Civil Court Case No. 1:23-cv-03467

ORIGINAL

24-6234

In the Supreme Court of the United States

U.S.C.A. Case No. 24-7134

THE UNITED STATES OF AMERICA *ex rel* **Danilo Augusto Feliciano**
Petitioner-Appellant

v

ROBERT KYLE ARDOIN *in his official capacity as Louisiana Secretary of State,* and **DOMINION VOTING SYSTEMS CORPORATION, DOMINION VOTING SYSTEMS INC.,** and **DOMINION VOTING SYSTEMS INTERNATIONAL CORPORATION**
Defendant-Appellees

PETITION FOR A WRIT OF CERTIORARI BEFORE JUDGEMENT

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In propria persona

QUESTION(S) PRESENTED

1. Does the District Court have the jurisdiction to dismiss an action filed under the Informer's Act (also known as the False Claims Act of 1863) 12 Stat. 696 (31 U.S.C. § 3729 - § 3733) without a written explanation from both the court and the Attorney General?

2. Does the Notice of Declination and Suggestion of Dismissal submitted by the United States Attorney's Office satisfy the requirements of 31 U.S.C. § 3730 (b) as a written explanation and consent for both the court and the Attorney General?

3. Does a relator have the right to pursue an action using criminal statutes under the Informer's Act (also known as the False Claims Act of 1863) 12 Stat. 696 (31 U.S.C. § 3729 - § 3733), if the relator has a personal interest in the action before the court?

PARTIES TO THE PROCEEDING AND RELATED PROCEEDINGS

A. PARTIES

The parties in the district court include the Petitioner-Appellant Danilo A. Feliciano and the Defendant-Appellees, Robert Kyle Ardoin, former Secretary of State for the State of Louisiana, and Dominion Voting Systems Corporation, Dominion Voting Systems Inc., and Dominion Voting Systems International Corporation. The parties before this Court include Petitioner-Appellant Danilo A. Feliciano and the United States Attorney's Office.

Disclosure Statement: No Disclosure Statement under Federal Rule of Appellate Procedure 26.1 or under Circuit Rule 26.1 is necessary, as Petitioner-Appellant is not a corporation or similar entity, but a free, living man, veteran and one of the people.

B. RULINGS UNDER REVIEW

The parties are before this Court on appeal from the 29 July 2024 Order of the district court issued by Hon. Carl J. Nichols, D.Ct. Doc. 22, *United States of America ex rel. Danilo Feliciano v. Robert Ardoin, et al,* No. 1:23-cv-03467.

C. RELATED CASES

There are two related cases. These are *Faust v. Louisiana* 23-010010-ELG which was dismissed with prejudice and an ensuing appeal, *Faust v. Louisiana* Case No. 1:23-cv-02567-DLF, which has been dismissed without prejudice. The second case is *Feliciano v. Garland* 1:23-cv-02522-UNA (D.D.C. 2023).

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Petitioner represents that he does not have any parent entities and does not issue stock.

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TO THE HONORABLE JUSTICES OF THE SUPREME COURT

INTRODUCTION

In the beginning of any testimony given in court, a witness is usually asked the question "Do you swear to tell the truth, the whole truth and nothing but the truth, so help you God." And it is in the spirit of truth that relator and advocate, Dañilo Augusto Feliciano, respectfully applies for a petition for certiorari before judgement to reverse an *Order* issued 29 July 2024 by the United States District Court for the District of Columbia. The action was placed before the United States Court of Appeals for the District of Columbia on 17 August 2024. The core issue being pursued by the relator is of utmost importance because it pertains to the future of elections in the United States, which are the foundation of liberty to a free people. As William Blackstone stated in his commentaries, "in a democracy there can be no exercise of sovereignty but by suffrage, which is the declaration of the people's will."

