No. 25-271

IN THE

Supreme Court of the United States

UNITED STATES OF AMERICA, EX REL.
MARK J. O'CONNOR, ET AL.,
Petitioners,

v.

USCC WIRELESS INVESTMENT, INC., ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the D.C. Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Court of Appeals, consistent with the uniform approach of the lower courts, correctly concluded that a *qui tam* action under the False Claims Act should be dismissed when the public disclosure bar affirmative defense is properly invoked via Rule 12(b)(6) motion and—upon review of plaintiffs' allegations and judicially noticeable materials—the court determines that the public disclosure bar defense applies and the original source exception to that defense does not.

2. Whether the Court of Appeals correctly concluded, in accord with decisions of the First, Third, Sixth, and Tenth Circuits, that information provided by a relator "materially adds to the publicly disclosed allegations or transactions" only if it is objectively significant enough to influence the government's decision on whether to pursue an alleged fraud, as considered against the backdrop of previously public information.

PARTIES TO THE PROCEEDING

Petitioners Mark J. O'Connor and Sara F. Leibman were appellants in the United States Court of Appeals for the D.C. Circuit and plaintiffs in the United States District Court for the District of Columbia.

Respondents USCC Wireless Investment, Inc., Telephone and Data Systems, Inc., King Street Wireless, LP, Allison Cryor DiNardo, United States Cellular Corporation, King Street Wireless, Inc., Carroll Wireless, LP, Carroll PCS, Inc., Barat Wireless, LP, and Barat Wireless, Inc., were the appellees in the United States Court of Appeals for the D.C. Circuit and defendants in the United States District Court for the District of Columbia.

CORPORATE DISCLOSURE STATEMENT

Respondent Telephone and Data Systems, Inc. ("TDS") is a publicly held corporation organized under the laws of the State of Delaware and is a diversified telecommunications company that provides high-quality communications services. BlackRock, Inc., which is not an affiliate or a parent corporation of TDS, is a publicly held corporation that reported that it owned more than 10% of the common shares of TDS as of March 31, 2025. Similarly, and in addition, Vanguard Group reported that it owned more than 10% of the common shares of TDS as of December 31, 2023.

Respondent Array Digital Infrastructure, Inc. ("Array" f/k/a United States Cellular Corporation) is a publicly held corporation organized under the laws of the State of Delaware and leases tower space to tenants and provides ancillary services, holds noncontrolling interests in primarily wireless operating companies and holds certain wireless spectrum licenses. TDS owns more than 10% of the stock of Array and is its parent and affiliate.

Respondent ADI Wireless Investment, Inc. ("ADIWI" f/k/a USCC Wireless Investment, Inc.) is not a public corporation and is organized under the laws of the State of Delaware and owns investments in entities that own wireless spectrum. ADIWI is a wholly-owned subsidiary of Array.

Respondent King Street Wireless, LLC (f/k/a King Street Wireless, Inc.) is not a public corporation, and is a wholly-owned subsidiary of ADIWI. It owns an investment in an entity that owns wireless spectrum.

Respondent King Street Wireless, L.P. is not a public corporation. It owns wireless spectrum. King Street Wireless, LLC is the general partner and minority

equity owner of King Street Wireless, L.P. ADIWI is the limited partner and majority equity owner of King Street Wireless, L.P.

Respondent Carroll PCS, Inc., formerly a Delaware corporation and not a public company, merged with and into ADIWI effective December 31, 2018.

Respondent Carroll Wireless, L.P., formerly a Delaware limited partnership and not a public company, dissolved effective December 31, 2018 when its sole general partner, Carroll PCS, Inc., merged with and into its sole limited partner ADIWI.

Respondent Barat Wireless, Inc., formerly a Delaware corporation and not a public company, merged with and into USCOC of Rochester, Inc. effective December 31, 2018.

Respondent Barat Wireless, L.P., formerly a Delaware limited partnership and not a public company, dissolved effective December 31, 2018 when its sole general partner, Barat Wireless, Inc., merged with and into its sole limited partner USCOC of Rochester, Inc.

Respondent USCOC of Rochester, Inc., formerly a Delaware corporation and not a public company, merged with and into ADIWI effective January 2, 2019.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES Page

STATUTES and REGULATIONS

RULES

AGENCY DECISION

INTRODUCTION

The False Claims Act's public disclosure bar was purpose-built for cases just like this one. That provision requires courts to dismiss *qui tam* lawsuits arising out of "allegations or transactions" that were—to a "substantial[]" degree—already part of the public domain. 31 U.S.C. § 3730(e)(4)(A). The public disclosure bar is subject to an exception. If "the person bringing the action is an original source of the information," then the suit may proceed.

Fully aware of a previous and nearly identical lawsuit that advanced the same alleged fraud theory, Petitioners sought to plead around the public disclosure bar by alleging that they qualified as an "'original source' under *Id.* § 3730(e)(4)(B)." Second Am. Compl. ¶ 37, *United States ex rel. O'Connor* v. *U.S. Cellular Corp.*, No. 20-cv-2071 (D.D.C. June 2, 2020), Dkt. 118 ("SAC"). On their own initiative and before Respondents filed a motion to dismiss invoking the defense, Petitioners alleged that the original source exception negated the public disclosure bar because they purportedly "ha[d] independent material knowledge of the information on which the allegations are based." *Id.*

The D.C. Circuit, like the District Court, conducted an unremarkable, fact-bound 12(b)(6) analysis in holding that the public disclosure bar foreclosed Petitioners' claims. The court reviewed the complaint together with judicially noticeable documents and concluded that these materials presented facts that trigger the public disclosure bar. It then considered Petitioners' original-source exception allegations and rejected them, finding that Petitioners' supposedly new information—even if taken as true—did not "materially add" to already public allegations and information. Finally, the D.C. Circuit rejected Petitioners' half-

hearted complaints about the District Court's decision to dismiss with prejudice, noting that Petitioners never made a formal motion for leave to amend (as local rules require) and that the District Court did not abuse its discretion in refusing to excuse Petitioners' procedural default.

That fact-specific decision does not warrant review by this Court. Petitioners first claim they are entitled to review or a GVR on the theory that the False Claims Act decision below conflicts with this Court's decision in *Cunningham* v. *Cornell University*—an ERISA case—and because "[t]he D.C. Circuit had no opportunity to consider *Cunningham*'s holding that plaintiffs need not anticipate and negate affirmative defenses in their complaint." Pet. 19. That argument is misleading in its presentation and wrong in its substance.

