Case No.: 20-7606

IN THE SUPREME COURT OF THE UNITED STATES

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 Third Circuit Court of Appeals

PETITION FOR REHEAR WITH ACCOMPANYING

MOTION FOR EXTRAORDINARY WRIT OF SUMMARY/DEFAULT JUDGMENT

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Pursuant Rule 44 of the U.S. Supreme Court, plaintiff respectfully prays the Court to Rehear the denial of the Petition for Writ of Certiorari entered on June 1 2021. Plaintiff additionally moves for an Extraordinary Writ of summary judgment not adjudicated in the lower courts.

JURISDICTION

Jurisdiction to hear the Petition for Certiorari was previously established under, *28 U.S.C. §1241(1).*

The Court's jurisdiction for Extraordinary Writ is invoked under *Article III,* and *28 U.S.C. § 1651(a).*

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

This action comes under the *Constitution's Fourteenth Amendment* providing 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" due process privileges guarded in *U.S. Codes of Title 42 §1983* where these grants were violated in the False Claims Acts statutes, *31 U.S.C. §§ 3729-3733;* and *28 U.S.C. § 1654* provisions that allows for this action to proceed *pro se* was basis for dismissal of the complaint.

INTRODUCTORY ARGUMENT

Pursuant Rule 44 of the U.S. Supreme Court Petitioner enters this timely Petition to REHEAR the Petition for Writ of Certiorari on its merits. Plaintiff further invokes the Court s jurisdiction under *Article III, 28 U.S.C. §1651(a)* in an additional move for EXTRAORDINARY WRIT of summary (/default) judgment. Plaintiff' move for summary judgment in the trial court filed March 20th, 2020, was not acted on by the court. It is appended to the Petition for Certiorari (App.G, 57a-62a). The motion was not adjudicated in the trial court, the record has nothing of an expressed written court decision on this motion. Nor was it acted on in the court of appeals, the issue on appeal was as to the questions presented to the Court.

The Court entered a discretionary denial of the Petition for Certiorari on June 1, 2021. Plaintiff pleads for a closer review of the merits of the matter whereas, the questions presented are of 'imperative public importance that necessitate the determination of the Court'.

The Petition for Certiorari argues Congress' 2009 reforms to the False Claims Act (FCA) that expanded government fraud protection in the *Fraud Enforcement and Recovery Act, (FERA) Pub.111-21, 123 Stat. 1617 (2009).* 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).*

"The FCA imposes significant penalties on anyone who knowingly presents . . . a false or fraudulent claim for payment or approval to the Federal Government, *31 U. S. C. § 3729(a)(1)(A), Universal Health Services. Inc. v. U.S. and Commonwealth of Mass. ex.rel. Escobar 136 S.Ct. 1989 (2016);* under the FERA reforms that "liability under [the FCA] for presenting a false or fraudulent claim for payment or approval [is no longer] limited to such a claim presented to an officer or employee of the federal government). ..." (Congress.gov website)

The petition argues that the definition of the FCA conduct meets that of medical malpractice when the FCA conduct is by healthcare providers; these actors in turn are therefore (/additionally) liable for medical malpractice. "Malpractice, defined by Cornell Law School Legal Information Institute (LII) is: The tort [an act or omission of an act that gives rise to injury or harm of another] committed when a professional fails to properly execute their duty to a client." The term "medical malpractice action or claim"

means a written claim or demand for payment based on a healthcare provider's furnishing (or failure to furnish) healthcare services, and includes the filing of a cause of action, based on the law of tort, brought in any court of any State or the United States seeking monetary damages, *42 U.S.C. Ch. 117 §11151 (7).*

The petition develops: the FCA conduct of willful falsification of patient information is intentional tort of medical malpractice by the healthcare provider. The intent to defraud does not need specific proof, it is the actual tort of the fraud that makes the claim viable. ***31 U.S. Code § 3729* - False Claim gives:**

(a) Liability for Certain Acts.—

(1) In general -Subject to paragraph 2 - any person who -

(A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval; **(B)** knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim; **(G)** knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals ...