Indeed, the right to participate in the election of the leaders who form the laws and destiny of a country has always been in peril from the machinations of a tyrannical patrician class. The Roman republic was famous for affording the right to participate in elections to its citizens, something that remained until it was slowly weakened and then eliminated under Caesar Augustus, the first Roman Emperor. The right to participate in elections is not just a secular matter. The Magna Carta restated the freedom to participate in church elections, after a band of English nobles demanded that King John sign the charter in 1215. In the first article, it states that "[w]e granted and confirmed by charter the freedom of the Church's elections - a right reckoned to be of the greatest necessity and importance to it... This freedom we shall observe ourselves, and desire to be observed in good faith by our heirs in perpetuity." Yet, it wasn't until this freedom was established and expanded by the founding fathers of this country when they enshrined suffrage in our constitution that a people could consider themselves free.

There is a simple fact that must be recognized, the permanent paper record required by the Help America Vote Act, the ballot, does not exist in Louisiana elections. Because of this, there can be no certainty behind the number of votes cast. "We regard it as equally unquestionable that the right to have one's vote counted is as open to protection by Congress as the right to put a ballot in a box." *United States v. Mosley*, 238 U.S. 383, 386 (1915). ***Fictio cedit veritati; fictio juris non est, ubi veritas.*** (Fiction yields to truth. Where truth is, fiction of law does not exist.)

Undoubtedly electronic voting is useful. Charles Dodgson made it perfectly clear that "the process of voting" and "the process of counting the votes, and announcing the result" should both be as simple as possible. However, what has not been made simple by electronic voting is how to verify the true number of votes cast by the people in a given election, ensuring that no votes are considered wasted or made fraudulently. That is the job of the United States government, the people, and this court to ensure.

In this petition, the advocate is presenting this truth to the Department of Justice, the Attorney General, and the United States Judiciary. To not say something when he has seen an egregious violation of the social compact between a free people and the government whom they consent themselves to be governed by, would be tantamount to treason on the part of the advocate. *Qui tacet consentire videtur*, "he who is silent is taken to agree" and quite assuredly, the advocate does not agree. If the Department of Justice refuses to enforce the Help America Vote Act in the state of Louisiana, the relator humbly requests this court to speak as to why he cannot pursue justice, or even better, the court should loudly affirm that justice shall not be denied. ***Justitia non novit patrem nec matrem, solum veritatem spectat justitia.*** Justice knows neither father nor mother, justice looks to truth alone.

OPINIONS BELOW

Petitioner seeks an order reversing the decision of the United States District Court for the District of Columbia issued on 29 July 2024. Petitioner filed a timely *Notice of Appeal to DC Circuit Court* on 4 September 2024, and was docketed on 17 August 2024 which is within the 60-day window as the United States is a party to the proceedings.

JURISDICTION

This Court has jurisdiction to resolve this application under this Court's Rules of Procedure, Rule 11, 28 U.S.C. Section 2101(e) and the authority to grant certiorari before judgment under Section 1254(1).

STATEMENT OF THE ISSUES ON APPEAL

1. Does the District Court have the jurisdiction to dismiss an action filed under the Informer's Act (also known as the False Claims Act of 1863) 12 Stat. 696 (31 U.S.C. § 3729 - § 3733) without a written explanation from both the court and the Attorney General?
2. Does the *Notice of Declination and Suggestion of Dismissal* submitted by the United States Attorney's Office satisfy the requirements of 31 U.S.C. § 3730 (b) as a written explanation and consent for both the court and the Attorney General?
3. Does a relator have the right to pursue an action using criminal statutes under the Informer's Act (also known as the False Claims Act of 1863) 12 Stat. 696 (31 U.S.C. § 3729 - § 3733), if the relator has a personal interest in the action before the court?

