20-7606

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

CASE NO.:

ZOE AJJAHNON ,
PLAINTIFF- PETITIONER

-V-

ST. JOSEPH UNIVERSITY MEDICAL CENTER

AND

RWJ BARNABAS HEALTH, INC.,

DEFENDANTS- RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI TO THE U.S. THIRD CIRCUIT COURT OF APPEALS (Civil Appeal No. : 20-2386)

PETITIONER' ARGUMENT IN SUPPORT OF THE PETITION

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Montvale, NJ 07645
Ph.:551-270-3966

QUESTIONS PRESENTED

This matter concerns an action brought under False Claims Act (FCA) provisions of S. 386, Pub. L. 111-21(2009) - Fraud Enforcement and Recovery Act (FERA) 2009; and under Constitutionally protected due process rights grants of the Fourteenth Amendment. The complaint labored that although the Government has sustained damages - by definition inherent the FCA Claim *FERA § 4(b)(2)(A)(ii)* - plaintiff's action under these same provisions is valid to pursue remedy of plaintiff's damages not the Government's. Indeed, "(Sec. 4 [of FERA (2009)) Amends the False Claims Act to: (1) expand liability under such Act for making false or fraudulent claims to the federal government; **and** (2) apply liability under such Act for presenting a false or fraudulent claim for payment or approval (currently [/prior the 2009 amendments] limited to such a claim presented to an officer or employee of the federal government). ..." (Emp. added) (Congress.gov website). The U.S. Third Circuit Court of Appeals appears to disagree, rendering an opinion that does not clarify for the specific question of the validity of the FCA claim as brought and, further dismissed, at variance to consistent court teachings (including their own*), the permissive due process rights grounds material to the FCA claims. The Court's review is sought to give direction respecting federal courts arbitrary applicability of the FCA claim as codified in *31 U.S.C.§§ 3729-3733.* The lower courts limit the FCA liability to the false claim made to the Government but the FCA claim clearly refutes this constraint in FERA 2009, where the Government damage is qualified in a "portion" of the FCA claim / the demand for payment, and *31 U.S.C.§3730 (b)(1)* gives that the FCA claim may be brought for 'the person'[/plaintiff] and the Government. The FCA claim attaches defendant liability to "[an]other recipient" than the Government, *31 U.S.C. §3729 (b)(2)(A)(ii).* Plaintiff contends that where the FCA claim extends to "[an]other recipient of the false claim for money, the scope of the FCA liability also extends to this 'other- than-the-government-recipient'. Further, the Court's review will instruct on the allowance of the Constitutionally protected due process rights of *42 U.S.C. §1983* grounds in this case as they inform the materiality element of the FCA claim.

The questions are,

1) Under *31 U.S.C. §3729 (b)(2)(A)(ii) - FERA § 4(b)(2)(A)(ii)* of *31 U.S.C. §§ 3729-3733,* is the FCA claim only viable for recovery of government damages and turns only on government participation, does the 'other recipient' of this false claim for money from the Government have grounds for remedy of plaintiff' individual damages, that is, plaintiff' ('nongovernment') portion of the FCA claim?

2) Do Court teachings support defendants due process violations of the Constitution' Fourteenth Amendment codes in *42 U.S.C. §1983* material for FCA liability?

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*The Third Circuit cited *Benn v. Universal Health Inc.* (3d. cir. 2004)to dismiss for lack of standing in 42 *USC §1983* at variance with standard Court teachings and the Third circuit's prior application of those standards, in the argument that defendants are "private actors" and therefore not liable for the "state actions" of the complaint.

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THE PARTIES

Pro Se plaintiff, Zoe Ajjahnon has the address, 110 Chestnut Ridge Rd., Montvale, NJ 07645; Ph.: 551-270-3966

Defendant, St. Joseph's University Medical Center is one of the healthcare services providers of St. Joseph's University Medical Centre. Instant emergency room (ER) is located at this facility: address: 703 Main Street, Paterson, NJ 07503; Ph.: 973-754-2000

Defendant, Robert Wood Johnson Barnabas Health, Inc. / RWJ Barnabas Health, Inc., announced its formation on March 31, 2016 from a merger of St Barnabas Medical Center and RWJ University Hospital Hamilton. In 2006 St. Barnabas paid $265 million dollars in penalties from a qui tam False Claims Act suit. RWJ Hospital Hamilton, in 2010 paid the government $6.3 million dollars for similar charges. The new corporation is registered a not-for-profit entity. It is a network of several hospitals that provide healthcare services in New Jersey to approximately 5 million people or ½ the State' population. Clara Maass Medical Center, at 1 Clara Maass Drive, 1 South Annex Unit, Belleville, NJ 07109 ; Ph.: 973-450-2000 is the corporation' short term care facility provider of this case. RWJ Barnabas Health, Inc. gives variably two corporate addresses, 950 Old Short Hills Road, West Orange, Essex County, N.J. 07052; Ph.: 973-322-4328 and 2 Crescent Place, Oceanport, Monmouth County, N.J. 07757; Ph.:732-923-8000

RELATED ACTION

On 31st December 2020 plaintiff petitioned the Executive Office of the President for an Executive Order suspending defendant, RWJ Barnabas' Short Term Care services and for the state of NJ direct oversight of defendant, St Joseph' Screening services, pending the outcome of a government appointed task force assessment of the significant risk to public safety posed by their respective healthcare services.

The request further suggested the institution of neutral, independent physicians to provide the second of the requisite two certifications for involuntary commitment; reasoning, government funded Medicaid would be less likely defrauded in this measure, since, like a private health insurance provider, Government money would not be spent in costly treatment of a false diagnosis. Looking at cancer for example, an oncologist could falsely diagnose for costly treatment, there is a measure where the oncologist treat cancer only *after* it has been diagnosed by another physician.

The 12/31/2020 EO request was further made of the Executive Office of the New Jersey State Governor on 2nd February 2021.

Case No.:

In The Supreme Court of The United States

Zoe Ajjahnon, Plaintiff-Petitioner

v.

St. Joseph's University Medical Center

And

RWJ Barnabas Health, Inc., Defendants - Respondents

On Petition for Writ of Certiorari to the Third Circuit Court of Appeals

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PETITION FOR WRIT OF CERTIORARI

Plaintiff respectfully petitions the Court for a writ of certiorari to review the judgment of the U.S. Third Circuit Court of Appeals.

OPINIONS

There are no less than two opinions from the Third Circuit in this matter. They are both of them unpublished. On November 27th 2020 the Third Circuit entered a judgment dismissing the action. (App.B) A Dec. 28th 2020 petition for Panel and En Banc Rehear was partially granted. The En Banc was denied, the Panel granted on 12/28/2020 and returned the opinion also on 12/28/2020. (App.A) The court's argument disturbed nothing of the 11/27/2020 opinion except for removing a factual error, the fabrication of an arrest put in the first opinion, and clarified for the two FCA claim diagnoses as opposed to one argued in the 11/27/2020 opinion.

