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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
801 North Florida Avenue, #218
Tampa, Florida 33602-3800

MAJOR STEFAN FREDERICK COOK, Plaintiff,	§	
	§	Civil Action Number:
v.	§	
	§	**8:09-cv-01382-RAL-EAJ**
SIMTECH, INC., LARRY GRICE, CEO OF SIMTECH, DEFENSE SECURITY SERVICES, COLONEL LOUIS B. WINGATE, DR. ROBERT M. GATES, UNITED STATES SECRETARY OF DEFENSE, BARACK HUSSEIN OBAMA, *de facto* PRESIDENT of the UNITED STATES, Defendants.	§	Motion to Recuse the Honorable RICHARD A. LAZZARA TRIAL-BY-JURY DEMANDED Pursuant to 28 USC §1861 and Seventh Amendment for all fact issues in Verified Complaint

MOTION TO RECUSE THE HONORABLE
RICHARD A. LAZZARA PURSUANT TO 28 U.S.C. §§144 and 455(a)

Plaintiff Major Stefan Frederick Cook files this Motion to Recuse pursuant to 28 U.S.C. §§144 and 455(a), in support of both theories of recusal. The basic reason for this Motion to Recuse is that Judge RICHARD A. LAZZARA has unconstitutionally denied Plaintiff's access to the courts by and through a coordinated government course of action. Compare ***Christopher v. Harbury***, 536 U.S. 403, 122 S.Ct. 2179; 153 L.Ed. 2d 413; 2002 (2002). Plaintiff's undersigned counsel has filed a certificate of good faith as required by 28 U.S.C. §144 in addition to Plaintiff's own affidavit and that of Plaintiff's expert witness.

By unilaterally denying Plaintiff's access to the Courts in violation of the First, Fifth, and Ninth Amendments to the United States Constitution, Judge RICHARD A. LAZZARA barred Plaintiff from filing a meritorious complaint, albeit one of first impression, seeking declaratory judgments concerning the organization and constitutional legitimacy of the military and further seeking construction and interpretation of a U.S. Army commissioned officer's sworn duty to uphold the United States Constitution against all enemies, foreign and domestic.

When a Judge shows heavy handed bias without even itemizing the ACTUAL issues raised in a pleading, motion, and application for TRO, he is showing pervasive bias which is plainly extrajudicial, because there is no possible "judicial, litigation experience based" source for the bias and prejudice. This is not a case where Judge LAZZARA's knowledge and prejudice results solely from his contact with Plaintiff and his Counsel in a case which has lasted for a year and a quarter of litigation, or more. It is obvious from Documents 3 and 6 submitted in this case that the Honorable RICHARD A. LAZZARA never read the first line of the Complaint or Application for TRO. As the United States Supreme Court has held (per Justice Scalia) that

> ...favorable or unfavorable predisposition can also deserve to be characterized as "bias" or "prejudice" because, even though it springs from the facts adduced or the events occurring at trial, it is so extreme as to display clear inability to render fair judgment. (That explains what some courts have called the "pervasive bias" exception to the "extrajudicial source" doctrine. See, e.g., ***Davis v. Board of School Comm'rs of Mobile County,*** 517 F.2d 1044, 1051 (CA5 1975), cert. denied, 425 U.S. 944, 48 L. Ed. 2d 188, 96 S. Ct. 1685 (1976).)

Liteky v. United States, 510 U.S. at 551, 114 S.Ct.at 1155, 127 L.Ed.2d at 488 (1994)(see further discussion below).

DUE PROCESS VIOLATIONS OF THE FIRST ORDER OF MANGITUDE

Judge RICHARD A. LAZZARA has in essence offended "traditional notions of fair play and substantial justice" to borrow the most famous line from Justice Stone's seminal opinion on personal jurisdiction from ***Int'l Shoe Co. v. Washington***, 326 U.S. 310, 316, 66 S. Ct. 154, 90 L. Ed. 95 (1945).

Judge RICHARD A. LAZZARA so offended these "traditional notions" when he disposed of this Plaintiff's Application for TRO and Complaint within 4 business days, acting ***sua sponte,*** at least insofar as the court electronic record reveals. Judge LAZZARA dismissed the Application for TRO the day after it was filed (July 23, 2009) on the sole formalistic rather than substantive basis that:

> The Court observes that Plaintiff's Application is not accompanied by a complaint and, therefore, fails to comply with the requirements of Local Rules 4.05(b)(2) and 4.06(b)(1). Furthermore, as the Eleventh Circuit Court of Appeals has observed, "[t] ther is no such thing as a suit for a traditional injunction in the abstract." ***Klay v. United Healthgroup, Inc.***, 376 F.3d 1092, 1097 (11th Cir. 2004).

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Plaintiff then filed his Complaint on Friday afternoon, July 24, 2009, together with a Motion to Reinstate his Application for TRO and by Monday afternoon, July 27, 2009, within less than 8 Court business hours, Judge RICHARD A. LAZZARA dismissed this Complaint and refused to reinstate the Application for TRO (again ***sua sponte***, no Defendant yet having been served, much less responded).

Judge Lazzara then and there ruled as follows in a single (if grammatically unwieldy) sentence:

> Having reviewed Plaintiff's submissions, including his recently filed complaint, and acting in accordance with its obligations to inquire into its

> subject matter jurisdiction at the earliest possible stage of the proceedings, *see* ***University of South Alabama v. The American Tobacco Co.***, 168 F.3d 405, 410 (11th Cir. 1999), the Court determines that Plaintiff lacks standing to bring this lawsuit, thus requiring the Court to deny his motion for reconsideration and to dismiss his complaint without prejudice for lack of subject matter jurisdiction. *See* ***DiMaio v. Democratic National Committee***, 520 F.3d 1299 (11th Cir. 2008).

