No. 25-347

In the Supreme Court of the United States

UNITED STATES AND MICHIGAN, EX REL. ERIK OLSEN, ET AL., PETITIONERS

v.

TENET HEALTHCARE CORPORATION, ET AL.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether petitioners' complaint adequately pleaded with particularity that respondents submitted false claims for payment under the False Claims Act, 31 U.S.C. 3729 *et seq.*

CORPORATE DISCLOSURE STATEMENT

Tenet Healthcare Corporation has no parent corporation, and no publicly held company owns 10% or more of its stock. VHS of Michigan, Inc., d/b/a Detroit Medical Center, is a subsidiary of Tenet Healthcare Corporation.

RELATED PROCEEDINGS

United States District Court (E.D. Mich.):

United States ex rel. Olsen v. *Tenet Healthcare Corp.*, No. 23-cv-10903 (July 30, 2024)

United States Court of Appeals (6th Cir.):

United States ex rel. Olsen v. *Tenet Healthcare Corp.*, No. 24-1785 (Apr. 22, 2025)

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INTRODUCTION

Just a few years ago, the Court asked the Solicitor General about an alleged split over how the particularity requirement of Federal Rule of Civil Procedure 9(b) applies to the False Claims Act (FCA). The Solicitor General carefully analyzed circuit precedent—the same cases the petition invokes here—and concluded that courts are not split but have "converg[ed] toward a fact-driven and flexible Rule 9(b) standard in FCA cases." U.S. Br. at 21, *United States ex rel. Owsley* v. *Fazzi Assocs., Inc.*, 143 S. Ct. 362 (2022) (No. 21-936). *Owsley*, like this case, arose from the Sixth Circuit. And the Solicitor General explained that the Sixth Circuit's pleading rule does not significantly differ from the one the government has defended. *Id.* at 10.

Nothing relevant has changed since 2022 when General Prelogar recommended denial and this Court took her recommendation. The nonprecedential, unanimous decision below broke no new ground. Petitioners themselves asked the Sixth Circuit to submit the case on the briefs and did not challenge the Sixth Circuit's rule, agreeing that clear case law settled the pleading requirements for their claims. And, contrary to petitioners' portrayal of their complaint as "materially stronger" than prior cases (Pet. 27), the Sixth Circuit identified multiple insurmountable flaws, including petitioners' concession that they did not actually know whether respondents, or someone else, made the supposedly fraudulent claims for payment. Pet. App. 14a. This case would be a very bad candidate for review even if some question worthy of certiorari lurked somewhere in the neighborhood. The petition should be denied.

STATEMENT

A. Legal background

The False Claims Act (FCA), 31 U.S.C. 3729 *et seq.*, imposes liability for knowingly presenting or directly inducing the submission to the government of "a false or fraudulent claim for payment." 31 U.S.C. 3729(a)(1)(A); see *Universal Health Servs., Inc.* v. *United States ex rel. Escobar*, 579 U.S. 176, 182 (2016). A claim for payment in the relevant sense encompasses "any request or demand * * * for money or property" that is "presented to an officer, employee or agent of the United States." 31 U.S.C. 3729(b)(2).

Violations of the FCA can give rise to civil penalties of up to $10,000 per false claim (with adjustment for inflation) and treble damages. 31 U.S.C. 3729(a), 3730(d). The penalties and treble damages that the FCA makes available "are essentially punitive in nature." *Vt. Agency of Nat. Res.* v. *United States ex rel. Stevens*, 529 U.S. 765, 784 (2000).

The government can assert FCA claims directly through the U.S. Department of Justice. 31 U.S.C. 3730(a). Private parties known as "relators" can also bring suit in the government's name through a qui tam action. 31 U.S.C. 3730(b)(1). If a relator files a qui tam action, the government may intervene and take over the case during a typically 60-day period in which the relator's complaint remains under seal. 31 U.S.C. 3730(b). If the qui tam action recovers damages or civil penalties, the government and relator share the recovery. 31 U.S.C. 3730(d). Relators can also seek attorney's fees. 31 U.S.C. 3730(d)(1) and (2).

The FCA's primary focus is on "those who defraud the Government." *Universal Health Servs.*, 579 U.S. at 180. Accordingly, plaintiffs must plead their claims, not just with plausibility under Federal Rule of Civil Procedure 8, but also with particularity under Rule 9(b). *Id.* at 195 n.6.