The District' dismissal of the case erroneously argued it is a *qui tam* matter on behalf of the government's damages and as *pro se* may not proceed. It adopts the language from an un-filed/ undocumented letter purporting to be from the U.S. Dept. of Justice warning of intent to decline intervention adding with emphasis that "our filing will also suggest that the court dismiss your False Claims Acts Claims" (11/22/2019) (App. F-1, 43a) and the department' subsequent notice of declination (1/2/2020) (App. F-2, 44a - 46a). Both these U.S. DOJ letters to the District are specious. The Complaint was sent to the US Attorney General's (AG')via email on 8/20/2019 (App. I, 155a) and also via regular US mail. The action was never filed as a qui tam matter, under seal and in accordance with *31 U.S.C. § 3730(b)(2)* as the District, quoting the U.S. DOJ letters, holds. In fact, the complaint appears never to have been properly filed, in any format, at the US AG' Office. Plaintiff has had no communication from that office of the email nor of the regular mail received on 8/29/19 (Mail Room ID # 4323865) when the action was sent to the Civil

Division of the US Attorney General's office. The complaint's 'service' on the U.S. Attorney's Office / DOJ in Newark comes with high irregularities. The office appears not to have any record of it and the only communication from that office are these two specious letters that bear no indiction (such as a filing ID# / Reference #/ Case #) of the case being filed at the DOJ'. The action strenuously denies that it is in pursuit of Government damages and specified this for the Appeals Court' review. In addition to this legal error, as argued on Appeal, the district's significant factual errors were also cited for review. The opinions of the Third Circuit are practically verbatim the District' entered on 6/28/20. (App. C)

JURISDICTION

Jurisdiction was invoked under 28 U.S.C. § 1331 in the district court for the district of New Jersey and as of right to appeal in the Third Circuit under 28 U.S.C. §1291. The jurisdiction in this Court is invoked under 28 U.S.C. §1254(1)

CONSTITUTIONAL AND STATUTORY PROVISIONS

This action comes under the *Constitution's Fourteenth Amendment* providing, "no state [shall] deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws" due process privileges guarded in *U.S. Codes of Title 42 section 1983* where these grants were trespassed in the False Claims Acts statutes, *31 U.S.C. §§ 3729-3733.*

STATEMENT OF CASE

This case began with a call made by a caller with a history of making such false police reports to the Paterson Police Department of a threat made by plaintiff, and concerns

defendant, the screening services of St. Joseph's Medical Centre claim of plaintiff's need of involuntary commitment / involuntary commitment to treatment at co-defendant', RWJ Barnabas short term care facility, at Clara Maass. The commitment was effected without the standard psychiatric evaluation and absent informed consent. In fact, in round denial of all statutory regulations for such deprivation of liberties.

Where *N.J. Rev. Stat. § 30.4-27.1 et seq* and related Rule of Court *Rule 4:74-7* govern 'in cases where an individual is alleged to be mentally ill and is in need of involuntary treatment (whether on an inpatient or outpatient basis) to avert danger to self, others, or property' (*Judge' Quick Guide to The New Jersey Involuntary Commitment Code and Related Rule of Court,* (2014 Revisions) August 2015 Update) the regulations' first requirement for a psychiatric examination to determine the presence of a mental illness was not done by the screening service. The psychiatrist at no point questioned, evaluated, examined plaintiff for the presence of a mental illness. The services' psychiatrist concluded a mental illness without performing a psychiatric examination. The screening service' diagnosis is based on no presenting / history of symptoms of the (/an) alleged disorder and is a matter of fabricated certifying statements, such as thoughts of delusion and fear/paranoia completely unknown- quite novel to plaintiff. For instance, plaintiff was informed from the screening service' record that she is paranoid of the email and telephone, and from co- defendant' the short term care facility (STCF) that this dread is as to technology in general, App.I, 171a and 188a respectively, but see the false certifying statements of defendants in their entirety, 161a-178a, the screening service' and

185a - 203a, the STCF'. These statements are each and every one of them false / untrue / quite unknown to plaintiff and actually denied where asked at the STCF in that defendant's sham psychiatric evaluation.

The screening services manufactured certifying statements based its false diagnosis of Bipolar disorder in the absence of the qualifying clinical manifestation of depression and mania/hypomania episodes (and that having cycled at least once, *International Classification of Diagnosis* 10^{th} Revision) compounds defendant's irregularities to falsely claim certification of the second requirement, that is, this mental illness causes the individual to be dangerous to self, others or property. Having not examined plaintiff for the presence of a mental illness, trying for the 'clear and convincing' facts that this illness causes the person to be dangerous was likewise not done. The screening services relies on a police record of a 'knife threat' by plaintiff. Said record carries nothing of a knife threat, nor a threat of any kind for that matter; in fact, nothing of danger to self, others or property. It is appended at Appendix I and designated Exhibit 3 of the complaint' attachments (159a - 160a). Further statutory guides were dismissed by the screening services in pursuit of the requisite court order for involuntary commitment. Denial of due process that effected the false imprisonment of plaintiff at co-defendant' the STCF includes denial of informed consent. At no point was plaintiff given the choice for voluntary treatment, as regulations/standards call for. Moreover, to plaintiff's direct question to the psychiatrist of why she is being committed, the screening psychiatrist literally ignored the question. She made no reply whatever. Plaintiff was not given any

forms to sign. Plaintiff was roundly denied informed consent.

This action argues aggregated violations of due process guarantees afforded in the standards for institutionalizing an individual at co-defendant, the short term care facility, where that psychiatrist deliberately falsified plaintiff's denial of the fabricated certifying statements from the screening service. The STCF RWJ Barnabas' Clara Maass would then add a second mental illness, that of Schizophrenia with defendant' full and explicitly stated knowledge of the absence of determinants / clinical manifest / symptoms of this diagnosis; expressly, plaintiff' lack of a psychiatric history/having never manifested the clinical determinants for this (nor any other) mental illness. The STCF psychiatrist spoke to this when he voiced his doubt about the bipolar disorder in the first place, calling it a "tentative" diagnosis whereas there is "no psychiatric history" and noted other factors like plaintiff' age coming against the presence of a mental illness absent an existing psychiatric history.

RWJ Barnabas FCA claim diagnosis of schizophrenia is significant for being able to force unnecessary medical treatment. The individual presenting with/having a history of schizophrenia, as to guides, is deemed mentally incompetent to refuse medication. Defendant may therefore force medication if this specific disease is present since the mere presence of a mental illness does not equate mental incompetence. *N.J.S.A. 30:4-24.2c*

In what it calls its 'two-step process' where the treating psychiatrist' diagnosis is 'seconded' by their purported 'independent' psychiatrist, defendant RWJ Barnabas Health, Inc. effects this barbarous forced medication of Haloperidol (/Haldol, a very

potent anti-psychotic/psychotropic sedative with serious longterm side effects). Discussing concerns over forced medication by defendant' 2-step, plaintiff was informed by the STCF staff that this 'seconding' psychiatrist has been the only physician engaged in this duty - ever- at defendant's Clara Maass.

The STCF forcibly administered Lithium for the fabricated diagnosis of bipolar disorder from the screening services. Plaintiff suffered a rare cardiac event from that drug. It was immediately discontinued. The forced medication for schizophrenia continued however. This forced treatment at the STCF is done via routinely having two nurses present to force the drugs, one prepared to "hold down" the person while the other inject the drug if refused. There is a pronounced inability to refuse Haldol at defendant, RWJ Barnabas' Clara Maass. The Court appreciates that Haldol is standard treatment for schizophrenia, the diagnosis necessary to force medication in the first place.

The FCA claims of this case are substantial for due process violations. This action is in pursuit of remedial damages sustained by plaintiff. Both plaintiff and the government were billed secondary these FCA violation, pursuant *31U.S.C. § 3730 (b)(1)* the government was informed by plaintiff of defendants' FCA claims. The government declined participation in the case.