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This is the sum total of the jurisprudence in Judge LAZZARA's order of July 27, 2009, but all the rest is NOT silence. The ***obiter dicta*** of the order are, to Plaintiff's mind, much more telling than the ruling itself:

> Plaintiffs complaint, at its core, is but another attempt to embroil a United States District Court in an ongoing controversy of whether President Barack Obama is a native-born citizen of the United States of America and thus qualified to be President under the United States Constitution. ..... [citations omitted]..... "[t] right thing to do is to bring [this case] to an early end." ....
>
> Plaintiff's first attempt to involve a federal district court in this ongoing conspiracy theory that President Obama is unqualified to be President of the United States of America because he was not a native-born citizen was rebuffed just eleven days ago by the United States District Judge Clay D. Land of the Middle District of Georgia based on a lack of standing. As Judge Land observed, because Plaintiff's orders have been revoked, he cannot satisfy the legal elements of standing to pursue a claim in federal court under Article III of the Constitution. ...[citations omitted]....The same result is appropriate in Plaintiff's second attempt in this case to thrust a federal district court into this controversial maelstrom. Having come to that jurisdictional conclusion, the Court is precluded from reaching the merits of Plaintiff's claims. ***Dimaio***, 520 F.3d at 1303.
>
> ..... This case is dismissed without prejudice for lack of jurisdiction and will remain closed. .... [/s *Richard A. Lazzara*]. .....
>
> Footnote 1: The Court would observe, however, that Plaintiff's complaint is the quintessential "shotgun" pleading that has been condemned on numerous occasions in the Eleventh Circuit Court of Appeals.....[citations omitted].....

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Plaintiff submits first that a reasonable person reading and reviewing the above orders, and knowing that they were entered within a period of four business days from

(and including) the Plaintiff's first filing on Wednesday, July 22, 2009, could only conclude and believe that the Honorable RICHARD A. LAZZARA is pervasively biased against the Plaintiff due to extra-and-in fact literally pre-judicial (i.e. ante-judicial) bias and prejudice against his cause of action, as expressly stated in the Judge's order of July 27, 2009 (Document 6).

THE ACTUAL SUBSTANCE OF THE COMPLAINT

Judge LAZZARA is prejudiced against Major Cook as an individual challenging the constitutional legitimacy of the chain of command based on a constitutional challenge to the eligibility of the President, even though Plaintiff's complaint is simultaneously much broader in its significance than that one single issue, in that it seeks to reform U.S. Army custom, practice, and policies regarding blind obedience to orders. That Judge LAZZARA's bias stems from an extra-judicial source is apparent from (and in fact, is the ONLY reasonable or possible interpretation of) the substantive text of his orders.

It is clear and obvious from Judge Lazzara's determination of Plaintiff Stefan Frederick Cook's lack of standing from the fact that he clearly and plainly did not read the Plaintiff's Complaint or Application for TRO, and from the rapidity of his decision to deny Plaintiff his Seventh Amendment right to a trial-by-jury without first evaluating the sufficiency of his complaint.

Plaintiff suspects and submits upon the substantial if circumstantial evidence of the rapidity of the entry of these orders that an invisible external and extra-judicial but governmental hand may have guided and informed Judge LAZZARA's judicial actions. Whether Judge LAZZARA acted prejudicially upon orders or coercion from other branches of government or if Judge LAZZARA is acting solely and exclusively out of

blind personal prejudice against the questions presented by Plaintiff's Application and Complaint, Judge LAZZARA is disqualified to serve as judge and must either recuse himself or be recused.

The challenges which Plaintiff seeks to have lodged concern (1) the right and power of an unconstitutional commander-in-chief to render lawful orders, and (2) the right and power of a commissioned officer of the United States Army to follow and protect his oath to uphold the constitution, AND (3) the procedures by which an officer must be allowed and empowered to question the lawful nature and status of orders received and to then and there demand an authoritative and independent determination of the constitutional validity of the Army Chain-of-Command and its actions under U.S. and International law if led by an ineligible President.

Plaintiff has received within four business days received so little in the way of a "fair" judicial review of his claims that this entire incipient litigation should be and in fact in the interests of "traditional notions of due process and fairly play" must be reassigned and retroactively referred to another U.S. District Judge for review and reconsideration pursuant to 28 U.S.C. §§144-0455(a).

The United States Court of Appeals for the Sixth Circuit has ruled in a similar case (wherein an order of dismissal had already been entered):

> 28 U.S.C.S. § 455 should, in proper cases, be applied retroactively in order to rectify an oversight and to take the steps necessary to maintain public confidence in the impartiality of the judiciary.
> * * * * * * * * * *
> Our view of the procedure to be followed in dealing with issues under § 455 is reinforced by the Supreme Court's recent decision in ***Liljeberg v. Health Services Acquisition Corp.***, 486 U.S. 847, 56 U.S.L.W. 4637, 100 L. Ed. 2d 855, 108 S. Ct. 2194 (1988), applying § 455 strictly and holding that § 455 should "in proper cases, be applied retroactively" in order "to rectify an oversight and to take the steps

> necessary to maintain public confidence in the impartiality of the judiciary." Id. at 4641.

Barksdale v. Emerick, 853 F.2d 1359 at 1362 (6th Cir. 1988).