It is misleading because, before *Cunningham* was decided, the D.C. Circuit *did* consider Petitioners' argument that they had no duty to "anticipate" and "negate an affirmative defense." That is the long-standing rule in the D.C. Circuit, which Petitioners invoked extensively below. Appellants' Reply Br. 5–6, *United States ex rel. O'Connor* v. *USCC Wireless Inv., Inc.*, No. 23-7044 (D.C. Cir. Feb. 2, 2024) (quoting *de Csepel* v. *Republic of Hungary*, 714 F.3d 591, 607–08 (D.C. Cir. 2013)). The D.C. Circuit applied that rule here. Pet. App. 12a. In a bid for a GVR, the petition simply swaps in citations to *Cunningham* to repeat the same uncontroversial point, which is inapposite because nobody *required* Petitioners to anticipate and attempt to negate an affirmative defense in their complaint. They did that on their own.

It is wrong because there is no conflict between *Cunningham* and the decision below. *Cunningham* held that a specific ERISA exemption was an affirmative

defense, not an element of an ERISA claim. But that is as far as the opinion went. Contrary to Petitioners' suggestions (Pet. 19–25), *Cunningham* did not say that affirmative defenses cannot be resolved against a plaintiff at the pleading stage. The Court did not consider that issue at all, let alone overthrow the established rule that plaintiffs can, in fact, plead themselves out of court by joining issue on an affirmative defense in the complaint. *E.g.*, *Jones* v. *Bock*, 549 U.S. 199, 215 (2007).

Further, because *Cunningham* was concerned with ERISA and not the FCA, *Cunningham* does not address the FCA-specific interplay between the public disclosure bar and original source exception. Many lower courts have addressed that subject, and they are unified in holding that a court may dismiss a complaint when the 12(b)(6) documents show that (i) the FCA's public disclosure bar applies and (ii) the original source exception to the bar does not. 31 U.S.C. § 3730(e)(4)(A). *Cunningham* provides zero basis for plenary review of that splitless question. And there is clearly no reason to GVR in an FCA case for the Court of Appeals to consider an ERISA decision that restates a point of pleading practice that has been settled in the D.C. Circuit for two decades, that Petitioners have already argued to that court based on binding circuit precedent, and on which the D.C. Circuit's opinion did not rest.

Petitioners' second question presented also does not warrant review. Petitioners assert that the D.C. Circuit adopted an "extreme" and unworkable interpretation of the original-source exception that supposedly (i) conflicts with decisions of the First, Third, Sixth, and Tenth Circuits, and (ii) is "impossible to meet in declined cases," i.e., in FCA cases where the government

has refused to intervene as a party. Pet. 30. Neither argument holds water.

As to conflict, the D.C. Circuit said expressly that its interpretation was "*consistent with the interpretation of 'materially adds' in other circuits.*" Pet. App. 19a n.8 (emphasis added); see also *Id.* at 18a–20a & n.6. As to impossibility, a subsequent—and related—D.C. Circuit decision disproves the claim. The same panel of the D.C. Circuit held in another declined case, argued the same day as this one, that these relators had met the "materially adds" standard adopted in the decision below. *United States ex rel. O'Connor* v. *U.S. Cellular Corp.* ("*Advantage*"), 153 F.4th 1272, 1280 (D.C. Cir. 2025) (decided Sep. 26, 2025).

Petitioners lost below not on any extreme view of the law but on a down-the-middle read of the materials properly available to the court on review of a motion to dismiss. Both courts below held that Petitioners had not alleged significant new information, but just "[p]rovid[ed] some additional color," to what was already in the public domain. Pet. App. 21a; 36a. Petitioners do not claim that they would prevail in any other court of appeals on that view of the facts alleged. And they do not claim that their disagreement with the D.C. Circuit's read of the factual allegations warrants this Court's review. The petition should be denied.

STATEMENT OF THE CASE

1. The False Claims Act enables individuals who independently discover fraud against the United States to bring a civil action "for the United States Government" and, if successful, collect up to "25 percent of the proceeds of the action or settlement" for themselves. 31 U.S.C. § 3730(b)(1), (d)(1). These individuals, known as *qui tam* relators, must first file their

complaint under seal and serve the government with a copy of both the complaint and "substantially all material evidence and information the person possesses." *Id.* § 3730(b)(2). This initial seal period affords the government an opportunity to fulfill its obligation to "diligently . . . investigate" the claimed violations and make an informed decision as to whether it "shall . . . proceed with . . . or decline[] to take over the action." *Id.* § 3730(a), (b)(4).

Given the financial incentives for relators to file claims under the FCA, Congress recognized the need to prevent "parasitic lawsuits" by relators whose claims are based on information squarely in the public domain and freely available to the government. *Schindler Elevator Corp.* v. *United States ex rel. Kirk*, 563 U.S. 401, 413 (2011). To prevent such "opportunistic" litigation, Congress enacted a "[g]overnment knowledge bar" in 1943 that barred any *qui tam* action based on information the government had already "learned of." *Graham Cnty. Soil & Water Conservation Dist.* v. *United States ex rel. Wilson*, 559 U.S. 280, 293–94 (2010). In 1986, Congress replaced that government knowledge bar with a public disclosure bar, *id.* at 295–96, which Congress amended in 2010, see 31 U.S.C. § 3730(e)(4).

In its current form, the public disclosure bar provides that "[t]he court shall dismiss an action or claim" brought by a *qui tam* relator "if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed" in, for example, the media or in "a Federal criminal, civil, or administrative hearing in which the Government or its agent is a party." *Id.*

The public disclosure bar is subject to an exception. The bar does not apply if "the person bringing the action is an original source of the information," meaning

the individual either (1) provided the government with the information on which the claim is based "prior to a public disclosure" of that information, or (2) "has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions" and "voluntarily provided the information to the Government before" filing suit. *Id.* § 3730(e)(4)(A)–(B).

The modern public disclosure bar, just like its 1986 predecessor and the government knowledge bar before that, is designed to ensure that "whistleblowing insiders with genuinely valuable information" are rewarded, while filtering out "opportunistic plaintiffs who have no significant information to contribute of their own." *Graham Cnty.*, 559 U.S. at 294 (quoting *United States ex rel. Springfield Terminal Ry.* v. *Quinn*, 14 F.3d 645, 649 (D.C. Cir. 1994)).

