

Qui Tam or Not Qui Tam: That is the Question

“NATURAL BORN CITIZEN” STILL RELEVANT TO OBAMA

by [Joseph DeMaio](#), ©2020



Source: [31 USC 3731](#)

(Mar. 1, 2020) — One of the commenters to this P&E [post](#) posed the legitimate question: does not the federal statute governing *qui tam* actions provide for mandatory dismissals of such actions where the substance of the action has previously been publicly disclosed through the news media? The answer is: maybe. Stated otherwise, as to the comment by Lindsay Boxer, yes, there is a bigger-than-zero potential that a court could dismiss under the applicable [statute](#), [31 U.S.C. § 3730\(e\)\(4\)\(A\)\(iii\)](#). However, there are also exceptions to the mandatory dismissal language of that statute.

First, a dismissal is conditioned under the statute upon a lack of opposition to same by “the Government.” Stated otherwise, if “the Government,” presumably through the U.S. Attorney General – now, Mr. William Barr – opposes the dismissal, the action should survive and proceed. As noted [here](#), there is a higher likelihood that, unlike the prior Obama/Holder administration, the Trump Administration would support, or at minimum not oppose, such an action. But given the highly-charged and toxic nature of the current political landscape, no such action would be prudent, if at all, until after November 2020 and then, only after President Trump wins.

Second, another exception to dismissal is if the person bringing the action is an “original source” of the information. An “original source” is defined in subsection (B) of the statute as an individual “who has knowledge that is independent of and *materially adds to the publicly disclosed allegations or transactions*, and who has voluntarily provided the information to the Government before filing an action under this section.” (Emphasis added)

The thrust of a new *qui tam* action would not directly challenge Obama’s eligibility as president, as virtually all of the prior attempts over the years have done. That issue is

now probably legally moot since he is no longer in office. However, the fact that these actions may be moot as to Obama does not mean, of course, that his purported bona fides as a “natural born Citizen” have been adjudicated. Far from it. It only means that the persons trying to get a decision have, in virtually all instances, lacked “standing” to maintain their actions, resulting in their dismissals.

Instead, the new *qui tam* action would challenge his right to continue receiving – and/or the continuing authority of the Treasury Department to pay to him – the taxpayer-funded pension provided to “prior presidents” under 3 U.S.C. § 102. That is a matter which would “materially add” to the previously-disclosed issues surrounding Obama’s purported constitutional eligibility and is one that is decidedly *not* moot.

While some might argue that this is a “distinction without a difference” and that the court would still likely dismiss, ask yourself this: what other mechanism has a chance of accomplishing the result sought, *i.e.*, obtaining a decision of an Article III federal court (and potentially up to and including the U.S. Supreme Court) on the question of whether someone *other* than a “natural born Citizen” is entitled to receive the presidential pension provided for under 3 U.S.C. § 102?

Any better ideas?