In a manner and litigation posture exactly analogous to that of the present case, the Sixth Circuit in ***Barksdale*** allowed (and indeed mandated) RETROACTIVE RECUSAL even where the Motion to Recuse was filed 10 days after the entry of an order of dismissal. 853 F.2d at 1361. Retroactive recusal due to bias is required in the present case because, quite simply, Judge LAZZARA has without justification unreasonably blocked both amendment of submissions full briefing on the merits, even prior to SERVICE of SUMMONS on the Defendants, he has done so for expressly and explicitly political reasons, clothed in the flimsiest of jurisprudential clothes. And in thus aborting litigation has not allowed the development of an adequate record even to take before a Court of Appeals. The fact that Judge LAZZARA has already now "done his worst" does not render this Motion untimely (it is being filed less than ten days after dismissal), nor will the interests of justice be served by disregarding it, no matter how politically sensitive certain select but separable aspects of Plaintiff's Complaint may seem to be.

THE RIGHT TO AN IMPARTIAL AND DISINTERESTED JUDGE IS FUNDAMENTAL UNDER THE FIFTH AND NINTH AMENDMENTS

Due process demands that the judge be unbiased. ***In re Murchison***, 349 U.S. 133, 136, 75 S.Ct. 623, 99 L.Ed. 942 (1955) ("A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases." (emphasis added)). Furthermore, a judge can and should be disqualified for "bias, [] a likelihood of bias[,] or [even] an appearance of bias." See ***Ungar v. Sarafite***, 376 U.S. 575, 588, 84 S.Ct. 841, 11 L.Ed.2d 921 (1964); see also ***Murchison,***

349 U.S. at 136 ("[O]ur system of law has always endeavored to prevent even the probability of unfairness."); accord ***Anderson v. Sheppard***, 856 F.2d 741, 746 (6th Cir. 1988) (opining that due process "require[s] not only an absence of actual bias, but an absence of even the appearance of judicial bias"). See also, generally, ***Railey v. Webb***, 540 F.3d 393, 399-400 (6th Cir. 2008).

Within less than one week's time, Major Stefan Frederick Cook filed two important documents in the above-entitled action, and both documents were dismissed by Judge RICHARD A. LAZZARA ***sua sponte*** within (quite literally) less than 8 business day hours of filing EACH document. Major Stefan Frederick Cook's Affidavit required by this Motion to Recuse pursuant to 28 U.S.C. §144 will be filed within the week, but an Expert Witness Affidavit will also serve as Notice of Challenge to legitimate authority, jurisdiction, and recusal---so that no further action should be taken by the Court in this case except for entry of an order of immediate recusal and or return to the clerk for random reassignment by the Chief Judge of the Middle District of Florida ***sua sponte.***

Plaintiff Major Stefan Frederick Cook has concluded and hereby submits that Judge LAZZARA's participation in this case violates Plaintiff's due process rights as explicated in several Supreme Court cases namely ***Tumey v. Ohio***, 273 U.S. 510, 523 (1927), ***In Re Murchison***, 349 U.S. 133, 136 (1955), and ***Ward v. Village of Monroeville*** 409 U.S. 57, 61 (1972). In particular, it is obvious that under no circumstances will or would Judge LAZZARA ever allow Plaintiff to submit any facts or mixed questions of fact and law to a jury, despite the guarantees of the 7th Amendment,

the public policies articulated by 28 U.S.C. §1861, and Rule 38 of the Federal Rules of Civil Procedure.

Major Stefan Frederick Cook is not required to allege or submit evidence conclusively showing whether in fact Judge LAZZARA was influenced by prior association or direct ex-parte communications with ***de facto*** President Obama, or any of his agents or persons unofficially acting on his behalf, or with Secretary of Defense Robert M. Gates or the Defense Security Service Agency or any related entities. Plaintiff herein need only allege and point to the public record in this case to demand immediate and retroactive recusal and ask whether Judge LAZZARA's blitzkrieg-like rulings while sitting on Plaintiff Major Cook's case during the first 24-32 business-day hours after its filing appears objectively improper and/or gives a reasonable person the belief and/or firm conviction based on inference that either Judge LAZZARA's personal and extrajudicial background circumstances and interests, prejudices, and biased have "...lead him not to **hold** the **balance nice,** clear and true.'" ***Ward,*** 409 U.S., at 60 (quoting ***Tumey*** **v.** ***Ohio,*** 273 U.S., at 523, 532).

The Due Process Clause "may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way, 'justice must satisfy the appearance of justice.'" ***Murchison,*** 349 U.S., at 136 (citation omitted). Judge RICHARD A. LAZZARA has not satisfied the appearance of justice. Judge LAZZARA has also completely failed to evaluate or even pretend to have read enough of Plaintiff Cook's Application for TRO and Complaint to determine whether or not Plaintiff Cook has standing, for example, to demand a declaratory judgment regarding the procedures by

which a commissioned officer may adhere to his oath by questioning the constitutionality or lawful status of military orders received, even in times of domestic peace (and there are severe constitutional questions and doubts under international law concerning the constitutional nature and lawful status of the so-called "Global War on Terrorism" ("Overseas Contingency Operations") as an instrument of national or international policy.

While Plaintiff and undersigned counsel are both quite aware that a Judge's rulings on legal questions, without more, will ALMOST never constitute grounds for recusal, Plaintiff submits that Judge LAZZARA's manner of precipitous, hasting, unreflective rulings within mere hours of filing, and his rulings on one particular issue, that of the Plaintiff's lack of STANDING (without addressing any of the actual text of the Plaintiff's complaint, and in fact, obviously misunderstanding it) produces a result so bizarre as to flunk the "reasonable jurist" standard, and therefore constitutes grounds for recusal under 28 U.S.C.§455(a) on the grounds of appearance of impropriety, unwillingness to decide a case fairly in regard to this particular issue, litigant, or perhaps even Plaintiff's attorney. In a situation such as the present where Judge LAZZARA has never met nor even seen the Plaintiff or his attorney in person, and can only be aware of the prior litigation in this case through hearsay sources such as the news media, the overwhelming weight of inference requires the conclusion that the Judge's prejudice or prejudicial conduct is based on extra-judicial bias and prejudice, or else on actual ex-parte conducts or orders written by an "invisible hand" as suggested above.

