

United States Senate
WASHINGTON, DC 20510

March 6, 2024

VIA ELECTRONIC TRANSMISSION

The Honorable Merrick Garland
Attorney General
Department of Justice

Dear Attorney General Garland:

The False Claims Act is our nation’s primary weapon to fight and deter fraud and recover taxpayer dollars that would otherwise be lost. A key feature of the False Claims Act is the *qui tam* provision which allows whistleblowers, known as relators, with inside knowledge of fraudulent conduct, to sue on the government’s behalf.¹ The statute requires the relator to file a claim under seal, and then the Justice Department has 60 days to investigate the allegations raised in the complaint.² After the 60-day investigatory period, the Justice Department may intervene and prosecute the case themselves, dismiss the case, or decline to intervene.³ If the government declines to intervene, the relator may continue litigating the case on the government’s behalf.⁴ On June 16, 2023, the Supreme Court ruled in *United States Ex Rel. Polansky v. Executive Health Resources, Inc., et al.* that the Justice Department “may move to dismiss an FCA action...whenever it has intervened – whether during the seal period or later on.”⁵ I write today requesting information on the Justice Department’s dismissal of *qui tam* cases after initially declining to intervene before and after the Supreme Court’s decision in *Polansky*.

According to reports, since the Courts decision in *Polansky*, concerns have been raised the Justice Department will unfairly dismiss *qui tam* cases even when the whistleblower case is strong and for reasons unrelated to the merits of the case.⁶ Further, additional concerns have been raised that the Justice Department, after initially declining, will intervene and dismiss False Claims Act cases during the late stages of litigation after the relator has spent years and resources

¹ 31 U.S.C. § 3730(c).

² 31 U.S.C. § 3730(b).

³ *Id.*

⁴ *Id.*

⁵ *United States, ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 143 S. Ct. 1720, 216 L. Ed. 2d 370 (2023) https://www.supremecourt.gov/opinions/22pdf/21-1052_fd9g.pdf.

⁶ Geoff Schweller, *SCOTUS Rules to Not Curb DOJ’s Dismissals of Qui Tam Whistleblower Suits*, Whistleblower News Network (Jun. 16, 2023) <https://whistleblowersblog.org/false-claims-qui-tam-news/scotus-rules-to-not-curb-doj-dismissals-of-qui-tam-whistleblower-suits/>.

litigating the case.⁷ Denying relators the right to pursue False Claims Act cases if the government doesn't initially intervene is counter to the basic, essential purpose of the Act, which is to empower private citizens to help the government fight and deter fraud. In order to better understand the Justice Department's position with respect to *qui tam* cases before and after the Supreme Court's decision in *Polansky*, please provide answers to the following no later than March 20, 2024.

1. Since 2020 to the date of this letter, provide the number of False Claims Act cases the Justice Department:
 - a. Declined to intervene;
 - b. Dismissed after initially declining to intervene;
 - c. Stage of litigation the case was dismissed;
 - d. Average time between declining to initially intervene and dismissal; and
 - e. Reason for dismissals after initially declining to intervene.
2. Has the Justice Department updated its policies, guidance, and related documents regarding False Claims Act interventions or dismissals after the Supreme Court's decision in *Polansky*? Provide copies of all policies, guidance, and related documents regarding the Justice Department's intervention and dismissal of False Claims Act cases.
3. What factors does the Justice Department consider when determining to dismiss a *qui tam* action after initially declining to intervene?
4. Does the Justice Department consult with the defrauded agency before determining whether to dismiss a *qui tam* action after initially declining to intervene?

Thank you for your prompt review and responses. If you have any questions, please contact Brian Randolph on my Committee staff at (202) 224-0642.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Budget

⁷ G. Norman Acker III, John H. Lawrence, Michael H. Phillips, *Supreme Court Affirms Government's Broad Dismissal Authority In False Claims Act Suits*, US Health Care and FDA Alert (Jul. 5, 2023) <https://www.klgates.com/Supreme-Court-Affirms-Governments-Broad-Dismissal-Authority-in-False-Claims-Act-Suits-7-5-2023>.