REASONS FOR GRANTING THE PETITION

I. *The Court's Review is Sought to Give Direction Respecting Federal Courts Arbitrary Applicability of the FCA Claim as Defined in FERA 2009 - codified in 31 U.S.C. §§ 3729-3733.*

The Court's review is necessary to provide standard for the scope of application of the

FCA Claim grounds to a nongovernment plaintiff pursuing individual damages or plaintiff' portion of the false claim as defined, *31 U.S.C. § 3729 (b)(2)(A)* where the False Claims claim is :

"means any request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that—
...
(ii) is made to a contractor, grantee, or <u>other recipient</u>, (Emp. added) if the money or property is to be spent or used on the Government's behalf or to advance a Government program or interest, and if the United States Government—
(I) provides or has provided any portion of the money or property requested or demanded; or
(II) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded;"

In 2009 Congress passed sweeping reforms to the False Claims Act that expanded government fraud protection in the Fraud Enforcement and Recovery Act, *Pub.111-21, 123 Stat. 1617 (2009)* "FERA". <u>FERA' reforms of FCA that allows private citizens to sue on behalf of the government broadened the definition of the FCA claim to include defendant liability to "[an]other recipient of the fraudulent 'demand for money to the government ... if the money ...is to be spent or used on the Government's behalf or to advance a Government program or interest and if the United States Government— provides or has provided any portion of the money or property requested or demanded; ... . *FERA § 4(b)(2)(A)(ii).*</u> The Third Circuit dismissed this grounds for the complaint, holding rather to the District's opinion that the action is a *qui tam* matter in pursuit of percentage of Government recovery. (Apps. A, B, and C, 1a -14a).

The first of the two issues on appeal asked, 'are the FCA laws' sufficiency limited to recovering government funds?" (Appeal, Statement of Issues, 16a)

The question was avoided, the circuit court simply regurgitated the district' opinion that "erroneously interpreted plaintiff's action as in pursuit of government damages, or to be specific, percentage of government damages."

The lower courts' denial of presentation/statement of the claim, holding the action a *qui tam* matter in pursuit of percentage of government recovery, is easily refuted prima facie in the facts of the case and relevant laws - Congress definition of the FCA Claim at *31 U.S.C. §3729 (b)(2)(A)* gives plaintiff footing to vindicate her own cause as argued in the Appeal (id. 21a-28a) and the elements for defendant FCA violation of, 1) a false statement or engages in a false course of conduct, 2) made or carried out with knowledge of the falsity, 3) that was material, and 4) involved a claim, (request or demand for money or property from the government [that under FERA reforms the claim is where the government provides a "portion" of the money demanded, as explicitly of Medicaid, the Exs.12, 215a-223a, or the FCA claim advances defendants government programs of the respective, screening services and STCF]), are substantiated in the Complaint and supporting Exhibits (69a - 226a).

The State of NJ inflexibly holds that the question of involuntary commitment is a legal matter, *(Matter of Commitment D.M. Supra 313 N.J. Super. At 450)* and sets out State law of 'clear standards and procedural safeguards for such deprivation of liberties' in *N.J.S.A. 30: 4-27.1 et seq* and *Court Rule 74-7*. Relying further on *31 U.S.C. §§3729 (b)(3)(4)* defining defendants *obligation* under these statutes and the *materiality* of their noncompliance with government regulations as they influence the demand for money

made to plaintiff - the recipient/victim of defendants misrepresentations - as well as - co-victim of the demand for money to the government based in FCA violations, support this action's FCA standing and plaintiff' independent pursuit of individual damages suffered.

Government regulations were all of them violated by defendants in their government funded and regulated programs. These misrepresentations were material for defendants false claims / demand for payment to plaintiff and the government.(App. I, Exhibits of the bills per se, 208a -226a). Petitioner argues that FERA (2009) in expanding the claim element expands too defendant liability and plaintiff standing under this statute. The Court's review is sought to give clarity here, and also as to the de facto absolve of defendants liability by the 3rd Cir. court' dismissal.

II. ***The Court's Review is further necessary in that the FCA Claims arose from due process violations, and the Third Circuit' Instant Opinion has Significantly Departed from Established Consistent Court Teachings on Federally Protected Due Process Laws and Grants of the Constitution in 42 U.S.C.§1983***

This action maintains that the FCA element of materiality is a function of defendants' due process violations. This argument goes to another change since FERA 2009 and to petitioner' question of due process violations substantial for defendants FCA illegalities, where the FCA liability for defendant/the healthcare provider is not merely in the disregard of government regulations but rather where those acts result in the defendant'/ provider' knowing falsification of a fraudulent claim for payment to the government [and other recipient of this demand for money]. *United States ex. rel. Clausen v. Lab. Corp. of Am.,* 290 F. 3d. 1301, 1311 (11th Cir. 2002) and *United States v. Lang,* 251 F. Supp. 3d 971, 975 (E.D.N.C. 2017). (See, Smith Pachter McWhorter FCA Practice Guide 2019.)

Therefore, defendants' FCA liability to plaintiff - "the other recipient of the demand for money/bill [shared by the government]" - are not just as to the fraudulent claim/demand for money but are also for the acts that resulted in /produced defendants' fraudulent claims - the due process violations of instant complaint. To state the obvious, it is not the government that is directly / immediately harmed by the substance of the defendants' misrepresentations or false certifications, it is the 'other recipient' of the healthcare provider's / defendants' false claims to the government/for the government program. FERA 2009 expansion of the False Claims Act in *FERA §4(b)(2)(A)(ii)* give standing to plaintiff, the "other recipient" to directly pursue the direct harm (to plaintiff) of defendants FCA liabilities.

Where defendant' due process violations supported in, among other irregularities: 'plaintiff's substantiated claims of round noncompliance with government standards for involuntary commitment set in *N.J.S.A. 30:4-27.1 et seq*, gross intentional medical misconduct, and numerous counts of violations of federally protected civil rights at defendants's government funded/run healthcare programs are cognizable for False Claims Acts liability claims as defined in the Fraud Enforcement and Recovery Act (FERA) 2009 amendments of the False Claims Act, the third circuit' affirmation of the [district'] dismissal that denied FCA standing denied also due process grounds, holding, defendants escape liability whereas they are 'private' not 'state' actors.

Court teachings affirm that the FCA 'is not a vehicle to punish garden-variety breaches of contract or regulatory violations' and speaking to liability explained, under

FCA 'the fact-specific inquiry of materiality looks to the effect of the likely or actual behavior of the recipient of the alleged misrepresentation.' *Universal Health Servs., Inc. v. United States and Commonwealth of Mass. ex rel. Escobar*, 136 S. Ct. 1989 (2016).

Defendants, St Joseph' and RWJ Barnabas - government healthcare programs for the mentally ill of, respectively, a screening service and a screening outreach program - here, a short term care facility for involuntary commitment/ involuntary commitment to treatment, violated statutory guides governing their respective services in pursuit of the mandated court order for service eligibility, (App.I, 204a-206a, the court order). The false certifying statements are, literally, defendants respective certifications to the court for the requisite court order. They are appended at App.I, 161a - 178a FCA false certifying statements of defendant, St. Joseph's, the screening services, and 185a -203a, FCA false certifying statements of defendant, RWJ Barnabas, short term care facility (STCF).

Defendants FCA liability attaches in their respective expressed false certifications for the court order, false claims arising from due process violations/ noncompliance with government regulations conditional for payment. *United States ex rel. Hobbs v. Medquest Assoc., Inc., 711 F. 3d 707, 714 (6th cir. 2013).* Defendants due process irregularities led to the false imprisonment of the involuntary commitment, forced unnecessary medication, and the other violations of the complaint material to the false claim/demand for money made to plaintiff (the direct/primary recipient of defendants misrepresentation) and the Government.

The complaint maintains a distinction between primary and secondary harm (not

liability) of defendants FCA violations. Reasoning, damages of the FCA claim may be distinguished as specific and separate for respective recipient(s) of the claim. The "other recipient" of the demand for money (/the FCA claim made on 'other recipient' and the government) may suffer unique damages from defendant FCA violations, harm that for the 'other recipient' of the FCA claim may not be limited to the monetary demand whereas defendant false claims conduct material for the FCA claim is directly perpetrated on this 'other recipient', not the Government.