STATEMENT OF THE CASE

> "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right." *Wesberry v. Sanders*, 376 U.S. 1, 17-18 (1964)

On 17 November 2023, on behalf of the United States of America, Dañilo Augusto Feliciano (hereinafter the "relator" or "advocate") filed a false claim action under seal (hereinafter, the "action") stating that on three separate instances, the Secretary of the State of Louisiana made claims to receive funds from the United States for use in the administration of their elections and that these funds would not be used in a manner contrary to Title III of the Help America Vote Act, Title III, Section 301 (a)(2)(B)(i), codified as 52 U.S.C. § 21081 (a)(2)(B)(i) (hereinafter, "HAVA"). However, the State of Louisiana does not produce the permanent paper record (hereinafter, the "*chose in action*" or the "*chose*") as required by HAVA, nor Louisiana does not keep this record in accordance with the 1960 Civil Rights Act, Title III Section 301, codified as 52 U.S.C. § 20701 (hereinafter, "1960 CRA"). A fact admitted to by the former Louisiana Secretary of State[1]. As such, the statements made and submitted for payment to the United State are definitively false.

On 12 February 2024, the advocate filed an initial *Motion to Unseal Case* and *Memorandum of Points and Authorities* to the district court. On 27 February, 102

[1] Center Square, Biz New Orleans, "La. Secretary of State Says Election Secure Without Paper Ballots", https://bizneworleans.com/la-secretary-of-state-says-election-secure-without-paper-ballots/, Accessed 2 November 2024

days after the action was initially filed, the Department of Justice (hereinafter, the "DOJ") reached out by e-mail to schedule a conference call. On 7 March 2024, the DOJ held a conference call to discuss the action with the advocate and the United States Attorney's Office (hereinafter, the "USAO"). This is 111 days after the action was submitted to the court. The DOJ and the USAO verbally requested an extension of the time for which the action was under seal. The advocate initially agreed to consider the extension, but later declined in writing.

On 3 July 2024, 229 days after the action was submitted and an additional 118 days after the conference call, the United States Attorney's Office submitted a *Notice of Declination and Suggestion of Dismissal* (hereinafter, the "suggestion") to the court. This is contradiction to the requirement of 31 U.S.C. § 3730 (b)(2)(4)(A) and 31 U.S.C. § 3730 (b)(2)(4)(B), which states the DOJ must respond within 60 days. The suggestion stated that the decision had been made not to intervene in the advocate's action and, while not requesting a dismissal, USAO provided reasons why the court should dismiss the case. Specifically, the USAO proposed that the advocate could not pursue the action without licensed counsel and that criminal statutes were not permitted to be pursued by a private person.

On 29 July 2024, the court issued an order dismissing the case without comment or an accompanying memorandum of opinion. On 23 August 2024, the advocate submitted a *Motion to Reconsider* to the court. On 4 September 2024, while the *Motion to Reconsider* was still pending, the advocate filed a *Notice of Appeal* of the 29 July 2024 order. On 16 September 2024, the court made a minute

order denying the *Motion to Reconsider*. On 17 September 2024, the court docketed the appeal and forwarded the record to the United States Court of Appeals for the District of Columbia Circuit.

SUMMARY OF THE ARGUMENT

"The word "and," each might say, means . . . well, and." *Pulsifer v. United States*, No. 22-340, 10 (U.S. Mar. 15, 2024). 31 U.S.C. § 3730(b)(1) states that an "action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting." This indicates that for the court to have the jurisdiction to dismiss the action, four separate elements must be satisfied. These elements are (1) the consent of the court for the dismissal, (2) the court's reasons for consenting to the dismissal, (3) the Attorney General's written consent to dismiss the action, and (4) the Attorney General's reasons for consenting to the dismissal. The *Notice of Declination and Suggestion of Dismissal* and the subsequent order to dismiss do not satisfy all four separate requirements, merely three. Without satisfaction of all elements, the court lacks jurisdiction to dismiss the action. In addition, 31 U.S.C. § 3730(b)(2)(A) states that the government may dismiss the action if "court has provided the person with an opportunity for a hearing on the motion." There has been no hearing or opportunity provided for a hearing. Nor is it settled case law that a relator cannot bring criminal statutes against defendants using the Informer's Act.

