False Claims Act Year in Review: 2024

Introduction

The US government and private plaintiffs use the False Claims Act (FCA) – a federal statute originally enacted in 1863 in response to defense contractor fraud during the American Civil War – to combat various forms of fraud in connection with government programs and contracts.

The FCA is significant because it provides that any person who knowingly submits, or causes to submit, false claims for payment to the government is liable for three times the government's damages plus a sizable penalty for each false claim. And it is unique because it allows private citizens (called "relators") to file suits on behalf of the government (called "*qui tam*" suits) against those who have defrauded the government and to recover a portion of the government's recovery.

There were numerous noteworthy FCA-related developments in 2024, which we explore throughout this publication.

In fiscal year 2024, the Department of Justice's (DOJ) total FCA recoveries through settlements and judgments exceeded $2.9 billion.[1] This reflects a 4.5-percent increase from last year's number and the largest amounts recovered in the last three years.[2] Of those 2024 recoveries, more than $2.42 billion came from settlements and judgments in matters commenced under the *qui tam* provisions of the FCA – a slight decrease from 2023 but a 21-percent increase from 2022 totals.[3] In contrast, recoveries in non-*qui tam* matters (that is, FCA matters brought *ab initio* by the DOJ itself as lead plaintiff) in 2024 totaled $502 million – a 38-percent increase in non-*qui tam* recoveries during 2023 and a 101-percent increase from 2022 totals.[4]

Industry-specific data reflect recoveries holding steady for the healthcare industry at more than $1.67 billion (slightly down from $1.86 billion in 2023 and $1.79 billion in 2022), while recoveries in cases involving the defense industry were at $93.2 million (significantly down from $556.8 million in 2023).[5] These figures do not include two large settlements that the DOJ announced shortly after the end of the 2024 fiscal year – a $425 million settlement with a pharmaceuticals manufacturer and a $428 million settlement with a defense contractor.[6] Recoveries for all non-healthcare and non-defense industries significantly increased to $1.15 billion (cracking the one-billion-dollar mark for the first time since 2017 and up from approximately $370 million and $348 million in 2023 and 2022, respectively).[7]

Accompanying the uptick in recoveries is a rise in the volume of FCA litigation, which approached the highest levels in history. As the DOJ explained in its annual press release, "The government and whistleblowers were party to 558 settlements and judgments, the second highest total after last year's record of 566 recoveries, and whistleblowers filed 979 *qui tam* lawsuits, the highest number in a single year."[8] Many of these cases reflect the DOJ's evolving FCA enforcement priorities (which are discussed in more detail below), "including combating health care fraud, the opioid epidemic, fraud in pandemic relief programs, and violations of cybersecurity requirements in government contracts and grants."[9]

There were many other significant developments for FCA defendants in 2024. Courts have begun applying the Supreme Court's 2023 decision in *United States ex rel. Polansky v. Executive Health Resources, Inc*., 599 U.S. 419 (2023), which established the standards for motions by the government to intervene and seek the dismissal of a *qui tam* action. The cases have demonstrated that, in the aftermath of *Polansky*, the government possesses significant discretion to dismiss such lawsuits, notwithstanding a relator's objection to dismissal. The Supreme Court recently decided another FCA case with potentially significant implications for what constitutes a "claim" under the FCA, including whether claims submitted to a private entity that administers a federal program constitutes a "claim" that gives rise to liability under the FCA. The Court's ruling could have significant implications for the types of contexts in which FCA liability can arise. And lower courts have been asked to resolve whether the FCA's *qui tam* provisions and large monetary penalties for FCA violations are unconstitutional – with one court concluding last year that the *qui tam* provisions are unconstitutional (a conclusion other courts have disagreed with) and with several courts concluding that certain FCA penalties can constitute unconstitutionally "excessive" fines under the Eighth Amendment to the US Constitution.

These and other developments, emerging trends, and high-profile FCA cases will be addressed in detail in this 2024 year in review.

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Jurisprudential trends and developments

Fallout from the Supreme Court's *Polansky* decision

In June 2023, the US Supreme Court issued its long-awaited decision in *United States ex rel. Polansky v. Executive Health Resources, Inc.*, 599 U.S. 419 (2023). The FCA allows private parties, known as "relators," to sue defendants on the federal government's behalf for acts that cause the submission of false claims for payment to the government. See 31 U.S.C. § 3730(b)(1). These "*qui tam*" actions are initially filed under seal. *Id.* § 3730(b)(2). During the 60-day seal period – which is often extended – the government decides whether to "intervene" and take over prosecution of the lawsuit. *Id*. If the government does not intervene during the seal period, it may intervene later upon showing "good cause" to do so. *Id.* § 3730(c)(3). Following intervention, the government takes over the action – meaning it may seek to voluntarily dismiss the action, just like any civil plaintiff can do. *Id.* § 3730(c) (3).

In *Polansky*, the Court's resolved Circuit splits regarding the government's right to intervene in and seek dismissal of a *qui tam* actions after the "seal" period over a relator's objection. The Court held that (1) the government may intervene in a *qui tam* action whenever it wants upon showing "good cause" and (2) Federal Rule of Civil Procedure 41 governs the dismissal procedure.

Polansky has engendered significant jurisprudential developments in FCA cases. Since *Polansky*, five notable trends have developed in the lower courts regarding the government's authority to dismiss FCA cases. This article examines those developments.

Background: Circuits split over intervention and dismissal

Before *Polansky*, the federal appellate courts were split on two questions about the government's authority to dismiss a *qui tam* action over the relator's objection to the case being dismissed. If the government intervenes in a *qui tam* action after the end of the 60-day seal period – which is often extended – may it seek dismissal of the action? And, if so, what standard governs that process?

As to the **first** question, several Circuit courts had held that the government could seek dismissal at any time, irrespective of intervention,[10] while others had held that the government could seek dismissal only after successfully intervening, during or after the seal period.[11] As to the **second** question, a three-way split had developed, with some Circuit courts holding that the government had an "unfettered right to dismiss,"[12] others requiring the government to show a "rational relation" between dismissal and accomplishing a valid government purpose,[13] and a third camp holding that the Rule 41(a) voluntary-dismissal standards governs.[14]

The Supreme Court's *Polansky* decision

The Supreme Court resolved these splits in *Polansky*. There, a relator brought a *qui tam* suit against a company that "helped hospitals bill the United States for Medicare-covered services," alleging that the company had enabled its clients to cheat Medicare by charging inpatient rates for outpatient services.[15] The government declined to intervene during the seal period but still found itself embroiled in years of costly, time-consuming discovery and ultimately "decided that the varied burdens of the suit outweighed its potential value."[16] So the government intervened and moved to dismiss the action, notwithstanding the relator's objection to dismissal.

The district court granted the government's motion,[17] and the Third Circuit affirmed, holding that (1) the government may move to dismiss, even if it declines to intervene during the seal period, so long as it moves to intervene sometime later; and (2) Rule 41(a) governs the dismissal procedure.[18]

The Supreme Court affirmed. In doing so, it pronounced two core holdings. **First**, the Supreme Court held that the government must intervene before moving to dismiss but that the government may intervene at any time upon a showing of "good cause."[19] The Supreme Court did not elucidate the meaning of "good cause" in this context, but it approvingly cited the Third Circuit's definition: Good cause is "a uniquely flexible and capacious concept, meaning simply a legally sufficient reason."[20]

Second, the Supreme Court held that, once the government intervenes and moves to dismiss, Rule 41(a) governs the procedure. The Court's reasoning was "not complicated: The Federal Rules are the default rules in civil litigation, and nothing warrant[ed] a departure from them" in the FCA context. Under Rule 41(a), dismissal is mandatory if the parties agree to it or if the plaintiff (*ie*, the government post-intervention) moves to dismiss before the defendant answers or seeks summary judgment. Absent those circumstances, the court may order dismissal "on terms that the court considers proper." In the FCA context, the Supreme Court held, two extra requirements are needed: (1) the district court order must follow a "notice and an

opportunity for a hearing," as required by 31 U.S.C. § 3730(c)(2)(A), and (2) the district court must consider the relator's interests, endeavoring to ensure that "substantial justice is accorded to all parties."[21] Despite these requirements, the Court emphasized that granting a government motion to dismiss needs only to clear a low bar. "[I]n all but the most exceptional cases," the Court explained, district courts should grant the government's motions to dismiss *qui tam* cases.[22] It reasoned that *qui tam* suits are brought "on behalf of and in the name of" the government, so the government should only need a "reasonable argument for why the burdens of continued litigation outweigh its benefits."[23]

Five jurisprudential trends emerging from *Polansky*

The case law applying *Polansky* reveals five emerging trends and takeaways.

