No. 22-6548

IN THE

SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA, Ex Rel., DAVID SHU – PETITIONER

vs.

PRISCILLA JENG, DONALD SWARTZ AND NANCY HUTT – RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

DAVID SHU, PRO SE

1094 BOLLIN AVENUE

CAMARILLO, CA 93010

(818) 918-8863

DAVIDSHU1@YAHOO.COM

QUESTIONS PRESENTED

A CASE OF FIRST IMPRESSION
LINCOLN LAW PRO SE FILING REQUIREMENT
QUESTION: WHETHER A PRO SE IS ALLOWED TO INITIALLY FILE A FALSE CLAIMS ACT (FCA) COMPLAINT IN A DISTRICT COURT WITHOUT A LAWYER?

Sub-Question 1:

Whether all Pro Se must hire a lawyer in order to file a False Claims Act (FAC) claim 31 U.S. Code §§3729-3733 (The Lincoln Law) in a Federal District Court or whether the requirement for Pro Se to obtain a lawyer should be made case by case?

(In the present case, there was no private sector attorney was willing to take this $748 false claim case on a contingency basis because the FCA reward is 15% of $748. Petitioner could not afford to hire a private sector attorney on an hourly basis to file the claim due to his low income status. The district judge further even disallowed Petitioner to utilize the Legal Center in the Northern California District Courthouse to obtain a Pro Bono and/or low cost attorney. US Government suffered and lost $748 and yet, Petitioner suffered and lost his job. US Supreme Court reaffirmed that pro se plaintiffs are entitled to enforce their own independent rights to file FCA claim in federal court under 28 U.S. Code §1654 and therefore should be allowed to file FCA claims)

Sub-Question 2:

Whether a Pro Se can file a False Claims Act (FCA) claim in a District Court and utilize the District Court provided Legal Center to obtain a Pro Bono (or low cost) attorney to proceed the claim?

Sub-Question 3:

Without Attorney General's involvement and written consent, whether the District Court violated 31 U.S. Code § 3730 (b) (1), (c) (3) to dismiss a False Claims Act (FAC) case immediately by the reason of Pro Se cannot file without a lawyer?

LIST OF PARTIES

[x] All parties appear in the caption of the case on the cover page

[ ] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows;

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The right to hearing is that which resides in both the Sixth Amendment as well as the Fourteenth Amendment. A right to hearing entails that an individual maintain and be afforded the legal right to be heard in the venue of a court of law with adequate due process attached..... 1

STATUS AND RULES

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below

OPINIONS BELOW

The Petitioner is not aware of the opinions of the lower courts in this case will be published or not. At the present, it's not published.

JURISDICTION

The United States Court of Appeals for the Ninth Circuit issued the final decision on 10/21/2022 (Case No. 22-15200 Appeal from D.C. No. 4:21-cv-01292-HSG Northern California District of California, Oakland) to deny PLAINTIFF-APPELLANT'S PETITION FOR REVIEW. On 1/9/2023, the Petitioner timely submitted the PETITION FOR A WRIT OF CERTIORARI Petition to the United States Supreme Court within the 90-day time period.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONSTITUTIONAL

The right to hearing is that which resides in both the Sixth Amendment as well as the Fourteenth Amendment. A right to hearing entails that an individual maintain and be afforded the legal right to be heard in the venue of a court of law with adequate due process attached.

INDIVIDUAL PRO SE HAS INDEPENDENT RIGHTS TO FILE FCA CASE:

Winkelman v. Parma City School District, 550 U.S. 516 (2007)

In *Winkelman*, the US Supreme Court reaffirms that *pro se* plaintiffs are entitled to enforce their own independent rights in federal court under 28 U.S. Code §1654

STATUS AND RULES

(1) 31 U.S. Code § 3730. Civil actions for false claims (b) Actions by Private Persons (1) A person may bring a civil action for a violation of section 3729 for the person and for the United States Government.

(2) 31 U.S. Code § 3730 (b)Actions by Private Persons (1) The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.

(3) 31 U.S. Code § 3730 (c) (3): If the Government elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action.

