NO. 17-

In the
Supreme Court of the United States

HOME CARE PROVIDERS, INC., NIGHTINGALE HOME HEALTHCARE, INC., NIGHTINGALE HOSPICE CARE, INC., and DEV A. BRAR,

Petitioners,

–v–

KELLY HEMMELGARN, RANDALL SNYDER, and INGRID MILLER, All Individually,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. In a series of decisions over more than four decades, this Court has applied the exhaustion, exclusive remedy, and jurisdiction stripping provisions of Section 205 of the Social Security Act, 42 U.S.C. § 405, to lawsuits that are disguised claims for benefits and disguised attempts to review Medicare provider decisions made reviewable by 42 U.S.C. §§ 1395cc and 1395ii. But the Court has not barred claims for relief for independently tortious conduct that relates in some tangential way to the Social Security or Medicare programs. Here, the court of appeals applied the exhaustion provision to a fourth amendment claim simply because the State official conducting the unlawful search worked for a State survey agency, and applied the provision to equal protection and first amendment claims that did not relate to any claim for benefits, a provider penalty, or provider reimbursement status.

Does the court of appeals' decision conflict with this Court's decisions in *Shalala v. Illinois Council on Long Term Care*, 529 U.S. 1 (2000); *Heckler v. Ringer*, 466 U.S. 602 (1984); and *Weinberger v. Salfi*, 422 U.S. 749 (1975) on this important question of federal law?

2. Section 405(g) provides a remedy under which a party may obtain judicial review of an administrative decision on benefits and §§ 1395cc and 1395ii apply that remedy to decisions involving provider eligibility or provider penalties. Section 405(h) requires the use of 405(g)'s remedy for matters within its scope and bars federal question and federal officer jurisdiction

over actions against the United States, the Secretary, or any officer or employee thereof to recover on any claim arising under those programs. The complaint in this case did not seek review of any Medicare claim for benefits, Medicare reimbursement decision, Medicare penalty, or Medicare eligibility determination, and the suit's surviving claims were not against the United States, the Secretary or any federal officer or employee.

Did the court of appeals decision to nonetheless apply § 405 conflict with the understanding of the section reflected in *Schoolcraft v. Sullivan*, 971 F.2d 81, 88-89 (8th Cir. 1992) and *Alvarado Hosp., LLC v. Price*, 868 F.3d 983 (Fed. Cir. 2017)

CORPORATE DISCLOSURE STATEMENT

None of Petitioners is a publicly traded entity and no publicly traded entities own more than ten percent of any petitioner entity.

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JURISDICTION

The Court of Appeals entered Judgment on June 27, 2017 and denied rehearing on August 22, 2017. Petitioners invoke this Court's jurisdiction under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

This case involves interpretation of 42 U.S.C. §§ 405; 1395cc and 1395ii, which the Appendix sets out in full. Sections 1395cc and 1395ii apply particular portions of the Social Security Act governing social security benefits appeals, including § 405, to Medicare benefits generally, and to determinations of provider status specifically. As this Court has held, those provisions adopted § 405 for Medicare "*mutatis mutandis*, *i.e.*, [a]ll necessary changes having been made." *Shalala v. Illinois Council on Long Term Care, Inc.*, 529 U.S. 1, 17 (2000) (quoting *Bowen v. Michigan Acad-*

emy of Family Physicians, 476 U.S. 667, 680 and *Black's Law Dictionary* 1039 (7th ed.1999).

This case turns on the meaning of subsections (g) and (h) of § 405. Subsection (g) grants a right of judicial review to "Any individual, after any final decision of the [Secretary] made after a hearing to which he was a party, irrespective of the amount in controversy . . . " The right is invoked by commencing a civil action "within sixty days after the mailing to [the individual] of notice of such decision or within such further time as the Commissioner of Social Security may allow." Subsection (h) provides:

> The findings and decision of the Commissioner of Social Security after a hearing shall be binding upon all individuals who were parties to such hearing. No findings of fact or decision of the Commissioner of Social Security shall be reviewed by any person, tribunal, or governmental agency except as herein provided. No action against the United States, the Commissioner of Social Security, or any officer or employee thereof shall be brought under section 1331 or 1346 of Title 28 to recover on any claim arising under this subchapter.