B. Factual and procedural background

1. Petitioners are three physicians who allegedly worked at Detroit Medical Center. Pet. App. 49a-51a. Detroit Medical Center, one of the two respondents, comprises six hospitals and two ambulatory surgery centers in Michigan. *Id.* at 49a. Its parent is Tenet Healthcare Corp., the other respondent, which operates many hundreds of hospitals, surgery centers, and other facilities throughout the United States. *Id.* at 48a. Petitioners brought this action to pursue FCA claims against respondents. *Id.* at 39a.

The crux of petitioners' theory is that hospital entities ultimately owned by respondents (Detroit Receiving Hospital and Sinai-Grace Hospital) suffered staffing issues during the COVID-19 pandemic and were required to board patients in emergency rooms. Pet. App. 3a, 60a. Petitioners assert in general terms that it was respondents' "protocol to bill government healthcare programs for ER boarded patients as if they were in the appropriate inpatient department as soon as an admission order is signed." *Id.* at 55a. Medicare payment regulations in fact require hospitals to treat patients as "inpatients" once an admission order is signed. 42 C.F.R. 412.3(a); see also Pet. App. 57a. Although petitioners suggest (Pet. 7, 9, 28) that their complaint describes an "automatic billing protocol" that respondents allegedly used, the cited

portions of the complaint mention allegedly fraudulent billing in wholly conclusory terms and rely on snippets of unspecific hearsay from a single email. Pet. App. 55a-56a, 61a-62a.

Indeed, even though the presentment of false claims for payment to the government is the hallmark of an FCA claim, petitioners' factual allegations offer nothing concrete about submission of any actual claims for payment to government healthcare programs. They never say, for example, that they ever had occasion to see, much less review, any bills submitted by respondents (or one of their hospital entities) to any payor, including government payors. Much of their complaint alleges facts unconnected to billing, such as alleged mechanisms to track the amount of time that patients were boarded in emergency rooms waiting for an inpatient bed, and alleged lapses in care of a few specific individuals purportedly boarded in emergency rooms. Pet. App. 63a-71a.

2. After the United States declined to intervene in the qui tam action, the complaint was unsealed. Pet. App. 21a. Petitioners filed an amended complaint, and respondents moved to dismiss the amended complaint on several grounds. *Id.* at 21a, 25a-26a.

The district court dismissed the action for failure to state a claim. Pet. App. 20a. In its view, petitioners did "not sufficiently allege that [respondents] directly participated in the submission of any of the purported false claims." *Id.* at 34a. Moreover, "the factual allegations [did] not support a plausible inference that [respondents] directed their subsidiary hospitals to bill government programs while knowing that, at the

time the billing period began, the hospitals failed to render the care required for payment of medical claims by the government." *Id.* at 34a-35a.

Petitioners instead relied on allegations about respondents' "general policy" and general awareness of severe staffing issues. Pet. App. 35a. The email and tracking-system allegations did not indicate that respondents "knew the non-party hospitals were supposedly billing for services that were not being provided." *Id.* at 36a. The district court further noted that classifying individuals as inpatient upon an order for their inpatient admission is consistent with 42 C.F.R. 412.3(a). Pet. App. 37a.

3. The Sixth Circuit unanimously affirmed in an unpublished decision. The court determined that respondents failed to plead with particularity any specific fraudulent claim for payment. Pet. App. 8a. Liability under the FCA, however, attaches to the claim for payment, not some more general fraudulent scheme. *Id.* at 9a.

The court of appeals first explained why petitioners' allegations about the six individual patients lacked "the specificity pertaining to a fraudulent claim for payment required to satisfy Rule 9(b)." Pet. App. 10a. Petitioners' allegations had "no specific information about the filing of the claims themselves." *Id.* at 11a (citation omitted). The complaint, for example, did not even identify which respondent actually submitted the purported false bills. *Ibid.* Nor did it identify any submissions containing misrepresentations on which the government relied. *Ibid.* Like the district court, the Sixth Circuit observed that the supposed "protocol" was merely to classify individuals as

inpatient on the physician's issuance of an admission order—just as 42 C.F.R. 412.3(a) directs. Pet. App. 11a.

