

Case No. 20-5228

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**SUPREME COURT OF THE UNITED STATES**

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UNITED STATES, ex rel. FRIEDRICH LU,

Petitioner,

v.

RAMANDEEP SAMRA; TRUSTEES OF BOSTON UNIVERSITY;  
TRUSTEES OF TUFTS COLLEGE; and MARIELENA GAMBOA-  
RUIZ,

Respondents.

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

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**BRIEF IN OPPOSITION TO PETITION FOR WRIT OF  
CERTIORARI OF RESPONDENTS TRUSTEES OF TUFTS  
COLLEGE AND MARIELENA GAMBOA-RUIZ**

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**CORPORATE DISCLOSURE STATEMENT**  
**OF TRUSTEES OF TUFTS COLLEGE**

Pursuant to Rule 29.6 of the Rules of the Supreme Court of the United States, the respondent Trustees of Tufts College certifies that it does not have a parent corporation, nor does any publicly held corporation own 10% or more of its stock.

**STATEMENT OF THE CASE**

The petitioner, Friedrich Lu, seeks certiorari review of orders issued in two separate civil actions that dismissed claims he filed against the respondents under the False Claims Act, 31 U.S.C. § 3729 et seq., on behalf of the United States government. (App. 1-10.) In the first such action, the U.S. District Court for the District of Massachusetts dismissed Lu's *qui tam* claims on the ground that Lu, as a *pro se* litigant, could not pursue *qui tam* claims on behalf of the United States government under the False Claims Act. (App. 4.) Lu filed the second *qui tam* action 15 days later.

On the defendants/respondents' motion, the District Court again dismissed Lu's *qui tam* claims. (App. 9-10.) The court's written decision set forth two separate grounds for dismissal of Lu's claims. (App. 6-9.) First, the court found that Lu had violated a prior order of the court (which required that Lu attach a copy of that prior order and a certification of compliance to any subsequent pleading that Lu files in U.S. District Court in Massachusetts) and concluded that the sanction of dismissal was warranted based on Lu's repeated failure to comply with the order as



well as his attempt to relitigate issues that were decided in the prior *qui tam* action Lu brought against Tufts. (App. 7-8.) Second, the court again concluded that Lu, as a *pro se* plaintiff, could not pursue a *qui tam* action on behalf of the United States government. (App. 9.)

The United States Court of Appeals for the First Circuit affirmed the District Court's judgment of dismissal of Lu's *qui tam* claims in both cases. (App. 1-2.) Consistent with the District Court's ruling, the First Circuit held that Lu, as a *pro se* litigant, could not pursue a *qui tam* action on behalf of the United States government. (App. 2.) Lu proceeded to file the present petition for a writ of certiorari with this Court, which raises the limited issue of whether a plaintiff may proceed *pro se* on a claim brought under the False Claims Act.<sup>1</sup>

### **ARGUMENT**

A petition for a writ of certiorari is granted only in limited circumstances. In general, a party seeking certiorari review should show "compelling reasons" for granting the petition. U.S. Sup. Ct. R. 10. Examples of "compelling reasons" include, without limitation, a split of legal authority between United States Courts of Appeals, a decision by a state's highest appellate court on an important federal question that conflicts with other state or federal appellate authority, or a court's decision on an important question of federal law that either conflicts with a decision

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<sup>1</sup> Lu is proceeding *in forma pauperis*, and the respondents therefore submit this opposition pursuant to the provisions of Supreme Court Rules 15.3 and 33.2.



of the U.S. Supreme Court or that has not been, but should be, settled by a decision of this Court. Id. None of these considerations are present in this case.