To speak to the FCA violations informing plaintiff' false imprisonment, defendants false certification in violations of statutory and constitutional principles material for the FCA claim (the demand for money to the government and plaintiff) of the bills generated from the false imprisonment, speaks to the component of 'intent' (i.e. with purposeful knowledge) to confine of this claim, *Restatement (Second) of Torts §35 (1965);* and it is understood that the false statements arising from defendants due process violations or government irregularities conditional for the money demanded of both the Government and plaintiff, cause direct or primary harm to plaintiff as distinguished from the secondary damage shared by both recipients of the FCA claim. The demand for payment made to the Government and plaintiff are secondary defendants misrepresentations. The Government' secondary damages are not specific for false imprisonment, forced medication, emotional trauma, etc. of defendants misrepresentations/ FCA conduct; however, defendant liability attaches for both Government and 'other recipient' of the fraudulent demand for money generated from defendants FCA violations.

Wherefore, pursuant 31U.S.C. *§ 3730 (b)(1)* providing, "A person may bring a civil

action for a violation of section 3729 ***for the person and*** **for the United States Government."** (emp. mine) plaintiff sent this case on 8/20/19 (the same date as filing at the District) to the US Attorney General via email and regular mail date received, 8/29/19 (App.I, 155a, cover letter to US OAG of Aug. 20 2019), holding at No Point that government participation was either necessary or sufficient to pursue remedy of plaintiff's (/personal) damages, wherefore it was *not* filed/submitted 'under seal' as required at 31U.S.C. *§ 3730 (b)(2)* (duly noted, if misconstrued in the District's opinion, App. C, 13a) of a plaintiff acting on behalf of the Government, that is, an action in pursuit of a share of Government recovery. Where, *28 U.S.C. §1654* allows a litigant to represent him/herself in a U.S. court of law, plaintiff's action may proceed *pro se* therefore. This was expressly stated on Appeal (id. 22a - 28a). In fact, the issues on Appeal manifestly substantiating 'this action is in pursuit of plaintiff's damages, not the Government's', is further supported in the fact that the district's opinion is 'bald rhetoric' - absent frame of legal authenticity of the case having been filed as a *qui tam* matter in pursuit of percentage of Government damages. The statement of claims come under both the False Claims Act, *31 U.S.C. §§ 3729-3733* and civil grants of *42 U.S.C. §1983 and §1981* (App.I, 69a) and filing or, more accurately, an attempt to file (there is no documentation that it was actually filed at the Civil Division it was sent, just acknowledgment that it was received at the Mail Room, #4323865) at the US Attorney General was <u>not</u> done under seal with 'substantial material evidence for recovery of Government damages' and served also on the US Attorney in accordance with set standards of a *qui tam* pursuit. (See, *The United States Department of Justice Archives 932 Provisions For The Handling Of Qui Tam Suits Filed Under The False Claims Act)*

Unavailing in the 3d. Cir. is the teaching from *United States ex. rel. Brown v. Celgene Corp., 226 F. Supp. 3d, 1032, 1044-45 (CD. Cal. 2016),* "Statutory requirements may be so central to the functioning of the government program that noncompliance is material as a matter of law."; notwithstanding this court of appeals is not unaware of the centrality of defendants due process violations to the complaint's standing, and defendants liability. In fact, in applying *Escobar's* standard in implied certification liability, the third circuit worked the 'misrepresentation for government payment' prong to dismiss defendant liability holding that the 'mere' request for payment is insufficient for liability to attach in the absence of 'specific representation'. *United States ex.rel. Schimelpfenig v. Dr. Reddy' Labs. Ltd., 2017 WL1133956 (E.D. PA., Mar., 2017)*

The third circuit' dismissal of this action dismissed also the 'specific representations' of the false claims. The opinion that reiterated the district's statements (added one falsehood of its own that was corrected upon the spurious rehear), significantly, left uncorrected the false statement by the district that plaintiff alleges a social worker provided the false diagnosis for the screening services court order, this even after plaintiff expressly denied this, pointing to the standard for a psychiatrist (or other physician) to personally examine for, and determine the presence of, the/a mental illness (App. D Appeal, 26a & App. E, Petition for En Banc and Panel Rehear, 32a-33a) - A significant manipulation of the record since, to hear plaintiff's denial of the social worker giving the false diagnosis, is to admit the fact that defendant violated statutory guides respecting - as labored - the standard for a psychiatric evaluation. The denial of the standard psychiatric evaluation compounded defendants subsequent noncompliance with standard regulations

for the involuntary commitment / commitment to treatment. Due process liability is substantiated for defendants - government healthcare programs whereas the psychiatrist's evaluation must assess for the 'grounding' mental illness (a mental illness must be present and that mental illness must be the cause for dangerousness; further, no less restrictive setting can appropriately treat the dangerously insane person) - the denial of this standard informs the false certifying statements and was conditional for the demand for payment - the false claims. This instituted the false imprisonment where defendant the STCF, propagated its own set of due process rights and FCA violations of the aggregate harm to plaintiff.

Under the statutory provisions of the False Claims Act, the complaint substantiated,

1.) FALSE CLAIMS ACTS OF INTENTIONAL SIGNIFICANT INCOMPETENCE OF MALICIOUS MEDICAL MALPRACTICE CONSTITUTES SUBSTANTIAL VIOLATIONS OF PROCEDURAL AND SUBSTANTIVE DUE PROCESS LAWS AT ST. JOSEPH'S MEDICAL CENTER, THE SCREENING SERVICES. THIS LED TO THE FALSE IMPRISONMENT OF PLAINTIFF AT CO-DEFENDANT'S INVOLUNTARY COMMITMENT FACILITY AND GROUNDS PLAINTIFF'S LIABILITY CLAIMS UNDER THE FEDERAL FALSE CLAIMS ACT PROVISIONS OF*31 U.S.C. §§3729- 3733* AND CONSTITUTIONALLY PROTECTED CIVIL RIGHTS OF *42 U.S.C. §1983 and §1981*

And

2.) DEFENDANT RWJ BARNABAS HEALTH CONTINUES THE HEALTH CARE PROVIDER'S PRACTICE OF FRAUDULENTLY OBTAINING MONEY FROM GOVERNMENT FUNDED PROGRAMS AT ITS SHORT TERM CARE FACILITY OF THIS COMPLAINT, CLARA MAASS. DEFENDANT'S FALSE CLAIMS CONDUCT IS SUBSTANTIAL FOR THE SERVICE' VIOLATIONS OF CIVIL RIGHTS, DISMISSAL OF DUE PROCESS, PERPETRATION OF INTENTIONAL MALICIOUS MEDICAL MALPRACTICE OF A FALSE DIAGNOSIS FOR THE PURPOSE OF FORCING MEDICATION, SUBSEQUENTLY FORCED MEDICATION, FALSE IMPRISONMENT, AND VIOLATED OTHER LAWS SUCH AS DELIBERATELY PREVENTING PLAINTIFF FROM SPEAKING TO THE COURT. DEFENDANT MADE BILLING CLAIMS TO PLAINTIFF AND GOVERNMENT FUNDED

PROGRAMS FOR THESE FRAUDS PER SE AND FOR THE TIME OR DURATION OF THE FRAUDS , I.E. EACH DAY PLAINTIFF WAS SUBJECT TO THESE FALSE CLAIMS ACTIONS AT THE FACILITY (Argued in the Complaint, App. I, 107a-146a)

The lower court's opinion constraints for grounds under FCA provisions for this action are groundless as a matter of law, as argued; the opinion' holding that defendants are not 'state actors' and escape therefore 42 U.S.C.*§1983* liability, is likewise futile under consistent Court teachings. Defendants, the screening services, St. Joseph's, and the involuntary commitment mental health service provider, the short term care facility, RWJ Barnabas, are acting in behalf of the State in government funded State established programs, *N.J.A.C.10:31 (*NJ Administrative Codes for Screening and Screening Outreach Program) that are regulated by State laws, *N.J.S.A. 30.4-27.1 et seq,* as the complaint asserts.