This Court has held that each of the three sentences in § 405(h) has independent meaning. *Weinberger v. Salfi*, 422 U.S. 749, 758-59 (1975).

STATEMENT

1. This case involves equal protection, first amendment and fourth amendment claims by Dev A. Brar, a doctor from India, and three of his healthcare businesses. Indiana State regulators targeted Dr. Brar based on his race and national origin and/or targeted him and his businesses as a "class of one" in violation of the equal protection clause. Respondents' conduct also included a warrantless, unreasonable search and seizure. Petitioners' sought damages for past violations and an injunction against future violations because the targeting and unlawful search were disruptive and costly to the businesses. Respondents worked for Indiana's State survey agency under 42 U.S.C. § 1395aa. The Secretary terminated Nightingale's Medicare Provider Agreement, and Nightingale separately sought administrative review of the termination under the Medicare statute, not in this action. This case seeks no relief from the termination or any other sanction the Secretary imposed on any provider, nor does it seek relief from any decision by the Secretary on any claims arising under the Medicare program.

Dev A. Brar, is a physician licensed in India who indirectly owns several home healthcare agencies and home hospice agencies. App.15a, ¶ 5.[1] Petitioner Home Care Providers, Inc., which Dr. Brar owns, is the corporate parent of the other two entity Petitioners:

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[1] References in the form "App.__" are to the Appendix filed in the Court of Appeals.

Nightingale Home Healthcare, Inc., and Nightingale Hospice Care, Inc. *Id.*, ¶ 6. This Petition will call Nightingale Home Healthcare, Inc. "Nightingale" and will call Nightingale Hospice Care, Inc. "Hospice." Through Nightingale, Hospice, and other subsidiaries, Home Care provides home healthcare and hospice services in Indiana and ten other States. *Id.*, ¶ 5. While the companies' Indiana locations are no longer eligible for Medicare, the companies maintain Medicare-eligible facilities in several other States.

Home healthcare services allow patients who otherwise require hospitalization or admission to a nursing home to receive care in their homes. App.20a, ¶ 22. This results in care that costs less than similar care delivered in an institution. *Id.* Patient outcomes are as good, and often better than, care provided in an institution. *Id.* Hospice provides hospice care to patients in residential settings, including assisted living facilities, other licensed facilities, and private homes. App.21a, ¶ 24. Nightingale and Hospice serve many patients who could not obtain care from other agencies due to geography or the difficulty, expense, or lack of profitability of providing care to those patients. App.20a, ¶ 23; App.21a, ¶ 25. The Indiana State Department of Health issued State licenses to both Nightingale and Hospice are licensed by.

As Medicare providers, Nightingale and Hospice had to comply with statutory and regulatory conditions of participation and enter into provider agreements. *Id.*, ¶ 18. The federal government uses State officials to conduct surveys to determine whether providers are in compliance, but may also use federal surveyors or rely upon private accreditation bodies such as The

Joint Commission, f/k/a the Joint Commission on Accreditation of Health Care Organizations. App.20a, ¶ 20. Nightingale and Hospice were accredited by the Accreditation Commission for Health Care. App.20a, ¶ 21. Surveys are conducted periodically to recertify providers for the Medicare or to address complaints. App.19a-20a, ¶ 19. Likewise, State regulators survey licensed facilities in connection with State license renewal or licensing complaints. App.21a, ¶ 29.

Respondents are three employees of the Indiana State Department of Health, who are sued in their individual capacities: Randall Snyder, Kelly Hemmelgarn, and Ingrid Miller. *Id.*, ¶ 30; App.23a, ¶ 38. Snyder is the Director of the State Department's Division of Acute Care. App.18a, ¶ 12. Hemmelgarn, who reports to Snyder, is a Program Director within the Acute Care Division and oversees State surveyors. *Id.*, ¶¶ 10, 12. Ingrid Miller is a State surveyor who reports to Hemmelgarn. *Id.* ¶ 11.

Dr. Brar recorded a racially tinged remark by one of Snyder's colleagues when she failed to hang up after leaving a voicemail for Dr. Brar. App.24a, ¶ 39. Dr. Brar called higher-ups at the Indiana State Department of Health to complain, and the caller was then disciplined. *Id.*, ¶ 40. Thereafter, Hemmelgarn and Snyder began to subject Dr. Brar, Home Care, Nightingale, and Hospice to a continuing campaign of harassment, discrimination, intimidation, and retaliation based on Dr. Brar's race, Dr. Brar's complaint, and Respondents' personal dislike or disapproval of Dr. Brar and his companies. App.22a, ¶ 30.