2. The public disclosure relevant here occurred in April 2008, when the law firm of Lampert, O'Connor & Johnston, P.C. (the "law firm") filed an amended complaint in the U.S. District Court for the District of Columbia, naming as defendants all ten Respondents here. The law firm accused Respondents of conspiring to register supposed sham "designated entities" (DEs) to fraudulently obtain discounted cell phone spectrum licenses at three auctions held by the Federal Communications Commission (FCC).[1] Pet. App. 5a. Its central

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[1] The FCC regulates the electromagnetic spectrum on which the telecommunications industry relies by, among other things, licensing control over certain frequency bands to private entities. *See generally* 47 U.S.C. § 151, *et seq.* Spectrum licenses are currently distributed through a competitive auction system. *Id.* § 307(a), (b). Given the high cost to participate in these auctions, and to promote fairness and increased market access, the FCC created the DE program, which offers, among other things, "[s]mall business bidding credits" for businesses whose average

allegation was that entities granted DE bidding credits as "very small businesses" had concealed that they were controlled by the much larger U.S. Cellular entities and therefore were ineligible for the credits they received. *Id.* at 29a.

The Department of Justice investigated the allegations in the 2008 complaint pursuant to 31 U.S.C. § 3130(a), Pet. App. 29a–30a. As to one entity—King Street Wireless, L.P.—the FCC also investigated the allegations before approving the bidding credit requested. *Id.* After completing its review, the FCC approved the credit. *Id.* The Department of Justice then notified the district court that it declined to intervene or take other action against Respondents. *Id.* at 30a. Shortly thereafter, the law firm voluntarily dismissed its action in full. *Id.*

3. In 2015, five years after the law firm abandoned its case, Petitioners—one of whom represented the law firm in its prior action, and additionally was a member of the law firm at the time—filed a complaint against Respondents in the U.S. District Court for the Western District of Oklahoma. Though filed by different relators in a different court, Petitioners' complaint alleged the same fraud as the law firm complaint. Petitioners alleged that the same ten defendants conspired to defraud the FCC via the same supposed sham entities, in the same spectrum auctions, by wrongfully obtaining and retaining the same DE bidding credits. See Pet. App. 30a. The complaint affirmatively alleged that relators were "original source[s]" exempt from the public disclosure bar, and it included numerous allegations about relators' alleged investigatory efforts

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gross revenues fall below certain thresholds. 47 C.F.R. § 1.2110(f)(1), (2).

that purportedly secured them original source status. SAC ¶¶ 37, 98–99, 111.

After receiving Petitioners' sealed complaint, the Justice Department again investigated these allegations. *Cf.* 31 U.S.C. § 3730(a). After its investigation, the Department declined to intervene once again, and the action was unsealed in December 2019. Pet. 16; *cf.* 31 U.S.C. § 3730(b)(4). The complaint was later transferred to the U.S. District Court for the District of Columbia. Pet. App. 23a.

Respondents moved to dismiss on several grounds, including the public disclosure bar. Placing Petitioners' Second Amended Complaint side-by-side with the law firm's complaint filed several years earlier, Respondents argued that Petitioners' allegations were nearly identical to these prior, publicly disclosed allegations and transactions. See U.S. Cellular MTD 13–15, *United States ex rel. O'Connor* v. *U.S. Cellular Corp.*, No. 20-cv-2071 (D.D.C. Oct. 26, 2020), Dkt. 149-1; King St. MTD 8–12, No. 20-cv-2071 (D.D.C.), Dkt. 148-1. Respondents further argued that Petitioners could not overcome the bar as original sources because they did "not plead *any* facts showing how they are an original source, when they obtained the information, how they obtained it, or how it materially adds to the wealth of publicly-disclosed information." U.S. Cellular MTD 19; *accord* King St. MTD 25–29.

4. The District Court concluded that "the public disclosure bar is an insurmountable defense to Plaintiffs-Relators' claims." Pet. App. 32a. Comparing Petitioners' complaint to the one filed in 2008, the court held that the public disclosure bar applied because both complaints concerned the same alleged scheme to "obtain [a] small business discount" in the "same three FCC spectrum auctions" by "the same ten entities." *Id.* at 28a, 33a, 35a. Petitioners did "not meaningfully

dispute the preclusive effect of the 2008 FCA suit" in many respects. *Id.* at 34a. They nonetheless insisted that their complaint was "sufficiently different" because it alleged that Respondents "maintain[ed] the sham companies" in the years after the auctions. *Id.* The District Court disagreed, stating: "That Defendants allegedly continued to perpetuate the fraud to retain their discounts simply provides more specific instances of the general fraudulent practices that they allegedly initiated to obtain those discounts in the first place." *Id.* at 35a.

The District Court held that Petitioners were not original sources and could not overcome the public disclosure bar. Petitioners claimed "that they conducted independent 'investigation and research,'" but most of their findings were "already public." Pet. App. 38a (cleaned up). As for the "little nonpublic information" they put forth, the District Court determined that it did "not materially add to the publicly disclosed information." *Id.* at 36a. Since the exception to the bar was not established, and because "[r]elators did not make a formal motion to amend"—as the District Court's local rules explicitly require—the complaint was dismissed with prejudice. *Id.* at 22a n.9; see *Kowal* v. *MCI Commc'ns Corp.*, 16 F.3d 1271, 1280 (D.C. Cir. 1994); D.D.C. Loc. Civ. R. 7(i), 15.1.

5. On appeal, Petitioners reiterated their position that "the public disclosure bar does not apply, either because their allegations were not 'substantially the same' as those in the 2008 *qui tam* action or because they qualify for the original source exception." Pet. App. 8a. The D.C. Circuit "reject[ed] both arguments" and affirmed. *Id.*

Recognizing that "the public disclosure bar is an affirmative defense," the Court of Appeals asked whether "the facts that give rise to the defense are

clear from the face of the complaint," and answered in the affirmative. Pet. App. 12a (quoting *de Csepel*, 714 F.3d at 608). Like the District Court, the Court of Appeals compared Petitioners' allegations to those in the public, judicially noticeable 2008 complaint. *Id*. at 13a; see *id*. at 28a n.1. And, like the District Court, it held upon reviewing Petitioners' allegations that while Petitioners' "complaint includes some additional facts, [it] ultimately describes a fraud that is merely a continuation of, and therefore substantially the same as, the scheme disclosed in the 2008 *qui tam* action." *Id*. at 13a.

