

No. 12-1497

In the Supreme Court of the United States

KELLOGG BROWN & ROOT SERVICES, INC., KBR INC.,
HALLIBURTON COMPANY, AND SERVICE EMPLOYEES
INTERNATIONAL, PETITIONERS

v.

UNITED STATES OF AMERICA EX REL. BENJAMIN CARTER

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

**SUPPLEMENTAL BRIEF FOR PETITIONERS
REGARDING INTERVENING DECISION**

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SUPPLEMENTAL BRIEF FOR PETITIONERS REGARDING INTERVENING DECISION

Pursuant to this Court's Rule 15.8, petitioners submit this supplemental brief to address the relevance of an intervening lower-court decision rejecting application of the Wartime Suspension of Limitations Act ("WSLA") to civil fraud claims.

As petitioners have explained, the government and private relators nationwide are routinely invoking the WSLA in seeking to toll civil fraud claims unrelated to war, creating a division of authority in lower courts. Pet. 17-18; Reply 7 & n.8; Supp. Br. 1-5. Even during the pendency of this petition, a number of new decisions have issued on both sides of the divide, some allowing tolling, and others correctly holding the WSLA inapplicable to civil *qui tam* suits.

The division has grown still deeper. On June 19, 2014, the U.S. District Court for the District of Columbia held in a published decision that the WSLA has no application to civil False Claims Act ("FCA") claims alleging that Lance Armstrong and associated entities had engaged in a doping scheme to win bicycle races, in violation of sponsorship agreements with the U.S. Postal Service. *U.S. ex rel. Landis v. Tailwind Sports Corp.*, No. 10-cv-976, ___ F. Supp. 2d ___, 2014 WL 2772907 (D.D.C. June 19, 2014); Supp. Br. 3-5 (discussing allegations in *Landis*).

Judge Robert L. Wilkins of the D.C. Circuit, sitting by designation, held that the WSLA did not apply to revive the time-barred claims in that case, and

rejected the relator’s request for tolling.¹ Judge Wilkins discussed at length—and ultimately found dispositive—this Court’s decision in *Bridges v. United States*, 346 U.S. 209 (1953), which held that the WSLA did not suspend the statute of limitations for criminal false statements in naturalization proceedings. 2014 WL 2772907, at *20. *Bridges*, Judge Wilkins explained, “noted that the legislative history of WSLA indicated a purpose to allow the government additional time to investigate *and prosecute* ‘war frauds’ and ‘war contracts.’” *Id.* at *20 & n.26 (quoting *Bridges*, 346 U.S. at 217-219; emphasis added).

Judge Wilkins criticized as “misplaced” the relator’s “heavy reliance” on the Fourth Circuit’s decision in this case. 2014 WL 2772907, at *20 n.27. He also found “unilluminating” (*ibid.*) *United States ex rel. McCans v. Armour & Co.*, 146 F. Supp. 546 (D.D.C. 1956), *aff’d per curiam*, 254 F.2d 90 (D.C. Cir. 1958)—cited prominently by both relator and the Solicitor General here. See Opp. 7, 8, 9; Br. for United States as *Amicus Curiae* 15. Judge Wilkins observed—as petitioners have explained—that *McCans* addressed whether “the WSLA applied to a civil FCA case” only in dicta. *Landis*, 2014 WL 2772907, at *20 n.27. Relying on *Bridges*, Judge Wilkins construed the WSLA narrowly, and held that it did not encompass the FCA claims in that case.²

¹ Only the relator in *Landis* invoked the WSLA; “the government did not make th[at] argument.” 2014 WL 2772907, at *19 n.25.

² Applying D.C. Circuit precedent, Judge Wilkins also concluded that civil FCA actions “do not require proof of fraud as an ‘essential element,’” and explained that the relator “ha[d] not

Landis supports petitioners' arguments about why the WSLA does not apply to civil cases. As petitioners have explained, the panel here departed from *Bridges's* rule of "narrow[] constru[ction]," by improperly extending WSLA tolling to a civil *qui tam* suit. Pet. 10-15. Here, as in *Landis*, "the WSLA has not tolled the running of the FCA's [statute of limitations] and * * * the WSLA does not apply to suspend any [statute of limitations] in this case." 2014 WL 2772907, at *20. *Landis* deepens the conflict in the lower courts and underscores the urgent need for this Court's review, to ensure uniformity on this frequently recurring and important question.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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contended that proof of specific intent to defraud is required." *Landis*, 2014 WL 2772907, at *20.