The United States Supreme Court has characterized the inquiry whether a rule stated by the court in a case is new as an inquiry whether reasonable jurists could disagree as to whether a result is dictated by precedent, the standard for determining

when a case establishes a new rule is objective; for such purposes, the mere existence of conflicting authority does not necessarily mean a rule is new. ***Williams v. Taylor***, 529 U.S. 362; 120 S.Ct.1495; 146 L.Ed.2d 389 (2000).

Judge LAZZARA's finding (Document 6, Filed 07/27/2009) that Major Cook lacks standing to lodge his complaint is a violation of Cook's Seventh Amendment right to trial-by-jury and an infringement on his First Amendment right to Petition for Redress of Grievances, along with his Ninth Amendment right to enforce and follow, as well as to preserve, protect, and defend, the sanctity of his oath to uphold the Constitution as a commissioned officer of the United States Army. Judge LAZZARA's perversion of the rule of standing in this case is merely pretextual, not based on reasoned jurisprudential analysis of the Plaintiff's situation. Judge LAZZARA's rule reflects that he is not entitled to the "benefit of the doubt" whether he is a "reasonable jurist" because it is not based on a new rule, but is rather just a word used utterly inappropriately and without reference either to the Plaintiff's Complaint, Application, or Motion. It must be remembered that this case, filed 07/22/2009, was declared closed and dismissed by 07/27/2009 even WITH the filing of a Complaint to support the Plaintiff's Motion to Reinstate the TRO denied on a technicality on 07/23/2009.

That technicality itself is very interesting to consider, BECAUSE THE JUDGE'S STATEMENTS IN DOCUMENT 3 QUOTED ABOVE, CONCERNING THE LOCAL RULES OF THE MIDDLE DISTRICT OF FLORIDA, ARE COMPLETELY AND ABSOLUTELY FALSE. As noted above, Judge LAZZARA stated on Thursday, July 23, 2009, that "Plaintiff's Application is not accompanied by a complaint and, therefore, fails to comply with the requirements of Local Rules 4.05(b)(2) and 4.06(b)(1)."

Document 3, Filed 07/23/2009, Page 1 of 2. It is enlightening to examine the actual rules which Judge LAZZARA cited (all forms of italic, bold, capitalized emphasis added here):

> RULE 4.05 TEMPORARY RESTRAINING ORDERS
> (a) Pursuant to Rule 65(b), Fed.R.Civ.P., temporary restraining orders may be issued without notice to be effective for a period of ten (10) days unless extended or sooner dissolved. Such orders will be entered only in emergency cases to maintain the status quo until the requisite notice may be given and an opportunity is afforded to opposing parties to respond to the application for a preliminary injunction. (See Rule 4.06 of these rules.)
> (b) Due to previously scheduled business it will not ordinarily be possible for the Court to interrupt its daily calendar in order to conduct a hearing or entertain oral presentation and argument incident to an application for a temporary restraining order. ***The Court's decision, of necessity, will USUALLY be made solely on the basis of the complaint and other supporting papers submitted pursuant to this rule.*** Accordingly, all applications for temporary restraining orders must be presented as follows:
> (1) The request for the issuance of the temporary restraining order should be made by a separate motion entitled "Motion for Temporary Restraining Order".
> (2) The motion must be supported by allegations of specific facts shown in the verified complaint ***OR*** accompanying affidavits, not only that the moving party is threatened with irreparable injury, but that such injury is so imminent that notice and a hearing on the application for preliminary injunction is impractical if not impossible (Rule 65(b), Fed.R.Civ.P.)
> (3) The motion should also: (i) describe precisely the conduct sought to be enjoined; (ii) set forth facts on which the Court can make a reasoned determination as to the amount of security which must be posted pursuant to Rule 65(c), Fed.R.Civ.P.; (iii) be accompanied by a proposed form of temporary restraining order prepared in strict accordance with the several requirements contained in Rule 65(b) and (d), Fed.R.Civ.P.; and (iv) should contain or be accompanied by a supporting legal memorandum or brief.
> (4) The brief or legal memorandum submitted in support of the motion must address the following issues: (i) the likelihood that the moving party will ultimately prevail on the merits of the claim; (ii) the irreparable nature of the threatened injury and the reason that notice cannot be given; (iii) the potential harm that might be caused to the opposing parties or others if the order is issued; and (iv) the public interest, if any.

It is altogether plan that the phrases "a verified complaint OR accompanying affidavits" and "***The Court's decision, of necessity, will USUALLY be made solely on the basis of***

the complaint and other supporting papers submitted pursuant to this rule," plainly contemplate that there may be ***Unusual*** circumstances in and under which affidavits alone, or a Verified Application for Temporary Restraining Order, will suffice under the Rules. In any event, Rule 1 states that the Federal Rules of Civil Procedure (and all local rules enacted thereunder), "should be construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding." In construing this clause, the Supreme Court has written that "Under the [FRCP's] the impulse is toward entertaining the broades possible scope of action consistent with fairness to the parties; joinder of claim, parties, and remedies is strongly encouraged." ***United Mine Workers v. Gibbs,*** 383 U.S. 715, 724, 86 S.Ct. 1130, 1138 (1966). Another "hornbook" way of phrasing it is that the Federal Rules of Civil Procedure are neither designed to enlarge nor restrict substantive rights, and that substantive justice rather than formalistic perfection of pleading practice is to be the primary goal of the courts in their administration and application of the rules.