The Sixth Circuit acknowledged petitioners' argument that "even without identifying the submission of a specific claim," Sixth Circuit precedent permits satisfying Rule 9(b) through "facts which support a strong inference that a claim was submitted." Pet. App. 13a. Thus, "a relator's specific personal knowledge of a defendant's billing practices may support a strong inference that defendants submitted false claims * * * even without the identification of a specific representative claim." *Ibid.* But petitioners did not allege "this level of personal knowledge of and access to [respondents'] billing practices and policies." *Id.* at 14a. Just the opposite, they conceded that they did not even know "precisely which entity keys in the bills." *Ibid.* Accordingly, they failed to plead with particularly even the "who" needed to plead the "who, what, when, where, and how" of the fraud. *Ibid.* (citation omitted).

Having held that petitioners failed to plead any false claim with particularity, the Sixth Circuit saw no need to reach respondents' many alternative grounds for affirmance, such as failure to plead falsity, scienter, materiality, and causation. Pet. App. 15a.

At no point during their arguments in the district court or at the Court of Appeals did the petitioners contend that the courts should apply a pleading standard other than that found in the Sixth Circuit's established precedent. Nor did they seek rehearing from the panel or the en banc court to address the issue.

REASONS FOR DENYING THE PETITION

No one disputes that FCA claims are subject to Federal Rule of Civil Procedure 9(b). As a result, an FCA relator's complaint must "state with particularity the circumstances constituting fraud." Fed. R. Civ. P. 9(b); see, *e.g.*, *Universal Health Servs., Inc.* v. *United States ex rel. Escobar*, 579 U.S. 176, 195 n.6 (2016).

Petitioners' premise (Pet. 2) is that a circuit split exists over whether Rule 9(b) imposes a "categorical bar" on qui tam actions unless the relators "work in billing departments or can identify specific claim forms submitted to the Government." That characterization does not accurately reflect the rule in the Sixth Circuit or elsewhere, and the circuit split petitioners allege does not exist.

The inspiration for petitioners' argument seems to be an amicus brief that the Solicitor General filed at the Court's invitation more than a decade ago in 2014. That brief identified some inconsistency among the lower courts over whether a qui tam relator must categorically "plead the details of particular false claims—that is, the dates and contents of bills or other demands for payment—to overcome a motion to dismiss." U.S. Br. at 10, *United States ex rel. Nathan* v. *Takeda Pharms. N. Am., Inc.*, 572 U.S. 1033 (2014) (No. 12-1349). The Solicitor General noted that even courts that had expressed some support for a per se rule had issued other decisions adopting a more nuanced approach. *Ibid.* The Solicitor General therefore was unsure over the extent of any real disagreement and anticipated that the apparent inconsistency might go away with time. *Ibid.*

Eight years later, the Solicitor General confirmed that the disagreement identified in the government's *Nathan* brief had indeed "subsided." U.S. Br. at 19, *United States ex rel. Owsley* v. *Fazzi Assocs., Inc.*, 143 S. Ct. 362 (2022) (No. 21-936). "No court of appeals now applies a per se rule requiring every FCA complaint to identify representative examples of specific false claims." *Id.* at 15. Instead, "the courts of appeals permit at least some FCA relators to plead the defendant's submission of false claims for payment even without identifying representative examples or specific details of the defendant's claims." *Id.* at 19; accord U.S. Br. at 17, *United States ex rel. Johnson* v. *Bethany Hospice & Palliative Care LLC*, 143 S. Ct. 351 (2022) (No. 21-462). The Court therefore denied certiorari in both *Owsley* and *Bethany Hospice*, as the Solicitor General's amicus briefs recommended.

Nothing has changed since *Owsley* to justify reassessment of the Solicitor General's conclusion. Nor, contrary to petitioners' request (Pet. 29-31), is there reason to ask the United States to weigh in yet again. Indeed, this would be an especially bad vehicle for the Court's review given petitioners' paltry allegations, their concessions in the court of appeals, their failure to raise the question presented below, and the Sixth Circuit's full rationale for affirming dismissal. The petition should be denied.

A. There is no circuit split warranting this Court's review.

Petitioners recycle the same alleged circuit conflict that the Solicitor General analyzed most recently in *Owsley*. Their discussion in no way calls the Solicitor General's prior analysis into question.

