

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

ROBERT C. LAITY,)	
)	
<i>Petitioner,</i>)	
)	
v.)	No. 20-7109
)	
KAMALA DEVI HARRIS,)	
)	
<i>Respondent.</i>)	
)	

MOTION FOR SUMMARY AFFIRMANCE

Pursuant to Federal Rule of Appellate Procedure 27 and Circuit Rule 27(g), Respondent Kamala Devi Harris hereby moves for summary affirmance in the above-captioned case.

In this meritless action, Petitioner contends that Senator Harris is not a “Natural Born Citizen” under Article II, Section 1, Clause 5 of the Constitution, and thus her election to the Vice-Presidency presents “potential harm” to national security. Compl. at 1-2. He sought an order from the District Court “enjoin[ing]” Senator Harris “from entering into the Office of the Vice-Presidency or Presidency of the United States” and a “decree of permanent injunction” preventing Senator Harris “from again attempting to seek election to the Presidency or Vice-Presidency.” *Id.* at 7 (capitalization and emphasis removed). The District Court

dismissed Petitioner's Complaint with prejudice for lack of standing.¹ See Rios Affidavit Ex. 1. Petitioner now seeks review of that decision.

The District Court's decision was unquestionably correct and should be summarily affirmed. See *Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam) (summary affirmance is appropriate when "the merits of [the] case are so clear that expedited action is justified"); see also *Hassan v. Fed. Election Comm'n*, 2013 WL 1165406, at *1 (D.C. Cir. 2013) (summarily affirming dismissal for lack of standing). Petitioner clearly does not have standing to challenge Senator Harris's eligibility to be Vice President.

"[S]tanding is an essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). To have standing, the plaintiff must show, among other things, that they

¹ Because the District Court dismissed Petitioner's Complaint for lack of standing, it did not address the merits of Petitioner's claim. Still, the error of Petitioner's position bears mention. Petitioner contends that *Minor v. Happersett* established that only those born in the United States to parents who are themselves U.S. citizens count as natural born citizens. *Minor* did no such thing. It simply stated in dictum that it was unsettled in 1874 whether the U.S.-born children of foreign parents are natural born citizens. 88 U.S. 162, 167 (1874). The Court answered "yes" two decades later in *Wong Kim Ark*, 169 U.S. 649, 704 (1898), and reaffirmed its holding in the 1980s in *Plyler v. Doe*, 457 U.S. 202, 211-212 (1982), and *INS v. Rios-Pineda*, 471 U.S. 444, 446 (1985). Following the Supreme Court's lead, lower courts have held repeatedly that those born in the United States are natural born citizens, regardless of the citizenship of their parents. See *Tilsdale v. Obama*, 2012 WL 7856823, at *1 (E.D. Va. Jan. 23, 2012); *Ankeny v. Governor of State of Ind.*, 916 N.E.2d 678, 688 (Ind. Ct. App. 2009).

have suffered an “injury-in-fact,” *i.e.*, “an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical.” *Competitive Enter. Inst. v. FCC*, 970 F.3d 372, 381 (D.C. Cir. 2020) (internal quotation and citation omitted).

Petitioner’s Complaint fails to allege an injury-in-fact. Its only allegation of injury is an oblique reference to “potential harm” related to “national security.” Compl. at 1; *see also* Mot. for Expeditious Consideration at 1 (seeking accelerated review because “[t]he nature of this case regards a national security issue”). This alleged injury—in addition to being entirely unfounded—is not sufficiently particularized to Petitioner to confer standing. “[G]eneralized grievance[s] shared by all or a large class of citizens” do not constitute injuries-in-fact. *Mideast Sys. & China Civil Constr. Saipan Joint Venture, Inc. v. Hodel*, 792 F.2d 1172, 1176 (D.C. Cir. 1986).

The injury-in-fact requirement precludes standing when the plaintiff’s allegations, like Petitioner’s, implicate nothing more than broad purported national security concerns. *See Skarzynski v. C.I.A.*, 637 F. App’x 220, 220 (7th Cir. 2016) (“[Plaintiff] has no standing to bring this case. He asserts that the CIA’s carelessness harmed national security generally and thereby harmed him, but this is hardly a concrete and particularized injury necessary to establish standing.”) (internal quotations omitted); *Pauling v. McElroy*, 278 F.2d 252, 254 (D.C. Cir. 1960)

(plaintiffs lacked standing where they sought to enjoin nuclear testing because the alleged injury was shared with “all mankind” and “in common with people generally”). Petitioner does not allege that Senator Harris’s ascension to the Vice Presidency will harm him in particular, *i.e.*, in a manner distinct from the harm that any other citizen would suffer. He therefore lacks standing to bring this case. *See Lujan*, 540 U.S. at 573 (“[S]eeking relief that no more directly and tangibly benefits [plaintiff] than it does the public at large . . . does not state an Article III case or controversy.”).