The State of New Jersey declares in **P. L. CHAP.112 (Aug. 11, 2009, S. 735) AN ACT** concerning involuntary commitment to treatment and amending and supplementing chapter 4 of Title 30 of the Revised Statutes and amending P.L.1991, c.270. **BE IT ENACTED** *by the Senate and General Assembly of the State of New Jersey:*

1. Section 1 of P.L.1987, c.116 (C.30:4-27.1) is amended to read as follows:
C.30:4-27.1 Findings, declarations.

1. The Legislature finds and declares that:

" a. The State is responsible for providing care, treatment and rehabilitation services to mentally ill persons who are disabled and cannot provide basic care for themselves or who are dangerous to themselves, others or property; and because some of these mentally ill persons do not seek treatment or are not able to benefit from voluntary treatment provided on an outpatient basis, it is necessary that State law provide for the voluntary admission and the involuntary commitment to treatment of these persons as well as for the public services and facilities necessary to fulfill these responsibilities.

b. Because involuntary commitment to treatment entails certain deprivations of liberty, it is necessary that State law balance the basic value of liberty with the need for safety and treatment, a balance that is difficult to effect because of the limited ability to predict behavior; and, therefore, it is necessary that State law provide clear standards and procedural safeguards that ensure that only those persons who are dangerous to themselves, others or property, are involuntarily committed to treatment.

c. ...

In addition it is the policy of this State that the public mental health system shall be developed in a manner which protects individual liberty and provides advocacy and due process for persons receiving treatment and insures that treatment is provided in a manner consistent with a person's clinical condition."

The " necessary ...State law provid[ing] clear standards and procedural safeguards that ensure that only those persons who are dangerous to themselves, others or property, are involuntarily committed to treatment" were each of them defied by the defendants of this case in due process violations in perpetrating the False Claims Acts claims of this complaint.

The complaint argues: Federally protected due process guarantees scrupulously guard procedural and substantive requirements for the legal standard for "clear and convincing" evidence to institute involuntary commitment. In *Addington v. Texas,* 441 U.S. 418; 99 S. Ct. 1804; 60 L. Ed.,2d 323 (1979) a unanimous court concluded that the Fourteenth Amendment due process provisions require clear convincing standard of proof in a state involuntary commitment proceeding. The State of NJ holds to this principle. In M.M., 384 N.J. Super 313, 894 A.2d 1158 (A.D. 2006) the court's adjudication invoked State guide, *Court Rule 74-7(b)* that reads in part 'a person is in need of involuntary commitment when there exists clear and convincing evidence that (1) the patient is mentally ill, (2) that mental illness causes the patient to be dangerous to self or others or property as defined in *N.J.S.A.30:4-27.2h and .2i,* (3) the patient is unwilling to accept appropriate treatment voluntarily after it has been offered, (4) the patient needs outpatient treatment or inpatient care at a short term care or psychiatric facility or special psychiatric hospital and (5) other less restrictive alternative services are not appropriate or available

to meet the person's mental health care needs. [Where] inpatient treatment is recommended, the [clinical and screening] certificates shall indicate that the patient is immediately or imminently dangerous to self, others or property or outpatient treatment is inadequate to render the patient unlikely to be dangerous within the reasonably foreseeable future. In the matter of D.C. 281 N.J. Super. 102, 656 A.2d 861 (A.D. 1995) reversed 146 N.J. 31,679 A. 2d 634 (1996) the State affirmed that, "there can be no deviation from strict statutory procedures for involuntary commitment". This holding by the court was upheld in J.R. 390 N.J. Super 523,916 A.2d 463 (A.D. 2007), as a matter of constitutional rights. The legal standards of those requirements are set forth in New Jersey State law, *N.J.S.A.30:4-27.1 et seq.*, further guarded in state statutes, *N.J.S.A.* 30 section *4D -1et seq,* and [NJ code] § 2A:32C Sections 1 through 15 and sections 17 and 18 [*C.2A:32C-1* through *C.2A:32C-17]* / New Jersey False Claims Act (NJFCA – essentially, New Jersey's adoption of the Federal FCA, *31 U.S.C. §§ 3729-3733*), among other guards. (from Complaint, App. I, 107a-110a)

The Third Circuit's opinion runs contrary to the Court' consistent teaching of defendants' due process liabilities in these FCA violations. The opinion' reliance on *Lugar v. Edmondson Oil Co. Inc.,* 457 U.S. 922 (1982) and the third circuit' own *Benn v. Universal Health System, Inc.,* 371, F. 3d 165, 174 (3d. Cir., 2004) to argue dismissal of defendants' liability as "private actors" not "state actors" [and] even if defendants irregularities were done with state aid, the lower court's argument runs, liability does not attach under *§1983* since the alleged violations are not actions of the State. This opinion is unfounded in established and consistent Court teaching of *42 U.S.C. §1983* liability

where *N.J. Rev. Stat. § 30.4-27.1 et seq* clearly show New Jersey State laws govern defendants' action of defendants State programs, the Screening services of defendant, St. Joseph' and the Screening Outreach program (the STCF) of defendant, RWJ Barnabas *(N.J.A.C. 10:31) roundly supporting that* defendants violations are actions of the state and liable under *§1983.*

The third circuit' dismissal is at variance with their own previous ruling moreover. From *Benn,* "To establish a claim under *§1983*, Benn must show that the defendants were, 1) state actors who 2) violated his rights under the Constitution or federal law. *Flagg Bros., Inc. v. Brooks,* 436 U.S. 149, 155, 98 S.Ct. 1729, 56 L.Ed.2d 185 (1978). That is, "plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law. *Parratt* v. *Taylor*, 451 U.S. 527, 535(1981)." "The traditional definition of acting under color of state law requires that the defendant in a *§ 1983* action have exercised power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law." *United States* v. *Classic*, 313, U.S. 299, 326 (1941); and, "In cases under *§1983*, `under color' of law has consistently been treated as the same thing as the `state action' required under the 14th Amendment." *Rendell-Baker v. Kohn,* 457 U.S. 830, 838, 102 S. Ct. 2764, 73 L.Ed. 2d 418 (1982); see also [the 3rd cir.'] *Dluhos v. Strasberg,* 321 F. 3d 365, 374 (3d Cir. 2003).

The third circuit misapplies *Lugar* v. *Edmondson Oil Co., supra*, since the Court made clear that if a defendant's conduct satisfies the state-action requirement of the Fourteenth Amendment, "that conduct [is] also action under color of state law and will support an

action under *§1983* ." Id., at 935. In such circumstances, the defendant's alleged infringement of the plaintiff's rights is 'fairly attributable to the State'. *Lugar*, 457 U.S., at 937. (App. E, 36a-37a, Petition for En Banc and Panel Rehear)

Defendants actions are actions of the Sate and their FCA violations were 'under color' of law. Further, even were the Court to dismiss NJ laws substantiating "state action" herein and the teachings of 'state actors' due process liability of defendants, the third circuit' 'private actors' leaning for due process liability escape cannot prevail in the Court's: " We have treated a nominally private entity as a state actor when it is controlled by an "agency of the State," *Pennsylvania v. Board of Directors of City Trusts of Philadelphia,* 353 U.S 230, 231 77 S.Ct. 806, 1 L.Ed.2d 792 (1957) *(per curiam),* when it has been delegated a public function by the State, cf., e.g., *West v. Atkins,* 487 U.S. 42, 56, 108 S.Ct. 2250, 101L.Ed. 2d 40 (1988)]; *Edmonson v. Leesville Concrete Co.,* 500 U.S. 614, 627-628, 111 S.Ct. 2077, 144 L.Ed. 2d 660 (1991), when it is "entwined with governmental policies," or when government is "entwined in [its] management or control," *Evans v. Newton,* 382 U.S. 296, 299, 301, 86 S.Ct. 486, 15 L.Ed. 2d 373 (1966).

