

Memorandum

TO: GARY KREEP

FROM: CHRISTOPHER TUCKER

RE: POTENTIAL CRIMINAL LIABILITY OF BARACK OBAMA

Barack Hussein Obama has come under much scrutiny ever since his rise to national prominence as the Democratic National Committee nominee, and his election in November of 2008, as to whether or not he is a naturally born citizen of the United States. He produced, in 2009, a certification of live birth issued by the state of Hawaii. This, however, is not definitive evidence of birth in Hawaii, nor of being a natural born citizen. This has done little to quiet those who question Mr. Obama's eligibility for the office President of the United States of America (herein after referred to as POTUS).

Currently, there are cases filed in both the federal courts and many state courts seeking to compel Barack Obama to produce evidence of his citizenship, and, in the case of his non-compliance of production of valid citizenship papers, to have the electoral votes in his favor nullified.

Assuming, for the purposes of this memo, that Mr. Obama is found to be ineligible, he could face a number of civil and criminal penalties.

Potential federal criminal charges are as follows:

1. False Personation of Officer or Employee of the United States (18 U.S.C. § 912).
(<http://codes.lp.findlaw.com/uscode/18/1/43/912>)

"Whoever falsely assumes or pretends to be an officer or employee acting under the authority of the United States or any department, agency or officer thereof, and acts as such, or in such pretended character demands or obtains any money, paper, document, or thing of value, shall be fined under this title or imprisoned not more than three years, or both."

Basically this statute calls for 1) Fraudulent intent, and 2) an overt act to accomplish the inducement of one giving over a thing of value. If it were found that Barack Obama was not a natural born citizen, as required by the U.S. Constitution Art. II § 1, he will have assumed the office of President fraudulently to obtain money (among other things) by

way of his annual salary. The Supreme Court has upheld convictions for False Personations in *U.S. v. Lepowitch*, (63 S.Ct. 914), and *Lamar v. U.S.*, (36 S.Ct. 535).

2. Conspiracy to Commit Offense or to Defraud United States (18 U.S.C. 371).

(<http://codes.lp.findlaw.com/uscode/18/l/19/371>)

“If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.”

As in all conspiracies, there must be two or more persons working in concert to achieve an illegal act, so the President would need a co-conspirator for this statute to apply. The state of Hawaii is being very secretive about the whereabouts or even existence of Mr. Obama’s supposed birth certificate. If the officials in charge of keeping these records know of its non-existence, then they would be co-conspirators with the objective of defrauding the United States as to the citizenship status of Barack Obama. There, however, must be an “in concert” element met, meaning that these officials are withholding the proof at the direction of Mr. Obama. Is it possible that these officials love the Barack Obama so much that they are withholding these documents out of the goodness of their own hearts? Yes, possibly, however unlikely. It is reasonable to infer that the Hawaiian officials are working “in concert” with Mr. Obama to suppress this information, since each would face both civil and criminal suits, not to mention the loss of furthering their own political goals.

3. Activities Affecting Armed Forces During War (18 U.S.C. 2388(a)).

(<http://codes.lp.findlaw.com/uscode/18/l/115/2388>)

“(a) Whoever, when the United States is at war, willfully makes or conveys false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States or to promote the success of its enemies; or

Whoever, when the United States is at war, willfully causes or attempts to cause insubordination, disloyalty, mutiny, or refusal of duty, in the military or naval forces of the United States, or willfully obstructs the recruiting or enlistment service of the United States, to the injury of the service or the United States, or attempts to do so—
Shall be fined under this title or imprisoned not more than twenty years, or both.”

Intent is fully at issue here; however, President Obama made it clear during his campaign that his full intent when entering office would be to scale down the conflict with Afghanistan and Iraq, eventually leading to a full withdrawal. His statements of being a natural born citizen to obtain the office of Commander in Chief were in effort to interfere with the attempts by the former Commander in Chief's attempt at engaging the enemy in these two countries, for the purpose of national security.