The D.C. Circuit then assessed whether "the original source exception" applied, and it answered no. Pet. App. 15a. The Court of Appeals first defined "what counts as a material addition for the purpose of the original source exception." *Id*. at 18a. The court noted that the "materially adds" analysis "must be a separate inquiry from whether relators have brought forward allegations that are 'substantially the same,'" lest the original source exception "be rendered nugatory." *Id*. at 18a n.6 (quoting *United States ex rel. Winkelman* v. *CVS Caremark Corp.*, 827 F.3d 201, 211–12 (1st Cir. 2016)). Relying on "the text and structure of the statute," "well-established common law meaning," and decisions of the First, Third, Sixth, and Tenth Circuits, the D.C. Circuit concluded that "a relator . . . 'materially adds' to public disclosures by contributing information that 'is sufficiently significant or essential' to influence the government's decision to prosecute fraud." *Id*. at 19a (quoting *Winkelman*, 827 F.3d at 211).

The Court of Appeals concluded that the "additional color about the fraudulent scheme" Petitioners added "does not make relators an original source" given the details made public by the 2008 action. Pet. App. 21a.

The court observed that the prior lawsuit "provided substantial information about U.S. Cellular's alleged control over" the purported "sham companies." *Id.* at 20a. Against that backdrop, the court concluded that Petitioners' allegations, even if taken as true on Rule 12(b)(6) review, would "merely confirm U.S. Cellular's continued control over the designated entities and its use of their licenses"—none of Petitioners' "new" information was "so significant or essential that it would influence the government's decision to prosecute." *Id.* at 21a.

The court also rejected Petitioners' argument that they *per se* qualified as original sources because the government investigated their allegations. Pet. App. 21a. Recognizing the FCA's mandate that relators must alert the government to their allegations and evidence, paired with the ultimately unknowable "range of factors" that may or may not impact how the government "exercises its enforcement authority," the Court of Appeals held that "the mere fact of a government investigation" does not establish materiality. *Id.* at 21a–22a.

REASONS FOR DENYING THE PETITION

I. THE FIRST QUESTION DOES NOT WARRANT PLENARY REVIEW OR A GVR.

Petitioners affirmatively alleged that they were original sources who could overcome the public disclosure bar. As courts routinely do on motions to dismiss, the Court of Appeals considered that allegation in light of the complaint as a whole, judicially noticeable materials, and the parties' arguments and found it could not stand.

Petitioners attempt to seek review of that case-specific holding by invoking *Cunningham*'s interpretation

of ERISA. For them, *Cunningham* means that the courts below erred by resolving a motion to dismiss based on the allegations "in their complaint, . . . before any factual development." Pet. 25. That argument dramatically misreads *Cunningham*.

Cunningham did not cast doubt on the black-letter principle that when the materials properly before the court pursuant to Rule 12(b)(6) show that a claim fails, then the claim fails at that stage, whether the flaw goes to an element of the claim, an affirmative defense, an immunity question, or some other barrier to relief. For example, if a complaint's "allegations show that relief is barred by the applicable statute of limitations, the complaint is subject to dismissal for failure to state a claim; that does not make the statute of limitations any less an affirmative defense." *Jones*, 549 U.S. at 215 (cleaned up). *Cunningham* did not address or alter that longstanding baseline rule.

And because *Cunningham* did not address the False Claims Act at all, it did not even arguably touch the lower court consensus on how the public disclosure bar and original source exception should be addressed when raised at the pleading stage. Consistent with the FCA's "shall dismiss" mandate, 31 U.S.C. § 3730(e)(4), the lower courts consistently apply the same tried and true method. They review the 12(b)(6) materials to determine both whether the public disclosure bar has been met and whether the original source exception overcomes it. That is what the Court of Appeals did here as well. That approach is uncontroversial, correct, and untouched by *Cunningham*.

A. The Court of Appeals Applied Basic Rules of Civil Procedure to Correctly Resolve an Issue that Petitioners Put Forth in their Complaint.

The D.C. Circuit took two steps along a much traveled path to conclude that the public disclosure bar applied and that the original source exception did not.

At step one, the court said that "[b]ecause the public disclosure bar is an affirmative defense and Defendants have raised it in a pre-answer motion under [Rule] 12(b), Defendants must show that 'the facts that give rise to the defense are clear from the face of the complaint.'" Pet. App. 12a (quoting *de Csepel*, 714 F.3d at 608). It then resolved that those facts were indeed clear from the face of the complaint and judicially-noticeable materials: the 2008 lawsuit already publicly disclosed the same alleged fraud. *Id.* at 12a–14a.

At step two, the Court of Appeals addressed Petitioners' pleadings and arguments that the original source exception negated the public disclosure bar. SAC ¶ 37; see also MTD Opp'n 23–26, *United States ex rel. O'Connor* v. *U.S. Cellular Corp.*, No. 20-cv-2071 (D.D.C. Nov. 25, 2020), Dkt. 152 (petitioners asserting that their operative complaint "alleges 'sufficient factual matter' to establish that Relators are, indeed, original sources under the requisite pleading standard."); Appellants' Br. 41–44, 50–66 (arguing that "plaintiffs are original sources"). In so doing, the Court of Appeals, like the District Court, again reviewed the complaint and judicially-noticeable, publicly-disclosed documents. See Pet. App. 28a n.1. It concluded based on those materials that Petitioners' "new" information "added some color" but did "not materially add to" what had earlier been alleged. *Id.* at 20a–21a.

That fact-bound decision is correct. When "faced with a Rule 12(b)(6) motion to dismiss," a court "must consider the complaint in its entirety" along with the "other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss." *Tellabs, Inc.* v. *Makor Issues & Rts., Ltd.*, 551 U.S. 308, 322 (2007) (citing 5B Wright & Miller § 1357 (3d ed. 2004 & Supp. 2007)). If "it is clear from [these materials] . . . that the plaintiff's claims are barred as a matter of law," then dismissal is warranted. *Conopco, Inc.* v. *Roll Int'l*, 231 F.3d 82, 86 (2d Cir. 2000). That fully aligns with the Court of Appeals' analysis. The court determined that the public disclosure bar was clear from the face of the complaint and judicially noticeable documents. Therefore—by operation of the statute—the court was required to dismiss Petitioners' action "*unless*" those same 12(b)(6) materials indicated that the original source exception applied. 31 U.S.C. § 3730(e)(4) (emphasis added). The Court of Appeals simply held on the basis of the 12(b)(6) materials before it that the original source exception did not apply.