1. The Sixth Circuit recognizes that "'particular' allegations of fraud may demand different things in different contexts." *United States ex rel. Hirt* v. *Walgreen Co.*, 846 F.3d 879, 881 (6th Cir. 2017). For example, "the requirement that a relator identify an actual false claim may be relaxed when, even though the relator is unable to produce an actual billing or invoice, he or she has pled facts which support a strong inference that a claim was submitted." *United States ex rel. Prather* v. *Brookdale Senior Living Cmtys., Inc.*, 838 F.3d 750, 769 (6th Cir. 2016) (citation omitted).

In *Prather*, the Sixth Circuit let a complaint proceed even though it failed to allege information about "[t]he actual *submission* of a *specific* request for anticipated payment to the government." 838 F.3d at 768-769. Despite the lack of such allegations, the complaint still supported a "strong inference that the specific requests for anticipated payment that [the relator] identified and described were submitted." *Id.* at 769. The complaint did so through allegations of "specific personal knowledge that relates directly to billing practices." *Ibid.* The court explained that the type of personal knowledge that can plead a claim with particularity may be "based *either* on working in the defendants' billing departments, *or* on discussions with employees directly responsible for submitting claims to the government." *Ibid.* (citation omitted; emphasis added). Thus, contrary to petitioners' contention (Pet. 2), the Sixth Circuit does not impose a requirement that the relators "work in billing departments."

Surveying these cases and others, the Solicitor General observed that "the Sixth Circuit recognizes a

variety of types of factual allegations by which FCA relators can create[] a strong inference that the defendant submitted false claims." U.S. Br. at 13, *Owsley*, *supra* (No. 21-936). Petitioners identify no Sixth Circuit precedent since *Owsley* that holds otherwise. On the contrary, the nonprecedential decision they cite, *United States ex rel. VIB Partners* v. *LHC Grp., Inc.*, No. 24-5393, 2025 WL 1103997, at *3 (6th Cir. Apr. 14, 2025), reaffirms *Prather*'s vitality, as does the nonprecedential decision in this very case, Pet. App. 13a-14a.

The other four circuits that petitioners locate on the Sixth Circuit's side of the alleged circuit split similarly apply a flexible approach, not a categorical pleading requirement. Whether a particular complaint satisfies Rule 9(b) "depends on context." *Vargas* v. *Lincare, Inc.*, 134 F.4th 1150, 1157 (11th Cir. 2025). Rule 9(b) "does not always require documentary proof at the pleading stage" but can sometimes be satisfied "by other means—so long as [the relator] still pleads the submission of a claim with 'sufficient indicia of reliability.'" *Ibid.*

The First Circuit likewise has "recognized at least one exception to the expectation that a relator should be able to allege the essential particulars of at least some actual false claims that were in fact submitted to the government for payment." *United States ex rel. Nargol* v. *DePuy Orthopaedics, Inc.*, 865 F.3d 29, 39 (1st Cir. 2017). And contrary to petitioners' suggestion (Pet. 16), the First Circuit has not closed the door on additional exceptions in future cases. Petitioners cite *United States ex rel. Flanagan* v. *Fresenius Med. Care Holdings, Inc.*, 142 F.4th 25, 37 (1st Cir. 2025),

Pet. 23, but that case focused on numerous deficiencies in the complaint and did not identify any sort of categorical pleading requirement.

The Fourth and Eighth Circuits similarly apply flexible, non-categorical pleading standards. A relator may plead the "particular details of a scheme to submit false claims paired with reliable indicia that lead to a strong inference that claims were actually submitted." *United States ex rel. Strubbe* v. *Crawford Cnty. Mem'l Hosp.*, 915 F.3d 1158, 1163 (8th Cir. 2019) (citation omitted). The relator does *not* need to allege, however, "a representative example describing 'the time, place, and contents of the false representations, as well as the identity of the person making the misrepresentation and what he obtained thereby.'" *United States ex rel. Nicholson* v. *MedCom Carolinas, Inc.*, 42 F.4th 185, 194 (4th Cir. 2022) (citation omitted). That is merely one way to plead a claim with particularity. See *ibid.*

2. Because the five circuits petitioners criticize do not categorically require details about specific false claims, the seven circuits supposedly on the other side are not, as petitioners assert, actually in conflict with them. The Solicitor General thus explained in 2022 that the circuits have "largely converged on a more flexible standard." U.S. Br. at 15, *Owsley*, *supra* (No. 21-936). The First, Fourth, Sixth, Eighth, and Eleventh Circuits, on the one hand, and the Second, Third, Fifth, Seventh, Ninth, Tenth, and D.C. Circuits, on the other, do not disagree over whether Rule 9(b) creates a categorical pleading requirement for FCA claims. *Id.* at 15-21. There may be differences of "em-

phasis," but there is no difference over whether "details regarding specific false claims for payment" are "invariably required." *Id.* at 18.