Defendants clinical certificates of false certifying statements - FCA violations of dismissal of court standards for probative facts, clear and convincing evidence, that effected the false statements for the necessary court order, are a matter of due process violations in not performing the clinical examination, procedurally at the screening services and substantively at the STCF. In *Poe v. Ullman,* 367 U.S. 497, 540 541 (1961) Justice Harlan for the dissent argues that constitutional guarantees of due process are not limited to guarding procedural fairness, writing, "[due process] in the consistent view of

this Court has ever been a broader concept . . . . Were due process merely a procedural safeguard it would fail to reach those situations where the deprivation of life, liberty or property was accomplished by legislation...", and goes on to develop that due process guarantees are not confined to the mere 'operation' of legislation, they are much more encompassing, meant to protect the substance of the freedoms they guard, the 'enjoyment of all three'; wherefore, the prerogative of due process safeguards against deprivation of life, liberty or property are more far-reaching than procedural compliance.

Plaintiff was denied liberties. Both defendants' False Claims Acts violations in the fraudulent certifying statements for the required court order for involuntary commitment, effected the false imprisonment of plaintiff.

The elements of false imprisonment are set forth in the *Restatement, (Second) of Torts, § 35 (1965):*
An actor is subject to liability to another for false imprisonment if (a) he acts intending to confine the other or a third person within the boundaries fixed by the actor, and (b) his act directly or indirectly results in such a confinement of the other, and (c) the other is conscious of the confinement or is harmed by it."

Plaintiff's damage claims are proper for "profound and dramatic" confinement resultant deprivation of federal guarantees. "... involuntary commitment the confinement of people who have committed no crime and have not in any way violated the rules of our society is a profound and dramatic curtailment of a person's liberty and as such requires meticulous adherence to statutory and constitutional criteria. In fact, the United States Supreme Court has time and again recognized this proposition that a great deprivation of liberty results from involuntary civil commitment..." *Restatement, (Second) of Torts, § 35 (1965); Fair Oaks Hospital v. Pocrass*, 266 N.J. Super, 140,628 A. 2d 829 (L.1993).

Plaintiff was denied informed consent. To the expressed request for the reason for commitment, defendant, the screening services gave no reply. Plaintiff was specifically denied the standard to 'first refuse' voluntary treatment/ a less restrictive setting. In this

FCA claims case that offer was never presented. Defendant, the STCF' substantive due process violations in its sham clinical evaluation also purposefully falsified the statements of its certification to the court, even regarding those explicitly denied by plaintiff and acknowledged by this defendant' psychiatrist as not a part of plaintiff's [medical/mental] history (App.I, Complaint, 122a-146a ; Exhibit, 185a-203a)

Plain v. Flicker, 645 F. Supp. 898 (D.N.J. 1986) arguing among other issues, "The Fourteenth Amendment of the Constitution provides in part that no state shall deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. [And supports this complaint's remedy demand under] *Title 42 U.S.C. § 1983* [that] provides a remedy for deprivations of rights secured by the Constitution and laws of the United States when deprivation takes place "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory...." Defendants' liability is further sustained under *§ 1981(c)of Title 42* and *18 U.S.C.§ 242* that in this matter of intentional tort by healthcare service providers (generally), the deprivation of constitutionally protected due process in expressed violation of state regulations – under color of state statute and for the purpose of false imprisonment conditional for defendants False Claims billing for government funds.

Where FCA claims (false claims for government insurance money) may apply to the nongovernmental as well as government programs of healthcare services, this petition advances the third reason for grant.

III. ***A Matter of National Importance Under Title 42 In The Interests of General Public Health and Welfare***

In addition to the federal provisions of *31 U.S.C. §§ 3729-3733* and *Title 42 U.S.C. § 1983* of the foregoing respecting defendants government program, this action under *42 U.S.C. section 1981* pleads a further relief in the interests of general Public Health and Welfare. The petition seeks standards in both government and nongovernment consumer-provider relationships in the healthcare industry. The FCA violations of this matter, defendants FCA conduct is unfortunately not uncommon, and healthcare providers far too easily prey upon the socio-economically disadvantaged for Government health insurance money. This is a serious public safety risk. Learned from *Escobar,* FCA violations can and do lead to death. *Escobar'* FCA action did not allege medical malpractice , this complaint does and cites the recent statistic that medical malpractice kills a conservative estimate of 400,000 people in the U.S. each year.

Public safety relief sought is specific for adjustments to existing measures that will serve to better prevent institutional abuse of regulations for involuntary commitment procedures, to check the ease with which the FCA claims substantiated in this matter may continue by these violators, and that the due process violations herein were designed to effect the FCA claims, such as forced false need for medication and that over routinely 20 days at defendant RWJ Barnabas, present serious medical / health risks to the victims of the healthcare provider's false conduct/the FCA Claims perpetrator.

Wherefore, the complaint pursues the following relief:

Where a screening service is used, the second certifying psychiatrist or other physician must be a neutral party, that is, one not affiliated with either the screening services or the short term care facility; funding is to be set for an on-call private physicians 'per diem'

program to execute the second clinical certification. It is a proactive measure to prevent the fraud in the first place. The screening service' claim of the patient's need for involuntary commitment to treatment is impartially scrutinized. The STCF has the vested interest of ratifying whatever the referring entity (/screening services) states, for mercenary purposes and the advance of their own government funded program, an independent physician – NOT affiliated with /paid by either provider, does not. The proposal stresses here that this measure does not do away with the *assessment within 72 hours of commitment at the STCF* – rather, it amends for the clinical evaluation upon the institution of the commitment *to determine course of treatment* during commitment, *rather than* (as it is now abused in False Claims Acts violations) to conclude *need of commitment to treatment* at the STCF' service.

The Court considers that this complaint of False Claims frauds and abuse by both the screening service provider and the STCF, both skilled FCA perpetrators, one perhapsmore so. RWJ Barnabas Health, Inc.' history evince combined penalties of over $270 million in federal FCA penalties.

"Robert Wood John University Hospital Hamilton RWJBarnabas Health 65000 $0 $65,000 2009 20090910 healthcare-related offenses HHS civil monetary penalties Robert Wood John University Hospital Hamilton (RWJ Hamilton), New Jersey, agreed to pay $65,000 to resolve its liability for CMPs under the patient dumping statute. The OIG alleged that RWJ Hamilton failed to provide a medical screening examination, stabilizing treatment or an appropriate transfer for a mother and her newborn child who came to RWJ Hamilton's emergency department for examination and treatment for a medical condition. federal agency action HHSOIG Health & Human Services Department Office of Inspector General civil New Jersey Hamilton USA New Jersey non-profit healthcare services hospitals https://oig.hhs.gov/fraud/enforcement/cmp/cmp-ae.asp 207363 2589 Robert Wood Johnson Health Care Corp. RWJBarnabas Health 5800000 $0 $5,800,000 2015 20151030 government-contracting-related offenses False Claims Act and related The Department of Justice reached 70 settlements involving 457 hospitals in 43 states for