Snyder and Hemmelgarn have taken actions that are extraordinary for government officials at their

level of seniority. App.23a, ¶ 36. Hemmelgarn made a complaint via a government website concerning Dr. Brar's use of the title "Dr." on the ground it was misleading because he has no Indiana medical license. *Id.* Hemmelgarn's complaint violated the Indiana Attorney General's guidelines that State agency officials at her level are to communicate regulatory complaints directly to the Attorney General's office, rather than via a website. *Id.* To conceal her conduct, Hemmelgarn's complaint asked that her name not be disclosed. *Id.* After learning Hemmelgarn made the complaint, Dr. Brar responded to the complaint, and no further action was taken on it. *Id.* To assess the permissibility of a branch office location in Merrillville, Indiana, near Chicago, Snyder took the extraordinary step of personally driving the distance between Plaintiffs' parent headquarters in Carmel, Indiana (an Indianapolis suburb) and the proposed branch location Merrillville location, finding it just outside permissible limits, which are expressed in terms of time, not miles. *Id.* ¶ 37. The State Department approved branch locations at the same or greater distances for other providers. *Id.*

In 2015, Hospice decided to close its office in Fort Wayne, where it had only a single patient on service nearby. App.24a-25a, ¶ 42. After initially indicating that Hospice could do so and it was only a simple matter of paperwork, Hemmelgarn and Snyder sent Miller to conduct an unlawful search and seizure by entering Hospice's business premises and rummaging through desks, boxes and filing cabinets in a general search for which there was neither probable cause nor a warrant. App.23a-24a, ¶ 38. Snyder and Hemmelgarn then used the results of Miller's illegal

search to initiate a "complaint survey" and a license revocation proceeding against Hospice, resulting in extensive legal expenses just to close the office. App.24a-25a, ¶ 42. They likewise tried to have CMS de-certify Hospice's Fort Wayne office, but CMS refused. *Id.*

Snyder and Hemmelgarn have subjected Nightingale to multiple "complaint" surveys. App.24a, ¶ 41. Nearly all surveys found that the complaints were not substantiated, and until recently none resulted in action against either Nightingale's license or Medicare status. *Id.* Nevertheless, the surveys were disruptive and costly to Nightingale. Filing No. 10, at ECF p. 4.

2. Dr. Brar and his companies sued on February 4, 2016, alleging the Indiana State Department of Health was committing ongoing discrimination based on race and national origin. App.29a, ¶ 66. They further alleged the Department was discriminating against Dr. Brar and his businesses based on personal dislike or some other irrational basis, *i.e.*, a "class of one" equal protection claim. *Id.*, ¶ 69. In addition, Hospice alleged Hemmelgarn had conducted an unlawful search of the Hospice's Fort Wayne office. App.31a, ¶ 78. Though the providers initially alleged due process violations and sought injunctive relief, they abandoned those claims on appeal and dismissed the Secretary.

On April 5, the district court dismissed the case for lack of subject matter jurisdiction. Although "A dismissal for lack of subject matter jurisdiction is not a decision on the merits, and thus cannot be a dismissal with prejudice, *Citadel Securities v. Chicago Board of Options Exchange*, 808 F.3d 694, 701 (7th Cir. 2015),

both the Order and the docket entry stated that "The Court has determined that it is without jurisdiction to hear Plaintiffs' claims; therefore, the dismissal is with prejudice and judgment will be entered accordingly." App.13a. Despite finding it lacked jurisdiction, the District Court opined that the Complaint also failed to state a claim on which relief could be granted. *Id.* at 12-13. The district court entered judgment the same day. Filing No. 43. The judgment was silent on whether it was with or without prejudice. *Id.*

3. Petitioners appealed to the United States Court of Appeals for the Seventh Circuit, arguing that their complaint asserted no claims that were governed by § 405, and that, if the section applied, exhaustion should be excused under *Weinberger v. Salfi*, 422 U.S. 749, 760-61 (1975) and *Mathews v. Eldridge*, 424 U.S. 319 (1976) because the complaint raised colorable constitutional claims that were wholly collateral to any claim for benefits.

