

20-5228
No

ORIGINAL

UNITED STATES SUPREME COURT

On Petition for Writ of Certiorari to the United States Court of Appeals for the First Circuit

United States ex rel Friedrich Lu, Petitioner

v

Ramandeep Samra, Trustees of Boston University, Trustees of Tufts College, Manojana

Gamboa-Ruiz and United States, Respondents

FILED

MAR 11 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

PETITION FOR WRIT OF CERTIORARI

Petitioner: Friedrich Lu, *pro se*

Date: June 5, 2020

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QUESTION PRESENTED FOR REVIEW

Under False Claims Act, may a relator proceed *pro se*, or must he hire an attorney?

JURISDICTION, PLUS CASES AND OPINIONS BELOW

- (1) Absent separate opinions, the First Circuit entered judgments on both cases on Dec 12, 2019 (which appear at Appendix 1 and 2), neither of which was published. No rehearing was sought in either case. Lu sought the petition on Mar 11, 2020, which the clerk's office of this court returned for the sake of format on Apr 6, 2020. Under 28 USC § 1254(1), the Court has jurisdiction over this petition, based on S Ct Rule 12.4 (same question arising from 2 judgments).
 - (a) *United States ex rel Friedrich Lu and Friedrich Lu v Ramandeep Samra, Trustees of Boston University, and Trustees of Tufts College*. United States Court of Appeals for the First Circuit No 18-1213; and
 - (b) *United States ex rel Friedrich Lu and Friedrich Lu v Marielena Gamboa-Ruiz and Trustees of Tufts College*. United States Court of Appeals for the First Circuit No 19-1381.
- (2) The opinions of United States district court appear at Appendix 3 and following, and is unpublished. They are *United States ex rel Lu v Samra*, No 17-cv-10119-IT, and *United States ex rel Lu v Gamboa-Ruiz*, No 18-cv-10105-IT.
- (3) Under S Ct Rule 29.4(b), a copy of this petition is served on the same day by first-class mail, postage prepaid, on United States Solicitor General, Room 5616, Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001.
- (4) Statute involved in the case: 31 USC § 3730(b)(1), provides in pertinent part:

“A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government.”

STATEMENT OF THE CASE

First Circuit Nos 18-1213 and 19-1381 both arose, under 28 USC § 1331, from the same district judge of United States District Court for the District of Massachusetts, who dismissed the cases *with prejudice* for the reason that a relator may not proceed *pro se*, citing an unpublished case of First Circuit.

ARGUMENT

(1) A case based on False Claims Act (FCA) “may be instituted by ‘any’ person in behalf of the government.” *United States ex rel Marcus v Hess* (1943) 317 US 537, 540.

(2) Yet all circuits that has decided the question whether a relator may proceed *pro se* have answered in the negative: *United States v Onan* (CA8 1951) 190 F.2d 1, 6-7; *United States ex rel Lu v Ou* (CA7 2004) 368 F.3d 773, 775-776, reaffirmed in *Georgakis v Illinois State University* (CA7 2013) 722 F.3d 1075, 1077, n, 1078; *Timson v Sampson* (CA11 2008) 518 F.3d 870, 873 (citing cases from CAs 7, 8, 9); *United States ex rel Mergent Services v Flaherty* (CA2 2008) 540 F.3d 89, 93; *Nasuti ex rel United States v Savage Farms, Inc* (CA1) 2015 WL 9598315; *United States ex rel Brooks v Ormsby* (CA5 2017) 869 F.3d 356.

To date, only the Third , Fourth, Sixth and Federal Circuits have not decided the issue.

(3) *Vermont Agency of Natural Resources v United States ex rel Stevens* (2000) 529 US 765, 773, n 4 (“a *qui tam* relator is, in effect, suing as a *partial* assignee of the United States”) (emphasis original).

(4) Blackstone was the first on record to link *qui tam* actions to contract (in a broad sense). *Commentaries on the Laws of England*. Book 3, Chap 9, at 159-160.

(5) Historically, a *qui tam* relator or an assignee has sued *pro se*. See Randy Beck, *Qui Tam Litigation Against Government Officials: Constitutional Implications of a Neglected History*. 93

Notre Dame L Rev 1235, 1260 et seq; Roman Artemiev, *Qui Tam Legal Concept and Practice: Evolution of the Legislation in the United Kingdom and the United States of America*. University of Westminster, 2017, at 31, 33-46 (available online).

(6) It is plain that a relator is not lawyering for the Government, who has counsel of record who receives case files and may intervene later in the case if necessary.

(7) An assignee is a real party in interest. *Sprint Communications Co v APCC Services, Inc* (2008) 554 US 269, 287-289 (“There is an important distinction between simply hiring a lawyer and assigning a claim to a lawyer (on the lawyer’s promise to remit litigation proceeds). The latter confers a property right (which creditors might attach); the former does not”).

(8) At stake is one’s right to represent *himself* in federal civil actions. 28 USC § 1654.

(9) Recap: The relationship between a relator and the Government is contractual (partial assignment), not attorney-client (no privilege or agency in either direction; relator’s attorney, if any, represents the relator, not the Government). This is so manifest, that Lu fails to comprehend why nobody sees it, particularly learned men and women sitting as judges.

CONCLUSION

The petition for a writ of certiorari should be granted.

Proof of service: Under penalty of perjury, Lu certifies that he served all documents to be filed, electronically on the same day -- he can not hand-delivers them in paper form due to closure of their offices with Covid 19 pandemic -- on

(1) attorney Lisa A Tenerowicz, representing Ramandeep Samra and Trustees of Boston University;

(2) attorney John G Wheatley, representing Trustees of Tufts College and Marielena Gamboa-Ruiz;

Also Lu serves same day electronically on Assistant US Attorney Steven T Sharoben, as well as a hard copy, under S Ct Rule 29.4(b), to Solicitor General, Solicitor General, Room 5616, Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001.