ARGUMENT

I. FOUR ELEMENTS ARE REQUIRED FOR JURISDICTION

The text of 31 U.S.C. § 3730 (b)(1) is clear; an "***action may be dismissed only*** if the court and the Attorney General give ***written consent to the dismissal*** and ***their reasons for consenting***." (Emphasis added) These elements are (1) the consent of the court for the dismissal, (2) the court's reasons for consenting to the dismissal, (3) the Attorney General's written consent to dismiss the action, and (4) the Attorney General's reasons for consenting to the dismissal. Without all four elements satisfied, the court lacks the jurisdiction to dismiss the action.

Element one, the consent of the court, is satisfied by the 29 July 2024 order dismissing the action. Elements three and four, the Attorney General's consent and reasons for consenting to the dismissal, ***might*** be inferred as satisfied by the suggestion of the USAO. The second element required for the authority to dismiss the action, the written reasons that the court has to consented to the dismissal, **does not exist**. While the court might agree with everything that the USAO suggests, the statute is clear, the court must still provide a written explanation why it consents to dismiss the action. Nowhere does 31 U.S.C. § 3730 give an exception for an inference. Without this written explanation of the court's reasoning, the court does not have jurisdiction.

31 U.S.C. § 3730 provides other situations where the court lacks jurisdiction. 31 U.S.C. § 3730 (e)(1) states that "[n]o court shall have jurisdiction over an action" if a case is brought by a member of the armed services against another member of the

armed services arising from the person's service in the armed forces. 31 U.S.C. § 3730 (e)(2)(A) states "[n]o court shall have jurisdiction over an action" if the action is against a member of congress, the judiciary, or a senior executive branch official "is based on evidence or information known to the Government when the action was brought." This appeal considers another instance where court lacks the jurisdiction to dismiss the action.

While this action is not against the Attorney General, the appeal arises from the suggestion of the USAO, who *appears* to be acting on behalf of the Attorney General. The action is based on information known to the government when the false claims action was brought, as the relator pursued a *Petition for a Writ in the Nature of a Mandamus* against the Attorney General entitled *Feliciano v. Garland* (D.D.C. 1:23-cv-02522-UNA) (Court of Appeals #: 23-5245) (SCOTUS #: 23-7118) for the substantially the same issue. This issue was also litigated in *Faust v. State of Louisiana and Ardoin, Robert* (D.D.C. 23-10010-ELG). The DOJ is fully aware of the situation.

This is a case of both national and public importance, involving the right to vote and ensure that *every legally cast vote is fairly counted.* In addition, 31 U.S.C. § 3730(b)(2)(A) states that the government may dismiss the action "court has provided the person with an opportunity for a hearing on the motion." There has been no hearing. If the Department of Justice decides to turn a blind eye to the

situation in Louisiana, all elements required for jurisdiction to dismiss the action should be satisfied. "To no one will we sell, to no one deny or delay right or justice."[2]

II. AND MEANS AND

Again, 31 U.S.C. § 3730 (b)(1) states that an "action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting." The word "and" is used in two separate places. The first is "the court and the Attorney General". The second instance is "written consent to the dismissal and their reasons for consenting." This creates four specific and independent elements: (1) the consent of the court, (2) the court's reasons for consenting to the dismissal, (3) the Attorney General's written consent to dismiss the action, and (4) the Attorney General's reasons for consenting to the dismissal. A required element, the court's reasons for consenting, does not exist.