Denial of access to the courts is an evil that the Federal Rules of Civil Procedure were designed to avoid, not implement. There is absolutely nothing in FRCP Rule 65 requiring that a TRO and Complaint be filed simultaneously, although both may obviously necessary to bring a suit under the Federal rules as applied to certain circumstances, but in the experience of the undersigned counsel and her staff, Judges rarely if ever [before this case] "slam the door shut" on judicial proceedings to temporarily restrain a forest clear-cutting or strip-mining operation or other potentially disastrous environmental violation (as when no Environmental Impact Statement has been done) if the Application for TRO is filed the week before a Complaint, which is

often filed only a week or five days in advance of the hearing on Preliminary Injunction.

But in the interests of "fairness" the Plaintiffs will examine the second local rule cited by Judge LAZZARA also:

> **RULE 4.06 PRELIMINARY INJUNCTIONS**
> (a) A preliminary injunction may not be issued absent notice (Rule 65(a)(1), Fed.R.Civ.P.), which must be given at least five (5) days in advance of the hearing (Rule 6(d), Fed.R.Civ.P.).
> (b) All hearings scheduled on applications for a preliminary injunction will be limited in the usual course to argument of counsel unless the Court grants express leave to the contrary in advance of the hearing pursuant to Rule 43(e), Fed.R.Civ.P. In order to develop a record and the positions of the parties in advance of the hearing, the following procedure shall apply:
> (1) The party applying for the preliminary injunction shall fully comply with the procedural requirements of Rule 4.05(b)(1) through (b)(5) of these rules pertaining to temporary restraining orders.
> (2) Service of all papers and affidavits upon which the moving party intends to rely must be made at least five (5) full days prior to the hearing (Rule 6(d), Fed.R.Civ.P.).
> (3) The party or parties opposing the application must file with the Clerk's Office, and deliver to the moving party, all counter or opposing affidavits, and a responsive brief, not later than the close of business on the day preceding the day of the hearing (Rule 6(d), Fed.R.Civ.P.)

It is perfectly plain that the Local Rules of the Middle District of Florida DO NOT in fact impose any additional "do or die" requirement on the timing of filing a complaint together with a TRO any more than FRCP Rule 65 itself does. As a matter of substance rather than form, Plaintiff Major Stefan Frederick Cook's Application for TRO included ALL the elements of a complaint, including the jurisdictional allegations, and the mere LABELLING of the VERIFIED initial document filed as an Application for TRO with multiple but parallel theories of entitlement (lacking, in essence, only numbered paragraphs in compliance with Rule 10(b)). Again, Judge LAZZARA fails the "reasonable jurist" test in his immediate denial of the Plaintiff's Application for the TRO just as surely as he failed that same test in connection with the question of standing, and it

is plain that BOTH failures resulted from the Judge's refusal to consider the Plaintiff's documents filed as a whole, in that the Judge did not even recognize the numerous issues listed and raised in both the TRO aside from the (by evasive governmental action) issue of ephemeral orders, issued one day and revoked the next, but always with the exact same constitutionally infirm "chain of command."

EXCERPTS FROM CANONS 1-3 OF THE FEDERAL CODE OF JUDICIAL CONDUCT EFFECTIVE JULY 1, 2009

Finally, as a last and separate argument in support of recusal, Plaintiff Major Stefan Frederick Cook submits and contends that, if the Canons of the Federal Code of Judicial Conduct are to have any more than an ephemeral and symbolic importance and value, Judge RICHARD A. LAZZARA must be recused because in his handling of this Plaintiff's case, he has flagrantly violated Canons 1-3 of the Federal Code of Judicial Conduct, revisions effective July 1, 2009:

CANON 1: A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY

An independent and honorable judiciary is indispensable to justice in our society. A judge should maintain and enforce high standards of conduct and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

COMMENTARY

Deference to the judgments and rulings of courts depends on public confidence in the integrity and independence of judges. The integrity and independence of judges depend in turn on their acting without fear or favor. Although judges should be independent, they must comply with the law and should comply with this Code. Adherence to this responsibility helps to maintain public confidence in the impartiality of the judiciary. Conversely, violation of this Code diminishes public confidence in the judiciary and injures our system of government under law.

http://www.uscourts.gov/library/codeOfConduct/Code_Effective_July-01-09.pdf

Judge RICHARD A. LAZZARA had violated the independence and honor of the Federal Judiciary by allowing at least the appearance, if not proving the reality, of

external influence and political interference with the judicial process. For all these same reasons, Judge LAZZARA has violated the provisions of Canon 2:

CANON 2: A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES

A. *Respect for Law.* A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. *Outside Influence.* A judge should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment. A judge should neither lend the prestige of the judicial office to advance the private interests of the judge or others nor convey or permit others to convey the impression that they are in a special position to influence the judge. A judge should not testify voluntarily as a character witness.

COMMENTARY

Canon 2A. An appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge's honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired. Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. This prohibition applies to both professional and personal conduct. A judge must expect to be the subject of constant public scrutiny and accept freely and willingly restrictions that might be viewed as burdensome by the ordinary citizen. Because it is not practicable to list all prohibited acts, the prohibition is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules, or other specific provisions of this Code.

Canon 2B. Testimony as a character witness injects the prestige of the judicial office into the proceeding in which the judge testifies and may be perceived as an official testimonial. A judge should discourage a party from requiring the judge to testify as a character witness except in unusual circumstances when the demands of justice require. This Canon does not create a privilege against testifying in response to an official summons.

Judge LAZZARA's conduct to date in the above-entitled and numbered cause appears to have violated or derogated from almost every provision of Canon 2 and the commentary, and for all these reasons, he should be retroactively recused and all his actions in the case of Major Stefan Frederick Cook rendered null and void.

