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8 UNITED STATES DISTRICT COURT  
 9 DISTRICT OF ARIZONA

10 KENNETH ALLEN,  
 11  
 12 Plaintiff,

09-CV-00373-TUC-FRZ

13 v.

14 DEPARTMENT OF HOMELAND  
 SECURITY and U.S. DEPARTMENT OF  
 15 STATE, *et al.*,  
 16 Defendants.

**DEFENDANTS' ANSWER  
 TO PLAINTIFF'S  
 AMENDED COMPLAINT**

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 18 The United States Department of State (“DOS”) and the United States Department of  
 19 Homeland Security (“DHS”) (collectively, “Defendants”) hereby answer Plaintiff’s Amended  
 20 Complaint [Dkt. #11-1] in the following numbered paragraphs, which correspond to the  
 21 Amended Complaint’s numbered paragraphs. Defendants deny each and every allegation  
 22 contained in the Amended Complaint except as may be expressly admitted herein.

- 23  
 24 1. Paragraph 1 contains statements of legal conclusions, not factual allegations requiring  
 25 a response, and on that basis, Defendants deny.  
 26 2. Paragraph 2 contains statements of legal conclusions, not factual allegations requiring  
 27 a response, and on that basis, Defendants deny.  
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Complaint for Injunctive Relief

3. Admit that Plaintiff has filed an Amended Complaint raising alleged claims under the Freedom of Information Act (“FOIA”). Admit that Plaintiff seeks an order requiring Defendants to comply with the FOIA and to release records requested by Plaintiff. Deny that Defendants have failed to fulfill their obligations under the FOIA. To the extent Plaintiff makes allegations regarding Barack H. Obama (“President Obama”), or regarding a person named Barry Soetoro, such allegations are subject to a pending motion to dismiss, and on that basis, Defendants deny.
4. Defendants admit that they are federal agencies and that they conduct affairs in Arizona. The remaining allegations in this paragraph describe Plaintiff’s intentions to effectuate service and require no response; to the extent a response is deemed required, Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations regarding Plaintiff’s intentions.
5. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.
6. Admit that Plaintiff seeks compelled release of various records. Deny that Plaintiff is entitled to relief. Allegations concerning President Obama or concerning a person named Barry Soetoro are subject to a pending motion to dismiss, and no response is therefore required. Deny that Barack Obama’s name is “fictitious.” To the extent this paragraph refers to unnamed defendants other than Defendants DHS and DOS, and to Plaintiff’s intentions to further amend his Amended Complaint, no response is required; to the extent a response is deemed required, Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations regarding Plaintiff’s intentions.
7. Because this paragraph refers to unnamed defendants other than Defendants DHS and DOS, no response is required.
8. Defendants incorporate by reference their above responses to paragraphs 1-7.

- 1 9. Allegations concerning President Obama or concerning a person named Barry Soetoro  
2 are subject to a pending motion to dismiss, and no response is therefore required.  
3 Further, paragraph 9 contains conclusions of law, not factual allegations requiring a  
4 response, and on that basis, Defendants deny.
- 5 10. Admit that Plaintiff seeks an order requiring Defendants to comply with the FOIA and  
6 to release records requested by Plaintiff. Deny that Defendants have failed to fulfill  
7 their obligations under the FOIA. Deny that DOS has failed to respond to Plaintiff's  
8 FOIA requests; admit that DHS has denied Plaintiff's request as to certain records;  
9 otherwise deny.
- 10 11. Deny that President Obama's first day in office was Monday, January 26, 2009.  
11 Admit that on January 21, 2009, President Obama's first full day in office, President  
12 Obama signed Executive Order 13489, which was entered into the Federal Register on  
13 January 26, 2009. Deny that Executive Order 13489 was signed on January 26, 2009.  
14 The final sentence of this paragraph contains Plaintiff's characterization of the scope  
15 of the Amended Complaint and requires no response.
- 16 12. Defendants refer the Court to the document described in this paragraph for a complete  
17 and accurate representation of its contents.
- 18 13. Allegations concerning President Obama or concerning a person named Barry Soetoro  
19 are subject to a pending motion to dismiss, and no response is therefore required.  
20 Further, paragraph 13 contains conclusions of law, not factual allegations requiring a  
21 response, and on that basis, Defendants deny. To the extent this paragraph alleges that  
22 President Obama is not a natural-born citizen of the United States, the allegation is  
23 denied.
- 24 14. Admit that Plaintiff's first FOIA request to DHS was dated February 9, 2009.  
25 Defendants refer the Court to the request described in this paragraph for a complete  
26 and accurate representation of its contents.
- 27 15. Admit that DHS responded to Plaintiff's February 9, 2009 FOIA request on February  
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1 19, 2009. Defendants refer the Court to this response for a complete and accurate  
2 representation of its contents.