(4) 28 U.S.C. § 1654, "In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

(5) 31 U.S.C. §§ 3729-33 (no wording in the status to require Pro Se must bring lawyer to file a FCA claim)

STATEMENT OF THE CASE

US Postal Service Santa Maria post office manager Priscilla Jeng (Rivera) and supervisor Donald Swartz corrupted and knowingly made and/or assist to

made, and submitted a false claim to defraud against the US Government on 11/1/2013. After the Petitioner reported this was a false claim incident, Priscilla Jeng (Rivera) and Donald Swartz sent removal notice to the Petitioner on 11/4/2013. Furthermore, Defendant Nancy Hutt, a Federal contractor/arbitrator corrupted with Defendants and committed fraud during the FCA false traffic claim procedure to defraud the US Government and approved the false claim and used this false claim to terminate Petitioner on March 24, 2015. Petitioner stood firmly to protect the US Government and its property and yet he was terminated by the US Postal Service for this false claim.

Defendants violated False Claims Act (FCA) 31 U.S.Code §§ 3729 – 3733. Defendants also retaliated and removed Petitioner and violated FCA Retaliation Claim 31 U.S. Code §3730 (h)(1)-(3).

Petitioner was employed by the US Postal Service in 2001 and had good record for the employment and had no negative and discipline prior to this false claim incident.

Petitioner stood firmly to protect the US Government and submitted documents and evidence including photos, measurements and City of Santa Maria Police Department Letter to show this was a false claim and the damages were falsely claimed to defraud the US Government.

After Santa Maria post office supervisor Donald Swartz who previously had violent criminal record while working for the US Postal Service, corrupted, knowingly made, assist to made, and submitted this False Traffic Claim to defraud

against the US Government and Petitioner, and further used this false traffic claim corrupted with Priscilla Jeng, Nancy Hutt and successfully removed the Petitioner on March 24, 2015. Donald Swartz immediately was rewarded and promoted to be the postmaster of the Santa Maria post office (Priscilla Jeng's position) in May, 2015.

On 2/19/2021 Petitioner filed FCA complaint in Northern California District Court.

On 3/1/2021 District Magistrate Judge grant Petitioner's IN FORMA PAUPERIS APPLICATION

On 3/30/2021 Petitioner submitted a motion to stay so he can bring in a Pro Bono (or a low cost) attorney and a motion FOR APPROVAL TO ALLOW A PRO BONO ATTORNEY TO REPRESENT THE PLAINTIFF OR IN THE ALTERNATIVE FOR APPOINTMENT OF COUNCIL

On 11/4/2021 Petitioner's Motion to stay in order for him to bring in a Pro Bono (or a low cost) attorney was denied without any reason.

On 12/10/2021 District Judge objected Magistrate Judge's finding and ruling and reversed Magistrate Judge's IN FORMA PAUPERIS APPROVAL, instead, issued another order for Petitioner's same motion which had already been approved by the magistrate judge, to deny IN FORMA PAUPERIS APPLICATION and simultaneously dismissed the case without giving Petitioner any opportunity to bring in a Pro Bono (or a low case) attorney. The ruling only denied Petitioner's 3/30/2021 motion's alternative i.e., to request the court to appoint a council but did

not respond and did not rule on the motion main request i.e., Petitioner requested the court to allow Petitioner bring in a Pro Bono (or a low cost) attorney that he was already interviewed, evaluated and orally approved by the Northern California District Court Legal Center Pro Bono Program.

On 12/12/2021 Petitioner requested the court to clarify the 12/10/2021 order to rule on the main request to allow Petitioner to bring in his already orally approved Pro Bono (or low cost) attorney.

On 12/16/2021 The district issued a text order and still dismissed the case for the reason of Pro Se cannot file FCA case and no Pro Se filling will be allowed. However, the district court still did not rule on the main request that allowing Petitioner to bring in his Pro Bono (or low cost) attorney that he already obtained. Instead, the ruling stated "the court knows nothing about pro bono attorney". This is incorrect. The record in the file clearly showed that Pro Bono Attorney (TBD) on the first page of the complaint. The truth of the matter is, Petitioner has submitted documents and affidavit to show that he had already contacted the legal center and successfully went through telephone interview and face-to-face interview at the San Francisco Northern California District Courthouse and he had evaluated, qualified as the low-income program and orally accepted by the Pro Bono program.

On 2/9/2022 Petitioner filed appeal o the Ninth Circuit Court of Appeals for the Ninth Circuit

On 10/21/2022 The Ninth Circuit issued a ruling to dismiss the appeal.