1. The government faces a low bar for dismissal, but dismissal is not automatic.

In *Polansky*, the Supreme Court admonished that the bar for dismissal is low. If the government seeks dismissal, then dismissal should follow "[i]n all but the most exceptional case."[24] The Court even held that "a district court should think several times over before denying a motion to dismiss."[25] *Id*. at 437–38. All that is required is a "reasonable argument" from the government as to "why the burdens of continued litigation outweigh its benefits," "even if the relator presents a credible assessment to the contrary."[26]

Lower courts have heard the message. Since *Polansky*, courts have frequently granted the government's motions to dismiss *qui tam* actions for varying reasons. For example, courts have dismissed *qui tam* actions where the government showed:

- The suit would "infringe on privileged information" and ongoing plea negotiations.[27]
- The relator failed to "meaningfully prosecute" the action and tried to have the government "do her work for her."[28]
- The government investigated the claims and found them to be meritless.[29]
- The relator asked the government to sue its own employees (in that case, in the Department of Veterans Affairs), which the government deemed imprudent.[30]

Although dismissal is expected when the government seeks it, there is at least one outlier decision post-dating *Polansky* demonstrating that dismissal is not guaranteed. In *United States ex rel. Day v. Boeing*, the Eastern District of Virginia initially granted the government's motion to dismiss but then granted a motion for reconsideration and vacated its order dismissing the case.[31] The court found that the "skimpy showing" offered by the government did not satisfy even *Polansky*'s low bar.[32] Specifically, the court found that the government "did not enumerate the significant costs of future discovery," did not "raise a problem of a special nature such as the disclosure of privileged documents," and did not "explain in detail (or at all) why it had come to believe that the suit had little chance of success on the merits."[33] Instead, the court found that the government made a "skimpy," "conclusory" argument that failed to "g[i] ve good grounds" for dismissal.[34]

Aside from "skimpy" arguments, there may be another ground to deny dismissal. As at least one court has acknowledged post-*Polansky*, a "relator's showing of a due process or equal protection violation might suffice" to reject the government's dismissal request.[35] Currently, though, "what that would look like is unclear," and no court to date has denied a government motion to dismiss a *qui tam* action on constitutional grounds.[36]

Takeaways for practitioners: If the government seeks dismissal over the relator's objection, the court will likely grant it. Since *Polansky*, courts have regularly granted the government's motions to dismiss and acknowledged the low bar for dismissal. Still, there may be at least two roadblocks to the government's dismissal request. First, as in *Day*, if the government offers conclusory arguments instead of "valid reasons" for dismissal, the court may demand more before dismissing or deny the dismissal. Second, if dismissal threatens the relator's due process or equal protections rights, the court might think twice before dismissing. Overall, however, practitioners should understand that the government's dismissal requests will frequently be granted – and are encouraged to consider it as a potential tool in their playbook for defending against meritless *qui tam* actions.

2. The government must intervene before seeking dismissal, but courts are collapsing the intervention inquiry into the dismissal inquiry.

If the government does not intervene during the seal period, it needs to show "good cause" to intervene later. 31 U.S.C. § 3730(c)(3). *Polansky* did not clearly explain what "good cause" meant. But it strongly suggested "good cause" is a low bar by acknowledging the Third Circuit's view that good cause requires "simply a legally sufficient reason."[37] Since *Polansky*, lower courts have used the same standard.[38]

In fact, the bar for good cause appears so low that several courts have collapsed the "good cause" inquiry into the dismissal inquiry. Courts doing so have reasoned that, if there are valid grounds for the government to seek dismissal, then those same grounds "also provide good cause to intervene."[39]

This "good cause to intervene equals good cause for dismissal" approach appears well supported. *Polansky* itself tacitly approved the Third Circuit's finding that "the Government's request

to dismiss the suit . . . **itself** established good cause to intervene."[40] And, even before *Polansky*, several Circuit courts had found that the "good cause" inquiry was "largely academic," as a motion to dismiss necessarily includes a motion to intervene.[41]

Takeaway for practitioners: When the government seeks dismissal of a *qui tam* action after declining to intervene earlier in the proceedings, the court's focus will be on the propriety of dismissal – not intervention.[42] Litigating whether the government had good cause to intervene may not be successful, as good cause for dismissal will necessarily mean good cause to intervene.

3. The FCA's hearing requirement does not require an in-person, evidentiary hearing; written submissions suffice.

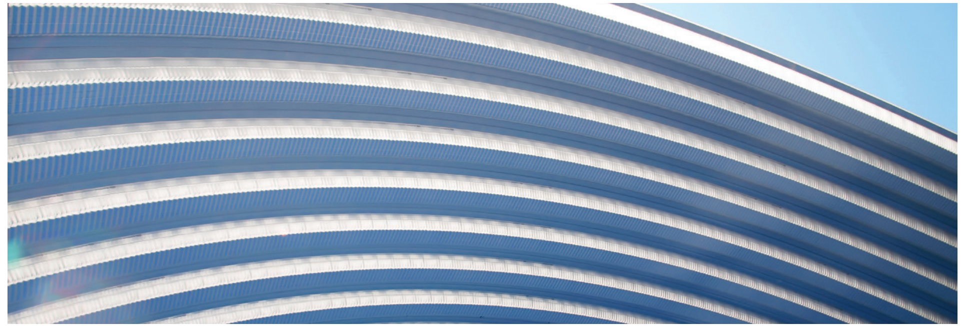
The *Polansky* Court held that the FCA requires "notice and an opportunity for a hearing" before a court may grant the government's motion to dismiss.[43] But the Court did not define what the hearing required.

Since *Polansky*, lower courts have overwhelmingly found that the FCA's hearing requirement does not necessitate a "formal evidentiary hearing in a courtroom" – rather, "written submissions" suffice.[44]

Takeaway for practitioners: Practitioners are encouraged to put their best foot forward in briefing on the government's motion to dismiss and not assume the court will hold a hearing on a motion to dismiss, unless specific circumstances warrant it.

4. *Polansky* likely overruled cases holding that Rule 24's intervention standard applies to *qui tam* actions.

Before the Supreme Court decided *Polansky*, several courts had held that the Rule 24 permissive-intervention standard applied when the government sought to intervene in a *qui tam* action. Under Rule 24(b)(1)(A), "permissive



intervention" occurs if a party "is given a conditional right to intervene by a federal statute" (like the FCA). Before permitting such intervention, the court must consider whether it will unduly delay or prejudice the adjudication of the original parties' rights. The language of the FCA, however, does not require such an inquiry. So, following *Polansky*, a question arose regarding whether Rule 24 governed post-seal interventions.

That question was answered in the negative by the Eastern District of Texas. In *United States ex rel. Jackson v. Ventavia Research Group, LLC*, the court ruled that Rule 24 does not supply the applicable standard; it is irrelevant to the government's intervention in *qui tam* actions.[45] The court reasoned that this conclusion was dictated by *Polansky*, which determined the intervention standard without mentioning Rule 24. As the district court explained, the *Polansky* Court's reasoning "substantially undermine[d]" pre-*Polansky* cases applying Rule 24.[46] The court also found that Rule 24 governs the intervention of "non-parties," but the government is not quite a "non-party" in a *qui tam* action because all such actions are brought on the government's behalf.[47] The court concluded that "the similarities between Rule 24 intervention and [FCA] intervention seem to begin and end with their use of the word 'intervention.'"[48] The court, accordingly, did not consider Rule 24's instruction regarding undue delay.

Takeaway for practitioners: Attempting to limit the government's ability to intervene after the seal period by referencing Rule 24 may be unlikely to succeed.

5. *Polansky* may inform state courts' interpretations of state FCA equivalents.

Many states maintain their own False Claims Acts that mirror the federal statute. Illinois, for example, has a False Claims Act with procedures like the federal law.[49] Recently, the Appellate Court of Illinois decided when the State of Illinois may dismiss a case brought under the Illinois False Claims Act.[50] With ample citation to *Polansky*, the Illinois Appellate Court held that the State has "nearly unfettered discretion to dismiss *qui tam* cases."[51] Although the Illinois court gave its government even more dismissal authority than *Polansky* gave to the federal government, *Polansky* still guided the Illinois court. Because the Illinois False Claims Act "closely mirrors the Federal False Claims Act," the court let *Polansky* "inform[]" its decision.[52] Specifically, the Illinois court approvingly cited *Polansky*'s view that the government deserves "substantial deference" when it seeks dismissal and that dismissal should be rejected "only in 'the most exception cases.'"[53]

Takeaways for practitioners: Because so many states' False Claims Acts mirror the federal statute, state courts might look to *Polansky* for guidance regarding when state governments can dismiss *qui tam* actions. In other words, state governments may enjoy substantial authority to dismiss state *qui tam* cases in states with acts mirroring the federal statute.

Supreme Court resolves questions concerning the scope of a "claim" under the FCA

The FCA prohibits the submission of false claims for payment to the government. While in many cases there is no question whether a claim has been submitted to the government – such as where a claim has been submitted directly to a federal agency or is made pursuant to a contract with the federal government – it is not always that clear. That is because there are various contexts in which private entities are involved in administering federal programs. For instance, are claims submitted to entities like Fannie Mae and Freddie Mac, which are federally chartered private corporations, subject to FCA liability? What about federally chartered nonprofits that further federal goals – are they within the FCA's scope? Or do these entities fall outside the FCA because they are privately administered and funded?

A crucial aspect of this discussion revolves around the FCA's definition of "claim." In 1986, Congress amended the FCA and defined "claim" in the statute for the first time as a request for money "made to a contractor, grantee, or other recipient *if the United States Government* ***provides*** *any portion of the money*."[54] Then, in 2009, Congress further amended the FCA, introducing a new definition of claim as a request for money "*presented to an officer, employee, or* ***agent*** *of the United States*."[55]

On June 17, 2024, the US Supreme Court granted certiorari in *Wisconsin Bell, Inc. v. U.S. rex rel. Heath*, No. 23-1127, to consider two pivotal questions with far-reaching FCA implications for those interacting with private entities regulated by federal law: (1) *How should a court determine whether the United States "provides" the money for a government program?* and (2) *Can a privately administered program be an "agent" of the government for FCA purposes?* And the Court issued a narrow, unanimous decision resolving the appeal on February 21, 2025.[56]

As background, *Wisconsin Bell* involved a request for payment from the Schools and Libraries Universal Service Support program, commonly known as the "E-Rate Program." Established through the Telecommunications Act of 1996, the E-Rate Program aims to advance universal access to rapid, efficient nationwide and global communications services. It achieves this goal by providing discounted services to eligible schools and libraries through competitive bidding and by subsidizing the cost of these services to ensure affordability for schools and libraries.