3 16. Admit that Plaintiff submitted a FOIA request, dated March 1, 2009, to DHS.  
4 Defendants refer the Court to the request described in this paragraph for a complete  
5 and accurate representation of its contents. To the extent this paragraph refers to the  
6 DHS response described in paragraph 15, Defendants refer the Court to that document  
7 for a complete and accurate representation of its contents.

8 17. Paragraph 17 contains conclusions of law, not factual allegations requiring a response,  
9 and on that basis, Defendants deny.

10 18. Allegations concerning President Obama or concerning a person named Barry Soetoro  
11 are subject to a pending motion to dismiss, and no response is therefore required.  
12 Further, this paragraph contains conclusions of law, not factual allegations requiring a  
13 response, and on that basis, Defendants deny. To the extent this paragraph refers to  
14 documents, Defendants refer the Court to such documents for a complete and accurate  
15 representation of their contents.

16 19. Allegations concerning President Obama or concerning a person named Barry Soetoro  
17 are subject to a pending motion to dismiss, and no response is therefore required. To  
18 the extent this paragraph alleges that President Obama is not a natural-born citizen of  
19 the United States, or is or ever was a citizen of Indonesia, those allegations are denied.  
20 Further, paragraph 19 contains conclusions of law, not factual allegations requiring a  
21 response, and on that basis, Defendants deny.

22 20. Allegations concerning President Obama or concerning a person named Barry Soetoro  
23 are subject to a pending motion to dismiss, and no response is therefore required. To  
24 the extent this paragraph alleges that President Obama is not a natural-born citizen of  
25 the United States, or is or ever was a citizen of Kenya or a British subject, those  
26 allegations are denied. Further, paragraph 20 contains conclusions of law, not factual  
27 allegations requiring a response, and on that basis, Defendants deny.

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1 21. Allegations concerning President Obama or concerning a person named Barry Soetoro  
2 are subject to a pending motion to dismiss, and no response is therefore required. To  
3 the extent this paragraph alleges that President Obama is not a natural-born citizen of  
4 the United States, those allegations are denied. Further, paragraph 21 contains  
5 conclusions of law, not factual allegations requiring a response, and on that basis,  
6 Defendants deny.

7 22. Allegations concerning President Obama or concerning a person named Barry Soetoro  
8 are subject to a pending motion to dismiss, and no response is therefore required. To  
9 the extent this paragraph alleges that President Obama is not a natural-born citizen of  
10 the United States, those allegations are denied. To the extent this paragraph refers to a  
11 document, Defendants refer the Court to the document, the authenticity of which  
12 Defendants contest, for a complete and accurate representation of its contents.  
13 Further, paragraph 22 contains conclusions of law, not factual allegations requiring a  
14 response, and on that basis, Defendants deny.

15 23. Admit that Plaintiff requested records from Defendants pursuant to the FOIA. To the  
16 extent paragraph 23 refers to one or more of Plaintiff's FOIA requests, Defendants  
17 refer the Court to those documents for a complete and accurate representation of their  
18 contents. To the extent this paragraph alleges that President Obama is not a natural-  
19 born citizen of the United States, those allegations are denied. Further, paragraph 23  
20 contains conclusions of law, not factual allegations requiring a response, and on that  
21 basis, Defendants deny.