The court of appeals eschewed any analysis of § 405(h), which is the subsection of the statute that requires resort to § 405(g)'s remedy and that expressly bars federal question and federal officer jurisdiction. Instead, the court of appeals held § 405(g), which simply provides the administrative remedy also required exhaustion of its own force, notwithstanding an express exhaustion provision in the second sentence of § 405(h). The court of appeals also held exhaustion could not be excused because the complaint, according to the court, contained no colorable constitutional claims. Like the district court's 12(b)(6) advisory opinion, the court of appeals holding there were no colorable constitutional claims rested on an absence of plead-

ing detailed facts, rather than any legal bar to the equal protection, first amendment and fourth amendment claims or any conclusion they weren't plausible under *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) or *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), neither of which the court cited. Because the dismissal was for lack of jurisdiction, and judgment was entered immediately, Petitioner's never had an opportunity to add more detail to their claims.

REASONS FOR GRANTING THE PETITION

The Court should grant certiorari to clarify that claims "arising under" the Social Security Act are those in which the Act "provides both the standing and the substantive basis" for the claim. *Shalala v. Illinois Council on Long Term Care*, 529 U.S. 1, 11 (2000) (quoting *Weinberger v. Salfi*, 422 U.S. 749, 760-61 (1975)). In other words, the administrative remedy, exhaustion, and jurisdiction stripping provisions in § 405 apply to what are, at bottom, claims for statutory benefits under the programs. For their part, respondents argued below that the exclusive remedy and jurisdiction-stripping provisions apply wherever a case has some relationship to the Act.

But "arising under" and "related to" are not legal equivalents. While some incautious dicta from *Illinois Council* and its predecessors suggests that § 405(h) "demands the 'channeling' of virtually all legal attacks through the agency," 529 U.S. at 13, the Court has not strayed from the basic statutory text in § 405,

which limits its effect to claims arising under the Social Security and Medicare statutes.

The Seventh Circuit's decision, on the other hand, demonstrates what happens when doctrine becomes unmoored from the statutory language that spawned it. Not only did the Seventh Circuit bar claims for which there is no statutory or administrative remedy under the Social Security Act or Medicare, its decision also conflicts with *Schoolcraft v. Sullivan*, 971 F.2d 81, 88-89 (8th Cir. 1992), which sensibly declined to apply to State officials a jurisdiction-stripping provision expressly naming "the United States, the Commissioner of Social Security, or any officer or employee thereof." The decision also conflicts with the Federal Circuit's more recent decision in *Alvarado Hosp., LLC v. Price*, 868 F.3d 983 (Fed. Cir. 2017), which held § 405 applies to claims for benefits arising under the Act, not suits on contracts that somehow relate to those benefits.

I. THE EXCLUSIVE REMEDY AND JURISDICTION-STRIPPING PROVISIONS IN 42 U.S.C. § 405(h) ONLY COVER SUITS FOR BENEFITS UNDER THE SOCIAL SECURITY AND MEDICARE ACTS

Section 405(h) has three separate sentences that describe when review under statutes other than 405(g) is barred: (1) The findings and decision of the Commissioner of Social Security after a hearing shall be binding upon all individuals who were parties to such hearing; (2) No findings of fact or decision of the Commissioner of Social Security shall be reviewed by any person, tribunal, or governmental agency except as herein provided; and (3) No action against the United States, the Commissioner of Social Security,

or any officer or employee thereof shall be brought under § 1331 or 1346 of Title 28 to recover on any claim arising under this subchapter. 42 U.S.C. § 405(h) (numbering and paragraph breaks added). Each of the three sentences has a distinct legal effect. *See Weinberger v. Salfi*, 422 U.S. 749, 758-59 (1975). The first sentence describes the decisions and findings of the Secretary to which it applies (those made after a hearing) and the effect of those decisions (binding on the individuals who were parties to the hearing). The second confines review of those decisions to the procedures available under § 405. And the third prohibits suit under specific statutes against "the United States, the Commissioner of Social Security, or any officer or employee thereof" on a claim arising under the subchapter, which governs claims for social security benefits.