General Prelogar explained, for example, that many circuits "have articulated essentially the same standard, under which an FCA complaint satisfies Rule 9(b) if it 'alleg[es] particular details of a scheme to submit false claims paired with reliable indicia that lead to a strong inference that claims were actually submitted.'" U.S. Br. at 16, *Owsley*, *supra* (No. 21-936) (quoting *United States ex rel. Grubbs* v. *Kanneganti*, 565 F.3d 180, 190 (5th Cir. 2009)); see also *United States ex rel. Polukoff* v. *St. Mark's Hosp.*, 895 F.3d 730, 745 (10th Cir. 2018); *United States ex rel. Customs Fraud Investigations, LLC* v. *Victaulic Co.*, 839 F.3d 242, 258 (3d Cir. 2016), cert. denied, 583 U.S. 821 (2017); *United States ex rel. Heath v. AT&T, Inc.*, 791 F.3d 112, 126 (D.C. Cir. 2015), cert. denied, 579 U.S. 927 (2016); *Ebeid* v. *Lungwitz*, 616 F.3d 993, 998-999 (9th Cir.), cert. denied, 562 U.S. 1102 (2010). The Eleventh Circuit recently articulated the same basic standard. *Vargas*, 134 F.4th at 1157.

Meanwhile, circuits supposedly on the lenient side of petitioners' alleged split occasionally express support for a stricter standard. See, *e.g.*, *United States ex rel. Sibley* v. *Univ. of Chi. Med. Ctr.*, 44 F.4th 646, 656 (7th Cir. 2022) ("'[T]o defeat dismissal, 'specific representative examples' of false submissions are required." (citation omitted)). Or they recognize that "the reports of a circuit split are, like those prematurely reporting Mark Twain's death, 'greatly exaggerated.'" *United States ex rel. Chorches for Bankr. Est. of Fabula* v. *Am. Med. Response, Inc.*, 865 F.3d

71, 89 (2d Cir. 2017). There is no genuine support for petitioners' alleged circuit split. Rather, "[t]he divergent outcomes in the courts of appeals * * * simply reflect courts' application of a fact-intensive standard to a range of different types of allegations." U.S. Br. at 8, *Owsley*, *supra* (No. 21-936).

Nor do petitioners identify any developments since this Court denied certiorari on this issue three times three years ago to show that it is more deserving of review now. *Owsley*, 143 S. Ct. at 362; *Bethany Hospice*, 143 S. Ct. at 351; *Molina Healthcare of Ill., Inc.* v. *Prose*, 143 S. Ct. 352 (2022). On the contrary, as described above, the only intervening appellate precedents they cite, *Vargas* and *Flanagan*, are consistent with the convergence trend that the Solicitor General identified in 2022.*

Petitioners nonetheless claim (Pet. 24) that "all other stakeholders" beside the United States believe in the circuit split. But their only citation for that claim is the briefing of the (ultimately unsuccessful) petitioners in *Molina Healthcare*. The Court can and should again accept the Solicitor General's recent assurances in *Owsley* and *Bethany Hospice* that there is no meaningful circuit split warranting this Court's review. The nonprecedential decision below certainly did not create one. On the contrary, as discussed next,

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* One notable FCA development since 2022 is the question raised by three Members of this Court over the constitutionality of the statute's qui tam procedures. See *United States ex rel. Polansky* v. *Exec. Health Res., Inc.*, 599 U.S. 419, 442 (2023) (Kavanaugh, J., concurring); *id.* at 449-452 (Thomas, J., dissenting). The existence of such a fundamental open question further weakens any argument for exploring FCA pleading requirements in this qui tam suit.

it focused on the case-specific flaws in petitioners' allegations, which were reinforced by their concessions to the Sixth Circuit.

B. This case would be a bad vehicle to address FCA pleading requirements.

Despite petitioners' objections over a "categorical" pleading rule, they disregard the Sixth Circuit's case-specific reasoning and their own arguments below. These points show that this would be an exceptionally poor candidate to explore the contours of Rule 9(b)'s particularity requirement for FCA claims.