While the E-Rate Program is funded exclusively by private money in the form of contributions by private telecommunications carriers, as required by regulations established by the Federal Communications Commission, the U.S. Treasury previously transferred $100 million into the fund that is used to finance E-Rate subsidies. The E-Rate Program is administered by the Universal Service Administrative Company, a private nonprofit organization incorporated in Delaware, subject to the FCC's oversight. It distributes up to nearly $4.5 billion in funding per year, with its three sister "Universal Service Programs" funding an additional $1.1 billion per year.

In *Wisconsin Bell*,[57] the Seventh Circuit held that a request for payment from the E-Rate Program counted as a "claim" for three reasons:

1. The US "provided" the money in the E-Rate Program by mandating private-carrier contributions
2. At least a portion of the funds, specifically delinquent payments amounting to around $100 million, temporarily passed through US Treasury accounts before reaching the E-Rate Program, and
3. The private administrator of the E-Rate Program was an "agent" of the US under the FCA because of the government's oversight in the collection and distribution of funds.

The Supreme Court resolved the split in a unanimous decision issued on February 21, 2025.[58] The Court held that E-Rate reimbursement requests can constitute fraudulent claims for FCA purposes "because the Government provided (at a minimum) a 'portion' of the money applied for"—that is, "the Government transferred more than $100 million from the Treasury into the pool of funds used to pay E-Rate subsidies."[59] The Court's holding rested on the statutory definition of a claim, which encompasses a request or demand for money if the "money is to be spent or used on the Government's behalf or to advance a Government program or interest" *and* if the federal government "*provides or has provided any portion of the money*" requested or demanded.[60] Because the Treasury provided a portion of the money used for E-Rate

reimbursements, requests for such reimbursements made to the Universal Service Administrative Company constitutes a claim for FCA purposes.[61]

The Court acknowledged, however, that its narrow holding leaves unresolved significant "issues about damages," including questions "about whether (and, if so, how) the amount of money the Government deposited should limit the damages [the relator] can recover."[62]

Justice Kavanaugh (joined by Justice Thomas) issued a concurring opinion stating that the FCA's "*qui tam* provisions raise substantial constitutional questions under Article II"—questions that he urged the Court to consider in the appropriate case. We address that issue in the next section of this publication.

Takeaway for practitioners: Businesses that transact with government-adjacent entities should assess this decision and the potential impact it will have on FCA liability, including whether it could lead to liability for reimbursement requests that previously may have been viewed as falling outside the scope of the FCA.

Are the FCA'S *qui tam* provisions unconstitutional?

In 2024, lower courts began to grapple with statements by Justices Clarence Thomas, Brett Kavanaugh, and Amy Coney Barrett in the Supreme Court's 2023 decision in *United States, ex rel. Polansky v. Executive Health Resources* questioning the constitutionality of the *qui tam* provisions.[63] While *Polansky* was about the FCA's standards for government dismissal of *qui tam* suits, as discussed above, many litigants have latched on to Justice Thomas's dissent arguing that the FCA's *qui tam* provisions are unconstitutional.[64] According to Justice Thomas, because Article II of the US Constitution vests the entire "executive power" in the President and those acting beneath him, it structurally violates the Constitution for Congress to permit non-executive persons (like private relators) to exercise executive power.[65] Justices Kavanaugh and Barrett also stated in a concurrence that "there are substantial arguments that a *qui tam* device is inconsistent with Article II and that private relators may not represent the interests of the United States in litigation."[66]

So far, only one district court was willing to go where the three Justices have hinted. In *United States ex rel. Zafirov v. Florida Medical Associates, LLC*,[67] Middle District of Florida Judge Kathryn Kimball Mizelle (a former clerk of Justice Thomas) held that the FCA violated Article II and was unconstitutional.[68] Judge Mizelle ruled that FCA relators are "officers of the United States" because they have the authority to enforce civil laws by conducting litigation in federal courts to vindicate public rights[69] – again, a view that has received no traction since the Civil War. Because FCA relators are (on this view) federal "officers," they are subject to the Appointments Clause in Article II, which requires the President to appoint "officers of the United States" and has no exception for *qui tam* suits.[70] Accordingly, Judge Mizelle held that any relator could not maintain any *qui tam* action consistent with the Constitution, and the case was dismissed.[71]

With that said, *Zafirov* is an outlier (based as it is entirely on the equally outlying statements from certain Justices in *Polansky*). Every other district court that has considered this issue after *Polansky* (at least six by our count on the date of this publication) has found that the FCA's *quit tam* provisions are constitutional.[72] Although many of those cases pre-dated *Zafirov*, the court in one case expressly criticized *Zafirov*, noting that it has no binding support beyond the non-binding statements from three Justices in *Polansky*.[73] *Zafirov* is currently on appeal at the Eleventh Circuit, along with several other cases in which district courts rejected constitutional challenges to the FCA's *qui tam* provisions. As this issue winds through the appellate courts, it will likely become clearer whether appellate courts are willing to embrace the view that the FCA is unconstitutional. And, if the Courts of Appeal split on this issue, the Supreme Court may weigh in sometime in the near future.

Can punitive aspects of FCA monetary awards violate the Excessive Fines Clause of the US Constitution?

Another interesting FCA development in 2024 is that courts have utilized the Excessive Fines Clause of the Constitution to reduce punitive aspects of large monetary awards imposed for violations of the FCA – namely, statutory penalties and treble damages.

The FCA's damages regime is punitive. Each "false claim" submitted – even as part of a broad course of conduct or contractual arrangement spanning years and embracing hundreds or even thousands of discrete invoices – is a separate violation of the FCA. And, for each such violation, the violator can be found liable for triple the amount of government losses (*ie*, the measure of "actual damages" times three), in addition to a monetary penalty set by regulators and subject to inflation.[74] In 2024, per-penalty amounts typically ranged between $13,946 and $27,894, the minimum and maximum penalty amounts decided by the Department of Commerce, respectively.[75]

This is particularly important as FCA lawsuits may involve tens of thousands of alleged false claims; an FCA lawsuit rarely involves only one (or even a handful) of alleged false claims. Think of a defendant administering one of the numerous government pandemic-era assistance programs. To the extent such program involved individual loans and/or grants to small businesses or sole proprietors, the government has taken the position that each such loan or grant, no matter how small, is its own "false claim" – including in cases where a given defendant processed hundreds of thousands of such loans or grants. This has led to some potentially oppressive penalty awards, including some grossly disproportionate to the actual damages caused by the defendant's conduct. Some defendants have thus looked for grounds to challenge the proportionality of such uneven penalties. That is where the Excessive Fines Clause comes into play.

By way of background, in 1998, the Supreme Court concluded that a civil monetary penalty could violate the Excessive Fines Clause of the Eighth Amendment.[76] Until recently, courts have been reluctant to declare monetary penalties imposed under the FCA improper on this basis. The opportunity to do so arose in 2021, where, in a case of first impression, the Eleventh Circuit held that the Excessive Fines Clause of the Eighth Amendment applied to FCA *qui tam* actions in which the government has declined to intervene.[77] In that case, *Yates v. Pinellas Hematology & Oncology, P.A.*, following a jury verdict relating to Medicare claims, the district court imposed the statutory minimum fine for each of the 214 violations at issue, resulting in a penalty award of $1.177 million – over *1,500 times* the actual damages.[78] On appeal, the parties disputed two key elements of the district court's decision: (1) whether the Eighth Amendment's Excessive Fines Clause applied to the monetary penalties portion of the judgment and, (2) if so, whether the penalties portion of the award constituted an unconstitutionally excessive fine.[79] The court held that the Excessive Fines Clause applied because a monetary award in *qui tam* action is "imposed by the United States" (even though the government, by dint of the DOJ's exercise of discretion, declined to participate directly in the case on its own behalf).[80] Despite finding that the Excessive Fines Clause applied, the Court upheld the $1.177 million FCA penalty even though the actual damages were only $755.[81] The Eleventh Circuit explained that it granted the district court's decision a "strong presumption of constitutionality" because the court had applied the statutory minimum penalty for each separate FCA violation (*ie*, $5,500 per violation).[82]

In contrast to *Yates*, in 2024, several courts invoked the Eighth Amendment to reduce FCA monetary judgments. In February 2024, a federal district court in *United States ex rel. Fesenmaier v. Cameron-Ehlen Group, Inc*. ruled that the jury's monetary award of $487 million in an FCA case had to be reduced because it was unconstitutionally excessive.[83] There, the jury found that the amount of actual damages was $43 million – an amount that was roughly trebled to $131 million. The remaining portion of the judgment was $358 million in mandatory statutory penalties for the 64,575 claims the jury found to be false. The court held that the judgment as a whole was not a "permissible punishment." The court based that conclusion on various factors, including the actual harm caused by the defendants, the severity of the defendants' violations, legislative intent, legislative history, the punitive-to-compensatory damages ratio, and the fact that the large number of separate, penalizable violations resulted from "something of an accounting fluke."[84] Based on those considerations, the court reduced the verdict by hundreds

of millions of dollars to $216 million – an award comprised of $43 million of actual damages, $86.6 million in enhanced damages, and $86.6 million in statutory penalties.[85]

Fesenmaier is not the only example of a successful Excessive Fines challenge to an FCA award in 2024. The Eighth Circuit also affirmed a district court's conclusion that an FCA verdict violated the Excessive Fines Clause in *Grant ex rel. United States v. Zorn*.[86] In *Zorn*, the district court had awarded treble damages and statutory penalties after finding that the defendants had submitted 1,050 false claims to the government.[87] The breakdown of these penalties involved $86,332 in actual damages, which were trebled to $258,996, to which the court piled on an additional statutory per-claim penalty of $5,000 for violations occurring before a set date, and a statutory per-claim penalty of $12,537 for violations occurring after the set date.[88] This led to a total civil penalty of $7,699,525 – even though actual damages were less than $90,000. The district court reduced the civil penalty by more than $1 million to $6,474,900, citing the Excessive Fines Clause.[89] The Eighth Circuit looked at the ratio of damages and penalties in assessing whether the award was excessive, observing that the verdict reflected "twenty-six times the amount of treble damages and seventy-eight times the amount of actual damages."[90] Based on those ratios, the court ruled that the penalties were excessive, notwithstanding the district court's reduction of the penalties.