To the extent Petitioner contends that the purportedly unlawful nature of Senator Harris’s election would itself constitute an injury, this too would not confer standing. *See Sibley v. Obama*, 866 F. Supp. 2d 17, 20 (D.D.C. 2012) (“A generalized interest of all citizens in constitutional governance does not suffice to confer standing on one such citizen.”), *summarily affirmed by* 2012 WL 6603088 (D.C. Cir. 2012). Numerous courts have addressed whether a candidate’s purported failure to satisfy the “Natural Born Citizen” clause amounts to an injury-in-fact for aggrieved citizens. The resounding answer is “no.” *See, e.g., Kerchner v. Obama*, 612 F.3d 204, 208 (3d Cir. 2010) (plaintiff lacked standing to challenge President Obama’s eligibility for presidency based on natural born citizen requirement); *Berg*

v. Obama, 586 F. 3d 234, 239 (3d Cir. 2009) (same); *Sibley*, 866 F. Supp. 2d at 20 (same).²

For the foregoing reasons, Senator Harris's Motion for Summary Affirmance should be granted.

Respectfully submitted,

November 30, 2020

/s/ Beth S. Brinkmann
Beth S. Brinkmann
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
(202) 662-6000
bbrinkmann@cov.com

*Counsel for Defendant Kamala Devi
Harris*

² To the extent Petitioner contends that he has standing because he has filed a writ of quo warranto, he is wrong. Filing a writ of quo warranto does not absolve Petitioner of his obligation to establish Article III standing, which he has failed to do. *See Sibley v. Obama*, 866 F. Supp. 2d 17, 20 (D.D.C. 2012). Moreover, only the Attorney General or the United States Attorney—not a private citizen like Petitioner—has standing to bring a quo warranto action challenging a public official's right to hold office. *See Andrade v. Lauer*, 729 F.2d 1475, 1498 (D.C. Cir. 1984); *Sibley*, 866 F. Supp. 2d at 20.

CERTIFICATE OF SERVICE

I hereby certify that on November 30, 2020, a true and correct copy of the foregoing was served on the following by the means set forth below:

by overnight mail with courtesy copy by email:

Robert C. Laity
43 Mosher Drive
Tonawanda, NY 14150
robertlaity@roadrunner.com

DATED: November 30, 2020

/s/ Beth S. Brinkmann
Beth S. Brinkmann

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

ROBERT C. LAITY,)	
)	
)	
<i>Petitioner,</i>)	No. 20-7109
)	
v.)	AFFIDAVIT OF DANIEL RIOS IN
)	SUPPORT OF RESPONDENT’S
KAMALA DEVI HARRIS,)	MOTION FOR SUMMARY
)	AFFIRMANCE
)	
<i>Respondent.</i>)	
)	

AFFIDAVIT OF DANIEL RIOS

I, Daniel Rios, swear:

1. I am an associate at Covington & Burling LLP, which represents Respondent Kamala Devi Harris (“Senator Harris”) in this action. This affidavit is offered in support of Senator Harris’s motion for summary affirmance. I make this affidavit based on my personal, firsthand knowledge and, if called and sworn as a witness, I could and would testify competently thereto.

2. Attached as Exhibit 1 is a true and correct copy of the docket report for *Laity v. Harris*, Case No. 1:20-cv-02511-EGS (D.D.C.). The minute order granting Senator Harris’s motion to dismiss appears as a November 10, 2020 entry.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 30, 2020, in Benicia, CA.

Respectfully submitted,

November 30, 2020

/s/ Daniel Rios
Daniel Rios

Exhibit 1

U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:20-cv-02511-EGS

LAITY v. HARRIS
Assigned to: Judge Emmet G. Sullivan
Case in other court: USCA, 20-07109
Cause: 42:1983 Civil Rights Act

Date Filed: 09/04/2020
Date Terminated: 11/12/2020
Jury Demand: None
Nature of Suit: 441 Voting
Jurisdiction: U.S. Government Defendant

Plaintiff**ROBERT C. LAITY**

represented by **ROBERT C. LAITY**
43 Mosher Drive
Tonawanda, NY 14150-5217
(716) 260-1392
PRO SE

V.