On 1/09/2013 Petitioner filed Petition for Review at the US Supreme Court.

District Judge dismissed the FCA claims for the reason that Pro Se is not allowed to file FCA claim according to Ninth Circuit's *Stoner* case. The district court further disallowed the Petitioner to utilize the Legal Center which is run by the San Francisco Bar Association to seek and bring in Pro Bono attorney (or low cost attorney) despite Petitioner's low income status and was interviewed, evaluated, qualified and orally approved.

There are three debts should be addressed:

(1) Disallowing all Pro Se to file FCA claim in a district court has violated 28 U.S.C. § 1654 and US Supreme Court's decision on *Winkelman v. Parma City School District*, 550 U.S. 516 (2007). Consequently, Petitioner's constitution rights to be heard in the venue of a court of law with adequate due process attached was denied.

(2) The Ninth Circuit *Stoner* case did not prohibit *Stoner* (Pro Se status during initial filing) to file the initial FAC claim. It was after the US Attorney dismissed the case, and Stoner still wanted to proceed the case, then a lawyer is required. In fact, both the district court and the Ninth Circuit did not reject Stoner's initial filing as a Pro Se but allowed *Stoner* to fully went through the process as Pro Se in both district and appeal court levels. In the present case, district judge went too far beyond the *Stoner* case, not only decided Pro Se cannot proceed FCA case but also decided Pro Se cannot even file FCA initial claim. Moreover, district judge even disallowed Pro Se to utilize the district courthouse legal center to obtain Pro Bono (or low cost) attorney.

(3) Like many pro se, Petitioner could not afford to hire an attorney to represent the case. Petitioner diligently kept seeking for attorneys including contact the Legal Center through low income Pro Bono program due to his low income status. But district judge disallowed Petitioner to use Legal Center in the courthouse to obtain (Pro Bono) attorney to represent his case. However, *Stoner* case did not limit where and how a Pro Se can find a lawyer to proceed.

Moreover, district court Judge dismissed the FCA claim without any input from the US Attorney and without US Attorney's written consent, which violated "31 U.S. Code § 3730.Civil actions for false claims (b)Actions by Private Persons — The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting."

REASONS FOR GRANTING THE PETITION

(1) Federal Appeals Courts have different opinions as to whether requiring a licensed attorney to represent the Pro Se relator due to the fact that FCA 31 U.S.C. §§ 3729-3733 is silent on this requiring a lawyer issue and also as to the timing when a pro se litigant is required to have an attorney to proceed (after or prior to US Attorney's decision NOT to intervene?)

(2) The district court dismissed this FCA complaint due to Petitioner's Pro Se status without an attorney. Thus, has violated the Petitioner's constitutional right to Be heard with adequate due process attached. This requirement is contradictory to the basic spirit and legal principal of the Lincoln Law as well as 28 U.S.C. § 1654. To requiring a Pro Se relator to hire licensed lawyer to file FCA complaints do not

encourage, but on the contrary, discourage individuals to report FCA cases. Most of Pro Se relators simply cannot afford and do not have sufficient financial resources to hire lawyers to pursue. As a result, by requiring a licensed lawyer to file FCA case is to prevent and block many Pro Se relators from filing FCA cases and this is fundamentally against the Lincoln Law's basic principle and spirit which is to encourage Pro Se relators to report FCA cases.

(3) When the US Postal Service managers used false claimed traffic accident and corrupted with a private individual to submit a false claim to defraud the US Government on 11/1/2013 and used this false claim to removed a loyal federal employee, Petitioner's filing FCA claim is not only for the Government's interest but most importantly, for his independent interests. Petitioner lost his job and is the one who was injured due to the false claim, therefore he has individual interest in this FCA case. Petitioner is entitled to file and/or pursue as Pro Se pursuant to 28 U.S.C. § 1654 to enforce his own independent rights according to *Winkelman.*

Ninth Circuit *Stoner* and some other cases so-called qui tam relators' primary interest is to share the lost funds by a certain percentage, which is NOT the case here and *Stoner* should not universally applied to every FCA Pro Se case. These courts' position for those who were based on the theory that sharing the interest of lost fund is that U.S. Government is the party that was injured, not the realtor.

