

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-2636
Summary Calendar

WANDERLON ANN BARNES,

Plaintiff-Appellee,

VERSUS

ARTHUR LEVITT, ETC., ET AL.

Defendants,

ARTHUR LEVITT, JR., ETC., UNITED
STATES OF AMERICA and JOSEPH C. MATTA,

Defendants-Appellants.

Appeal from the United States District Court
for the Southern District of Texas
(CA H 92 0898)

(July 6, 1994)

Before KING, HIGGINBOTHAM and BARKSDALE, CIRCUIT JUDGES:

PER CURIAM:*

This is an interlocutory appeal from, *inter alia*, the district court's order denying in part the substitution of the United States as defendant. Pursuant to 28 U.S.C. §2679(d)(1), the Attorney General certified that the individual defendants were acting within the scope of their employment with the United States and filed a

* Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

notice of substitution reflecting the change in parties. The district court entered an order dismissing the individual defendants and granting the substitution, but, upon reconsideration, ruled that, contrary to the certification, defendant Joseph Matta was not acting within the scope of his employment and reinstated him as a defendant. Under our decision in ***Garcia v. United States***, ___ F.3d ___, 1994 WL 202541 (5th Cir. 1994), "the district court had no authority to review the scope of employment issue, which was decisively resolved in the employee's favor by the act of certification." ___ F.3d at ___.

The United States and the individual defendant also seek review of an additional issue, but we decline to do so in light of the limited nature of review in an interlocutory appeal. See ***United States v. Jenkins***, 974 F.2d 32, 34 (5th Cir. 1992).

For the foregoing reasons, the district court's order is

REVERSED.