Defendant

KAMALA DEVI HARRIS
U.S. Senator

represented by **Benjamin John Razi**
COVINGTON & BURLING LLP
850 Tenth Street, NW
One City Center
Washington, DC 20001
(202) 662-5463
Email: brazi@cov.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Movant**U.S. ALLEGIANCE INSTITUTE**

represented by **William Jeffrey Olson**
WILLIAM J. OLSON, P.C.
370 Maple Avenue West
Suite 4
Vienna, VA 22180
(703) 356-5070
Fax: (703) 356-5085
Email: wjo@mindspring.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
09/04/2020	<u>1</u>	COMPLAINT against KAMALA DEVI HARRIS (Filing fee \$ 400, receipt number 4616104076) filed by ROBERT C. LAITY. (Attachments: # <u>1</u> Civil Cover Sheet)(zjf) (Entered: 09/11/2020)
09/04/2020		SUMMONS (3) Issued as to KAMALA DEVI HARRIS, U.S. Attorney and U.S. Attorney General (zjf) (Entered: 09/11/2020)
09/17/2020	<u>2</u>	STANDING ORDER: The parties are directed to read the attached Standing Order Governing Civil Cases Before Judge Emmet G. Sullivan in its entirety upon receipt. The parties are hereby ORDERED to comply with the directives in the attached Standing Order. Signed by Judge Emmet G. Sullivan on 09/17/20. (Attachment: # <u>1</u> Exhibit 1) (mac) (Entered: 09/17/2020)
10/05/2020	<u>3</u>	CERTIFICATE OF SERVICE by ROBERT C. LAITY re <u>2</u> STANDING ORDER. (zjf) (Entered: 10/07/2020)

10/15/2020	<u>4</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on United States Attorney General. Date of Service Upon United States Attorney General 09/29/2020., RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the United States Attorney. Date of Service Upon United States Attorney on 9/29/2020. (Answer due for ALL FEDERAL DEFENDANTS by 11/28/2020.) (zjf) (Entered: 10/20/2020)
10/19/2020	<u>5</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. KAMALA DEVI HARRIS served on 9/28/2020 (zjf) (Entered: 10/21/2020)
10/26/2020	<u>6</u>	NOTICE of Appearance by Benjamin John Razi on behalf of KAMALA DEVI HARRIS (Razi, Benjamin) (Entered: 10/26/2020)
10/26/2020	<u>7</u>	MOTION to Dismiss by KAMALA DEVI HARRIS (Attachments: # <u>1</u> Text of Proposed Order)(Razi, Benjamin) (Entered: 10/26/2020)
10/26/2020	<u>8</u>	NOTICE of Consent to Proceed before US Magistrate Judge for All Purposes by ROBERT C. LAITY. (zjf) (Entered: 10/30/2020)
11/02/2020	<u>9</u>	Memorandum in opposition re <u>7</u> MOTION to Dismiss filed by ROBERT C. LAITY. (Attachments: # <u>1</u> Text of Proposed Order)(zjf) (Entered: 11/05/2020)
11/05/2020	<u>10</u>	REPLY to opposition to motion re <u>7</u> MOTION to Dismiss filed by KAMALA DEVI HARRIS. (Razi, Benjamin) (Entered: 11/05/2020)
11/09/2020	<u>11</u>	MOTION for Leave to File by U.S. Allegiance Institute (Attachments: # <u>1</u> Amicus Brief, # <u>2</u> LcvR 26.1 Certificate, # <u>3</u> Text of Proposed Order)(Olson, William) (Entered: 11/09/2020)
11/10/2020		NOTICE OF ERROR re <u>11</u> Motion for Leave to File; emailed to wjo@mindspring.com, cc'd 1 associated attorneys — The PDF file you docketed contained errors: 1. DO NOT REFILE FYI– When adding parties they must be in all caps per the Court's instructions (zjf,) (Entered: 11/10/2020)
11/10/2020	<u>12</u>	ERRATA by U.S. ALLEGIANCE INSTITUTE <u>11</u> MOTION for Leave to File filed by U.S. ALLEGIANCE INSTITUTE. (Attachments: # <u>1</u> Exhibit Corrected amicus curiae brief)(Olson, William) (Entered: 11/10/2020)
11/10/2020		MINUTE ORDER granting <u>7</u> MOTION to Dismiss and dismissing this action with prejudice as the addition of facts regarding the current pleading would be futile. Further, the Court denies <u>11</u> MOTION for Leave to File as moot. Pro Se Plaintiff Robert Laity ("Mr. Laity"), who has brought similar claims against various other elected officials in the past, see Laity v. State, 153 A.D.3d 1079 (2017), brings this claim against U.S. Senator Kamala Harris, claiming that she is ineligible to become Vice President of the United States because she is not a natural born citizen. See Compl., ECF No. 1 at 1–2. Senator Harris avers that this case should be dismissed because Mr. Laity lacks standing and has not stated a claim upon which relief can be granted. See Def.'s Mot, ECF No. 7 at 1–2. The Court finds that Mr. Laity lacks standing. "Before this Court may evaluate the merits of his claims, plaintiff must demonstrate that he has the requisite standing to bring this lawsuit, and that the Court may grant the relief he seeks." Sibley v. Obama, 866 F. Supp. 2d 17, 19 (D.D.C. 2012), aff'd, No. 12–5198, 2012 WL 6603088 (D.C. Cir. Dec. 6, 2012). "Federal courts have jurisdiction over a case or controversy under Article III of the U.S. Constitution only if the plaintiff has standing to sue." Id. at 1920 (citing Kerchner v. Obama, 612 F.3d 204, 207 (3d Cir.2010)). "Standing under Article III requires: (1) violation of a legally protected interest that is personal to the plaintiff and actual or imminent, not conjectural or hypothetical; (2) a causal relation between the injury and the defendant's challenged conduct; and (3) likelihood that a decision for the plaintiff will compensate for the injury." Id. (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 56061, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)). "A generalized interest of all citizens in constitutional governance does not suffice to confer standing on one such citizen." Id. (citing Drake v. Obama, 664 F.3d 774, 779 (9th Cir.2011)). "To establish standing in a case, the plaintiff must show that he has a 'personal stake' in the alleged dispute, and that the injury is 'particularized' as to him. Id. (citing Raines v. Byrd, 521 U.S. 811, 819, 117 S.Ct. 2312, 138 L.Ed.2d 849 (1997)). Mr. Laity has not alleged any injury particularized to himself. Though he attempts to argue that there would be a potential harm to national security, see Compl., ECF No. 1 at 1, his argument is unpersuasive because his generalized assertions are "hardly a 'concrete and particularized injury'

		[towards himself, that would be] necessary to establish standing." Skarzynski v. C.I.A., 637 F. App'x 220 (7th Cir. 2016). Further, based on the allegations in the pleading, no set of additional facts would cure the pleading's deficiency. Because the Court finds that Mr. Laity lacks standing, it need not reach Senator Harris's 12(b)(6), failure to state a claim" argument. Signed by Judge Emmet G. Sullivan on 11/10/2020. (lcegs2) (Entered: 11/10/2020)
11/17/2020	<u>13</u>	NOTICE OF APPEAL as to Minute Order on Motion to Dismiss filed on 11/10/2020 by ROBERT C. LAITY. Fee Status: No Fee Paid. Parties have been notified. (Attachments: # <u>1</u> Certificate of Service)(zjf) (Entered: 11/18/2020)
11/18/2020	<u>14</u>	Transmission of the Notice of Appeal, Minute Order Appealed, and Docket Sheet to US Court of Appeals. The fee remains to be paid and another notice will be transmitted when the fee has been paid in the District Court re <u>13</u> Notice of Appeal. (zjf) (Entered: 11/18/2020)
11/19/2020		USCA Case Number 20-7109 for <u>13</u> Notice of Appeal filed by ROBERT C. LAITY. (zrdj) (Entered: 11/19/2020)
11/24/2020		USCA Appeal Fees received \$ 505 receipt number 4616104614 re <u>13</u> Notice of Appeal filed by ROBERT C. LAITY (zjf) (Entered: 11/25/2020)
11/25/2020	<u>15</u>	Supplemental Record on Appeal transmitted to US Court of Appeals re USCA Appeal Fees; USCA Case Number: 20-7109. (zjf) (Entered: 11/25/2020)