The court's analysis proceeded in several parts. First, the court confirmed that the Excessive Fines Clause applies in *qui tam* actions, even where the government has chosen not to intervene.[91] Second, the court explained that an assessment of whether penalties are excessive should be based on a comparison of the actual damages to the amount of penalties – not a comparison of penalties to a combination of compensatory damages and the punitive aspects of the damages award (*ie*, treble damages and statutory penalties).[92] Third, the court held that the total award amount violated the Excessive Fines Clause when considering the relatively minimal harm the defendants had actually caused, the lack of support for some of the allegations levied against the defendants, and the Supreme Court's own statement that "an award of more than four times the amount of compensatory damages might be close to the line of constitutional impropriety."[93] Based on those holdings, the Eighth Circuit vacated the punitive sanction and remanded the case back to the district court along with instructions "to apply a baseline civil penalty of $5,500 for those violations that occurred on or before November 2, 2015, determine the amount of treble damages that is compensatory and the amount that is punitive, ensure the punitive sanction falls within an appropriate single-digit multiplier of the amount of compensatory damages, and enter judgment accordingly."[94] The instruction to ensure that the punitive sanction falls within a single-digit multiplier ensures that the ultimate monetary award in the case will be significantly reduced on remand.

These cases demonstrate that the Excessive Fines Clause may have teeth for defendants seeking to reduce the punitive aspects of large monetary awards under the FCA. But the line between an excessive and a constitutionally permissible fine still remains rather undefined, and this is an evolving area. It is possible that some courts will reject the premise that the Eighth Amendment even applies to monetary recoveries in *qui tam* actions in which the government declines to intervene. For instance, in 2024, the Seventh Circuit in *Stop Illinois Health Care Fraud, LLC v. Sayeed* expressed "skepticism" as to whether the Excessive Fines Clause applied to these kinds of FCA disputes, but the court ultimately held that it did not need to reach that conclusion.[95] The Court held that even if it reached that conclusion, it still would not find the fines to be "unconstitutionally excessive" because the fine fell "squarely within the boundaries set by Congress."[96]

Overall, it is still a fairly rare occurrence for courts to reduce FCA verdicts under the Excessive Fines Clause, but this emerging jurisprudence bears watching. Companies on the losing end of a large FCA judgment may consider making the argument that the verdict violates the Excessive Fines Clause of the Constitution. Going forward, these cases provide new constitutional avenues for defendants to obtain a reduction in large monetary awards in FCA cases.

Jurisprudential developments: But-for causation

Courts continued to grapple with how to interpret the FCA's causation element in cases where a violation of the Anti-Kickback Statute (AKS) is a predicate violation for the false claim allegation. This has led the healthcare industry to anxiously await the First Circuit's ruling in *United States v. Regeneron*, Case No. 23-2086 – which was argued in July 2024 and decided on February 18, 2025, making the First Circuit the latest court to weigh in on the Circuit split.[97] The Supreme Court has not provided any guidance on this topic, but the First Circuit's recent ruling may create substantial pressure for the Supreme Court finally to weigh in.

As background, relators may pursue FCA claims based on alleged violations of the AKS on the ground that submitting a claim to the government that "includes items or services *resulting from* an [AKS] violation constitutes a false or fraudulent claim for purposes of [the FCA]."[98] The debate among the federal appellate courts is premised on the meaning of the "resulting from" language in this portion of the FCA. On the one hand, the Third Circuit in *Greenfield* was the first US Court of Appeals to address the question of what causal link was sufficient to connect an alleged kickback scheme to a subsequent claim for reimbursement: "a direct causal link, no link at all, or something in between."[99] Rather than perform a textual analysis on the term "resulting from," the Third Circuit held in 2018 that the language only requires that a relator prove "a *link* between the alleged kickbacks and the medical care received."[100] This is a more relaxed standard for demonstrating a violation of the FCA predicated on a violation of the AKS. On the other hand, in *Cairns*, the Eighth Circuit rejected the Third Circuit's approach in 2023 and instead addressed the issue as one of statutory interpretation.[101] Relying on the ordinary meaning of the "resulting from" language, the court held that the relator must prove a direct causal link between the AKS violation and defendant's subsequent submission to the government of a false claim for reimbursement.[102] In other words, the government would need to establish that "the defendants would not have included particular 'items or services' [in their claims to the government] absent the illegal kickbacks."[103] Later in 2023, the Sixth Circuit followed suit in the *Martin* decision, opting to apply the "but-for" causation standard to FCA claims.[104] In *Martin*, the Sixth Circuit did not mince words when it stated "[w]here a statute 'yields a clear answer, judges must stop.'"[105]

This leads to the *Regeneron* appeal that the First Circuit resolved in February 2025. In July 2020, the US filed suit against a drug manufacturer, alleging that the manufacturer paid millions of dollars to a charitable patient assistance program to induce purchases of its drug.[106] The parties filed cross-motions for summary judgment, arguing over the appropriate causation standard to apply to this set of facts.[107] The *Regeneron* district court ultimately found the statutory construction analysis from the Eighth and Sixth Circuits to be persuasive.[108] In doing so, the court rejected the DOJ's and the Third Circuit's more relaxed approach, while observing that a "but-for" causation standard did not make the government's burden "insuperably difficult."[109] The district court, in fact, ruled that the government had satisfied its burden of establishing that a dispute of fact on causation existed, even under the stricter but-for causation standard, and thus denied *Regeneron*'s motion for summary judgment.[110] Following this decision, the district court agreed with Regeneron's request that the district court *sua sponte* certify its summary judgment ruling for interlocutory appeal.[111] On appeal, the First Circuit sided with its sister Circuits that had adopted the stricter causation standard, holding that the relator or the government "must prove that the AKS violation was a but-for cause of the false claim" and affirmed the district court's judgment.[112]

A ripe Circuit split exists on this issue of causation. In the coming months, the government will need to weigh its options in whether to ask the Supreme Court to hear the case and resolve the case, which appears particularly worth of review given the Circuit split and the increasing number of district court decisions applying the "but-for" causation standard. Either way, the First Circuit's opinion will likely impact strategy surrounding FCA litigation, including causation-based arguments for seeking dismissal of FCA claims.[112]

This further highlights the need for litigants to be mindful of both the Circuit and district in which they sit. If a case is in those Circuits that do not have a controlling circuit court decision, there are opportunities to argue for the more favorable standard to your defense – that is, the "but for" causation standard.

Some noteworthy 2024 FCA settlements

Generic drug manufacturer

That same month, the DOJ announced that the country's largest generic-drug manufacturer, Teva Pharmaceuticals, had agreed to pay $425 million to resolve allegations that it violated the FCA "by paying copays for Medicare patients for the multiple sclerosis drug Copaxone while steadily raising the drug's price."[113]

AKS and Stark Law enforcement

In 2024, the DOJ signaled that it continues to be committed to cracking down on Medicare fraud, including violations of the AKS. The DOJ announced at least four settlements of FCA cases for such alleged violations:

- In January 2024, a New York hospital settled its healthcare fraud claims for $17.3 million. The settlement resolved FCA claims based on the allegation that hospital contracts improperly compensated physicians for each referral that they sent to the hospital's chemotherapy infusion center.[114]
- In May 2024, a Florida medical laboratory owner agreed to pay $27 million to settle allegations that he billed Medicare for cancer genomic tests that were not medically necessary and were procured through illegal kickbacks, in violation of the AKS.[115]
- Also in May 2024, the DOJ announced a $12 million settlement with a spinal device manufacturer (and its senior executives) to resolve allegations that they illegally paid kickbacks to 17 orthopedic surgeons and neurosurgeons to induce them to use the manufacturer's products in procedures performed on Medicare beneficiaries.[116]
- In December 2024, a Southern California-based clinic and laboratory paid $10 million to resolve allegations that they submitted false claims to Medicare and California's Medicaid program, arising from allegations of paying kickbacks and making self-referrals. The defendants were accused of "(a) paying kickbacks to marketers to refer Medicare and Medi-Cal beneficiaries to SCMC clinics in violation of the Anti-Kickback Statute (AKS), (b) paying kickbacks to third-party clinics in the form of above-market rent payments, complimentary and discounted services to clinic staff and write-offs of balances owed by patients and clinic staff in exchange for referring Medicare and Medi-Cal beneficiaries to UDL for laboratory tests in violation of the AKS and (c) referring Medicare and Medi-Cal beneficiaries from SCMC clinics to UDL for laboratory tests in violation of the Stark Act prohibition against self-referrals."[117]