(b) Definitions.—For purposes of this section—

(1) the terms "knowing" and "knowingly"-

(A) mean that a person, with respect to information - **(i)** has actual knowledge of the information; **(ii)** acts in deliberate ignorance of the truth or falsity of the information; or **(iii)** acts in reckless disregard of the truth or falsity of the information; and **(B)** require no proof of specific intent to defraud;

(2) the term "claim" -

(A) 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 - **(i)** is presented to an officer, employee, or agent of the United States; or **(ii)** is made to a contractor, grantee, *or other recipient,* (italics mine) 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;

Regarding FCA medical malpractice in an April 24, 2015 article titled, *Medicare Fraud Claims Fail When Courts Read the Rules Closely: U.S. ex rel. Parker v. Space Coast Medical Associates, L.L.P.,* Arnold & Porter Advisory published,

"As Medicare fraud allegations increasingly target the healthcare community, radiation oncology practices have faced recent legal challenges regarding the provision of proper physician supervision of radiation therapy services. These cases, typically brought under the federal False Claims Act (FCA), have alleged that supervision was provided by professionals lacking appropriate credentials, that purported supervisors were not on site as required, or simply that no supervision was provided at all. ... [However in *U.S. ex rel Parker v. Space Coast Medical Associates, LLP, 2015 WL 1456122* (MD. Fla. Feb. 6, 2015)], Chief Judge Anne C. Conway dismissed the case against Space Coast Cancer Center (Space Coast), [affirming] that Medicare providers may be held accountable to comply with standards only when clearly articulated in regulation or published policy. The Court also held that where a provider adopts a reasonable interpretation of an ambiguous Medicare rule or policy, even if that interpretation is incorrect, the provider cannot be liable under the False Claims Act. [This holding on implied false certification further rendered, the FCA claims are required to show violation of] "federal rules that were a precondition of payment," because only violations of "conditions of payment, rather than conditions of participation in a particular program," are actionable under the FCA."

The Court teaching on implied false certification of the FCA claim refutes this conclusion. In *Universal Health Services. Inc. v. U.S. and Commonwealth of Mass. ex.rel. Escobar 136 S.Ct. 1989 (2016)* Justice C. Thomas for a unanimous Court writes,

"This case concerns a theory of False Claims Act liability commonly referred to as implied false certification. According to this theory, when a defendant submits a claim, it

impliedly certifies compliance with all conditions of payment. But if that claim fails to disclose the defendant's violation of a material statutory, regulatory, or contractual requirement, so the theory goes, the defendant has made a misrepresentation that renders the claim false or fraudulent under *§3729(a)(1)(A).* ... We first hold that, at least in certain circumstances, the implied false certification theory can be a basis for liability. Specifically, liability can attach when the defendant submits a claim for payment that makes specific representations about the goods or services provided, but knowingly fails to disclose the defendant's noncompliance with a statutory, regulatory, or contractual requirement. In these circumstances, liability may attach if the omission renders those representations misleading. We further hold that False Claims Act liability for failing to disclose violations of legal requirements does not turn upon whether those requirements were expressly designated as conditions of payment. Defendants can be liable for violating requirements even if they were not expressly designated as conditions of payment."

The complaint's argument in its entirety roundly supports intentional tort of FCA medical malpractice by defendants and substantiates the elements of medical malpractice inherent the FCA claims: (1) the existence of a legal duty on the part of the doctor [the medical practitioner] to provide care or treatment to the patient ; (2) a breach of this duty by a failure of the treating doctor [the medical practitioner] to adhere to the standards of the profession; (3) a causal relationship between such breach of duty and injury to the patient; and (4) the existence of damages that flow from the injury such that the legal system can provide redress. *(www. ncbi.nlm.nih.gov website)*; and to further deny the petition for certiorari is to deny the integrity of the nation's legal system for justice in this significant public health and welfare issue of medical malpractice. As the Court dealt with important question of implied false certification of the FCA claim, that the claim by

virtue of *FERA § 4(b)(2)(A)(ii)* extends to [an]other than the government recipient of the bill and damages, the petition is for *Court instruction to guard inherent provisions for remedy of injuries resultant medical malpractice upon this 'other than the government' from which the FCA claims on the government sprang.*

To put this petition to rehear in perspective, a conservative estimate puts at 400,000 - the deaths in the US from medical malpractice each year, that would make it approximately 1,000,000 deaths since this action first came on in 2019. Not all medical malpractice is FCA related but the FCA conduct by healthcare providers come under medical malpractice. The point the petition labors to the Court is that the *2009 FERA* reforms now make available to the government insured the same remedy at law as the privately insured for redress in a medical malpractice suit. The Medicaid or Medicare recipient may independently pursue his/her unique damages and need not go through the government to realize redress in a kind of 'proxy remedy' where the government must pursue its (portion) of the damages for the 'other recipient' of the FCA claim to remedy his/her unique injuries from which the FCA claim (to both government and 'other recipient) arose. Under FERA definition of the FCA claim, the FCA medical malpractice suit is not dependent on, nor limited to, government participation in the court action for redress and escapes punishment otherwise.