However, this case is different. In this instant case, Petitioner was the party who was injured by this false claim, his interest is to protect the Government from losing fund and the damages he had suffered due to this false claim. Petitioner is

the real party in interest in this instant case. Therefore, reasonably Petitioner should have a broad and independent discretion to determine its fate of the case.

For those cases that relators were not personally been injured but trying to represent the government, it's reasonable that a licensed attorney is required. However, in this instant case, the Plaintiff was personally injured by this false claim and was entitled to present, plead and conduct his own independent cases according to 28 U.S. Code § 1654. While the Petitioner cannot afford to hire a provide sector attorney to proceed, he should be allowed to obtain a attorney or a Pro Bono (low cost) attorney from the District Courthouse Legal Center.

(4) Some courts deemed it's necessary to require a licensed attorney to proceed with FCA case, because a licensed lawyer is more effective during a federal court's proceedings. And because a relator may make sweeping allegations that, while true, he is unable effectively to litigate. However, the matter of the fact is the US Supreme Court had already acknowledged that Pro Se's capacity and already established Pro Se litigants' litigation filing standards and could be treated less stringent than a lawyer to protected Pro Se rights. Such a small civil case in the face amount of $748 reasonably should not be required to hire a lawyer to file the FCA case. Nationwide, such small amount of the cases are allowed to file in a small claim court without requiring a licensed lawyer to represent the case. Especially, the US attorney presumably is a licensed lawyer and is capable to proceed the case with Pro Se upon making a decision to intervene.

The U.S. Supreme Court has a long history to protect Pro Se filing by establishing Pro Se filing standards. For example, the US Supreme Court made clear in *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972): "Pleadings by *pro se* litigants, regardless of deficiencies, should only be judged by function, not form." The U.S. Supreme Court also made clear that *pro se* document is to be liberally construed. As the Court unanimously held in *Haines v. Kerner*, 404 U.S. 519 (1972), "a *pro se* complaint, 'however inartfully pleaded,' must be held to 'less stringent standards than formal pleadings drafted by lawyers' and can only be dismissed for failure to state a claim if it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Id., at 520 521, quoting *Conley v. Gibson*, 355 U.S. 41,45 46 (1957)."

In *Hughes v. Rowe et al.* 449 U.S. 5, 101S. Ct., 173, 66 L. Ed. 2d 163, 49 U.S.L.W. 3346, the US Supreme Court stated; "It is settled law that the allegations of such a [pro se] complaint, 'however inartfully pleaded' are held 'to less stringent standards than formal pleadings drafted by lawyers.'" See *Hains v. Kerner*, 404 U.S.519,520 (1972). See also *Maclin v. Paulson*, 627 F.2d 83, 86 (CA7 1980); *French v. Heyne*, 547 F.2d 994, 996 (CA7 1976)

To regard a Pro Se relator is not as effective as to a lawyer standard and therefore require a lawyer to proceed a FCA case, is not only to impose a hardship on pro se to proceed due to lawyer fees cost undue financial burden but also ignored the protections that the US Supreme Court has provided to Pro Se litigants.

Furthermore, by imposing an undue financial burden/requirement that FAC case must be represented by a lawyer would have eliminated and discouraged many individuals to report FAC cases because many Pro Se litigants cannot afford to hire an attorney. And this is contradicted with the Spirit of the Lincoln Law which is to encourage individuals to file.

(5) The District Court dismissed the FAC case without the US Attorney's involvement and without US Attorney's written Consent. This has violated 31 U.S. Code § 3730 (b)(1), (c)(3). Civil actions for false claims dismissal which requires Attorney General's written consent.

(6) The FCA states that "[a] person may bring a civil action" under the FCA "for the person and for the United States Government." 31 U.S. Code §3730(b)(1). There is no wording in the status to require Pro Se must bring lawyer to file a FCA claim

(7) It's crucial and critical for the US Supreme Court to establish a uniform standard for FCA Pro Se filing because this is exactly the center piece of the Lincoln Law case. Lincoln Law is especially important to prevent the US Government agencies, employees and contractors from defrauding against the US Government by encouraging Pro Se to file claims. And most of Pro Se simply cannot afford to hire attorney to file claims.

