

No. 17-936

IN THE
Supreme Court of the United States

GILEAD SCIENCES, INC.,

Petitioner,

v.

UNITED STATES EX REL.

JEFFREY CAMPIE AND SHERILYN CAMPIE,

Respondents.

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

RESPONDENTS' SUPPLEMENTAL BRIEF

Andrew S. Friedman
Francis J. Balint, Jr.
BONNETT, FAIRBOURN,
FRIEDMAN & BALINT, P.C.
2325 E. Camelback Rd.
Suite 300
Phoenix, AZ 85016

Ingrid M. Evans
EVANS LAW FIRM, INC.
3053 Fillmore St., #236
San Francisco, CA 94123

Tejinder Singh
Counsel of Record
Erica Oleszczuk Evans
GOLDSTEIN & RUSSELL, P.C.
7475 Wisconsin Ave.
Suite 850
Bethesda, MD 20814
202.362.0636
tsingh@goldsteinrussell.com

Counsel for Respondents

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii
SUPPLEMENTAL BRIEF.....1
CONCLUSION.....2

TABLE OF AUTHORITIES

Cases

*United States ex rel. Mei Ling v.
City of Los Angeles,*
2018 WL 3814498 (C.D. Cal. July 25, 2018).....1

United States v. Somnia, Inc.,
2018 WL 684765 (E.D. Cal. Feb. 2, 2018).....1

Statutes

False Claims Act, 31 U.S.C. § 3729 *et seq.*.....1

SUPPLEMENTAL BRIEF

The United States has filed its brief recommending that certiorari be denied, and the arguments against certiorari are stronger than ever.

1. First, the government's brief confirms that the Ninth Circuit correctly applied this Court's precedents (U.S. Br. 7-17), that there is no circuit conflict (*id.* at 17-21), and that this case is a poor vehicle to revisit materiality under the False Claims Act, 31 U.S.C. § 3729 *et seq.*, at the pleading stage (U.S. Br. 22-23).

2. Second, experience continues to show that the question presented does not warrant certiorari. The decision below was issued in July 2017. The petition has been pending for almost a year. And contrary to petitioner's naked assertion that the Ninth Circuit's decision has rendered the False Claim Act's materiality standard toothless, district courts within the Ninth Circuit have in fact repeatedly cited the decision below in dismissing plaintiffs' claims. *See United States ex rel. Mei Ling v. City of Los Angeles*, 2018 WL 3814498, at *18, *22 (C.D. Cal. July 25, 2018) (holding that the government's complaint failed to plead materiality because it conceded that the government paid the defendants with actual knowledge of violations, and did not present any allegations suggesting that the relevant requirements were nonetheless material); *United States v. Somnia, Inc.*, 2018 WL 684765, at *8-9 (E.D. Cal. Feb. 2, 2018) (citing the decision below and holding that the relator had not pleaded materiality). These rulings are consistent with other district court decisions, cited in our Brief in Opposition (at 23), finding no materiality at the pleading stage.

3. Finally, no circuit split has developed—let alone deepened—regarding how courts should address materiality at the pleading stage. The government’s brief echoes the analysis in our Brief in Opposition, and explains why the only relevant appellate decision handed down after the initial certiorari papers were filed in this case (from the Sixth Circuit) is consistent with the decision below and with every other appellate decision to consider this question. U.S. Br. 21.

CONCLUSION

Certiorari should be denied.

Andrew S. Friedman
Francis J. Balint, Jr.
BONNETT, FAIRBOURN,
FRIEDMAN & BALINT, P.C.
2325 E. Camelback Rd.
Suite 300
Phoenix, AZ 85016

Ingrid M. Evans
EVANS LAW FIRM, INC.
3053 Fillmore St., #236
San Francisco, CA 94123

Respectfully submitted,

Tejinder Singh
Counsel of Record
Erica Oleszczuk Evans
GOLDSTEIN & RUSSELL, P.C.
7475 Wisconsin Ave.
Suite 850
Bethesda, MD 20814
202.362.0636
tsingh@goldsteinrussell.com

December 19, 2018