Where the privately insured and their insurers have and do sue for redress, medical malpractice for money from government funded insurance - Medicaid and Medicare and/ or (as in instant matter) government funding of a State healthcare program have largely

gone unpunished as medical malpractice. In *Escobar,* the Court observed that redress was sought only as to the FCA claims made on the government not [for additional damages of] allegations of medical malpractice. Before FERA expansions, the petition argues that the FCA suit limited redress to the money demanded of the government - the secondary harm of FCA violations, the argument goes; however, where [an]other than the government is demanded money along with the government the 2009 liability expansions now include primary damages since the claim may also be as to the demand of money made on [an]other recipient of the bill shared with the government and the damages to the 'other recipient' in the FCA claims by the healthcare provider, the primary damage, include in their specifications the injuries of medical malpractice from which the money demanded (of both government and [an]other recipient) arose.

The Petition at pages 11-12 reads:

"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."

As with all medical malpractice harm, FCA medical malpractice injuries range to death - also learned from *Escobar.* However, FCA medical malpractice with impunity is so 'settled' in the healthcare industry, so taken for granted, that in this case where plaintiff' FCA damages brought defendants liability to over $8.1 million, the claims in proper procedural allowances actually went uncontested by defendants - and even more, defendants prevailed in court. Where defendants did not contest the claims, plaintiff entered a motion for Summary Judgment - App. G, 57a-62a. It too went unanswered in the trial court. This inaction by the court was pivotal due process denial. The court's argument for dismissal of the complaint is premised on the action done in pursuit of

government damages. To decide the summary judgment motion would have been fatal to this argument, whereas the summary judgment in its entirety /the total damages of the complaint is all of it the damages plaintiff, not the U.S. government, sustained as shown in the Complaint at pages 73-77. (App.I, 149a-153a.)

This presumed impunity in FCA medical malpractice, affirmed in the court of appeals, given by the trial court in its denial of FERA provisions that expanded FCA defendant liability; the failure to decide the summary motion, a crucial due process right disallowance to maintain court reasoning as earlier stated.

In the dismissal of the complaint, plaintiff - the other recipient of the demand for money / the FCA claim shared with the government - was denied the right to pursue redress of individual/specific (not the government's) FCA claim damages. (See Exhibits 12 a, b, &c appended at 215a-223a) where defendant RWJ Barnabas bill is constructed to read the amount demanded of Plaintiff and the government / Medicaid will pay the balance. Plaintiff is not on Medicaid which defendant, RWJ Barnabas, seasoned FCA actor knows, and billed plaintiff additionally (i.e. 2x) for the same services as self-pay, Exhibit 14, appended at 225a).

Medical malpractice with impunity - it is the unheard-of realized by healthcare providers where FCA conduct substantiates the malpractice.

REASONS TO REHEAR THE PETITION FOR CERTIORARI

I. *Court guidance is necessary in the question,*

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?

To leave this question unanswered appears tantamount to denial of the privileges / provisions at law for remedy of exploitive medical malpractice that is medical malpractice of intentional tort, that which informs FCA violations by medical practitioners.

The further proposals of the Petition' measures to curb medical malpractice in the specified healthcare services, give more reason for grant of certiorari. Learned from private insurance companies, increased premiums to cover losses secondary medical malpractice suits at best, has perhaps curbed, but obviously not stopped this public risk. We find still the need for additional measures to lessen the likelihood of the malpractice, in, for instance, stipulations for the oncologist to (only) treat cancer, this practitioner does not diagnose in this speciality. Having to have an independent diagnosis before the costly treatment of this disease lowers the likelihood of false diagnoses (intentional or not) and generated insurance claims that would be dealt with by even higher medical malpractice insurance carriage.

