

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 08-5433

September Term 2008

1:08-cv-01179-UNA

Filed On: September 3, 2009

Herman Gafatasi Lemusu,

Appellant

v.

United States Department of Justice, et al.,

Appellees

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

BEFORE: Sentelle, Chief Judge, and Ginsburg and Garland, Circuit Judges

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the brief filed by appellant. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). It is

ORDERED AND ADJUDGED that the district court's order filed July 8, 2008, be affirmed. The district court properly dismissed appellant's complaint, because it did not state a claim within the meaning of the False Claims Act, 31 U.S.C. § 3729(a). See generally U.S. ex rel. Bettis v. Odebrecht Contractors of Cal., Inc., 393 F.3d 1321 (D.C. Cir. 2005). And even though the gravamen of the complaint was a violation of the False Claims Act, appellant waived that argument on appeal, by arguing instead, and for the first time, an Eighth Amendment willful and deliberate indifference claim. See Potter v. District of Columbia, 558 F.3d 542, 547 (D.C. Cir. 2009) (and cases cited therein) (this court reviews only those arguments that were made in the district court); Ben-Kotel v. Howard University, 319 F.3d 532, 535 (D.C. Cir. 2003) (the court of appeals does not entertain an argument made for the first time on appeal).

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Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam