

No. A-

IN THE

Supreme Court of the United States

COCHISE CONSULTANCY, INC. AND THE PARSONS CORPORATION,
Petitioners,

v.

UNITED STATES OF AMERICA
EX REL. BILLY JOE HUNT,

Respondent.

APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

TO THE HONORABLE CLARENCE THOMAS, ASSOCIATE JUSTICE OF THE
SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE
ELEVENTH CIRCUIT:

Pursuant to this Court's Rule 13.5, petitioners The Parsons Corporation and Cochise Consultancy, Inc. respectfully request a 60-day extension of time, to and including September 8, 2018, within which to file a petition for a writ of certiorari to the United States Court of Appeals for the Eleventh Circuit.*

The court of appeals filed its opinion on April 11, 2018. *United States ex rel. Hunt v. Cochise Consultancy, Inc.*, 887 F.3d 1081 (11th Cir. 2018). Unless extended,

* Pursuant to this Court's Rule 29.6, undersigned counsel state that petitioners The Parsons Corporation and Cochise Consultancy, Inc. have no parent corporations and that no publicly held company owns 10% or more of their stock.

the time within which to file a petition for a writ of certiorari will expire on July 10, 2018. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1). A copy of the court of appeals' opinion is attached hereto as Exhibit A.

1. This case presents an important and recurring question in False Claims Act litigation that has produced a three-way circuit split: whether a relator in a False Claims Act *qui tam* action may rely on the statute of limitations in 31 U.S.C. § 3731(b)(2)—which begins to run “when facts material to the right of action are known or reasonably should have been known by the official of the United States charged with responsibility to act in the circumstances”—in a suit in which the United States has decided not to intervene and, if so, whether the relator constitutes an “official of the United States” for purposes of Section 3731(b)(2).

Respondent Billy Joe Hunt filed a False Claims Act suit against petitioners on November 27, 2013, alleging that petitioners had defrauded the United States Department of Defense in connection with work they performed as defense contractors in Iraq. The United States declined to intervene in the suit. Petitioners moved to dismiss, arguing that the action was barred by the six-year statute of limitations established by Section 3731(b)(1) because the complaint had been filed “more than 6 years after the date on which the [alleged False Claims Act] violation” occurred. 31 U.S.C. § 3731(b)(1). Hunt did not dispute that his complaint was untimely under Section 3731(b)(1), but maintained that the statute of limitations in Section 3731(b)(2) applied and that the action was timely under that section because it had been brought

“within three years of when he disclosed the fraud to the government.” *Hunt*, 887 F.3d at 1083.

The district court dismissed Hunt’s complaint as time-barred. *Id.* The Eleventh Circuit reversed, however, and held that the statute of limitations in Section 3731(b)(2) did apply to Hunt’s claim—even though the United States had not intervened in the case—and that the limitations period did not begin to run until Hunt disclosed the material facts about petitioners’ alleged fraud to the United States. *Id.* Because the complaint had been filed within three years of that disclosure, the Eleventh Circuit concluded that Hunt’s complaint was timely. *Id.*

2. As the petition will explain, this Court’s review is warranted because the Eleventh Circuit’s decision creates a three-way split among the federal courts of appeals as to whether *qui tam* relators can invoke the statute of limitations in Section 3731(b)(2)—or instead must bring their claims within six years of the alleged False Claims Act violation under Section 3731(b)(1)—and whether relators are “official[s] of the United States” within the meaning of Section 3731(b)(2).

The Fourth, Fifth, and Tenth Circuits have all explicitly held that Section 3731(b)(2) applies only where the United States filed the False Claims Act suit itself or intervened as a plaintiff in a suit filed by a relator. *United States ex rel. Sanders v. N. Am. Bus Indus., Inc.*, 546 F.3d 288, 293 (4th Cir. 2008); *United States ex rel. Sikkenga v. Regence Bluecross Blueshield of Utah*, 472 F.3d 702, 725 (10th Cir. 2006); *United States ex rel. Erskine v. Baker*, 213 F.3d 638, 2000 WL 554644, at *1 (5th Cir. 2000) (per curiam) (unpublished). The Third and

Ninth Circuits, in contrast, have held that a relator may rely on Section 3731(b)(2) even where the United States has not intervened as a plaintiff. *United States ex rel. Malloy v. Telephonics Corp.*, 68 F. App'x 270, 273 (3d Cir. 2003) (unpublished); *United States ex rel. Hyatt v. Northrop Corp.*, 91 F.3d 1211, 1216 (9th Cir. 1996). Those two courts have further held that, in such cases, the relator is the relevant “official of the United States” for purposes of Section 3731(b)(2) and that the three-year statute of limitations therefore begins to run when the relator knew or shown have known of the alleged violation. *Hyatt*, 91 F.3d at 1217–18; *see also Malloy*, 68 F. App'x at 273.

In this case, the Eleventh Circuit rejected both of these alternative approaches. In direct conflict with the five other circuits that have considered the issue, the Eleventh Circuit held that a relator can rely on the limitations period established by Section 3731(b)(2) in cases where the United States has not intervened *and* that the three-year limitations period is triggered by the United States’ knowledge of material facts about the alleged False Claims Act violation, not by the relator’s knowledge. *Hunt*, 887 F.3d at 1090–91, 1096–97. In so holding, the Eleventh Circuit acknowledged that its decision permitting a relator to rely on Section 3731(b)(2) in the absence of government intervention was “at odds with the published decisions of two other circuits,” *id.* at 1092 (citing the conflicting decisions of the Fourth and Tenth Circuits), and also explicitly “reject[ed] the Ninth Circuit’s” conclusion that a relator can be the relevant “official of the United States” under Section 3731(b)(2) “as inconsistent with that text,” *id.* at 1097.

This circuit split is not merely theoretical. It has serious practical ramifications for False Claims Act litigation: If this case had been filed in the Third, Fourth, Fifth, Ninth, or Tenth Circuits, Hunt's claim would have been time-barred. In the Fourth, Fifth, and Tenth Circuits, Hunt would not have been able to rely on Section 3731(b)(2) at all and would instead have been required to file suit within six years of the alleged False Claims Act violation under Section 3731(b)(1), which he indisputably failed to do. And in the Third and Ninth Circuits, Hunt would have been permitted to invoke Section 3731(b)(2), but his claim still would have been time-barred because, in those circuits, he would be considered a "government official" who knew about the alleged violations more than six years before suit was filed.

3. Additional time is necessary to permit counsel to prepare and file a petition that adequately addresses these important issues. An extension of 60 days is warranted because counsel of record was not involved in the prior proceedings in this case and therefore requires additional time to study the record and relevant case law. In addition, counsel of record has numerous preexisting professional responsibilities during June and July, including an opening brief due on June 27 in *Nevada Restaurant Services, Inc. v. Clark County*, No. 18-15507 (9th Cir.); an opening brief due on July 5 in *County of San Mateo v. Chevron Corp.*, No. 18-15499 (9th Cir.); and an answering brief due on July 16 in *Lawson v. Grubhub, Inc.*, No. 18-15386 (9th Cir.). Counsel also has longstanding firm management committee meetings from July 7 through July 13. No party would be prejudiced by a 60-day extension of time.

CONCLUSION

Accordingly, petitioners respectfully request that an order be entered extending the time to file a petition for a writ of certiorari by 60 days, to and including September 8, 2018.

Respectfully submitted.

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