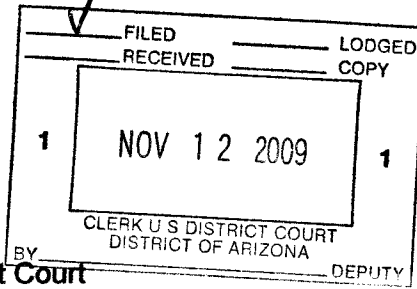


1 Kenneth L Allen
10055 E Gray Hawk Dr
2 Tucson Arizona 85730
520-514-9704
3 kenandbetseyallen@msn.com
in Proper Person



4 United States District Court
5 District of Arizona

7 Kenneth Allen) Case No.: No. 09-CV-00373-TUC-FRZ
8 Plaintiff,) **REPLY MEMORANDUM IN SUPPORT OF**
9 vs.) **PLAINTIFFS VAUGHN INDEX**
10 Department of Homeland Security; et al.)
11 Defendant's)

12
13 Comes Now, Plaintiff Kenneth Allen and hereby submits this Reply Memorandum in Support of
14 Plaintiffs Vaughn Index from the Defendants the DHS and DOS.

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 It would seem that the Defendants believe that the burden of proof is now on the Plaintiff to
17 prove that he complied with FOIA Mandate and that a Vaughn Index isn't necessary, in fact the
18 Vaughn index is a necessary tool with regards to the FOIA . The documents I have requested
19 would help should there be further litigation. As we know a member of the Islamic brotherhood
20 has attacked and killed 13 and wounded 32 others if Fort Hood We don't know who Barry
21 Soetoro is, we know he went to school in Indonesia, we also know he went to school in
22 California at the Occidental College, he may have went to school in Hawaii. After finding out that
23 the Administration knew about Major Hasan what does DOS and the Dos know about Mr
24 Soetoro? in King, 830 F.2d at 219; see, e.g., Maine v. U.S. Dep't of the Interior, 298 F.3d 60, 65
25 (1st Cir. 2002); Rugiero v. U.S. Dep't of Justice, 257 F.3d 534, 544 (6th Cir. 2001) (explaining
26 that Vaughn Index enables court to make "independent assessment" of agency's exemption
27
28

1 claims), Campaign for Responsible Transplantation v. FDA, 219 F. Supp. 2d 106, 116 (D.D.C.
2 2002) ("Without a proper Vaughn index, a requester cannot argue effectively for disclosure and
3 this court cannot rule effectively."); Cucci v. DEA, 871 F. Supp. 508, 514 (D.D.C. 1994) ("An
4 adequate Vaughn index facilitates the trial court's duty of ruling on the applicability of certain
5 invoked FOIA exemptions, gives the requester as much information as possible that he may use
6 to present his case to the trial court and thus enables the adversary system to operate."); cf.
7 Antonelli v. Sullivan, 732 F.2d 560, 562 (7th Cir. 1984) (holding that no Vaughn Index is
8 required when small number of documents is at issue and affidavit contains sufficient detail);
9 Moye, O'Brien, O'Rourke, Hogan & Pickert v. Nat'l R.R. Passenger Corp., No. 02-126, 2003 WL
10 21146674, at *6 (M.D. Fla. May 13, 2003) ("Vaughn indexes are most likely to
11 "create balance between the parties."

12
13 The Plaintiff has filed a request from DHS and the State Department for documents relating to
14 Barry Soetoro, Stanley Ann Soetoro and Lolo Soetoro , in each case the defendants have
15 claimed exemptions under the FOIA and failed to follow FOIA mandate. In a response from the
16 Defendants dated September 17th 2009 Defendants DHS stated "[The USCIS has also
17 commenced a search for records maintained under, and retrievable by reference to, the name
18 Lolo Soetoro (also deceased).² At such time as records pertaining to Lolo Soetoro are located,
19 the USCIS will disclose all nonexempt, non-privileged portions of the record to you". Also see
20 Plaintiffs Exhibit L DOS FOIA reply dated June 1 2009 whee the State Department... concedes
21 that they can release documents with respect to Barack Obama and Barry Soetoro if in fact they
22 refuse to answer a request from me in writing, that request was made and never answered,
23 however with respect to the Department of State they closed the case before I could ever
24 answer allowing the Plaintiff no opportunity to comply with their request.

25
26 Although this Court may deny my request for a Vaughn Index at this time, the court however
27 should order the DOH and DOS to produce the agency records they have conceded to have
28 and are not exempt such as records pertaing to both Barry Soetoro and Lolo Soetoro.

1 It would however clear the playing grounds if the Plaintiff had some documentation from the
2 agency's. To this date they haven't released anything. It has been held that since the burden of
3 proof in an FOIA case was on the agency, the agency should be required to index all records (or
4 portions thereof) for which it claimed an exemption. The index was to contain a description of
5 each category of material withheld (on a line-by-line basis if necessary), the exemption(s)
6 claimed for each, and an explanation of why they applied. The court recognized that compiling
7 such indexes, which are commonly known as *Vaughn* indexes, could place a great burden on
8 agencies but expressed its belief that this was where the FOIA meant for the burden to be
9 placed and not on the Plaintiff.

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

17 As a result, questions concerning the adequacy of the government's pleading frequently
18 become a central issue in an FOIA case as my requests because we can see how the
19 Government uses and protects its people, what really happened in Fort Hood?. Such questions
20 are most common in Exemption 1 (*i.e.*, national security) cases. These involve some
21 considerations not generally applicable to the other exemptions. The generally accepted test for
22 deciding an FOIA case in the Government's favor on the basis of a *Vaughn* index and
23 supporting affidavits does. If Barry Soetoro is protected (*ie.*) because of security reasons than
24 the DOH and DOS should provided adequate documents to prove so.

25 A true Vaughn index identifies discrete portions of documents and identifies the exemption
26 pertaining to each portion of the document. In most cases, such an index provides the date,
27
28

1 source, recipient, subject matter and nature of each document in sufficient detail to permit the
2 requesting party to argue effectively against the claimed exemptions and for the court to
3 assess the applicability of the claimed exemptions.
4

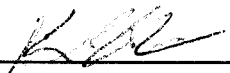
5 **CONCLUSION**

6 Fore the forgoing reason this Honorable Court should enjoin the Defendants the DHS and DOS
7 to produce a Vaughn Index or if they feel that it is a little premature this court should order the
8 Defendants to release agency records that aren't exempt so that the Plaintiff has an equal
9 chance regarding this litigation.
10

11 *////*

12 *///*

13 Respectfully submitted Tuesday , November 10, 2009

14 

15 Kenneth L Allen, in proper person

16 10055 E Gray Hawk Dr

17 Tucson Arizona 85730
18
19
20
21
22
23
24
25
26
27
28