22 24. Defendants refer the Court to the documents described in paragraph 24 for a complete  
23 and accurate representation of their contents. Further, paragraph 24 contains  
24 conclusions of law, not factual allegations requiring a response, and on that basis,  
25 Defendants deny.

26 25. Paragraph 25 contains conclusions of law, not factual allegations requiring a response,  
27 and on that basis, Defendants deny. Further, to the extent this paragraph refers to  
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1 documents, Defendants refer the Court to such documents for a complete and accurate  
2 representation of their contents.

3 26. Admit that the Office of Management and Budget (“OMB”) carries the  
4 responsibilities set forth in 5 U.S.C. § 552a. Deny that OMB “is responsible for the  
5 [Privacy Act’s] implementation.” Defendants lack knowledge or information  
6 sufficient to form a belief about the truth of the remaining allegations in the second,  
7 third, eighth, and ninth sentences of this paragraph. The remaining sentences of this  
8 paragraph contains conclusions of law, not factual allegations requiring a response,  
9 and on that basis, Defendants deny.

10 27. Allegations concerning President Obama or concerning a person named Barry Soetoro  
11 are subject to a pending motion to dismiss, and no response is therefore required. To  
12 the extent this paragraph alleges that President Obama is not a natural-born citizen of  
13 the United States, that President Obama is or ever was a citizen of Indonesia, or that  
14 Lolo Soetoro is or ever was President Obama’s father by birth or adoption, those  
15 allegations are denied. Further, paragraph 27 contains conclusions of law, not factual  
16 allegations requiring a response, and on that basis, Defendants deny.

17 28. Allegations concerning President Obama or concerning a person named Barry Soetoro  
18 are subject to a pending motion to dismiss, and no response is therefore required. To  
19 the extent this paragraph alleges that President Obama is or ever was a practicing  
20 Muslim, that allegation is denied. Further, this paragraph contains conclusions of law,  
21 not factual allegations requiring a response, and on that basis, Defendants deny.

22 29. Allegations concerning President Obama or concerning a person named Barry Soetoro  
23 are subject to a pending motion to dismiss, and no response is therefore required. To  
24 the extent this paragraph alleges that President Obama is not a natural-born citizen of  
25 the United States, that allegation is denied. Further, paragraph 29 contains  
26 conclusions of law, not factual allegations requiring a response, and on that basis,  
27 Defendants deny.

- 1 30. Defendants lack knowledge or information sufficient to form a belief about the truth  
2 of the first and third sentences of paragraph 30, which describe Plaintiff's subjective  
3 opinions. Further, this paragraph contains conclusions of law, not factual allegations  
4 requiring a response, and on that basis, Defendants deny.
- 5 31. The first five sentences of paragraph 31 contain conclusions of law, not factual  
6 allegations requiring a response, and on that basis, Defendants deny. Defendants lack  
7 knowledge or information sufficient to form a belief about the truth of the remaining  
8 allegations in paragraph 31; to the extent these sentences refer to documents,  
9 Defendants refer the Court to such documents for a complete and accurate  
10 representation of their contents.
- 11 32. Paragraph 32 contains conclusions of law, not factual allegations requiring a response,  
12 and on that basis, Defendants deny.
- 13 33. Paragraph 33 contains conclusions of law, not factual allegations requiring a response,  
14 and on that basis, Defendants deny.
- 15 34. Allegations concerning President Obama or concerning a person named Barry Soetoro  
16 are subject to a pending motion to dismiss, and no response is therefore required. To  
17 the extent this paragraph alleges that President Obama is not a natural-born citizen of  
18 the United States, that allegation is denied. Deny the allegations in this paragraph  
19 concerning the beliefs of DHS Secretary Janet Napolitano. Further, paragraph 34  
20 contains conclusions of law, not factual allegations requiring a response, and on that  
21 basis, Defendants deny.
- 22 35. Paragraph 35 contains conclusions of law, not factual allegations requiring a response,  
23 and on that basis, Defendants deny. Further, Defendants refer the Court to the  
24 documents referred to in this paragraph for a complete and accurate representation of  
25 their contents.
- 26 36. Allegations concerning President Obama or concerning a person named Barry Soetoro  
27 are subject to a pending motion to dismiss, and no response is therefore required. To  
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1 the extent this paragraph alleges that President Obama is not a natural-born citizen of  
2 the United States, that allegation is denied. Further, paragraph 36 contains  
3 conclusions of law, not factual allegations requiring a response, and on that basis,  
4 Defendants deny.