Finally, it is in relation to Canon 3, that Judge LAZZARA has failed most

profoundly:

CANON 3: A JUDGE SHOULD PERFORM THE DUTIES OF THE OFFICE FAIRLY, IMPARTIALLY AND DILIGENTLY

The duties of judicial office take precedence over all other activities. In performing the duties prescribed by law, the judge should adhere to the following standards:

A. *Adjudicative Responsibilities.*

(1) A judge should be faithful to, and maintain professional competence in, the law and should not be swayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should hear and decide matters assigned, unless disqualified, and should maintain order and decorum in all judicial proceedings.

(3) A judge should be patient, dignified, respectful, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity.

. . .

(4) A judge should accord to every person who has a legal interest in a proceeding, and that person's lawyer, the full right to be heard according to law. Except as set out below, a judge should not initiate, permit, or consider ex parte communications or consider other communications concerning a pending or impending matter that are made outside the presence of the parties or their lawyers. If a judge receives an unauthorized ex parte communication bearing on the substance of a matter, the judge should promptly notify the parties of the subject matter of the communication and allow the parties an opportunity to respond, if requested. . . .

To the Plaintiff and his counsel, it honestly appears that this case could not possibly have been decided so rapidly without outside input and pressure of an extraordinary nature. Judge LAZZARA in effect absolutely, positively, and utterly refused to "hear" Plaintiff Major Stefan F. Cook's complaint, even though this matter was assigned to him, and he allowed partisan interests, expressly articulated in his orders, to determine and decide the outcome of Major Stefan Frederick Cook's case.

SUMMARY AND CONCLUSIONS

Judge LAZZARA dismissed Major Cook's Application for Temporary Restraining Order and Complaint for wrongful termination owing to governmental pressure, tortuous interference, and suggestions of blackmail and extortion of the proposed involuntary plaintiffs SIMTECH and its CEO GRICE without ever mentioning

any of these issues, or the role of the Defense Security Service Agency, although these are all at the core of Plaintiff's Complaint, which is not primarily focused on a resolution of the eligibility of President Barack Obama, but on the status of the Army and its officers under constitutional oath "to protect against all enemies, foreign and domestic."

WHEREFORE, Major Stefan Frederick Cook prays that this Court should PROCEED NO FURTHER, pursuant to the Rule of Law Articulated in 28 U.S.C. §144, and that the Honorable Judge RICHARD A. LAZZARA should voluntarily recuse himself permanently to allow an independent review of the (exceptionally brief, swift, and non-adversarial proceedings in this case, which amounted to a reflexive and unthinking denial of access to the Courts, in which Judge LAZZARA was the only adversary, acting directly or indirectly, intentionally or unintentionally, as part of a VERY consistent custom, pattern, practice, and policy of concerted government denial of redress or resolution on this issue of supreme public interest and importance) by an impartial judge without connections of any kind to the parties or histories of litigation in this case.

Pursuant to 28 U.S.C. §144, no further action in this case may be taken without further decision by the Chief Judge of the Middle District of Florida with regard to the appointment of an independent judicial review of Judge RICHARD A. LAZZARA's management and the character of his disposition of issues in this case as consistent or not with due process of law and the reasonable perception of impartiality or bias in Judge LAZZARA's course of conduct and disposition of all aspects of Major Stefan Frederick Cook's complex litigation against the United States Department of Defense and others in the executive branch

concerning chain of command and the procedural means by which an officer may uphold his oath of office and statutory duty to uphold the Constitution of the United States and to obey ONLY lawful orders.

Respectfully submitted,

Saturday, August 1, 2009
Lughnasadh

By: _____

Dr. Orly Taitz, Esq. (SBN 223433)
Attorney for the Plaintiffs
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Affidavit of Stefan Frederick Cook

1. My name is Stefan Frederick Cook. I am the Plaintiff in Middle District of Florida Case Number: 8:09-cv-01382-RAL-EAJ.

2. I am a natural person over the age of 18, with full mental capacity and civil rights. I have never been convicted of a felony nor any crime of moral turpitude, and suffer from no known or suspected mental disease nor any psychological impairment of any kind.

3. I have served in the United States Army, Army Reserve, or Army National Guard for the past 20-21 years, including approximately 4 years on active duty.

4. I did not file my lawsuit merely to avoid orders or going to Afghanistan, in fact, I relished the opportunity for foreign deployment and the opportunity to use my skills to the maximum in the service of my country and of world peace and prosperity.

5. Rather, I filed my Complaint and Applications for Temporary Restraining Order first for the purpose of seeking a judicial declaration clarifying my constitutional duties under my oath, next for the purpose of seeking such a declaration clarifying my obligation as an officer to determine the lawful nature and limits of any and all orders I receive, and constantly to question the chain of command, in order to preserve, protect, and defend the Constitution of the United States against all enemies, foreign and domestic. My primary concern is to protect the honor, integrity, and sanctity of my oath, which is the same oath taken by all commissioned officers in all branches of the United States Armed Forces.

6. I am neither a pacifist nor a coward. My conscientious and moral objections rest entirely on my Constitutional duty to doubt and question the legitimacy of the ***de facto*** Commander-in-Chief, who appears to be hiding behind his Presidential Power merely to avoid confirming his honesty or admitting his dishonest. In light of the circumstances of worldwide questioning of the legitimacy of American armed intervention abroad, I believe that I best serve my country and my fellow soldiers by questioning rather than acquiescing blindly to the present chain-of-command.

7. **I was until July 14, 2009, employed as a civilian engineer with large Department of Defense contracting obligations by Simtech, Inc., chief executive officer Larry Grice, in Tampa, Florida.**

8. On July 14, 2009, Larry Grice informed me that he had come under great pressure from the Department of Defense (Defense Security Services Agency) to terminate me from my employment, on the grounds that my security clearance would likely be imminently revoked. On that day I was then and there terminated.