Opioid epidemic

In 2024, the DOJ announced several FCA settlements involving healthcare fraud in connection with the opioid epidemic.[118] The DOJ announced settlements with two entities that had filed for bankruptcy. The first was with a now-bankrupt opioid manufacturer. Under the terms of the settlement, the government received an "unsubordinated, general unsecured claim of $475.6 million" to resolve allegations relating to losses to federal healthcare programs that paid for one of the manufacturer's blockbuster opioid products.[119] Another settlement was reached with Rite Aid and its subsidiaries and affiliates. As part of the settlement, the government was provided a $7.5 million payment and an "unsubordinated, general unsecured claim of $401.8 million" to resolve allegations that Rite Aid knowingly dispensed unlawful opioid prescriptions that lacked a legitimate medical purpose.[120]

Separately, the DOJ and a doctor entered a consent judgment that required the doctor to pay the government $4.7 million arising from allegations that he unlawfully prescribed opioids without a medical basis and received kickback payments from a drug manufacturer.[121]

Military procurement fraud

In June 2024, the DOJ announced that two defense contractors had agreed to pay $70 million to resolve FCA allegations that they had overcharged the US Navy "for spare parts and materials needed to repair and maintain the primary aircraft used to train naval aviators."[122]

Pandemic-related fraud

In 2024, the DOJ continued to crack down on fraud in connection with the Paycheck Protection Program and other frauds affecting government healthcare programs for services related to COVID-19 testing and treatment. "During fiscal year 2024, the Department obtained more than 250 False Claims Act settlements and judgments, which collectively exceeded more than $250 million, resolving allegations of pandemic-related fraud."[123] The significant number of settlements reflects that COVID-19-related fraud was one of the DOJ's top FCA enforcement priorities last year and may continue to be a priority moving forward – see the following section for a more robust discussion of the DOJ's COVID-19-related enforcement efforts.

Enforcement trends and initiatives

FCA and AI, cybersecurity, and technology

AI, cybersecurity, and ever-continuing technological updates are transforming almost every field they are utilized in, including the law. As such, it is no surprise that the government has taken actions to address these areas.

Artificial intelligence.

On March 7, 2024, Lisa Monaco, then-Deputy Attorney General, spoke about AI at the American Bar Association's 39th National Institute on White Collar Crime. She noted that the DOJ planned to address the risks AI posed and made it clear that fraud and misconduct promulgated through AI would be treated as though an actor or entity had engaged in the misconduct.[124] She also noted that the DOJ will seek more severe consequences when an actor or entity intentionally misuses AI for bad actions.[125] Monaco further stated that, moving forward, the DOJ would be considering an entity's ability to protect against AI misuse and the risks AI poses when reviewing their compliance programs.[126] Monaco concluded her comments on AI by announcing a new DOJ initiative called "Justice AI" that would be utilized to address potential frauds involving AI.[127]

Technologies involved in FCA violations.

In 2024, several court cases addressed issues surrounding the use of emerging technologies to submit claims to the government and the implications those technologies may have for FCA defendants.

In *United States ex rel. Stenson v. Radiology Ltd., LLC*, the Ninth Circuit reversed, in part, a district court's dismissal of an FCA claim brought by a relator alleging the use of inadequate diagnostic technology resulting in false claims to Medicare.[128] In *Stenson*, the relator had claimed that the defendant had submitted false claims to the Centers for Medicare and Medicaid Services for diagnostic readings that had been conducted on a non-medical grade computer. The district court dismissed the action at the pleading stage for failure to state a claim. The Ninth Circuit disagreed. The technology that the defendant had used for diagnostic testing played a significant role in the ruling. The relator had alleged "that radiologists can detect cancer in images displayed on diagnostic-grade monitors but cannot detect cancer when the same images are displayed on lower-grade displays, like the Dell Monitors" that the defendants used for diagnostic purposes.[129] The court explained that "conducting a reading on wholly inadequate technology is effectively the same as not providing the service at all."[130] Based on these allegations, the court ruled that the relator had sufficiently pled that the defendant "falsely certifie[d] its compliance with the general Medicare statute by submitting claims for diagnostic readings conducted on the Dell Monitors" – monitors that Dell did not even market for diagnostic use. According to the Ninth Circuit, the defendant's use of inadequate technology to perform diagnostic testing – which was subsequently billed to CMS – could gave rise to FCA liability.

That same month (April 2024), the District Court of New Jersey's decision in *U.S. ex rel. Schieber v. Holy Redeemer Healthcare System, Inc*. denied a motion to dismiss a *qui tam* action against a company that provided a "fully integrated Software-as-a-Service (SaaS) application for homecare and hospice agencies."[131] The relator claimed that the application "was intentionally designed to inflate reimbursements from Medicare, Medicaid, and private health insurance" – and 'caused' home health providers to 'upcode' services claims because it 'automatically and repeatedly prompted the provider to select a higher number of necessary visits.'"[132] As one example, "if a provider determined that a patient required twelve home visits, the SaaS application would allegedly provide a prompt stating: 'There are 12 therapy visits. The next level begins at 14. Are further edits needed?'" As another example, "if a provider input four or fewer visits, the SaaS application would purportedly 'prompt [a provider] to increase his assessment to six (6) visits' to avoid the downward reimbursement afforded under the LUPA framework." According to the relator, "most nurses and therapists simply accepted the [SaaS] prompt to increase the number of visits." The court concluded that the relator had alleged enough at the pleading stage for the provider of this software application to be held liable for violating the FCA. This is an interesting – and perhaps extreme – example of how the use of emerging technologies to bill the government can give rise to FCA liability.

Cybersecurity.

The courts also addressed issues of cybersecurity-related false claims in 2024. There were multiple cases in 2024 where the DOJ utilized the Civil Cyber-Fraud Initiative (CCFI)[133] to pursue claims against entities for knowingly being noncompliant with cybersecurity requirements and misrepresenting their compliance timelines. Three of these cases have been settled, while one is still ongoing. In each of the DOJ's press releases announcing settlements for these cases, Brian M. Boynton, then-Principal Deputy Assistant Attorney General and head of the Justice Department's Civil Division, was quoted as saying, "We will continue our efforts

under the department's Civil Cyber-Fraud Initiative to hold contractors accountable when they fail to honor cybersecurity requirements designed to protect government information."[134]

Several FCA settlements involving cybersecurity issues were reached in 2024:

- In May 2024, a staffing company agreed to pay $2.7 million to resolve allegations that it had violated the FCA by not utilizing the appropriate measures needed to protect contact-tracing subjects' personal health information (PHI).[135]
- Similarly, in June 2024, two consulting companies agreed to pay $7.6 million and $3.7 million, respectively, to settle allegations that they had not completed their "required pre-production cybersecurity testing" which led to some applicants' personally identifiable information (PII) being made public.[136]
- In October 2024, Pennsylvania State University (Penn State) agreed to pay $1.25 million to settle allegations that it failed to implement required cybersecurity measures in connection with its contracts with Department of Defense and NASA but had falsely represented its compliance with these measures.[137] Those contracts required Penn State to utilize a specific cloud software and to submit "cybersecurity assessment scores" to show its compliance with certain cybersecurity requirements.

Moving forward, companies are encouraged to stay aware of the risk of FCA liability for the use of AI, inadequate cybersecurity measures, and emerging technologies. FCA compliance programs are encouraged to take these developments into account moving forward.

Continued pursuit of COVID-19-related FCA violations

A trend likely to continue into 2025 is the government's focus on allegations of FCA violations related to the COVID-19 pandemic. Violations have included, but are not limited to, fraudulent claims in relation to the Paycheck Protection Program (PPP) and fraudulent claims submitted in relation to COVID-19 tests.

In 2021, the Attorney General established the COVID-19 Fraud Enforcement Task Force (Task Force), to be led by the Deputy Attorney General, to utilize all measures available "including criminal, civil, and administrative actions…to combat and prevent COVID-19 related fraud."[138] The Task Force was created to "detect and disrupt future fraud" and "assist in the recovery of stolen funds," among other actions available to it to aid in the pursuit of COVID-19 related fraud.[139]

In April 2024, the Task Force released its 2024 Report, detailing its progress in combatting fraud related to the COVID-19 pandemic. The report noted that, as of its date of publication, "over 3,500 defendants [had been] criminally charged, over 400 civil settlements and judgments [were obtained, and] over $1.4 billion in fraudulently obtained CARES Act funds [had been] seized or forfeited."[140] The 2024 Report noted that the Task Force would continue its pursuit of COVID-19 related fraud, and would expand its efforts by supporting extending the statute of limitations to pursue this fraud and supporting legislation to create an "interagency body to respond to government benefits fraud."[141]

Based on the actions taken and language used by the Task Force, it is likely its efforts to pursue COVID-19-related fraud using the FCA will continue into, at least, 2025.

Other noteworthy developments

Below, we summarize other emerging FCA or FCA-related developments that companies are encouraged to note.

