IN THE SUPREME COURT OF THE UNITED STATES

No. 12-1497

KELLOGG BROWN & ROOT SERVICES, INC., ET AL., PETITIONERS

v.

UNIETD STATES OF AMERICA, EX REL. BENJAMIN CARTER

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

MOTION OF THE UNITED STATES FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE AND FOR DIVIDED ARGUMENT

Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Solicitor General, on behalf of the United States as amicus curiae, respectfully moves for divided argument and for leave to participate in the oral argument in this case as amicus curiae supporting respondent. The United States requests ten minutes of argument time. Respondent has consented to an allocation of ten minutes of his argument time to the United States.

1. This case presents questions concerning the construction of the False Claims Act, 31 U.S.C. 3729 et seq. (FCA), and the Wartime Suspension of Limitations Act, 18 U.S.C.

3287 (WSLA). The questions presented are (1) whether the WSLA applies to a civil fraud claim brought by a private relator under the FCA; and (2) whether the FCA's "first-to-file" provision, 31 U.S.C. 3730(b)(5), bars a relator from filing a new qui tam suit when a qui tam action raising similar allegations has been filed, but subsequently dismissed on non-merits grounds, before the new suit is commenced. The United States has filed a brief as amicus curiae supporting respondent, contending that the WSLA applies to a civil FCA claim brought by a private relator and that the FCA's first-to-file provision does not apply when a second action is filed after the first action is no longer pending.

2. The FCA is the primary tool by which the federal government combats fraud and recoups losses suffered from fraud in federal contracts and programs. The WSLA was enacted to improve the government's ability to recover for frauds against the United States during times of war. The United States therefore has a substantial interest in the proper interpretation of both statutes. At the Court's invitation, the United States filed a brief at the petition stage of this case.

The government has frequently participated in oral argument as amicus curiae in cases raising issues about the proper interpretation of the FCA. See, e.g., Schindler Elevator Corp. v. United States ex rel. Kirk, 131 S. Ct. 1885 (2011); Graham

County Soil & Water Conservation Dist. v. United States ex rel. Wilson, 559 U.S. 280 (2010); United States ex rel. Eisenstein v. City of New York, 556 U.S. 928 (2009); Allison Engine Co., Inc. v. United States ex rel. Sanders, 553 U.S. 662 (2008). The United States also has participated in oral argument as a party in cases involving the WSLA. See United States v. Grainger, 346 U.S. 235 (1953); Bridges v. United States, 346 U.S. 209 (1953); United States v. Smith, 342 U.S. 225 (1952).

3. Because participation in oral argument by the United States will provide the Court with the government's unique perspective on the questions presented, division of the argument will materially assist the Court in its consideration of the case.

Respectfully submitted.

DONALD B. VERRILLI, JR.
Solicitor General
Counsel of Record

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