GOVERNMENT OF THE UNITED STATES	:	
OF AMERICA	:	Case No. 08-cv-1933
	:	
	:	
Relator,	:	
	:	
vs.	:	
	:	
	:	
BARACK HUSSEIN OBAMA,	:	
	:	
Defendant.	:	

CERTIFICATE OF SERVICE

I, hereby certify that Philip J. Berg, Esquire, the Relator’s Brief in support of his Response in Opposition to the U.S. Department of Justice and U.S. Attorney’s Motion to Dismiss Relator’s False Claim Act Complaint was served by mail through the United States Postal Service, this 20th day of April 2009 upon the following:

Keith V. Morgan
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s/ Philip J. Berg

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EXHIBIT “1”

EXHIBIT “2”

EXHIBIT “3”

EXHIBIT “4”

EXHIBIT “5”

EXHIBIT “6”

EXHIBIT “7”