Each sentence contains terms that define and limit its scope. The second sentence only applies to "findings of fact or decision[s] of the [Secretary]." It is only those findings and decisions that are shielded from review "by any person, tribunal, or governmental agency except as" provided in § 405. If a complaint does not seek to review decisions or findings of the Secretary, § 405 creates no bar to jurisdiction under other federal (or State) provisions.

The third sentence poses a jurisdictional bar to some actions under some federal (but not State) provisions. Again, it describes the class of actions within its scope, specifically, actions "to recover on any claim arising under this subchapter." If an action does not seek to recover on a claim that arises under Medicare, the third sentence of § 405(h) likewise does

not apply, and creates no bar to general federal question jurisdiction under 28 U.S.C. § 1331.

A. The State Defendants' Independent Decisions to Violate the Constitution Were Not Findings or Decisions by the Secretary

The first sentence of § 405(h) illuminates the sorts of "findings and decisions" of the Secretary that are shielded from non-§ 405 review by the second sentence. The first sentence refers to "[t]he findings and decision of the [Secretary] after a hearing." The decisions covered by the provision are the sorts of decisions the Secretary makes in administering the program, such as approving and denying reimbursement claims and entering into and terminating provider agreements, decisions specifically made reviewable by 42 U.S.C. § 1395cc

Those are not the actions challenged. Rather, the Complaint alleges constitutional torts that are wholly independent of the merits of any actions of the Secretary, every bit as much as ordinary torts that State actors might commit while performing governmental functions. In addition, neither the allegations of the Complaint nor any contention by the Defendants suggests that the Secretary decided Indiana regulators should violate the Constitution. Nor is there any suggestion the Secretary told Ingrid Miller to conduct a general search of Hospice's premises.

Rather, the State Defendants targeted Dr. Brar and Hospice, who were not the subject of regulatory actions by the Secretary. As Appellants pointed out in their briefing, this case is based on the State Defendants' independent decisions to violate the

constitution. App.20a. In the absence of any suggestion the Secretary told State officials to violate the constitution, the decisions to do so were theirs, not the Secretary's.

B. This Action Did Not Seek to Recover on any Claim Arising Under Medicare

Claims arising under Medicare are those claims for services that the Medicare statute authorizes to be paid. In each case where this Court applied the § 405(h) bar, the cases barred were direct or attempts to secure payment of Medicare benefit claims. For example, in *Shalala v. Illinois Council on Long Term Care*, 529 U.S. 1, 11 (2000), an association of Nursing homes challenged Medicare regulations that governed participation and payment in the Medicare program. In *Heckler v. Ringer*, 466 U.S. 602 (1984) the plaintiffs challenged the Secretary's decision not to provide Medicare Part A reimbursement to those who had undergone a particular medical operation. In *Weinberger v. Salfi*, 422 U.S. 749, 760-61 (1975), the plaintiffs challenged a "duration of relationship" regulation that would deny them Social Security benefits if valid.

Close analysis of *Illinois Council* and the Seventh Circuit decision in *Bodimetric Health Services v. Aetna Life & Casualty*, 903 F.2d 480 (7th Cir. 1990) clarify what the courts mean by claims that are "simply . . . styl[ed] as a claim for collateral damages instead of a challenge to the underlying denial of benefits." *Cf.* Slip Op. 16. In *Bodimetric*, the Seventh Circuit held the damages claims "would simply provide plaintiffs with theories to recover the value of lost benefits and consequential damages . . . " 903 F.2d at

486 (quoting the district court's opinion). Thus, the Court held, the ALJ can provide relief to *Bodimetric* through the reversal of denied claims." *Id.*

In *Illinois Council*, this Court first observed that § 405(h)'s third sentence applies "in a typical Social Security or Medicare benefits case, where an individual seeks a monetary benefit from the agency (say, a disability payment, or payment for some medical procedure), the agency denies the benefit, and the individual challenges the lawfulness of that denial." 529 U.S. at 10. The Court then described the question before it as "does the statute's bar apply when one who might later seek money or some other benefit from (or contest the imposition of a penalty by) the agency challenges in advance (in a § 1331 action) the lawfulness of a policy, regulation, or statute that might later bar recovery of that benefit (or authorize the imposition of the penalty)?" *Id.*

The cases above establish § 405(h)'s scope. It applies to claims for Medicare benefits and claims that seek to avoid the imposition of penalties under the Act. This case seeks none of those things. Plaintiffs disclaimed any request to overturn the termination, which was being sought instead in administrative proceedings. ECF 26 at p. 7; ECF 38 at p. 2. Nor did the Complaint seek payment of Medicare claims or an injunction against termination or non-payment. No relief under § 405(h) could even apply to Hospice or Dr. Brar, who were not then subject to termination and were not then being denied reimbursement on Medicare claims.