Most importantly, it is reasonable and inevitable that the US Supreme Court must hear a FCA case from Pro Se litigant(s) in order to be made aware of Pro Se filing situations from Pro Se to gain the first hand most reliable information and then can make the Lincoln Law equally applied to everyone and clarify Pro Se filing standard and requirement in order to be fair to all American People and the Government and to fully reflect the spirit of the Lincoln Law,

which is to encourage individuals to stand out and report. However, at present, the district courts and appeal courts are doing the opposite to constrain and hurdle and reject individuals who do not have the financial resource to hire attorney to file FCA cases.

At the very least, reasonably, "pro se is required to hire lawyer to file FCA claim" should be made on individual basis and during different phrases, not universally reject all Pro Se's filing initially. Pro Se's right to be heard must not be deprived.

CONCLUSION

The False Claims Act (FCA), also called the "Lincoln Law", is an American federal law that imposes liability on persons and companies (typically federal contractors) who defraud governmental programs. It is the Federal Government's primary litigation tool in combating fraud against the Government. Lincoln Law encourages individuals to report and file FCA cases.

Pro Se is a critical part of the Lincoln Law. If this case is not heard by the US Supreme Court, then all the Pro Se won't be able to have their voiced to be heard and Lincoln Law is not fully implemented by adding a high bar to requiring Pro Se to hire lawyer because without financial resources, Pro Se cannot afford to hire attorney and this "hiring lawyer" requirement, which is not found in the Lincoln Law (FAC), essentially block Pro Se's to file and report FCA cases.

Thus, Pro Se who has no sufficient financial capacity to hire lawyer, their voices and cases won't ever be heard and proceed. In the present case, the Petitioner reported a $748 falsely claimed accident damages against the US Government. The Petitioner stood firmly to protect the US Government and its property and reported this is a fraudulent claimed vehicle damages and the US Government is not liable for this false claimed damages. And yet, the US Postal Service managers and contractor Hutt corrupted to present and approve the false claim and terminated the Petitioner's job.

Despite the diligent efforts that the Petitioner had made to seek for licensed attorney to represent him, no lawyer was willing to take such small amount of the case on a contingence basis. The Government lost $748 and the Petitioner lost his job. In addition to the fact that the Petitioner went to the district court legal center and went through the interview and evaluation process to obtain a low-cost or Pro Bono attorney through the Pro Bono Program, the district court judge ignored and still dismissed the case for the reason of without an attorney. The district court judge would not even allow the Petitioner to utilize the Legal Center to obtain a lawyer (and/or a Pro Bono lawyer).

This case is not about Petitioner himself but is for the spirit and implementation of the Lincoln Law and most importantly, for many individuals who has knowledge about the false claim and defraud the Government but lack of sufficient financial resources to hire a lawyer to file FCA case in a federal district court. Petitioner has no intention to open a flood gate for Pro Se to file FCA cases without any standard, however, by requiring only lawyer(s) can file a FCA case, is not a fair way to set up the "standard" for Pro Se filing. Reasonably, this "must have lawyer to file or to proceed requirement" should be made case by case.

Instead of blankly disallowed Pro Se to file initial FAC claim and even not allow them utilizing the courthouse provided legal center to obtain Pro Bono (or low cost) attorney, courts should be increasingly being asked to balance the interests of the Government, the relators and the violators under a wide variety of situations stemming in filing a FCA case. However, due to a lack of a proper framework and proper standard, court rulings are inconsistent regarding whether and/or when to permit or dismiss Pro Se filing FCA complaints.

With the threat of damages, attorney fees, and costs incurred, many pro se whistleblowers simply do not have the sufficient financial resources to hire attorneys and are unlikely to risk

reporting fraud against the Government. This strikes at the very heart and future of the FCA. Indeed, the FCA is premised on information revelation. Pro Se whistleblowers are valuable because they have what the Government lacks – information. Remove that, and the FCA statute does not work. Unless courts recognize a zone of protection flowing from the FCA, the information will dry up and fraud against the Government will rise as it goes undetected.

This is a small case. However, this case would touch the very heart of the Lincoln Law and have a tremendous positive and profound impact to strengthen our existing Lincoln Law's implementation system. Petitioner respectfully requests the PETITION FOR A WRIT OF CERTIORARI to be granted. If a Pro Bono attorney is preferred, Petitioner would appreciate and respectfully requests the Honorable Court to arrange a Pro Bono attorney.

Date: January 9, 2023

David Shu, Petitioner