B. *Cunningham* Did Not Alter Basic Rules of Civil Procedure That Allow Courts to Address Affirmative Defenses at the Pleading Stage.

Petitioners posit that the Court of Appeals' analysis of the FCA's public disclosure bar defense conflicts with this Court's recent decision in *Cunningham* v. *Cornell University*, 604 U.S. 693 (2025), which addressed fiduciary obligations under ERISA. Petitioners appear to read *Cunningham* to suggest that affirmative defenses categorically cannot be resolved at the pleading stage, "before any defendant pleads the defense and before any factual development." Pet. 25; see also Pet. 22 (complaining "respondents never asserted the defense in an answer; they raised it in their first

and only pre-answer motion to dismiss"). But *Cunningham* did not say that. The Court did not address and certainly did not overturn the established principle that affirmative defenses may, in fact, be raised and resolved against a plaintiff in a pre-answer motion to dismiss when the 12(b)(6) materials warrant.

Cunningham evaluated whether the exemption to liability laid out in Section 1108(b)(2)(A) of ERISA is an affirmative defense or an element of an ERISA claim. The Court concluded that Section 1108(b)(2)(A) constituted an affirmative defense, and thus was not an element of a claim that an ERISA plaintiff is required to plead, "because an 'affirmative defense'" is "'not something the plaintiff must anticipate and negate in her pleading.'" *Cunningham*, 604 U.S. at 694 (citation omitted).

That ruling has no bearing on this case, where Petitioners affirmatively chose to place the applicability of the public disclosure bar defense on the table in their complaint. *Cunningham* did not upend the "familiar principle[]"—applied below—that "an affirmative defense may be adjudicated on a motion to dismiss for failure to state a claim." *In re Colonial Mortg. Bankers Corp.*, 324 F.3d 12, 16 (1st Cir. 2003). Nor did the Court rewrite the black-letter rule that courts may consider whether plaintiffs have pleaded themselves out of court by joining issue on an affirmative defense in their complaint, as Petitioners did below. *Jones*, 549 U.S. at 215. The long-established law is that "a complaint is subject to dismissal for failure to state a claim if the allegations, taken as true, show the plaintiff is not entitled to relief"; and "whether a particular ground for opposing a claim may be the basis for dismissal for failure to state a claim depends on whether the allegations in the complaint suffice to establish that ground, not on the nature of the ground in the

abstract." *Id.* (cleaned up). *Cunningham* did not unsettle that rule.

C. *Cunningham's* ERISA Analysis Does Not Speak to the Proper Interpretation or Analysis of the False Claims Act's Unique Public Disclosure Bar and Original Source Exception.

Further, because *Cunningham* did not address the False Claims Act at all, that decision has zero to say about the FCA-specific question of how courts may address the public disclosure bar and original source exception at the pleading stage. Consistent with lower court practice across the country, the D.C. Circuit required Respondents to show based on 12(b)(6) materials that the public disclosure bar applies, and then turned to the relators' original source allegations, finding them insufficient. That uniform approach is correct and fully consistent with the statute's text.

1. Petitioners wrongly characterize the D.C. Circuit's approach to addressing the FCA's public disclosure bar and original source exception as "novel." Pet. 2–3. In truth, the D.C. Circuit's approach tracks a broad lower court consensus on how to apply 31 U.S.C. § 3730(e)(4) when a False Claims Act defendant moves to dismiss under Rule 12(b)(6).

Unanimously, lower courts have "held that the 2010 'amendments transformed the public disclosure bar from a jurisdictional bar to an affirmative defense'" properly raised in a 12(b)(6) motion. *E.g.*, *United States ex rel. Reed* v. *KeyPoint Gov't Sols.*, 923 F.3d 729, 737 n.1 (10th Cir. 2019) (quoting *United States ex rel. Prather* v. *AT&T, Inc.*, 847 F.3d 1097, 1102 (9th Cir. 2017)); *accord* Pet. App. 12a; *United States ex rel. Chorches ex rel. Bankr. Est. of Fabula* v. *Am. Med. Response, Inc.*, 865 F.3d 71, 80 (2d Cir. 2017); *United*

States ex rel. Beauchamp v. *Academi Training Ctr., LLC*, 816 F.3d 37, 40 (4th Cir. 2016); see also *United States ex rel. Moore & Co., P.A.* v. *Majestic Blue Fisheries, LLC*, 812 F.3d 294, 300 (3d Cir. 2016) ("[T]he amended bar is not jurisdictional."); *United States ex rel. Ambrosecchia* v. *Paddock Lab'ys, LLC,* 855 F.3d 949, 953 (8th Cir. 2017) (same); *United States ex rel. Osheroff* v. *Humana, Inc.*, 776 F.3d 805, 810 (11th Cir. 2015) (same).

Thus, if a defendant invokes the bar in a motion to dismiss under Rule 12(b)(6), the courts first ask whether the defendant has carried its burden to establish the public disclosure bar affirmative defense. They ask whether the pleadings, items subject to judicial notice, and matters of public record show "that the transaction setting forth the alleged fraud was publicly disclosed." *Moore*, 812 F.3d at 304; *accord United States ex rel. Paulos* v. *Stryker Corp.*, 762 F.3d 688, 692–93 (8th Cir. 2014); see also *Winkelman*, 827 F.3d at 208 (describing this as the "routine[]" approach of the circuits). If so, the public disclosure bar applies "unless the action is brought by the Attorney General or the person bringing the action is an original source of the information." 31 U.S.C. § 3730(e)(4)(A).

Where appropriate, courts then turn to the second step of the analysis, asking whether the original source exception "nonetheless" allows the relator to "clear the bar." *Moore*, 812 F.3d at 304. This is consistent with the plain text of Section 3730(e)(4), which provides that the public disclosure bar applies "*unless* . . . the person bringing the action is an original source." 31 U.S.C. § 3730(e)(4)(A) (emphasis added). If not, then the court "shall dismiss." *Id.* Here, too, the courts' analysis is simple: review the materials before them to decide whether the relator's "complaint is []sufficient to plausibly state that [the relator]

qualifies as an original source." *Ambrosecchia*, 855 F.3d at 955; see also*, e.g.*, *Moore*, 812 F.3d at 304 (asking whether *relator* "can nonetheless clear the bar . . . [as] an 'original source'"); *United States ex rel. Jacobs* v. *JP Morgan Chase Bank, N.A.*, 113 F.4th 1294, 1303 (11th Cir. 2024) (asking whether *relator* "can establish that he is an 'original source'").