The financial /insurance cost for the FCA medical malpractice is not as to higher insurance premiums it is as to the drainage exacted from government funds. The compromise of public health and welfare is the same however. Recipients of Medicaid, Medicare, and consumers of other government funded healthcare programs are at equal risk of the harm from medical malpractice. - unnecessary medication, false diagnosis,

etc., and those risks, as stated in the preceding, include death. (See the Petition at Pages 22-28.)

II. *The Court needs to instruct on,*

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?

42 U.S.C. § 1983' overarching provisions of procedural and substantive due process provide frame for legal treatment respecting the elements of medical malpractice outlined above, and argued in the petition as material for the FCA claim. This grounds the Petition's pleadings at pages 22-28 for proposed measures to further check FCA conduct by healthcare providers specifically as to, pointedly, the legal (not medical as argued in both the Complaint and the Petition) matter of involuntary commitment/ involuntary commitment to treatment in government funded programs. These measures also speak to FCA medical malpractice curbs for government insurance money from Medicaid and Medicare.

REASON TO GRANT EXTRAORDINARY WRIT OF SUMMARY / DEFAULT JUDGMENT

Petitioner relies on the Court's 'original' jurisdiction in this final Court of justice to rectify the inaction in the lower court for the action' summary judgment / judgment as a matter of law.

Filed March 20, 2021 petitioner moved in the trial court for summary judgment on the grounds of *F.R.Civ. P Rule56(a)* providing : *"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 ."* Where defendant RWJ Barnabas filed no

pleading disputing the claims (this defendant defaulted in not answering the summons), plaintiff's motion is granted as a matter of law.

The motion 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 F.R.Civ.P. The answer or motion must be served on plaintiff ...if you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint."* (App. F- 4, 51a - 55a, Summons Returned Executed on Defendants)

Motion for summary judgment relied further on *Nolte v. Nannino 107 N.J. L. 462 154 A. 831 (1931)* teachings - applied: "the frivolous answer of defendant, St. Joseph's may be stricken (this defendant did not serve an answer on plaintiff. (App. F-5, 56a, defendant, St. Joseph Medical Center False Certification of Service of filing put as answer), and where defendant, RWJ Barnabas did not contest the claims by not answering the complaint, summary judgment is proper, judgment as a matter of law for movant.

"WHEREFORE, plaintiff move[d] for summary judgement of the damage total of $3,442,978.40 in its entirety from defendant, St. Joseph University Medical Center.

And

WHEREFORE, under *F.R.Civ.P. Rule 56*, plaintiff move[d] for summary judgment of the damage total of $4,695,190, in its entirety from defendant, RWJ Barnabas Health Inc." (App. G, 59a)

Where defendant, RWJ Barnabas did not answer, defendant, St. Joseph Medical

Centre never served an answer on plaintiff. Both defendants defaulted, yet prevailed as plaintiff FCA claims were cast a *qui tam* matter on behalf of the government and may not proceed *pro se. 28 U.S.C. § 1654* refutes this; plaintiff's is not seeking third party damages, the complaint is not for percentage of government recovery and plaintiff may represent herself in court under *sec. 1654.* The court failed to act on this motion, offering neither a grant nor denial, the pleading was not adjudicated.

Petitioner invokes the Court's 'original' jurisdiction under *Article III* of the Constitution, *28 U.S.C. § 1651(a),* and rests too on provisions of the Court as final Court these proceedings may be brought. Plaintiff has no other/further recourse at law for justice/adjudication of the Summary/Default judgment than an extraordinary writ by this Court.

WHEREFORE, plaintiff moves the Court for extraordinary writ of the summary/default judgment for the damage total of $3,442, 978.40 from defendant, St. Joseph University Medical Center, and the damage total of $4,695,190.00 from defendant, RWJ Barnabas Health Inc. the judgment in its entirety of $8,138,168.40. (App.I, 153a)

CONCLUSION AND PRAYER

In light of the foregoing, the Petition for Writ of Certiorari and the Motion for Extraordinary Writ of Summary/Default judgment should be granted.

Petitioner thanks the Court for reconsidering this matter.

Respectfully submitted,
ZOE AJJAHNON, **PRO SE PLAINTIFF**

By: _____

DATED: *June 14, 2021* ZOE AJJAHNON, ***Pro Se*** **PLAINTIFF-PETITIONER**