Increase in FCA per-claim penalty amounts

On January 15, 2025, FCA penalties were increased to adjust for inflation. As of that date, penalties start at a per-claim minimum of $14,308 (increased from $13,946) and are capped at a per-claim maximum of $28,619 (increased from $27,894).[142] These penalties are implemented against violations that have occurred or will occur after January 15 – along with violations that predate January 15 but are assessed by the Department of Commerce after January 15.[143]

Incoming Administrative False Claims Act

On December 23, 2024, the Fiscal Year 2025 National Defense Authorization Act was signed into law by President Joe Biden. This Act contained the Administrative False Claims Act, which raises the maximum amount of a fraud claim that can be pursued administratively from $150,000 to $1 million.[144] This means that agencies themselves would be able to handle fraud claims involving liabilities of up to $1 million. Due to the significant differences between federal court proceedings and administrative proceedings, this is a potentially consequential change that companies are encouraged to consider.

2025 and the new administration

The 2025 change in administration has led to a flurry of activity that companies are encouraged to monitor. One major item of note is a January 21, 2025 Executive Order, entitled, "Ending Illegal Discrimination and Restoring Merit-Based Opportunity," which appears to create potential FCA liability (or at least investigation and litigation risks) for continued maintenance of certain diversity, equity, and inclusion (DEI) programs.

The stated purpose of the Executive Order is ending illegal DEI and diversity, equity, inclusion, and accessibility (DEIA) programs. The Executive Order primarily focuses on companies and organizations that do business with the federal government, such as federal contractors or federal grant recipients, but also touches the private sector more broadly; it specifically "encourage[s] the private sector to end illegal discrimination and preferences, including DEI" and directs federal agencies to draft strategic enforcement plans targeting the "most egregious and discriminatory DEI practitioners." While the DEI Executive Order appears targeted at simply removing DEI initiatives, it creates significant uncertainty as to the regulatory scheme moving forward and creates potential liability against companies that fail to comply with these initiatives.

The DEI Executive Order includes a provision that creates potential FCA liability for government contractors or government grant recipients who do not comply with the Executive Order's mandate to cease DEI initiatives. Specifically, it states that *each contract or grant award* must include (A) "A term requiring the contractual counterparty or grant recipient to agree that its compliance in all respect with all applicable Federal anti-discrimination laws is material to the government's payment decisions for purposes of section 3729(b)(4) of title 31, United States Code; and (B) A term requiring such counterparty or recipient to certify that it does not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws." These provisions cite to the materiality provision of the FCA, which defines "material" as "having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property."

The Executive Order does not provide additional language or rationale for the citation to the FCA. However, it is apparent that this certification, which would accompany either (a) a potential government contractor's bid for work or (b) an application for federal grant funding, if viewed as false in the eyes of the current DOJ, could serve as a basis for an allegation of an FCA violation.

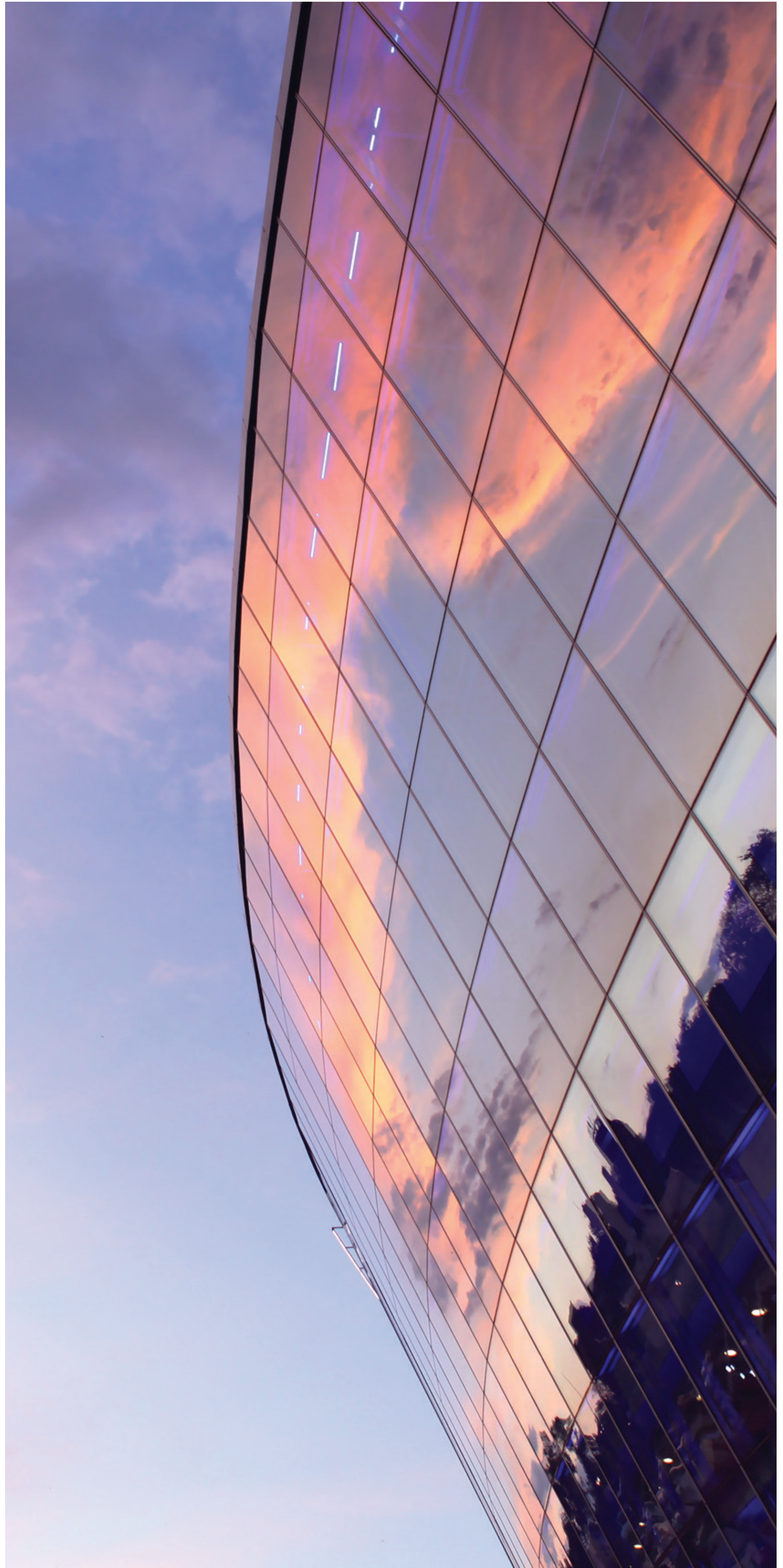
This is of note for a few reasons. First, while the scope may be limited, at this time, to these two categories, the federal government is clearly intent on expanding the reach of this Executive Order. Second, the certification is fairly broad – stating that the company does not operate any program in violation of federal anti-discrimination laws.

With the legal landscape continuing to change, the risk of non-compliance is significantly increased.

In addition, even if the DOJ does not pursue this allegation, a private whistleblower could – particularly given the FCA's *qui tam* relator provisions, as well as the DOJ's recent whistleblower initiatives.

To be sure, litigation is pending regarding the enforceability and legality of the Executive Orders. On February 21, 2025, the federal district court in Maryland issued a preliminary injunction in a case brought by the National Association of Diversity Officers in Higher Education, among others. The case challenges the constitutionality of two Executive Orders ("EOs") relating to diversity, equity, and inclusion ("DEI"), including 14173, "Ending Illegal Discrimination and Restoring Merit-Based Opportunity."[145] In its ruling, the court found that the plaintiffs were likely to prove at trial that the EO provisions that raise the possibility of FCA enforcement violate the First Amendment's free speech protections and the Fifth Amendment's due process protections, among other things. This nationwide injunction will remain in effect until either (a) the court makes a final determination on the merits or (b) it is successfully overturned on appeal.

Be on the lookout for client alerts and webinars from DLA Piper to keep you informed.



Endnotes

[1] *See* DOJ Office of Public Affairs, *False Claims Act Settlements and Judgements Exceed $2.9B in Fiscal Year 2024, available at:* https://www.justice.gov/opa/pr/false-claims-act-settlements-and-judgments-exceed-29b-fiscal-year-2024. This number excludes two settlements collectively valued at $850 million that we reached shortly after the end of fiscal year 2024.

[2] *See* Fraud Statistics – Overview – Oct. 1, 1986 – Sept. 30, 2024, Department of Justice, Civil Division, *available at*: https://www.justice.gov/opa/media/1384546/dl.

[3] *See* Fraud Statistics – Overview – Oct. 1, 1986 – Sept. 30, 2024, Department of Justice, Civil Division, *available at*: https://www.justice.gov/opa/media/1384546/dl.

[4] *See* Fraud Statistics – Overview – Oct. 1, 1986 – Sept. 30, 2024, Department of Justice, Civil Division, *available at*: https://www.justice.gov/opa/media/1384546/dl.

[5] *See* Fraud Statistics – Overview – Oct. 1, 1986 – Sept. 30, 2024, Department of Justice, Civil Division, *available at*: https://www.justice.gov/opa/media/1384546/dl.

[6] *See* DOJ Office of Public Affairs, *False Claims Act Settlements and Judgements Exceed $2.9B in Fiscal Year 2024, available at:* https://www.justice.gov/opa/pr/false-claims-act-settlements-and-judgments-exceed-29b-fiscal-year-2024.

[7] *See* Fraud Statistics – Overview – Oct. 1, 1986 – Sept. 30, 2024, Department of Justice, Civil Division, *available at*: https://www.justice.gov/opa/media/1384546/dl.