Petitioners fault the Court of Appeals for allocating to them the burden to establish the original source exception. But again, that is exactly what other courts do when applying these particular provisions of the False Claims Act at the motion-to-dismiss stage. The Eleventh Circuit requires the relator to "establish that he is an original source" in order to get the benefit of the exception. *Jacobs*, 113 F.4th at 1303; see also *Osheroff*, 776 F.3d at 816 (affirming dismissal where relator could not "overcome the public disclosure bar"). The Ninth Circuit says that "[i]f the public disclosure bar applies, a relator may overcome it by demonstrating that she was an 'original source' of the information." *E.g.*, *United States ex rel. Sam Jones Co.* v. *Biotronik, Inc.,* 152 F.4th 946, 950 (9th Cir. 2025). And the Eighth Circuit states that a relator fails to establish this exception if the "complaint is insufficient to plausibly state that [the relator] qualifies as an original source." *Ambrosecchia*, 855 F.3d at 955.

2. *Cunningham* says nothing about any of this. Focused on ERISA's regulation of business arrangements between plan sponsors and service providers, it provides zero insight into the False Claims Act's text or structure. And the FCA is meaningfully different from ERISA. ERISA defines a set of "[p]rohibited transactions" in one section, 29 U.S.C. § 1106, and a larger set of "[e]xemptions from prohibited transactions" in another, *id.* § 1108. In light of the statute's "orthodox format," the Court in *Cunningham* concluded that

Congress intended for the exemptions to liability to be treated as "affirmative defense[s]" that "must be pleaded and proved by the defendant who seeks to benefit from them." *Cunningham*, 604 U.S. at 702. The Court arrived at that conclusion based on common-law practice and traditional principles of "fairness"—principles that would be violated if plaintiffs were required to anticipate and negate the "numerous" exceptions to liability in ERISA that "turn on facts one would expect to be in the [defendant's] possession." *Id.* at 705.

Section 3730(e) of the FCA is distinct from Section 1108 of ERISA. Far from sharing Section 1108's "orthodox format" of affirmative defenses, *id.* at 702, Section 3730(e) sets out a mix of jurisdictional barriers, rules governing collateral proceedings, and one affirmative defense—the public-disclosure bar. No one disputes that the public disclosure bar is an affirmative defense. But, uniquely, the public disclosure bar affirmative defense is subject to an "original source *exception*." *Graham Cnty.*, 559 U.S. at 295 (emphasis added). And, as the D.C. Circuit correctly observed, the original source exception focuses on matters that one would expect to be in the relators' possession, not the defendants'. See Pet. App. 15a.

That exception-to-an-exception sets Section 3730(e)(4) of the FCA apart from Section 1108 of ERISA. *Cunningham* did not discuss any exception to the ERISA affirmative defense at issue in that case, but did observe that it was fair in the ERISA context to place the pleading burden on the party that was likely to have the relevant information, 604 U.S. at 705, contrary to Petitioners' erroneous suggestion that *Cunningham* closed its eyes to all such "practical considerations," see Pet. 23.

Another obvious distinction between the two statutory frameworks is that Section 3730(e)(4) directs that

where applicable, courts "*shall dismiss* an action or claim under this section." That False Claims Act language clearly contemplates pleading-stage dismissals, and is unlike any language in ERISA's Section 1108. For this additional reason, there is no possible conflict between *Cunningham* and the decision below.

D. *Cunningham* Provides No Ground For A GVR.

For substantially the reasons already discussed, Petitioners' alternative request for a GVR is baseless.

In general, the Court will consider a GVR only where, among other requirements, it sees "a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration" in light of intervening events. *Lawrence ex rel. Lawrence* v. *Chater*, 516 U.S. 163, 167 (1996) (per curiam). Petitioners trumpet *Cunningham* as such an intervening event, but there is no realistic chance the D.C. Circuit would reach a contrary conclusion in light of *Cunningham*.

As explained, the D.C. Circuit's decision rests on a long-settled proposition that *Cunningham* nowhere questions: "A complaint is subject to dismissal for failure to state a claim if the allegations, taken as true, show the plaintiff is not entitled to relief." *Jones*, 549 U.S. at 215. That is equally true when the obstacle to relief is best characterized as an affirmative defense. *Id.* Nothing about *Cunningham* calls for reconsideration of that core civil litigation practice—not in general and certainly not within the specific parameters of the False Claims Act, which *Cunningham* did not address.

Moreover, the proposition that *Cunningham* underscored in overruling the Second Circuit—that a plaintiff need not anticipate or negate an affirmative defense—is old news in the D.C. Circuit. That principle

was articulated in *de Csepel* v. *Republic of Hungary*, 714 F.3d 591, 608 (D.C. Cir. 2013) (quoting *Flying Food Grp., Inc.* v. *NLRB*, 471 F.3d 178, 183 (D.C. Cir. 2006)). The D.C. Circuit followed *de Csepel* in this case, quoting it for the related proposition that a defendant may advance an affirmative defense at the pleading stage only if the facts bearing on that defense are present on the face of the complaint. See Pet. App. 12a (quoting *de Csepel*, 714 F.3d at 608). Moreover, Petitioners placed express reliance on *de Csepel* below, both in their reply brief, Appellants' Reply Br. 5–6, and in arguing on rehearing that the panel had wrongly "require[d] private qui tam plaintiffs to anticipate and negate [an] affirmative defense in their complaint," Pet. Reh'g 1, *United States ex rel. O'Connor* v. *USCC Wireless Inv., Inc.*, No. 23-7044 (D.C. Cir. Mar. 27, 2025). Before this Court, Petitioners have simply substituted *Cunningham* for *de Csepel* to make an identical argument. Pet. i (first question presented). Those circumstances make it unusually clear that the "reasonable probability" requirement cannot be met in this case. *Lawrence*, 516 U.S. at 167. Petitioners have already presented the substance of their argument to the Court of Appeals twice, based on binding Circuit precedent. The Court of Appeals has twice determined, correctly, that this argument does not affect the outcome of this case.

