U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General *Washington, DC 20530*

The Honorable Charles E. Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Grassley:

This responds to your letter to the Department of Justice (Department), dated February 7, 2025, which renewed requests made in correspondence dated March 6 and May 9, 2024, regarding the Department's use of its statutory dismissal authority pursuant to the False Claims Act, 31 U.S.C. § 3730(c)(2)(A).

As an initial matter, the Department shares your view of the importance of the False Claims Act and its *qui tam* provisions in combatting fraud against government agencies and programs. In large part because of your efforts to strengthen the statute, the False Claims Act is one of the government's single most important tools in combatting fraud. In fiscal year 2024, settlements and judgments under the False Claims Act exceeded $2.9 billion, and whistleblowers filed the highest number of *qui tam* actions ever recorded in a single year. Recoveries since 1986, when you spearheaded efforts to strengthen the statute, now total more than $78 billion. The Department appreciates your staunch support of its enforcement efforts, as well as the invaluable contributions of whistleblowers to those efforts.

While *qui tam* cases continue to serve an important role in identifying fraud against taxpayer-funded programs, not every *qui tam* case advances this objective. In the limited instances where the Department has determined that a whistleblower's continued pursuit of a *qui tam* case would not vindicate the government's interests or otherwise would risk undermining important governmental interests, we have sought dismissal.

In your prior correspondence from 2024, you inquired about the frequency with which the Department has dismissed *qui tam* actions following the Supreme Court's June 2023 decision in *U.S. ex rel. Polansky v. Executive Health Resources, Inc*. Since June 1, 2023, the Department has sought dismissal in nineteen *qui tam* actions, of which seven requests remain pending in the district courts. These cases equate to approximately one percent of the more than 1,570 *qui tam* actions that the Department has received since June 1, 2023.

The Department's guidance regarding dismissal under Section 3730(c)(2)(A), which can be found in the Justice Manual, has remained unchanged after the Supreme Court's decision in *Polansky*. The Department evaluates whether dismissal is appropriate based upon the non-exhaustive list of factors set forth in Section 4-4.111 of the Justice Manual, *DOJ Dismissal of a Civil* Qui Tam *Action*. In some cases, the basis for dismissal is evident at the outset of the case, such as when the complaint facially lacks merit or an investigation reveals that the allegations offer no prospect of recovery. In other cases, the Department has afforded whistleblowers additional time after declination to develop their claims and has dismissed only after it became clear that the case would not advance the public interest.

In response to the specific question posed in your prior correspondence, we have identified ten cases since January 2020 in which the government sought dismissal after initially declining to intervene. By comparison, during this same period, the Department received more than 3,850 new *qui tam* complaints, and, as a result, these ten cases represent less than 0.3 percent of the whistleblower actions filed during this period.

In the very limited number of cases where dismissal has occurred after declination, the length of time between declination and dismissal has varied depending upon a number of case-specific factors, including the time needed for courts to adjudicate motions to dismiss and protracted discovery disputes, the filing of amended complaints by relators, and intervening appellate proceedings, all of which may affect our decision to dismiss. In all ten of the cases in which the government sought dismissal after declination, the United States sought dismissal at a procedural stage that was no later than the dismissal affirmed by the Supreme Court in *Polansky*, where the government's motion to dismiss was filed contemporaneously with defendants' motions for summary judgment following discovery.

With respect to each *qui tam* action filed, the Department coordinates closely with the affected agency to evaluate the facts, the law, and the claims asserted. As part of this coordination process, the agency typically will recommend whether the government should either intervene or decline the matter, and, in appropriate cases, the agency also may recommend that the government seek to dismiss the matter. An agency recommendation to dismiss may include its views on the merits of the case, the potential for burdensome discovery, or any other issues that the agency believes are relevant. The Department, however, ultimately decides whether to dismiss a *qui tam* action. To that end, in order to ensure that decisions have been made in accordance with the relevant facts and law, the Department will review pending motions to dismiss based upon the statutory dismissal authority set forth in 31 U.S.C. § 3730(c)(2)(A).

The Department is proud of its record of recoveries under the False Claims Act and greatly appreciates your continued support of the Act and its whistleblower provisions to combat fraud against taxpayers.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

STEVEN HOUGH
Digitally signed by STEVEN HOUGH
Date: 2025.03.25 18:05:25 -04'00'

Steven Hough
Office of Legislative Affairs

cc:

The Honorable Richard J. Durbin
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510