In a twist of recursive logic, it is the decision of the USAO not to intervene in the action that creates the basis that the USAO gives suggesting the dismissal. The advocate brought the claim properly before the court and the Department of Justice. (The suggestion by the USAO does not indicate at any point that it is on behalf of the Attorney General.) The USAO then decided not to intervene and because the advocate is not a licensed attorney, argues the advocate is unable to pursue the action. The reasons provided entirely avoid the merits of the case. At all times, the Attorney General and the court are entirely silent on the merits of the action. It

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[2] United Kingdom National Archives, "Magna Carta 1215", https://www.nationalarchives.gov.uk/education/resources/magna-carta/british-library-magna-carta-1215-runnymede/, accessed 2 November 2024

cannot be properly inferred that the USAO speaks for both the Attorney General and the court, nor that the court consents to be spoken for by the USAO.

III. A RIGHT TO PURSUE JUSTICE

The USAO cites *Jean-Baptiste v. United States Dep't of Justice*, 1:23-cv-02669 (TNM) (D.D.C. Feb. 9, 2024) and *Qihui Huang v. Wheeler*, 215 F. Supp. 3d 100 (D.D.C. 2016) as the basis for which counts four and five of the action should be denied. In the two cases, the court asserted that a private party plaintiff lacked the standing to pursue criminal charges against defendants. However, neither of the referenced cases involve the false claims act or allegations made by a relator on behalf of the government and for the public. In this action against defendants Ardoin and Dominion, the advocate is not merely private party, but instead is a private attorney general or a public interest lawyer, who happens to have a personal interest. The action is brought by one of the people and a free citizen, as such justice should not be denied because the government **chooses** not to act.

In the Department of Justice's own Criminal Resource Manual, Section 932 states that "[o]ne of Congress's objectives in modifying the Act was to encourage the use of qui tam actions in which citizens are authorized to bring, as "private Attorneys General," lawsuits on behalf of the United States alleging frauds upon the government."[3] The modern statutory text of the false claims act is based upon the original Informer's Act, also known as Lincoln's law, and passed on March 2,

[3] Department of Justice, "932. Provisions for the Handling of Qui Tam Suits Filed Under the False Claims Act", https://www.justice.gov/archives/jm/criminal-resource-manual-932-provisions-handling-qui-tam-suits-filed-under-false-claims-act, (1 November 2024)

1863 as 12 Statute 696. Section 3 of the Act details that "every such person shall... on conviction in any court of competent jurisdiction, be punished by imprisonment not less than one, nor more than five years, or by fine of not less than one thousand dollars." Section 4 of the Informer's Act states "[s]uch suit may be brought and carried on by any person, as well for himself as for the United States". It is clear that criminal charges were explicitly allowed by the original Informer's Act.

Furthermore, the role of a private attorney general was considered by the Supreme Court of the United States in *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400 (1968). "When the Civil Rights Act of 1964 was passed, it was evident that enforcement would prove difficult, and that ***the Nation would have to rely in part upon private litigation as a means of securing broad compliance with the law***. A Title II suit is thus private in form only." (Emphasis added)

The purpose of the action is to address the damages inflicted upon the people of Louisiana by the failure of the Louisiana Secretary of State to keep a permanent paper record of each ballot cast in accordance with 52 U.S.C. § 20701. 52 U.S.C. § 20701 states "[e]very officer of election shall retain and preserve, for a period of twenty-two months" every permanent paper record of a ballot cast. Dominion Voting Systems had a duty to create a permanent paper record and defendant Ardoin had a duty to preserve that *chose in action*. They knowingly and willingly failed and continue to fail.

Count five of the action, a violation of 18 U.S.C. § 1001, is neither denied nor addressed by the USAO. The election systems of Louisiana are not in accordance

with the law and defendant Ardoin sought payments through the Help America Vote Act. The Department of Justice knows this. With the decision to not join in the action, the Government fails to hold the defendants responsible for presenting false claims to the United States Government for payment and fails to protect our election infrastructure.

CONCLUSION

Wherefore, for the foregoing reasons, the Plaintiff-Appellant respectfully requests that the court reverse the district court's 29 July 2024 and grant him leave to pursue the action and what other relief the court may find appropriate.

Dated: 12 November 2024

Respectfully submitted,

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