In requesting a GVR, Petitioners also return to their theme, *e.g.*, Pet. 17 nn.4–5, that it is somehow unfair—even an "insult"—that the District Court dismissed with prejudice and the Court of Appeals affirmed without providing leave to amend. See *id.* at 36–37. But as Petitioners ultimately acknowledge, see *id.* at 25, the *reason* why the District Court did not grant them a third opportunity to replead is straightforward and a problem of Petitioners' own making.

Petitioners did not follow the District Court's local rules or Circuit precedent for requesting leave to amend. Those rules do not permit a plaintiff to simply tack on a do-over request when opposing a motion to dismiss. Instead, "[a] motion for leave to file an amended pleading shall be accompanied by an original of the proposed pleading as amended." See D.D.C. Loc. Civ. R. 7(i), see also *id.* R. 15.1 (similar). Petitioners did not comply with that rule—they did not even "make a formal motion to amend." Pet. App. 22a n.9. Long-settled circuit precedent says that when a plaintiff procedurally defaults in that manner, whether to grant leave to replead is left to the sound discretion of the trial court. See *Kowal*, 16 F.3d at 1280. The Court of Appeals concluded that in this case, the District Court did not abuse its discretion in deciding "not to grant 'such leave *sua sponte*.'" Pet. App. 22a n.9 (quoting *Kowal*, 16 F.3d at 1280). Petitioners did not argue otherwise in the Court of Appeals, and they understandably do not ask this Court to review that abuse-of-discretion holding either.

There is no reason for a re-do, particularly because this entire case is a re-do: the underlying fraud claim has already been presented to the FCC and Justice Department, several times, in multiple fora, for nearly 20 years. Time and again, and as recently as this summer, both agencies have provided the same response to these serial requests for enforcement: "We decline to do so." Mem. Op. & Order ¶ 19, *In re Applications of T-Mobile US, Inc. & U.S. Cellular Corp.*, FCC GN Dkt. No. 24-286 (July 11, 2025). The Court should likewise opt to let this case rest.

II. THE SECOND QUESTION DOES NOT WARRANT THIS COURT'S REVIEW.

Petitioners' second request for review can be readily dispatched. Petitioners say the D.C. Circuit rejected the interpretation of "materially adds" adopted by the First, Third, Sixth, and Tenth Circuits. Pet. 26. That is wrong. The D.C. Circuit expressly *joined* those courts and embraced their reasoning. Petitioners also fundamentally misunderstand the D.C. Circuit's "materially adds" standard, as an intervening D.C. Circuit decision applying that standard unambiguously shows. The decision below is correct and adopts a standard indistinguishable from the one Petitioners advocated in their briefs below. And any tension between the D.C. Circuit's standard and the Seventh Circuit's interpretation of "materially adds" is irrelevant to this case because Petitioners concede they would also lose in the Seventh Circuit, as they understand that court's standard.

1. Petitioners contend that the D.C. Circuit rejected the interpretation of "materially adds" adopted by the First, Third, Sixth, and Tenth Circuits. The opposite is true: The D.C. Circuit expressly *joined* these courts and stated that its interpretation is "consistent with the interpretation of 'materially adds' in other circuits." See Pet. App. 19a n.8; see also *id.* at 18a–20a & n.6.

More specifically, the Court of Appeals held that a relator "'materially adds' to public disclosures by contributing information that 'is sufficiently significant or essential' to influence the government's decision to prosecute fraud." Pet. App. 19a. As the chart below shows, the First, Third, Sixth and Tenth Circuits likewise read "material" to refer to something "significant," "essential," or otherwise "sufficiently important to influence the behavior of the recipient."

Circuit	Standard
First	Information contributed by a relator is "material" if it is "**significant**," "**essential**," or otherwise "sufficiently important to influence the behavior of the recipient." *Winkelman*, 827 F.3d at 211.
Third	"[T]o 'materially add[]' to the publicly disclosed allegation or transaction of fraud, a relator must contribute **significant** additional information to that which has been publicly disclosed so as to improve its quality." *Moore*, 812 F.3d at 306.
Sixth	"Materiality in this setting requires the claimant to show it had information '[o]f such a nature that knowledge of the item would affect a person's decision-making,' is '**significant**,' or is '**essential**.'" *United States ex rel. Advocs. for Basic Legal Equal., Inc.* v. *U.S. Bank, N.A.*, 816 F.3d 428, 431 (6th Cir. 2016).
Tenth	Information contributed by a relator is material where it is "sufficiently **significant** or **essential**," or is "sufficiently important to influence the behavior of the recipient." *Reed*, 923 F.3d at 756, 759.
D.C.	"A relator . . . 'materially adds' to public disclosures by contributing information that 'is sufficiently **significant** or **essential**' to influence the government's decision to prosecute fraud." Pet. App. 19a.

These statements illustrate that the D.C. Circuit meant what it said. It adopted a standard "consistent with the interpretation of 'materially adds'" in the First, Third, Sixth, and Tenth Circuits. Pet. App. 19a n. 8.

2. Petitioners advance the implausible claim that the D.C. Circuit actually *rejected* the decisions it said it was embracing. That flawed argument rests on a fundamental misinterpretation of the D.C. Circuit's "materially adds" standard.

According to Petitioners, the D.C. Circuit's "materially adds" standard is so stringent that it can be met only if the government *actually* decides to prosecute the alleged fraud itself. As Petitioners put it, "[i]f the government declines" to intervene as a party "it is not even plausible the information was material to the government." Pet. 30. "Under this logic," Petitioners bemoan, "no relator in a declined case can ever establish materiality." *Id.*; see also *id.* at 3 ("This standard ensures no relator will ever qualify in a declined case . . . ."); *Id.* at 33 ("[R]elators like petitioners in declined cases . . . are automatically barred in the [D.C. Circuit].").

Petitioners' interpretation of the D.C. Circuit's standard is wrong for three reasons.

First, Petitioners do not and cannot identify any place in the opinion below where the D.C. Circuit actually adopts such a standard. Petitioners point to a sentence where the Court of Appeals says "a relator materially adds to public disclosures by contributing information that is sufficiently significant or essential to influence the government's decision to prosecute fraud." Pet. App. 19a (cleaned up). But that sentence does not say that the government must *actually* decide to prosecute. Rather, it just says that *the court* must deem the additional information "*sufficient[]*" to "*influence*" the prosecution decision, as considered in light of the information that was previously publicly available to the government. *Id.* (emphases added).

Second, Petitioners' position ignores the D.C. Circuit's explicit statements that it was adopting a standard consistent with decisions of the First, Third, Sixth, and Tenth Circuits—decisions that, as Petitioners concede (at 32–33) do not automatically preclude a "materially adds" finding in declined cases.