In the case of *Schulze v. U.S.* (259 F. 189) Petitioner was convicted under this statute, and the question of intent was at issue. The court stated, “

“It is true that in charging the offense it is unnecessary to allege the intent; the offense being one whose very definition necessarily includes intent. In such a case it is necessary only to aver in apt terms the acts done. The intent will be inferred. The charge is not unlike that of treason, the indictment for which needs go no further than to follow the language of the statute which defines the offense. (*United States v. Greathouse*, 2 Abb.U.S. 364, Fed. Cas. No. 15,254)...”

This means that intent is inferred from the act itself. Mr. Obama has already announced that the efforts in Afghanistan will be scaled back, and a full withdrawal is planned for 2011. Furthermore, the announcement of this strategy works to the aid of our enemy, who now knows to sit in caves and wait out the U.S. for only a year or so. This certainly works interrupt our operations and promote the success of our enemy.

4. False Statement in Application and Use of Passport (18 U.S.C. 1542).

(<http://codes.lp.findlaw.com/uscode/18/1/75/1542>)

“Whoever willfully and knowingly makes any false statement in an application for passport with intent to induce or secure the issuance of a passport under the authority of the United States, either for his own use or the use of another, contrary to the laws regulating the issuance of passports or the rules prescribed pursuant to such laws; or

Whoever willfully and knowingly uses or attempts to use, or furnishes to another for use any passport the issue of which was secured in any way by reason of any false statement—

Shall be fined under this title, imprisoned not more than 25 years (if the offense was committed to facilitate an act of international terrorism (as defined in section [2331](#) of this title)), 20 years (if the offense was committed to facilitate a drug trafficking crime (as defined in section [929 \(a\)](#) of this title)), 10 years (in the case of the first or second such offense, if the offense was not committed to facilitate such an act of international terrorism or a drug trafficking crime), or 15 years (in the case of any other offense), or both.”

To obtain a U.S. passport one must show a valid birth certificate or some other form of identification showing U.S. citizenship. Barack Obama would have to have furnished some sort of birth certificate or other document showing he is a citizen. Of course, even if he was not a natural born citizen, he could show naturalization or some other citizenship papers. However, if these documents are spurious, then he would be guilty pursuant to the first paragraph, and to then use his illegally obtained passport, he would also be guilty under the second paragraph as well.

5. False Personation of Citizen of the United States (18 U.S.C. 911).

(<http://codes.lp.findlaw.com/uscode/18/1/43/911>)

Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined under this title or imprisoned not more than three years, or both.

If Mr. Obama is not a natural born citizen, then he must have other proof of United States citizenship. If he has neither of these, then as acting head of state he is holding himself out to be a citizen of the United States, and is therefore liable under this section as well.

6. Perjury (18 U.S.C. 1621).

(<http://codes.lp.findlaw.com/uscode/18/1/79/1621>)

Whoever—

(1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or

(2) in any declaration, certificate, verification, or statement under penalty of **perjury** as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true;

is guilty of **perjury** and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States.

Mr. Obama has taken the oath of office of POTUS, in front of Chief Justice of the U.S. Supreme Court, John Roberts, in which he promises to “defend the Constitution”. As an illegal alien, or even a non-natural born citizen, he would be acting as an ineligible President. Furthermore, as an attorney, and a former professor of Constitutional law,

Barack Obama would have full knowledge of the requirements for an eligible candidate for the office of POTUS. This shows that he has willfully stated that he will and is acting contrary to his Presidential oath.

In summation, all of these crimes require a specific *Mens Rea*, or intent that the acts be so accomplished. Mr. Obama knows, or at least should know, the place of his birth and the status of his citizenship, as all, or nearly all, adults in the world do. He has, therefore, willfully and knowingly made repeated false claims as to his citizenship, and this makes him absolutely liable for the above mentioned crimes against the United States.