more than $250 million related to cardiac devices that were implanted in Medicare patients in violation of Medicare coverage requirements. federal agency action DOJ_CIVIL Justice Department Civil Division civil New Jersey New Brunswick USA New Jersey non-profit healthcare services hospitals https://www.justice.gov/opa/pr/nearly-500-hospitals-pay-united-states-more-250-million-resolve-false-claims-act-allegations 193677 2589 Robert Wood Johnson University Hospital Hamilton RWJBarnabas Health 6350000 $0 $6,350,000 2010 20100319 government-contracting-related offenses False Claims Act and related Robert Wood Johnson University Hospital Hamilton, a New Jersey-based hospital, agreed to pay $6.35 million to settle allegations that it fraudulently inflated its charges to Medicare patients to obtain larger reimbursements from the federal health care program. federal agency action DOJ_CIVIL Justice Department Civil Division civil New Jersey Hamilton USA New Jersey non-profit healthcare services hospitals https://www.justice.gov/opa/pr/new-jersey-hospital-pay-635-million-resolve-allegations-inflating-charges-obtain-higher 194041 2589 Saint Barnabas Corporation RWJBarnabas Health 265000000 $0 $265,000,000 2006 20060615 government-contracting-related offenses False Claims Act and related fraud Saint Barnabas Corporation agreed to pay the United States $265 million to settle allegations that it defrauded the federal Medicare program. federal agency action DOJ_CIVIL Justice Department Civil Division civil New Jersey USA New Jersey non-profit healthcare services hospitals https://www.justice.gov/archive/opa/pr/2006/June/06_civ_373.html 207642 2589 Saint Barnabas Medical Center RWJBarnabas Health 113190 $0 $113,190 2010 20101231 employment-related offenses wage and hour violation Fair Labor Standards Act federal agency action WHD Labor Department Wage and Hour Division civil 1598333 New Jersey Livingston 07039 622110 622110: General Medical and Surgical Hospitals USA New Jersey non-profit healthcare services hospitals March 7, 2017 download of a dataset posted by the Wage and Hour Division at https://enforcedata.dol.gov/views/data_summary.php Date and year are the Findings End Date in the dataset posted by the Wage and Hour Division, which does not provide case opening or closing dates. The company name is the Legal Name provided by the dataset unless that field is blank, in which case the Trade Name is used. The dataset provides only one address and does not indicate whether it is the company headquarters address or the establishment address. The penalty amount is the total of civil monetary penalties and mandated back wages. The original dataset provides a breakdown. 699676 2589 ROBERT WOOD JOHNSON BARNABAS HEALTH RWJBarnabas Health 13494 $0 $13,494 2020 20200515 safety-related offenses workplace safety or health violation federal agency action OSHA Occupational Safety & Health Administration civil 344753207 New Jersey TOMS RIVER 99 ROUTE 33 08755 622110 622110: General Medical and Surgical Hospitals USA New Jersey non-profit healthcare services hospitals Extracted from a download of OSHA's Enforcment Data downloaded on 12/07/2020, available at https://enforcedata.dol.gov/views/data_catalogs.php 3651124 2589 6" [VIOLATIONS TRACKER - Internet Source]

If history is any predictor of future conduct, defendant's STCF will not likely turn away

anyone referred for their services - whatever the fraud this actor needs to perpetrate. The STCF can No longer be the second certifying agent. It is too easy to manipulate billing for government funds.

Further, whereas defendant, RWJ Barnabas Health, Inc. services over ½ New Jersey' population, the risk to public safety (from falsified needs for drug treatment, for instance) is too great not to address / implement these public safety measures. For all that these proposals effectively bar fraud, they are finally public safety measures.

That the funding for the 'per diem program' will implement a preventive to fraud and abuse of the system and therefore cut waste of funds, it is cost effective – saving money by reducing the ease of False Claims practices by healthcare services in keeping with the goal of *Congress in the 2005 Deficit Reduction Act* in providing for that which 'primarily drains Medicaid and Medicare, False Claims conduct by health care providers.'

As to the referring screening service, their services, dependent on government funds as they are, financial incentives will motivate them to declare anyone coming through their doors as a referral to a STCF. The number of referrals by the screening services should not dictate continued funding received and more stringent regulations to ensure what here smacks of kickbacks is not further incentive to the screening service to refer to the STCF, *42 U.S.C. § 1320a-7b(b)*. (App.I, 104a)

Additionally, where this matter shows that healthcare professionals, under color of law, can (and do) effortlessly present doctored, incompetent, fabricated material to the court in their various False Claims conduct, it seems necessary to be able to - as easily – verify their certifying statements to the court. To that end these proposed guides call for a

verbal (in addition to the written) recording of the required clinical evaluation. The verbal recording of the required clinical / psychiatric examination more readily provide proof of compliance or, as here, noncompliance with court standard for establishing need for involuntary commitment and it would be afforded the same privacy protection rights as the concurrent written evaluation.

A further proposal is that all the certifying statements of the certificate should be shared with the person/prospective committee ***before*** submission to the court for the commitment order, as a matter of informed consent under due process guarantees. That is, the person should be given all the information of the service' conclusion of the nature of the mental illness, the dangerousness to self, others, or property that it causes and why this level of liberty deprivation (vs. a less restrictive setting) is needed. A full page added to the certificate seems indicated here where the potential committee signs (checking off on each of these statements) in confirmation of 'informed consent.' Allowances for the patient deemed mentally incompetent by virtue of the illness apply where the next of kin or power of attorney needs to sign. Having a mental illness does not automatically impute mental incompetence as the examining physician/psychiatrist with any competence, would know. The measure of the verbal recording provides additional guard from FCA healthcare providers' manipulations. The False Claims practice of this matter's defendants evince the harm from such manipulation.

Further, notwithstanding that the Courts in 1976 relaxed the 'affidavit' status of the certifying statements in the pursuit of the commitment order, a valid clinical certificate is held to the same credibility standard as any other document seeking an order from the

court. The certifying physician should have full knowledge that penalties of perjury apply to any false or falsified information. That should be clearly written on the certificate, above the physician's signature. (App.I, 141a-146a)

Where vulnerability of Medicaid recipients to healthcare FCA violations exists in nongovernmental programs at healthcare service providers, these proposals offer, the measure of Medicaid payments for nonemergency high ticket services be conditional on a second opinion. For instance, where a physician treating a Medicaid recipient for diabetes recommends a 'high ticket' treatment such as a leg amputation, that surgery/treatment option requires a second opinion. In light of FCA abuses, that surgery may not be necessary and a lower cost treatment may be, not just indicated but - as is the labor here, actually life-saving.

IV. ***Significant Judicial Deficiencies in the Lower Courts Present Another Reason for Court Review***

While the Court' review is necessary for the Third circuit' widely conflicting position on the Constitution' Fourteenth Amendment due process grants in *42 U.S.C.§1983* - it is further sought as to due process rights infringement of judicial deficiencies in the lower courts where judgment as a matter of law was denied in the District court's final judgment and the Appeal' court's answer for rehear was granted simply to correct the Appeal's falsification of the record in its earlier dismissal of the case. In short, an apparent abuse of procedural due process, (or more pointedly judicial procedures) in denying the substantive to be heard.

