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CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
BY	DEPUTY

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 6 in Proper Person

7 United States District Court  
 8 District of Arizona

Kenneth Allen	)	Case No.: No. 09-CV-00373-TUC-FRZ
	)	
Plaintiff,	)	<b><u>MOTION FOR A VAUGHN INDEX</u></b>
	)	
vs.	)	
Department of Homeland Security; et al.	)	
	)	
Defendant's	)	

13 Comes Now, Plaintiff Kenneth Allen and hereby submits this Motion for a Vaughn Index from  
 14 the Defendants the DHS and DOS.

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 The Plaintiff has filed a request from DHS and the State Department for documents relating to  
 17 Barry Soetoro, Stanley Ann Soetoro and Lolo Soetoro , in each case the defendants have  
 18 claimed exemptions under the FOIA and failed to follow FOIA mandate. In a response from the  
 19 Defendants dated September 17th 2009 Defendants DHS stated "[The USCIS has also  
 20 commenced a search for records maintained under, and retrievable by reference to, the name  
 21 Lolo Soetoro (also deceased).2 At such time as records pertaining to Lolo Soetoro are located,  
 22 the USCIS will disclose all nonexempt, non-privileged portions of the record to you". To this  
 23 date they haven't released anything. It has been held that since the burden of proof in an FOIA  
 24 case was on the agency, the agency should be required to index all records (or portions thereof)  
 25 for which it claimed an exemption. The index was to contain a description of each category of  
 26 material withheld (on a line-by-line basis if necessary), the exemption(s) claimed for each, and  
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1 an explanation of why they applied. The court recognized that compiling such indexes, which  
2 are commonly known as *Vaughn* indexes, could place a great burden on agencies but  
3 expressed its belief that this was where the FOIA meant for the burden to be placed.

4 The requirements for an adequate *Vaughn* index have been refined in subsequent cases. *E.g.*,  
5 *Pacific Architects Eng., Inc. v. Renegotiation Board*, 505 F.2d 383 (D.C. Cir. 1974); *Cuneo v.*  
6 *Schlesinger*, 484 F.2d 1086 (D.C. Cir. 1973). The Ninth Circuit requires a much more detailed  
7 *Vaughn* index than any of the other circuits. *Wiener v. FBI*, 943 F.2d 972 (9th Cir. 1991). The  
8 procedure is now universally accepted as a standard one for FOIA cases so that a substantial  
9 majority are decided on the basis of the requester's pleadings on one side and the agency's  
10 *Vaughn* index with supporting affidavits on the other.

11 As a result, questions concerning the adequacy of the government's pleading frequently  
12 become a central issue in an FOIA case. Such questions are most common in Exemption 1 (*i.e.*,  
13 national security) cases. These involve some considerations not generally applicable to the  
14 other exemptions. The generally accepted test for deciding an FOIA case in the Government's  
15 favor on the basis of a *Vaughn* index and supporting affidavits does.

16 The affidavits must show, with reasonable specificity, why the documents fall within the  
17 exemption. The affidavits will not suffice if the agency's claims are conclusory, merely reciting  
18 statutory standards, or if they are too vague, or sweeping. If the affidavits provide specific  
19 information sufficient to place the documents within the exemption category, if this information is  
20 not contradicted by the record, and if there is not evidence in the record of agency bad faith,  
21 then summary judgment is appropriate. . .

22 *Hayden v. National Security Agency/Central Security Service*, 608 F.2d 1381, 1387 (D.C. Cir.  
23 1979). See *Oglesby v. U.S. Dept. of Army*, 79 F.3d 1177 (D.C. Cir. 1996), for an example of a  
24 determination that a *Vaughn* index was inadequate.

25 The government must define functional categories of documents; it must conduct a document-  
26 by-document review to assign documents to proper categories; and it must explain to the court  
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1 how the release of each category would interfere with enforcement proceedings.

2 *Husek v. IRS*, No. 91-6231 (2d Cir. Jan. 28, 1992) (unpublished order), 956 F.2d 1161 (2d Cir.  
3 1992) (table cite) (Exemption 6: public interest in scrutinizing the hiring decisions of federal  
4 agencies outweighs the de minimus privacy interest federal employees have in their citizenship,  
5 date of birth, educational background, veteran's preference, and in narrative comments and  
6 codes).


7 **CONCLUSION**

8 Fore the forgoing reason this Honorable Court should enjoin the Defendants the DHS and DOS  
9 to produce a Vaughn Index.

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11 //

12 //

13 Respectfully submitted Monday, October 12, 2009

14 

15 Kenneth L Allen, in proper person

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