Notably, Lu concedes in his petition (in paragraph 2 under the heading “Argument”) that there is no circuit split on the issue raised in his petition. Indeed, there is universal agreement among every federal circuit appellate court that has addressed this issue—including the First, Second, Third, Fourth, Fifth, Seventh, Ninth, Eleventh, and D.C. Circuits—that a *pro se* litigant may not pursue a *qui tam* action under the False Claims Act. See Wojcicki v. SCANA/SCE&G, 947 F.3d 240, 244 (4th Cir. 2020); United States ex rel. Brooks v. Ormsby, 869 F.3d 356, 357 (5th Cir. 2017); Gunn v. Credit Suisse Group AG, 610 Fed. Appx. 155, 157 (3d Cir. 2015) (unpublished); Nasuti ex rel. U.S. v. Savage Farms Inc., Case No. 14-1362, 2015 WL 9598315, at \*1 (1st Cir. Mar. 12, 2015) (unpublished); Jones v. Jindal, 409 Fed. Appx. 356 (D.C. Cir. 2011) (unpublished); Timson v. Sampson, 518 F.3d 870, 873 (11th Cir. 2008); United States ex rel. Mergent Services v. Flaherty, 540 F.3d 89, 93 (2d Cir. 2008); United States ex rel. Brooks v. Lockheed Martin Corp., 237 Fed. Appx. 802, 803 (4th Cir. 2007) (unpublished); Stoner v. Santa Clara County Office of Educ., 502 F.3d 1116, 1127 (9th Cir. 2007); United States ex rel. Szymczak v. Covenant Healthcare Sys., Inc., 207 Fed. Appx. 731, 732 (7th Cir. 2006) (unpublished). The rationale of this rule is that, because relators in a *qui tam* action bring suit on behalf of the government, and *pro se* litigants may only represent themselves, a *pro se* litigant may not bring a *qui tam* action on behalf of



the government. Nasuti ex rel. U.S. v. Savage Farms, Inc., Case No. 12-30121-GAO, 2014 WL 1327015, at \*7 (D. Mass. Mar. 27, 2014) (unpublished).

One of the leading cases on this issue is a decision by the U.S. Court of Appeals for the Seventh Circuit in an appeal Lu filed from the dismissal of a previous *qui tam* action Lu had brought against his former faculty advisor (and others) at the University of Illinois at Chicago. See United States ex rel. Lu v. Ou, 368 F.3d 773 (7th Cir. 2004), abrogated on other grounds by United States ex rel. Eisenstein v. City of New York, 556 U.S. 928 (2009). Judge Posner, writing for the Seventh Circuit in a case of first impression, explained that the same policy that forbids litigants to be represented by nonlawyers applies equally to *qui tam* cases, and thus bars *pro se* plaintiffs from bringing *qui tam* actions on behalf of the United States. Id. at 775. He further explained that having such a rule that limits legal representation to lawyers “operates to filter out frivolous litigation that can redound to the harm of the represented party,” especially considering the represented party (*i.e.*, the United States) may be bound or have its rights waived by its legal representative under principles of res judicata and collateral estoppel. Id. Given that only an attorney can provide legal representation to the government, the Seventh Circuit concluded that Lu could not pursue a *qui tam* claim as a *pro se* litigant and affirmed the dismissal of his case.

Lu has not identified any special circumstances or unique considerations that would warrant certiorari review of well-established case law that is followed by every circuit court decision to have considered this issue. Both the U.S. Court of



Appeals for the First Circuit and the U.S. District Court for the District of Massachusetts correctly concluded that Lu could not pursue his *qui tam* claims as a *pro se* plaintiff, consistent with every other federal court of appeals to decide this same issue. Accordingly, Lu has not established any compelling reason to grant certiorari review of this legal issue.

### CONCLUSION

For the foregoing reasons, respondents Trustees of Tufts College and Dr. Marielena Gamboa-Ruiz respectfully request that this Honorable Court deny Mr. Lu's petition for a writ of certiorari.

Respectfully submitted,

*/s/ John G. Wheatley*

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Dated: August 31, 2020



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**CERTIFICATE OF SERVICE**

I, John G. Wheatley, counsel for the respondents, Trustees of Tufts College and Marielena Gamboa-Ruiz and a member of the Bar of this Court, certify that on this 31<sup>st</sup> day of August, 2020, I caused a copy of the Brief for Respondents, Trustees of Tufts College and Marielena Gamboa-Ruiz in Opposition to be served by electronic means and served by mail on the following:

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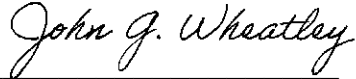
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I further certify that all parties required to be served have been served.

  
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