The second of the two issues on appeal reads,

"The merits of the trial court' dismissal [is also] a matter of procedural deficiencies. The court dismissed the action for [a] reason it held fatal to it from the start of the proceedings without allowance to amend the Complaint as might have been indicated after plaintiff' 2/2/20 filing (App.F-3, filed1/30/20, 47a-48a) declaring that it is Not a *qui tam* action on behalf of the Government in pursuit of percentage of Government damage recovery, as the DOJ states in the un-filed, undocumented pre-warning of intent to decline and further 'suggestion (not motion) to dismiss' (App. F-1 & F-2, 43a & 44a-46a, respectively*) states. The district' opinion adopts almost verbatim the language of the US attorney' suggestion to dismiss and argument for dismissal. (App.C, the district' opinion, & App.F-2, the DOJ spurious letter - 'spurious' qualified in the preceding)

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*Both the undocumented letter of Government Intent to Decline Intervention and the filed Notice to Decline Intervention and Suggestion to Dismiss were done by a U.S. assistant attorney that is under US DOJ complaint investigation for having perpetrated fraud on the NJ DOL. He did this by hacking the DOL' computer system. Plaintiff has personally been injured by this specific assistant US attorney in various ways via his compromise of my internet communications. There is nothing supporting that this action was as to proper procedures sent to his attention nor that any standard government decision to decline or intervene was his to make unilaterally or even as would be proper in association with the US Attorney General.**To stress this case was never filed as a *qui tam* action in pursuit of government recovery**, and there is no record of its filing at the US DOJ, Newark office this attorney works from. This actor is privy to plaintiff' email communications and apparently adopted control of the case upon its 8/20/19 email to the OAG (155a). He has access to other personal information. Plaintiff has engaged law enforcement proceedings to stop this actor' various internet fraud and harassment he has perpetrated by compromising my personal identifying information. This attorney concocted an 'adjustment' of payments under guise of the NJ DOL to end an existing UI claim. The sham adjustment and the money for this hoax on the NJ DOL was all done by a manipulation of the computer systems. He stole from the DOL to perpetrate this hoax that ended the active UI claim and prevent further payments whilst fraudulently manipulating my direct deposit bank account.

As this pertains to the petitioned Court review, where both lower courts' opinions' are

practically verbatim this actor's 'suggestion to dismiss' it is very disconcerting that neither District nor Third Circuit bothered to note that the US DOJ filing of the purported Government Notice to Decline Intervention and suggestion to Dismiss (App. F-2) did not come with the authority, or more the point, legal authenticity of a duly filed case before the US DOJ. This letter - the verbatim of the lower courts' arguments for dismissal - bears no identify number of the case filings at the US Attorney Office nor the office of US Attorney General for that matter. There is nothing of standard procedure of a *qui tam* action in pursuit of government damages here and nothing (no paper trail of the case filing at the US attorney's for instance) as would be assumed if proper, that legitimizes this assistant US attorney representing the government in this case. The 1/2/2020 Notice to decline is 90 days beyond the 60 days limit for Government decision, if any. (*US DOJ Archive. 932, Provisions For The Handling Qui Tam Suits Filed Under The False Claims Act*) (This is a courtesy calculation based on the date of mailing to the OAG, to reiterate there can be no actual limit calculation since there is no actual filing date at this office or the US DOJ' given plaintiff or that anywhere appears on the Notice to Decline as would be subsumed in a case ID / Ref. No.).

The Suggestion (not motion) to Dismiss was held by plaintiff as not for the government damages / the government portion of defendants FCA liability (argued in plaintiff's Response, App. F-3, 47a-50a), wherefore plaintiff's summary judgment (App.G, 57a-62a) being dismissed under guise of Government claims reasons in highly irregular - a denial of judgment as a matter of law. The damages of this FCA complaint are plaintiff's Not the government's to pursue, wherefore the immaterial of Government intervention; further, the claims were never disputed by either defendant, St. Joseph's put in a sham answer that was never served on plaintiff and RWJ Barnabas flat out defaulted. (App. G, 57a-62a, Motion for Summary Judgment)

The district further defied federal standards in allowing a default answer and plaintiff's motion for judgment as a matter of law was improperly denied. (App. G, Motion for Summary Judgement, 57a-62a). Defendant, RWJ Barnabas defaulted, plaintiff moved to dismiss their out-of-time answer (App. H-1, 63a-64a; see also, App.H-2, 65a-68a, Plaintiff' Response to Defendant' Opposition to [this] Motion, 5/9/20). The irregular process made an appearance in the district' decision to "dismiss [defendants] crossclaims" (App.C, 13a-14a). Defendant, St. Joseph' frivolous/sham answer entered, complete with a false certification of service (App. F-5, 56a); the pleadings baseless and insubstantial by virtue of the sham filing also held merit with the district.

The third circuit skirted this second issue on appeal as well.

The lower courts' opinion(s) have so far departed from the teachings of law adjudicating the facts and laws of this case, the opinions are held in the classic sense of an opinion - holdings not necessarily based on fact (nor law, as here.)

Due process freedoms enshrined in the Constitution complained of in the case, and False Claims Acts claims violations, were further compounded by judicial misconduct of the lower courts' opinions or own invention for plaintiff' reason for this action. The lower courts cast the case as a *qui tam* action in pursuit of percentage of government recovery. The complaint everywhere, repeatedly, voluminously deny that, as explicitly restated on Appeal. (App. D, 15a-28a)

Remanding this matter to the lower court would not serve the interests of justice in light of such flagrant judicial misconduct. The district, originating the statements of all three opinions of dismissal, effected the denial of a motion for judgment as a matter of law. Com*ing* under *FRCiv.P 56(a): "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law*" plaintiff moved for summary judgment against defendant RWJ Barnabas that filed no pleading disputing the claims. This defendant defaulted in not answering the summons. Plaintiff's motion as a matter of law also rested *on Court regulations expressly given in the Summons perfected on 2/7/20: "Within 21 days after service of this summons on you ...you must serve on the plaintiff an answer or a motion under Rule 12 of the FRCiv.P. The answer or motion must be served on plaintiff ...if you fail to respond, judgment by default will be entered you for the relief demanded*

in the complaint." (App. F- 4, 51a - 55a, Summons Returned Executed on Defendants) Where defendant, RWJ Barnabas did not answer, defendant, St. Joseph's Medical Centre never served an answer on plaintiff. (App. F-5, 56a, Defendant, St.Joseph' False Certification of Service of answer) Both defendants defaulted, yet prevailed as plaintiff' FCA claims were cast a *qui tam* matter on behalf of the government.

Plaintiff' §1291 appeal by right pointed to this discrepancy along with the viability of the complaint's FCA grounds. The 3rd. Cir. court nevertheless returned the same opinion from the district, literally - practically verbatim, except for an added manufacture/ falsification of the record, declaring as 'specific fact' plaintiff was arrested for the unfounded 'knife threat'. The Petition for En Banc and Panel Rehear was granted to correct this falsification. The grant of 12/28/2020, returned the same (11/27/2020) opinion for rehear but for deleting this falsification of the record and adjusting for the two (not one) FCA claims of the fabricated diagnoses. In short, the lower courts present with serious procedural deficiencies. All three opinions read alike an argument specious altogether as to the facts and laws of the case. A review of this particular of the process therefore is not so much important for teachings of the Court - the lower opinions are unfounded in the laws and facts of the complaint - the complaint everywhere substantiates an action for redress of due process violations conditional for defendants FCA claims and validates the False Claims Acts claims liability, and too, plaintiff standing and right to proceed *pro se.* A review of this portion then is more significant for Court handling of evident judicial misconduct an affront on Constitutionally guarded grants in defying (actively and passively) due process freedoms enshrined therein.

These compelling reasons for the Court's review may be captured in the Complaint' concluding statement and this matter of constitutional grants for public welfare/ safety in the interests of justice, may not be left unanswered.

"This argument substantiates denial of due process guarantees in violations of constitutional provisions by defendants, St Joseph' and RWJ Barnabas healthcare services providers that defrauded the government and exploited plaintiff in their respective FCA conduct of fraud and abuse to claim money from both government and plaintiff for services not rendered and that done in violations of Constitutionally granted civil liberties. The Constitutional due process guarantees that come against deprivation of civil liberties under color of authority intentionally violated in defendants FCA fraudulent course of conduct, are purposed to extort. Civil rights remedies are upheld in Title 42 whether the violence is 'unadorned' or context in more elaborate schemes as here where it (the civil rights violations) are designed to defraud." (id., 146a - 147a).

CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, in this final Court for justice, the petition should be granted.

Respectfully submitted,

ZOE AJJAHNON, ***PRO SE*** PLAINTIFF

By:

ZOE AJJAHNON, *Pro Se* PLAINTIFF-PETITIONER

DATED: March 8th, 2021