5 37. Paragraph 37 contains conclusions of law, not factual allegations requiring a response,  
6 and on that basis, Defendants deny.

7 38. Paragraph 38 contains conclusions of law, not factual allegations requiring a response,  
8 and on that basis, Defendants deny.

9 39. Paragraph 39 contains conclusions of law, not factual allegations requiring a response,  
10 and on that basis, Defendants deny.

11 40. Paragraph 40 contains conclusions of law, not factual allegations requiring a response,  
12 and on that basis, Defendants deny.

13 41. Paragraph 41 contains conclusions of law, not factual allegations requiring a response,  
14 and on that basis, Defendants deny.

15 42. Allegations concerning President Obama or concerning a person named Barry Soetoro  
16 are subject to a pending motion to dismiss, and no response is therefore required.  
17 Further, paragraph 42 contains conclusions of law, not factual allegations requiring a  
18 response, and on that basis, Defendants deny.

19 43. Allegations concerning President Obama or concerning a person named Barry Soetoro  
20 are subject to a pending motion to dismiss, and no response is therefore required.  
21 Further, paragraph 43 contains conclusions of law, not factual allegations requiring a  
22 response, and on that basis, Defendants deny.

23 44. Admit that Plaintiff seeks disclosure of various records. Deny that Plaintiff is entitled  
24 to relief. To the extent this paragraph contains allegations concerning President  
25 Obama or concerning a person named Barry Soetoro, such allegations are subject to a  
26 pending motion to dismiss, and no response is therefore required.



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First Cause of Action

43. Defendants incorporate by reference their responses to paragraphs 1 through 48.  
44. This paragraph contains conclusions of law, not factual allegations requiring a response, and on that basis, Defendants deny.

Second Cause of Action

45. Defendants incorporate by reference their responses to paragraphs 1 through 48.  
46. This paragraph contains conclusions of law, not factual allegations requiring a response, and on that basis, Defendants deny.

Third Cause of Action

47. Defendants incorporate by reference their responses to paragraphs 1 through 48.  
48. This paragraph contains conclusions of law, not factual allegations requiring a response, and on that basis, Defendants deny.

Conclusion

Allegations concerning President Obama or concerning a person named Barry Soetoro are subject to a pending motion to dismiss, and no response is therefore required. Further, this unnumbered paragraph contains conclusions of law, not factual allegations requiring a response, and on that basis, Defendants deny. Deny that Plaintiff is entitled to relief.

**AFFIRMATIVE DEFENSES**

1. Plaintiff has failed to exhaust his administrative remedies.
2. Records at issue are exempt or excluded from disclosure under the Freedom of Information Act.
3. The Amended Complaint fails to state a claim for which relief can be granted.

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**PRAYER FOR RELIEF**

WHEREFORE, Defendants pray that the Court dismiss Plaintiff's suit with prejudice, render judgment that Plaintiff take nothing, assess costs against Plaintiff, and award Defendants all other relief to which they are entitled.

Dated: October 5, 2009

Respectfully submitted,

TONY WEST  
Assistant Attorney General

ELIZABETH J. SHAPIRO  
Deputy Branch Director

s/ Brigham J. Bowen  
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**CERTIFICATE OF SERVICE**

I hereby certify that on October 5, 2009, I caused a copy of the foregoing Answer to be sent via first-class mail, postage pre-paid, to:

Kenneth L. Allen  
10055 E. Gray Hawk Dr.  
Tucson, AZ 85730

October 5, 2009

s/ Brigham J. Bowen