The Sixth Circuit accepted petitioners' premise "that, even without identifying the submission of a specific claim, they can still satisfy [Rule 9(b)] by pleading 'facts which support a strong inference that a claim was submitted.'" Pet. App. 13a (citing *Prather*, 838 F.3d at 768-769). After *Prather*, that exception clearly exists under Sixth Circuit precedent—although, as the court below noted, it is confined to circumstances where the relator has personal knowledge of the relevant billing practices. See *ibid.* Petitioners, however, disclaimed having such personal knowledge. They expressly "concede[d] that they 'do not know at this stage of the litigation precisely which entity keys in the bills.'" *Id.* at 14a (citation omitted). Put simply, they did not allege, and did not claim to have any knowledge of, the identity of the actor that supposedly submitted the false claims for payment. Yet "Rule 9(b) requires that the plaintiff specify the 'who, what, when, where, and how' of the alleged fraud," *ibid.* (citation omitted), and petitioners' pleading did not get past even the first of those questions. *Id.* at 15a.

Petitioners are therefore wrong to claim (Pet. 27) that this case cleanly presents the question presented in their petition. The Sixth Circuit's highlighting of petitioners' concession—that they did not and cannot plead whether either respondent submitted any of the purportedly false claims for payment—presents clear alternative grounds for affirmance. The petition simply ignores this problem, even though it was a central concern not just of the court of appeals but also of the district court. As the district court recounted, the complaint lacked any factual allegations to suggest that either respondent "submitted a single hospital bill, much less a false one." Pet. App. 33a (citation omitted). Petitioners failed to adequately allege that respondents "directly participated in the submission of any of the purported false claims." *Id.* at 34a.

Petitioners do not identify any court of appeals that would allow a complaint to proceed despite this deficiency. For example, petitioners never contend that any circuit would disagree with the Sixth Circuit's statement here that "[t]he 'who' is * * * a minimum requirement" for FCA claims under Rule 9(b). Pet. App. 15a. Nor could petitioners reasonably make such a claim. Even the circuits whose law petitioners find favorable agree that FCA qui tam complaints must plead the "who, what, when, where, and how." See, *e.g.*, *United States ex rel. Prose* v. *Molina Healthcare of Ill., Inc.*, 17 F.4th 732, 739 (7th Cir. 2021); *Polukoff*, 895 F.3d at 745; *United States ex rel. Colquitt* v. *Abbott Lab'ys*, 858 F.3d 365, 371 (5th Cir. 2017); *United States ex rel. Bookwalter* v. *UPMC*, 946 F.3d 162, 176 (3d Cir. 2019); *United States ex rel. Silingo* v. *WellPoint, Inc.*, 904 F.3d 667, 677 (9th Cir.

2018). Given petitioners' uncontested failure to adequately plead the "who" for their fraud claim, any dispute over how best to articulate the applicable pleading standards would be wholly academic.

For the same reason, this case does not actually present the scenario posed in the petition's question presented: "relators who plead detailed firsthand knowledge of a fraudulent billing scheme." Pet. i. As the Sixth Circuit emphasized, petitioners disclaimed knowledge of the billing, including perhaps the most basic issue of who actually engaged in the billing. See Pet. App. 14a.

Contrary to petitioners' claim now (Pet. 27), nothing about this case "presents materially stronger evidence of fraud" than other recent cases in which this Court denied certiorari. By the time briefing was closed in the Sixth Circuit, petitioners must have seen the writing on the wall. They filed a motion to waive their initial request for oral argument and to instead submit the case on the briefs because of the Sixth Circuit's "clear case law" applying Rule 9(b) and Federal Rule of Civil Procedure 12(b)(6). Doc. 25, at 2. Under the clear case law of the Sixth Circuit and everywhere else, the complaint's lack of allegations that respondents participated in billing the government, on top of the complaint's numerous other failures, indeed made the appeal a straightforward affirmance—as the Sixth Circuit's nonprecedential and unanimous decision reflects.

Nor, for that matter, did petitioners ever argue to the Sixth Circuit that this case presented an important question over the proper pleading standard under Rule 9(b). Petitioners accepted existing Sixth

Circuit precedent, did not invoke precedent from other circuits on this topic, and never argued below that the Sixth Circuit risked creating or deepening a circuit split. Pet. C.A. Br. 18-24; Pet. C.A. Reply Br. 1-4. In fact, petitioners expressly "acknowledged" the "requirements" to plead the fraud with particularity and "provide examples of specific fraudulent conduct that are representative samples of the scheme." Pet. C.A. Reply Br. 1 (citation omitted). Then, even after the panel decision, petitioners did not bother to seek rehearing before either the panel or the en banc court. If the Sixth Circuit were truly in conflict with its sister circuits, petitioners surely would and should have given that court an opportunity to self-correct.