[8] *See* DOJ Office of Public Affairs, *False Claims Act Settlements and Judgements Exceed $2.9B in Fiscal Year 2024, available at:* https://www.justice.gov/opa/pr/false-claims-act-settlements-and-judgments-exceed-29b-fiscal-year-2024.

[9] *See* DOJ Office of Public Affairs, *False Claims Act Settlements and Judgements Exceed $2.9B in Fiscal Year 2024, available at:* https://www.justice.gov/opa/pr/false-claims-act-settlements-and-judgments-exceed-29b-fiscal-year-2024.

[10] *See Swift v. United States*, 318 F.3d 250, 252 (D.C. Cir. 2003); *United States ex rel. Sequoia Orange Co. v. Baird-Neece Packing Corp.*, 151 F.3d 1139, 1145 (9th Cir. 1998); *Ridenour v. Kaiser-Hill Co.*, 397 F.3d 925, 933 (10th Cir. 2005); *see also Borzilleri v. Bayer Healthcare Pharms., Inc.*, 24 F.4th 32, 39 n.7 (1st Cir. 2022) (suggesting agreement with this approach without deciding the issue).

[11] *See U.S. ex rel. Poteet v. Medtronic, Inc.*, 552 F.3d 503, 519 (6th Cir. 2009); *United States v. UCB, Inc.*, 970 F.3d 835, 844 (7th Cir. 2020).

[12] *Swift*, 318 F.3d at 252.

[13] *Sequoia Orange*, 151 F.3d at 1145; Ridenour, 397 F.3d at 936.

[14] *UCB*, 970 F.3d at 850.

[15] *Polansky*, 599 U.S. at 428.

[16] *Id*.

[17] *Polansky v. Exec. Health Res., Inc.*, 422 F. Supp. 3d 916, 927 (E.D. Pa. 2019).

[18] *Polansky v. Exec. Health Res., Inc.*, 17 F.4th 376, 388–91 (3d Cir. 2021)

[19] *Polansky*, 599 U.S. at 430–31 (citing 31 U.S.C. § 3730(c)(2)).

[20] *Id*. at 429 n.2.

[22] *Id*.

[23] *Id*. at 438.

[24] *Id*. at 437.

[25] *Id*. at 437-438.

[26] *Id*. at 438.

[27] *United States ex rel. Doe v. Credit Suisse AG*, 117 F.4th 155, 162 (4th Cir. 2024).

[28] *United States ex rel. Carver v. Physicians Pain Specialists of Alabama, P.C.*, No. 22-13608, 2023 WL 4853328, at *7 (11th Cir. July 31, 2023).

[29] *Brutus Trading, LLC v. Standard Chartered Bank*, No. 20-2578, 2023 WL 5344973, at *3 (2d Cir. Aug. 21, 2023) (for district court's dismissal rationale, see No. 18-11117, 2020 WL 3619050, at *3–4 (S.D.N.Y. July 2, 2020)).

[30] *United States ex rel. Sargent v. McDonough*, No. 23-328, 2024 WL 809902, at *1 (D. Me. Feb. 26, 2024).

[31] No. 23-371, 2024 WL 2978469, at *5 (E.D. Va. June 13, 2024).

[32] *Id*. at *5.

[33] *Id*.

[34] *Id*.

[35] *Sargent*, 2024 WL 809902, at *1 n.1 (citing Polansky, 599 U.S. at 436 n.4).

[36] *Id*.

[37] *Polansky*, 599 U.S. at 429 n.3.

[38] *See United States ex rel. Jackson v. Ventavia Rsch. Grp., LLC*, --- F. Supp. 3d ---, 2024 WL 3812294, at *6 (E.D. Tex. Aug. 9, 2024).

[39] *Carver*, 2023 WL 4853328, at *6; *see also Brutus Trading*, No. 20-2578, 2023 WL 5344973, at *2 (affirming district court's treatment of government's motion to dismiss as an "implicit[]" motion to intervene); *Jackson*, 2024 WL 3812294, at *6 (the government's "desire to dismiss the case" for valid reasons "constitutes good cause to intervene").

[40] 599 U.S. at 429 n.2 (emphasis added).

[41] *Swift*, 318 F.3d at 252; *see also Borzilleri*, 24 F.4th 39 n.7.

[42] *See Brutus Trading*, 2023 WL 5344973, at *2.

[43] *Polansky*, 599 U.S. at 427 (citing 31 U.S.C. § 3730(c)(2)(B)).

[44] *United States ex rel. Doe v. Credit Suisse AG*, 117 F.4th 155, 161 (4th Cir. 2024); *see also Brutus Trading*, 2023 WL 5344973, at *2 (if the district court "carefully consider[s] the parties' written submissions," it need not hold a hearing); *Sargent*, 2024 WL 809902, at *1–2 (rejecting request for courtroom hearing because the court's review of papers constituted an "adequate hearing," and noting that an "exceptional showing" would be required for a courtroom hearing); *Jackson*, 2024 WL 3812294, at *9 (finding the FCA does not require an evidentiary hearing).

[45] --- F. Supp. 3d ---, 2024 WL 3812294, at *6 (E.D. Tex. Aug. 9, 2024).

[46] *Id*. at *5.

[47] *Id*. at *6.

[48] *Id*.

[49] 740 Ill. Comp. Stat. Ann. 175/1 to 175/8.

[50] *See State ex rel. Fox v. Thornley*, 227 N.E.3d 788 (Ill. App. Ct. 4th Dist 2023).

[51] *Id*. at 796.

[52] *Id*. at 797.

[53] *Id*. at 798 (quoting *Polansky*, 599 U.S. at 437).

[54] False Claims Amendments Act of 1986, Pub. L. No. 99-562, § 2, 100 Stat. 3153, 3154 (codified at 31 U.S.C. § 3729(c) (2008)) (emphases added).

[55] § 4(a)(2), 123 Stat. at 1622 (codified at 31 U.S.C. § 3729(b)(2)(A)(i)) (emphasis added).

[56] *Wisconsin Bell, Inc. v. United States ex rel. Heath, No. 23-1127, 604* U.S.—, 2025 WL 567337, at *2 (U.S. Feb. 21, 2025).

[57] *United States ex rel. Health v. Wisconsin Bell, Inc.*, 92 F.4th 645 (7th Cir. 2024).

[58] *Wisconsin Bell, Inc. v. United States ex rel. Heath,* No. 23-1127, 604 U.S.—, 2025 WL 567337, at *2 (U.S. Feb. 21, 2025)

[59] *Id*.

[60] 31 U.S.C. § 3729(b)(2)(A)(ii)(I).

[61] *Wisconsin Bell, Inc.,* 2025 WL 567337, at *6-7.

[62] *Id.* at *8.

[63] *United States, ex rel. Polansky v. Executive Health Resources, Inc.*, 599 U.S. 419 (2023).

[64] *Id*. at 449-52.

[65] *Id*. at 45-51.

[66] *Id*. at 442.

[67] *United States ex rel. Zafirov v. Florida Medical Associates, LLC,* ---F. Supp.3d---, 2024 WL 4349242 (M.D. Fla. 2024).

[68] *Id*. at *4.

[69] *Id*. at *5-8.

[70] *Id* at *15-18.

[71] *Id* at *19.

[72] *See United States ex rel. Wallace v. Exactech, Inc.,* 703 F.Supp.3d 1356 (N.D. Ala. 2023) (collecting cases where every circuit has rejected this argument); *United States ex rel. Butler v. Shikara,* ---F.Supp.3d---, 2024 WL 4354807 (S.D. Fla. 2024); *United States v. Reditus Labs., LLC, 2024 WL 4351862* (C.D. Ill. 2024); *United States ex rel. CLJ, LLC v. Halickman, 2024 WL 3332055 (S.D. Fla. 2024); United States v. 24th Street, Inc.,* 2024 WL 3272828 (D.N.J. 2024); *United States v. Chattanooga Hamilton County Hospital Authority,* 2024 WL 4784432 (E.D. Tenn. 2024).).

[73] See, *eg, Chattanooga Hamilton County Hospital Authority,* 2024 WL 4784432, at *2-3.

[74] Department of Justice, Civil Division, *The False Claims Act,* https://www.justice.gov/civil/false-claims-act.

[75] *Id*.

[76] *United States v. Bajakajian,* 524 U.S. 321, 333 (1998).

[77] *Id*. at 1314.

[78] 715 F. Supp. 3d 1133, 1164 (D. Minn. 2024).

[79] *Id*. at 1159, 1164.

[80] *Id*.

[81] *Id*.107 F.4th 782, 797 (8th Cir. 2024).

[82] *Id*. at 788.

[83] *Id*. at 791.

[84] *Id*.

[85] *Id*.

[86] 107 F.4th 782, 797 (8th Cir. 2024).

[87] *Id*. at 788.

[88] *Id*. at 791

[89] *Id*.

[90] *Id*.

[91] *Id*. at 798

[92] *Id*. at 798-99.

[93] *Id.* at 798. (citing *State Farm Mut. Auto Ins. Co. v. Campbell*, 538 U.S. 425 (2003))

[94] *Id*. at 800-01.

[95] 100 F.4th 899, 906–07 (7th Cir. 2024).

[96] *Id*. at 907–08

[97] *United States v. Regeneron Pharms., Inc.,* No. 23-2086, —F.4th—, 2025 WL 520466, at *3 (1st Cir. Feb. 18, 2025).

[98] 42 U.S.C. § 1320a-7b(g) (emphasis added).

[99] *Greenfield*, 880 F.3d at 95.

[100] *Id*. at 100.