9. I have filed suit then for an additional purpose: to clear my name with the United States Army and Department of Defense and to seek a positive injunction for reinstatement in my civilian employment, and to protect my employer from governmental retaliation, which at this point appears to constitute an inevitable and irreparable injury without judicial intervention.

10. Also on July 14, 2009, the Army Human Resources Command in St. Louis informed me that they were treating my lawsuit as a request for revocation of orders, even though my request was for a STAY of orders pending constitutional verification of the chain-of-command.

11. Accordingly, I have filed suit for the still additional purpose of challenging every order issued by the United States Army, including revocation of orders, under the current ***de facto*** Commander-in-Chief, because it appears that he has chosen to manipulate the army in such a way and manner as to divert attention from the question, to evade judicial review of the United States Department of Defense chain-of-command, and to render all United States soldiers as servants or slaves of a totalitarian dictatorship.

12. I believe and submit that the Army is and must remain the chief "front line" guarantor of freedom and constitutional legitimacy in this country, "against all enemies, foreign and domestic," and I further believe and submit that the essence of freedom is the right to speak and challenge and question possibly illegitimate authority freely and without fear of reprisal.

13. I have at every turn been denied my fundamental right to petition for redress of grievances in obedience to my oath, and now I am being punished

by Judge LAZZARA's illegitimate denial of access to the courts to seek redress of my grievances.

14. I question and challenge the revocation of my orders to deploy as being just as likely both illegal and unconstitutional as the original orders to deploy in the first place.

15. I believe, contend, and here submit, subject both to my oath under penalty of perjury and my oath as a commissioned officer of the United States Army, that the United States Armed Forces, absent verification of constitutional chain of command, cannot lawfully function, cannot operate at all.

16. My lifelong commitment to service in the army at home and abroad is testament to the sincerity of my belief, and the depths of my anguish over this situation, namely that the current highly suspect and constitutionally dubious chain-of-command in fact renders the United States Army a band of impressed private chattel slaves, little distinguishable from an outlaw organization of terror or piracy.

17. In his twin orders of July 23, and July 27, 2009, Judge RICHARD A. LAZZARA, chose to ignore one hundred percent of the content of my complaint and application for temporary restraining order, and thereby denied me access to the Courts. He did not do this by a "no trespass" order nor an injunction against my filing, for he dismissed my case "without prejudice."

18. Rather, Judge LAZZARA has denied me access to the Courts by refusing to read or pay attention to the clearly itemized substance of my complaint, and by closing not the door of the courthouse but his judicial mind and attention to anything I, or my counsel, had said or written.

19. Judge RICHARD A. LAZZARA has shown beyond reasonable doubt to the eyes, ears, and mind of any reasonable person that he has "pre-judged" my case without even reading it, when he refers to "this ongoing conspiracy theory that President Obama is unqualified to be President", when he states that "Plaintiff's complaint, at its core, is but another attempt to embroil a United States District Court in an ongoing controversy of whether President Barack Obama is a native-born citizen of the United States of America.

20. By these prejudicial phrases and words especially "embroil" and "conspiracy theory", Judge LAZZARA shows pervasive bias against me which is clearly "extra-judicial" in nature, because he has not even begun to address or evaluate the actual contentions of my Complaint and Application for Temporary Restraining Order.

21. Further, it appears to me that Judge LAZZARA has twisted or misrepresented key elements of the law, specifically the law of constitutional standing, by denying that a currently commissioned officer of the United States Army has standing to challenge and question the lawful nature and status of orders, either to go into actively deployed service or not to go into such service, is to say that an officer has no legal or constitutional right to defend or enforce his oath to follow "lawful" orders and to uphold the constitution against all enemies.

22. From his first "day on the case", namely July 23, 2009, Judge LAZZARA has misstated or twisted the law, including the Local Rules of the Middle District of Florida and Federal Rules of Civil Procedure, to deny me my First, Fifth, and Ninth Amendment rights of access to the courts.

23. I believe and submit to this Court that the only remedy is the retroactive recusal of Judge RICHARD A. LAZZARA and randomly reassign this case to some other judge in the Middle District of Florida after excluding all those judges who may have been subject to "severe twisting of arms" by the current administration, which is as capable of threatening a judge's career and livelihood as it is threatening mine.

24. I submit that a senior judge would be both less likely to be prejudiced concerning current political issues and less susceptible to threats of career-curtailing legal action, perhaps a retired or senior judge should be brought in from another district, perhaps, for example, someone of the standing and stature of the Honorable Judges Kenneth L. Ryskamp or James C. Paine, both Senior Judges for the Southern District of Florida, or Judge Peter T. Fay, Senior Judge of the 11th Circuit, or perhaps even some visiting senior judge from another district or circuit.

25. I make all these statements as matters of which I have personal knowledge and/or concerning which I am fully informed and have formed reasonable beliefs in connection therewith.

26. I make this affidavit under penalty of perjury, and will affirm that I no more lightly and frivolously would challenge the impartiality of a United States Federal District Judge without good and just cause than I would challenge the constitutional eligibility and legitimacy of the President of the United States and Commander-in-Chief of the Armed Forces if I were not convinced in my heart and mind that serious questions concerning these matters exist, to and regarding which I as a reasonable person, and a conscientious officer of the United States, cannot be acquiescent or ignore.

27. I will testify to all of the above-and-foregoing matters in open court, subject to cross-examination.

FURTHER THIS AFFIANT SAITH NAUGHT.

Major Stefan Frederick Cook, U.S. Army

NOTARY'S JURAT

Plaintiff Stefan Frederick Cook appeared in person before me on Monday, August 3, 2009, to acknowledge, execute, sign under oath, and verify the above and foregoing Affidavit as Required by Title 28 of the United States Code, §144 concerning the recusal of judges..