Third, the D.C. Circuit's recent decision in a companion case made crystal clear that Petitioners' reading of the decision below is wrong—the D.C. Circuit's standard is *not* "impossible to meet in declined cases." *Contra* Pet. 30. In *Advantage*, which is also a declined case, the same three-judge panel of the D.C. Circuit reversed a dismissal under Rule 12(b)(6). The panel held that a complaint filed by these same relators *did* satisfy the "materially adds" standard as compared to certain "information previously disclosed to the FCC." *Advantage*, 153 F.4th at 1281. In reaching that conclusion, the *Advantage* court reiterated and reapplied the same "materially adds" standard adopted below. *Id.* (quoting Pet. App. 19a).

Though Respondents disagree with the D.C. Circuit's application of this standard in *Advantage*, that decision plainly refutes Petitioners' Chicken Little argument that "declined cases" are "automatically barred" from proceeding under the original-source exception in the D.C. Circuit. That is just not what the D.C. Circuit said or held.[2]

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[2] Petitioners also mischaracterize and misquote a decision from the First Circuit, *United States ex rel. Banigan* v. *Pharmerica, Inc.*, 950 F.3d 134 (1st Cir. 2020). Pet. 31. The court in *Banigan* did not hold that a relator's "specific insider knowledge . . . 'materially added' to what was publicly known." Pet. 31 (misquoting *Banigan*, 950 F.3d at 147). Instead, it applied the prior original source definition of the pre-2010 FCA and held that a relator overcame the public disclosure bar because his allegations were—

3. The D.C. Circuit's decision is correct and adopts fundamentally the standard for which Petitioners advocated below.

Contrary to Petitioners' suggestion that the D.C. Circuit disregarded the statute's text, Pet. 26, Judge Rao's opinion for the court carefully analyzed the meaning of "material" in the context of the phrase "materially adds." In doing so, the D.C. Circuit drew both on Black's Law Dictionary and on decisions of this Court that interpreted "material" in the specific context of the FCA, see Pet. App. 18a–19a (citing *Universal Health Servs., Inc.* v. *United States ex rel. Escobar*, 579 U.S. 176, 193 (2016)), and in other federal legislation, see Pet. App. 19a n.7 (addressing precedents interpreting "material" in immigration and fraud statutes). The Court of Appeals thus adopted a textually sound definition of "materially adds" that adheres to prior guidance from this Court, in addition to aligning with decisions of other circuits. See *supra*, at 23–24.

What is more, the D.C. Circuit's standard looks just like the standard Petitioners themselves requested. Specifically, Petitioners' opening brief below contended that new information meets the "materially adds" standard "when a relator's allegations might actually affect the government's decision making" and thus "materially contribute[] to the detection and redress of fraud on the Government." Appellants' Br. 51–52 (first quoting *United States ex rel. Maur* v. *Hage-Korban*, 981 F.3d 516, 525 (6th Cir. 2020)). That is no different from the D.C. Circuit's holding, under which

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regardless of their substance—based on his "direct and independent knowledge." *Banigan*, 950 F.3d at 147 (quoting 31 U.S.C. § 3730(e)(4)(B) (2006)). That decision, decided under a prior version of the statute, offers no insight as to when a relator "materially add[s]" to publicly disclosed information under the current version of the statute. *Contra* Pet. 31.

the "materially adds" standard is met when a relator goes beyond prior public disclosures and "contributes information that is sufficiently significant or essential to influence the government's decision to prosecute fraud." Pet. App. 19a (cleaned up).

Petitioners' real grievance is not that the D.C. Circuit adopted the wrong standard, but that they disagree with the court's application of the standard to this case. That fact-bound conclusion is correct—"the 2008 action already disclosed the allegations of Defendants' fraud" and relators merely provided "some additional color" about those allegations. Pet. App. 21a. And more to the point, Petitioners' disagreement with that fact-bound conclusion does not merit review by this Court.

4. Finally, the Seventh Circuit cases cited in the Petition (at 29–30) also do not support certiorari. Petitioners contend that the Seventh Circuit "takes a fundamentally different approach" from other circuits, but that is far from clear.

Petitioners cast the First Circuit as standing on the other side of the split from the Seventh (Pet. 30), but the First Circuit has cited the Seventh Circuit's key case *approvingly*, reading it to say only that "[t]he question of whether a relator's information 'materially adds' to public disclosures often overlaps with the questions of whether public disclosure has occurred and, if so, whether the relator's allegations are substantially the same as those prior revelations." *Winkelman*, 827 F.3d at 211 (discussing *Cause of Action* v. *Chi. Transit Auth.*, 815 F.3d 267, 283 (7th Cir. 2016)). If that is the right reading of the Seventh Circuit, there is no conflict—everyone acknowledges that there is "potential for overlap" between the two parts of the statute. *Reed*, 923 F.3d at 757.

On the other hand, the Tenth Circuit and now the D.C. Circuit have read the Seventh Circuit to say that the "substantially the same" and "materially adds" prongs are completely coextensive. And those courts have said a Seventh Circuit interpretation that treats those two provisions as completely coextensive "cannot be right." *Advantage*, 153 F.4th at 1281–82; *Reed*, 923 F.3d at 757.

So the clearest disagreement among the circuits on this point is a disagreement about what the Seventh Circuit's standard actually is. The Seventh Circuit is the court best situated to clear that up—and it has not yet responded to the commentary from other circuits about what its precedents mean.

In any event, the discussion about how best to characterize the Seventh Circuit's position does not matter to this case. Petitioners concede they would lose under their view of the Seventh Circuit's standard (Pet. 34), just as they lost in the D.C. Circuit. And given that concession, any question about possible disagreements between the Seventh Circuit and other circuits can be easily set aside for another day, consistent with the Court's denial of other petitions that have sought to highlight the Seventh Circuit's statements regarding the "materially adds" standard. See *United States ex rel. Heron* v. *Nationstar Mortgage, LLC*, No. 24-542 (cert denied Apr. 21, 2025); *Bellevue* v. *Universal Health Servs. of Hartgrove, Inc.*, No. 17-842 (cert denied Mar. 19, 2018); *Cause of Action*, No. 16-131 (cert denied Oct. 3, 2016).

CONCLUSION

For the foregoing reasons, the Court should deny the petition for a writ of certiorari.

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