[101] *United States ex rel. Cairns v. D.S. Med. LLC,* 42 F.4th 828 (8th Cir. 2023).

[102] *Id*.

[103] *Id*.

[104] *United States ex rel. Martin v. Hathaway*, 63 F.4th 1043 (6th Cir. 2023).

[105] *Id.* at 1053 (quoting Argus Leader Media, 139 S. Ct. 2356 (2019)).

[106] *United States v. Regeneron Pharms., Inc.,* 2023 WL 6296393, at *1–2 (D. Mass. Sept. 27, 2023).

[107] *Id*. at *1.

[108] *Regeneron*, 2023 WL 6296393 at *11.

[109] *Id*. at 12.

[110] *Id*. at *13.

[111] *United States v. Regeneron*, 2023 WL 7016900, at *2 (D. Mass. Oct. 25, 2023).

[112] *United States v. Regeneron Pharms., Inc.*, No. 23-2086, —F.4th—, 2025 WL 520466, at *3 (1st Cir. Feb. 18, 2025).

[113] DOJ Office of Public Affairs, *False Claims Act Settlements and Judgements Exceed $2.9B in Fiscal Year 2024, available at:* https://www.justice.gov/opa/pr/false-claims-act-settlements-and-judgments-exceed-29b-fiscal-year-2024.

[114] DOJ Office of Public Affairs, *New York-Presbyterian/Brooklyn Methodist Hospital Settles Health Care Fraud Claims for $17.3 Million* (Mar. 12, 2024), *available at:* https://www.justice.gov/usao-edny/pr/new-york-presbyterianbrooklyn-methodist-hospital-settles-health-care-fraud-claims-173.

[115] DOJ Office of Public Affairs, *Florida Businessman Daniel Hurt to Pay Over $27 Million for Medicare Fraud in Connection with Cancer Genomic Tests* (Mar. 24, 2024), *available at*: https://www.justice.gov/opa/pr/florida-businessman-daniel-hurt-pay-over-27-million-medicare-fraud-connection-cancer-genomic.

[116] DOJ Office of Public Affairs, *Medical Device Manufacturer Innovasis Inc. and Two Top Executives Agree to Pay $12M to Settle Allegations of Improper Payments to Physicians* (May 29, 2024), *available at:* https://www.justice.gov/opa/pr/medical-device-manufacturer-innovasis-inc-and-two-top-executives-agree-pay-12m-settle.

[117] DOJ Office of Public Affairs, S*outhern California-Based Clinics, Laboratory and Their Owners to Pay $10M for False Claims Arising from Kickbacks and Self-Referrals* (Dec. 26, 2024), *available at:* https://www.justice.gov/opa/pr/southern-california-based-clinics-laboratory-and-their-owners-pay-10m-false-claims-arising.

[118] DOJ Office of Public Affairs, *False Claims Act Settlements and Judgements Exceed $2.9B in Fiscal Year 2024, available at:* https://www.justice.gov/opa/pr/false-claims-act-settlements-and-judgments-exceed-29b-fiscal-year-2024.

[119] *Id.; see* DOJ Office of Public Affairs, *Opioid Manufacturer Endo Health Solutions Inc. Agrees to Global Resolution of Criminal and Civil Investigations into Sales and Marketing of Branded Opioid Drug* (Feb. 29, 2024)*, available at:* https://www.justice.gov/opa/pr/opioid-manufacturer-endo-health-solutions-inc-agrees-global-resolution-criminal-and-civil

[120] DOJ Office of Public Affairs, *False Claims Act Settlements and Judgements Exceed $2.9B in Fiscal Year 2024, available at:* https://www.justice.gov/opa/pr/false-claims-act-settlements-and-judgments-exceed-29b-fiscal-year-2024; DOJ Office of Public Affairs, *Rite Aid Corporation and Affiliates Agree to Settle False Claims Act and Controlled Substance Act Allegations Related to Opioid Dispensing* (July 10, 2024), *available at:* https://www.justice.gov/opa/pr/rite-aid-corporation-and-affiliates-agree-settle-false-claims-act-and-controlled-substance.

[121] DOJ Office of Public Affairs, *Federal Court Permanently Prohibits Ohio Physician from Prescribing Opioids and Imposes $4.7M Judgment for Alleged Unlawful Opioid Distribution (Aug. 2, 2024), available at:* https://www.justice.gov/opa/pr/federal-court-permanently-prohibits-ohio-physician-prescribing-opioids-and-imposes-47m.

[122] DOJ Office of Public Affairs, *Sikorsky Support Services Inc. and Derco Aerospace Inc. Agree to Pay $70M to Settle False Claims Act Allegations of Improper Markups on Spare Parts for Navy Trainer Aircraft* (June 21, 2024), *available at:* https://www.justice.gov/opa/pr/sikorsky-support-services-inc-and-derco-aerospace-inc-agree-pay-70m-settle-false-claims-act.

[123] DOJ Office of Public Affairs*, False Claims Act Settlements and Judgements Exceed $2.9B in Fiscal Year 2024, available at:* https://www.justice.gov/opa/pr/false-claims-act-settlements-and-judgments-exceed-29b-fiscal-year-2024.

[124] Department of Justice, *Speech, Deputy Attorney General Lisa Monaco Delivers Keynote Remarks at the American Bar Association's 39th National Institute on White Collar Crime,* (Mar. 7, 2024), https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-monaco-delivers-keynote-remarks-american-bar-associations.

[125] *Id.*

[126] *Id.*

[127] *Id.*

[128] 2024 U.S. App. LEXIS 10136, *2 (non-precedential).

[129] *Id.* at *5-7.

[130] *Id.* at *5-7.

[131] *United States ex rel. Schieber v. Holy Redeemer Healthcare Sys., Inc.*, 2024 U.S. Dist. LEXIS 78387, *7 (D. N.J.)

[132] *United States ex rel. Schieber v. Holy Redeemer Healthcare Sys., Inc.*, 2024 U.S. Dist. LEXIS 78387, *7 (D. N.J.)

[133] In 2021, DOJ announced the implementation of the Civil Cyber-Fraud Initiative ("CCFI"). The CCFI uses the FCA to "pursue cybersecurity related fraud by government contractors and grant recipients" and targets entities that "knowingly [provide] deficient cybersecurity practices or protocols, knowingly [misrepresent] their cybersecurity practices or protocols, or knowingly [violate] obligations to monitor and report cybersecurity incidents and breaches." (Department of Justice, Press Release, *Deputy Attorney General Lisa O. Monaco Announces New Civil Cyber-Fraud Initiative* (Oct. 3, 2021), https://www.justice.gov/opa/pr/deputy-attorney-general-lisa-o-monaco-announces-new-civil-cyber-fraud-initiative.

[134] DOJ Office of Public Affairs, *The Pennsylvania State University Agrees to Pay $1.25M to Resolve False Claims Act Allegations Relating to Non-Compliance with Contractual Cybersecurity Requirements* (Oct. 22, 2024), *available at:* https://www.justice.gov/opa/pr/pennsylvania-state-university-agrees-pay-125m-resolve-false-claims-act-allegations-relating.

[135] DOJ Office of Public Affairs, *Staffing Company to Pay $2.7M for Alleged Failure to Provide Adequate Cybersecurity for COVID-19 Contact Tracing Data* (May 01, 2024), *available at:* https://www.justice.gov/opa/pr/staffing-company-pay-27m-alleged-failure-provide-adequate-cybersecurity-covid-19-contact

[136] DOJ Office of Public Affairs, *Consulting Companies to Pay $11.3M for Failing to Comply with Cybersecurity Requirements in Federally Funded Contract* (June 17, 2024), *available at:* https://www.justice.gov/opa/pr/consulting-companies-pay-113m-failing-comply-cybersecurity-requirements-federally-funded.

[137] DOJ Office of Public Affairs, *The Pennsylvania State University Agrees to Pay $1.25M to Resolve False Claims Act Allegations Relating to Non-Compliance with Contractual Cybersecurity Requirements* (Oct. 22, 2024), *available at:* https://www.justice.gov/usao-edpa/pr/penn-state-agrees-pay-125-million-resolve-false-claims-act-allegations-relating-non.

[138] Department of Justice, *COVID-19 Fraud Enforcement Task Force Fact Sheet*, https://www.justice.gov/opa/press-release/file/1394716/dl.

[139] *Id*.

[140] Department of Justice, Council of the Inspectors General on Integrity and Efficiency, *COVID-19 Fraud Enforcement Task Force 2024 Report*, (April 2024), https://www.justice.gov/coronavirus/media/1347161/dl?inline.

[141] *Id*.

[142] Federal Register, *Civil Monetary Penalty Adjustments for Inflation*, 6.3(3) (Dec. 30, 2024), https://www.federalregister.gov/documents/2024/12/30/2024-31310/civil-monetary-penalty-adjustments-for-inflation.

[143] Federal Register, *Civil Monetary Penalty Adjustments for Inflation*, 6.3 (Dec. 30, 2024), https://www.federalregister.gov/documents/2024/12/30/2024-31310/civil-monetary-penalty-adjustments-for- inflation.

[144] H.R.5009 - 118th Congress (2023-2024): To authorize appropriations for fiscal year 2025 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes, H.R.5009, Section 5203,118th Cong. (2024), https://www.congress.gov/bill/118th-congress/house-bill/5009/text.

[145] *Nat'l Ass'n of Diversity Officers in Higher Educ. v. Trump*, No. 1:25-CV-00333-ABA, 2025 WL 573764, at *24 (D. Md. Feb. 21, 2025).

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