In short, were the Court inclined to try to offer greater clarity on the need to plead details about specific false claims submitted for payment, this case would be an unsuitable vehicle—for multiple reasons. If the Court granted certiorari, a threshold question likely to consume the Court's attention would be whether petitioners' complaint even gets out of the starting gate when they offer no facts to suggest respondents participated in the allegedly fraudulent billing. Petitioners do not dispute that the Sixth Circuit's fact-bound determination that the complaint lacks those critical allegations is correct and undeserving of this Court's review. They likewise do not dispute that this Court generally does not grant certiorari to consider arguments and theories that were never aired before the lower court. See, *e.g.*, *Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n.7 (2005) ("[W]e are a court of review, not of first view[.]").

C. The decision below is correct.

Petitioners barely attempt to defend their complaint in response to the Sixth Circuit's ruling that it falls short of what Rule 9(b) requires. They seemingly contend (Pet. 28) that Rule 9(b) demands nothing more than allegations about a "fraudulent scheme" and allegations that "defendants regularly submit claims to government programs," which supposedly together support "a strong inference that false claims were the natural, logically intended result of the scheme." This loose conception of Rule 9(b) would stray far from how the rule is normally understood and would prevent it from achieving its purpose.

"In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake." Fed. R. Civ. P. 9(b). Compared with the normal pleading requirements under Rule 8, Rule 9(b) "provides for greater particularity in all averments of fraud or mistake." *Swierkiewicz* v. *Sorema N.A.*, 534 U.S. 506, 513 (2002). The rule's reference to "circumstances constituting fraud" requires allegations on "matters such as the time, place, and contents of the false representations or omissions, as well as the identity of the person making the misrepresentation or failing to make a complete disclosure and what that defendant obtained thereby." 5A Charles Alan Wright et al., *Federal Practice and Procedure* § 1297 (4th ed. 2025). Again, petitioners accepted below that they bore this pleading burden. Pet. C.A. Br. 18-19 (quoting *Chesbrough* v. *VPA, P.C.*, 655 F.3d 461, 467 (6th Cir. 2011)).

Petitioners suggest (Pet. 29) that Rule 9(b) merely guarantees fair notice of the alleged misconduct. But

even the circuits whose decisions petitioners prefer recognize that Rule 9(b) does much more. The rule also "protects defendants from harm to their reputation and goodwill, reduces the number of strike suits, and prevents plaintiffs from filing baseless claims then attempting to discover unknown wrongs." *Grubbs*, 565 F.3d at 190 (citation omitted). Of course, like "[a]ny heightened pleading rule," Rule 9(b) "could have the effect of preventing a plaintiff from getting discovery on a claim that might have gone to a jury, had discovery occurred and yielded substantial evidence." *Tellabs, Inc.* v. *Makor Issues & Rts., Ltd.*, 551 U.S. 308, 327 n.9 (2007). But that is the unavoidable tradeoff for enforcing threshold pleading standards—even the ordinary standard of Rule 8. The drafters of the federal rules recognized that on balance, pleading standards and dismissal for failure to meet them provide an "important mechanism for weeding out meritless claims." *Fifth Third Bancorp* v. *Dudenhoeffer*, 573 U.S. 409, 425 (2014).

In all events, this case does not come close to a scenario in which Rule 9(b) is placing excessive demands on a plaintiff. As discussed above, petitioners failed even to allege *who* submitted the purportedly false claims for payment. The "complaint neither identifies which of the named defendants actually submitted falsified invoices or bills to the government, nor which documents or reimbursement claims contained misrepresentations upon which the government relied." Pet. App. 11a (citation and brackets omitted). The complaint also fails to "allege that [respondents] instructed or required the medical professionals in any of these cases to board [the example]

patients for any period of time and to bill for care that was not administered." *Ibid.*

Under any colorable understanding of Rule 9(b), petitioners did not come close to pleading fraud with particularity. The district court was right to dismiss the action, and the Sixth Circuit was right to affirm.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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