I am a notary public, in good standing, authorized and qualified by the State of Florida to administer oaths.

Notary Public, State of Florida,
Tampa, Hillsborough County

NOTARIAL SEAL AFFIXED ABOVE

Printed Name of Notary: Brian Dwyer address: 203 Apollo Beach Blvd

My Commission Expires: 3/11/13

BRIAN M. DWYER NOTARY PUBLIC STATE OF FLORIDA My Comm. Expires March 11, 2013

ATTORNEY'S CERTIFICATE OF GOOD FAITH

I, Orly Taitz, am an attorney licensed to practice law in the State of California, before the Supreme Court of the United States, and other Federal District Courts. I am in the process of seeking admission ***pro hac vice*** in the United States District Court for the Middle District of Florida, but have yet to obtain a firm commitment from any resident attorney to serve as local counsel.

I am the attorney for the Plaintiff in this case, Major Stefan Frederick Cook, and I have reviewed the law and the circumstances underlying Judge Richard A. Lazzara's conduct in connection with this cause.

I agree that a reasonable person would be likely, if not almost certain, to conclude that Judge Richard A. Lazzara's rapid, in fact "lightening like", disposition of this case was a result of preconceived, extrajudicial notions and pervasive bias based either on politics or on some other external factor having nothing to do with Major Cook's Complaint, Application(s) for Temporary Restraining Order, and Motion to Reinstate the same, because nothing in Judge Lazzara's orders contained in Documents 3 and 6 suggests that the Honorable Judge even read the first page of any of these documents, much less the prayer(s) for relief.

For these reasons I certify, as counsel of record for Plaintiff Major Stefan Frederick Cook, that his Motion to Recuse and Affidavit in support thereof are both submitted in good faith. The Plaintiff's Motions are certainly and surely not submitted for purposes of delay, because nothing could be faster, nor anything more unreasonable and "injudicious" than Judge RICHARD A. LAZZARA's complete suppression of Major Cook's complaint and issues, effectively by slamming the courthouse door in his and my faces, within 4 days.

Major Cook's case is well-grounded in law and facts, and his allegations are by no means concerned exclusively, merely, or simply with the birth records of ***de facto*** President Obama, but in fact stand as a challenge to the United States Army regarding the procedures for verification of the lawful and constitutional status of orders issued, and the relationship between an officer's obligation to obey "lawful" orders and his duty to preserve, protect, and defend the Constitution of the United States against all enemies, foreign and domestic.

I believe and submit that Judge Richard A. Lazzara's handling of this case appears to me, as an officer of the court, to be politically motivated rather than legally justifiable, and for that reason I am submitting and advancing Plaintiff Major Cook's Motion to Recuse this Judge Pursuant both to 28 U.S.C. §144 and 28 U.S.C.§455(a).

I have executed, made, and signed this Certificate of Good Faith as a Declaration under Penalty of Perjury, as allowed by 28 U.S.C. §1746, and I do accordingly certify, verify, and state under penalty of perjury that the foregoing Certificate of Good Faith is true and correct.

Done on Saturday, August 1, 2009, in Rancho Santa Margarita, Orange County, California.

By: _____

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CERTIFICATE OF SERVICE

The above-and-foregoing ***Motion to Recuse the Honorable Richard A. Lazzara, M.D. Florida, pursuant to 28 U.S.C. §§144 and 455(a)*** was served by facsimile and/or U.S. Mail (postage prepaid) on Thursday, August 6, 2009, on the following parties:

Colonel Thomas D. MacDonald
Garrison Commander, Fort Benning, Georgia
Hugh Randolph Aderhold , Jr.
PO Box 1702
Macon , GA 31202-1702
478-621-2728
Email: Randy.Aderhold@usdoj.gov

Col. Louis B. Wingate
U. S. Army Human Resources Command-St. Louis
1 Reserve Way, St. Louis, MO 63132 .

Dr. Robert M. Gates, Secretary of Defense, by and through the Pentagon:
1000 Defense Pentagon Washington, DC 20301-1000

MAJOR REBECCA E. AUSPRUNG
Department of the Army
U.S. Army Litigation Division
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Arlington, VA 22203-1837
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Email: Rebecca.Ausprung@us.army.mil

President Barack Hussein Obama,
At
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

by and through the Attorney General of the United States, Eric Holder, at

U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

and Maxwell Wood, United States Attorney for the Middle District of Georgia, at

U.S. Attorney's Office ☐Gateway Plaza ☐300 Mulberry Street, 4th Floor☐Macon, Georgia 31201 ☐Tel: (478) 752-3511

And also at:

Columbus Division ☐1246 First Avenue ☐SunTrust Building, 3rd Floor
☐Columbus, Georgia 31901 ☐Tel: (706) 649-7700.

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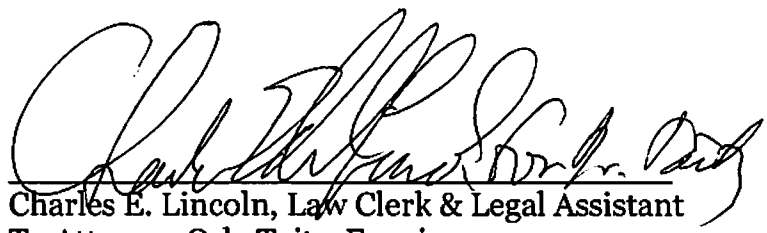

Charles E. Lincoln, Law Clerk & Legal Assistant
To Attorney Orly Taitz, Esquire,
For the Plaintiff Major Stefan Frederick Cook

And by Local Counsel:

_____

Inger Garcia-Armstrong
For the Plaintiff Major Stefan Frederick Cook