Applying the statute to bar claims such as the Equal Protection and Search and Seizure claims in

this case would immunize Defendants from accountability for discrimination and other outrageous conduct. Under the panel opinion, Defendants could announce they intend to survey providers owned by minorities twice as often as those owned by whites, and would do so by breaking and entering the providers' offices in the middle of the night, or perhaps hacking their computer files. Unless that action resulted in a final decision of the Secretary under § 405, the federal courts would be powerless to prevent such conduct. The unconstitutional conduct alleged in the complaint cannot be remedied via administrative review. Because the Complaint does not seek "to recover on any claim arising under" Medicare, the third sentence of § 405(h) does not apply.

II. THE JUDICIAL REVIEW PROVISION IN § 405(g) DOES NOT INDEPENDENTLY BAN SUITS THAT DO NOT SEEK TO RECOVER STATUTORY BENEFITS

Section 405(g), which the court of appeals relied on, simply provides for judicial review: "Any individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a party . . . may obtain a review of such decision" by filing a lawsuit in district court within 60 days. It is the second sentence of § 405(h) that renders that route of review exclusive for claims for benefits: "No findings of fact or decision of the Commissioner of Social Security shall be reviewed by any person, tribunal, or governmental agency except as" provided in § 405. Thus, § 405(h) governs whether exhaustion is required, not § 405(g). The panel's comment in footnote 10 that "[i]n light of our conclusion that Nightingale's claims were jurisdictionally barred under

§ 405(g)'s administrative-exhaustion requirement, we offer no opinion regarding whether these claims were barred by § 405(h)" makes no sense. The jurisdictional bars, if any, all appear in § 405(h).

In addition to the fact the exhaustion provision doesn't apply, the waiver principles in *Weinberger v. Salfi* and *Mathews v. Eldridge*, 424 U.S. 319 (1976) would excuse exhaustion even if the provision were potentially applicable, because the complaint raised colorable constitutional claims that were collateral to any claim for benefits. As *Mathews v. Eldridge* established, a constitutional claim can be "colorable" for purposes of excusing exhaustion, even if it cannot survive a motion to dismiss for failure to state a claim. That was the exact result in *Eldridge*. First the Court determined Mr. Eldridge's claim was sufficiently colorable to excuse exhaustion; then the Court rejected the claim on the merits.

III. THE DECISION CONFLICTS WITH *SCHOOLCRAFT V. SULLIVAN*, 971 F.2D 81 (8TH CIR. 1992) AND *ALVARADO HOSPITAL V. PRICE*, 868 F.3D 983 (FED. CIR. 2017)

The court of appeals decision lacks any analysis of the statutory language. Unsurprisingly, therefore, the court of appeals reaches conclusions at odds with the statutory text. Unfortunately, such things can happen when lower courts focus solely on this Court's decisions and do not look to the statutory language on which those decisions are based.

Decisions from two other circuits stand in stark contrast. In *Schoolcraft v. Sullivan*, 971 F.2d 81 (8th Cir. 1992), the Eighth Circuit refused to apply the

jurisdiction-stripping provision in the third sentence of subsection 405(h) to claims against State officials because "[t]his provision expressly applies only to officials of the United States. . . . The State defendants are neither officers nor employees of the federal government." *Id.* More recently, the Federal Circuit in *Alvarado Hosp., LLC v. Price*, 868 F.3d 983 (Fed. Cir. 2017) held that a suit based on a contract settling a Medicare claims dispute was not barred by § 405(h). The Federal Circuit Court noted that the Medicare Act did not provide either the standing or substantive basis for the providers' claim, nor was the Act "inextricably intertwined" with the breach of contract claim. *Alvarado Hosp., LLC v. Price*, 868 F.3d 983, 998 (Fed. Cir. 2017).

CONCLUSION

The Court should grant the Petition for Writ of Certiorari.

Respectfully submitted,

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