NO. 25-728

In the Supreme Court of the United States

THE UNITED STATES OF AMERICA and the STATE OF GEORGIA *ex rel.* BARBARA SENTERS,
Petitioner,

v.

QUEST DIAGNOSTICS INC.,
Respondent.

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

BRIEF IN OPPOSITION

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Question Presented

Whether petitioner pleaded submission of a false claim under the False Claims Act, 31 U.S.C. § 3729, with the particularity required by Federal Rule of Civil Procedure 9(b).

Corporate Disclosure Statement

Quest Diagnostics Incorporated certifies that it is a publicly held corporation and a publicly traded entity on the New York Stock Exchange (DGX).

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Brief in Opposition

This Court is well acquainted with the issues raised in the petition for certiorari. Just one month ago, the Court denied what petitioner herself calls "[a] complementary petition presenting the same issue" in *United States ex rel. Olsen v. Tenet Healthcare Corp.*, No. 25-347, 2026 WL 80010 (U.S. Jan. 12, 2026) (mem.). Pet.*i*. The petition here, filed by the same counsel as in *Olsen*, seeks review of the same question based on the same arguments. *See* Pet.*i*, 1, 3, 26-28, 34. The result should be the same as well: the Court should deny review.

Indeed, this Court has denied no fewer than *thirteen* petitions in the last decade raising the same question of how Rule 9(b) applies to qui tam actions brought under the False Claims Act (FCA).[1] In considering those petitions, the Court twice requested the views of the Solicitor General, who twice recommended denial. *See* Br. for the United States as

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[1] *Olsen*, 2026 WL 80010; *Jacobs v. Walgreen Co.*, 143 S. Ct. 104 (2022) (mem.); *Johnson v. Bethany Hospice & Palliative Care LLC*, 143 S. Ct. 351 (2022) (mem.); *U.S. ex rel. Owsley v. Fazzi Assocs., Inc.*, 143 S. Ct. 362 (2022) (mem.); *Molina Healthcare of Ill., Inc. v. Prose*, 143 S. Ct. 352 (2022) (mem.); *Sheoran v. Walmart Stores E., LP*, 142 S. Ct. 1210 (2022) (mem.); *U.S. ex rel. Juan v. Hauser*, 141 S. Ct. 904 (2020) (mem.); *U.S. ex rel. Strubbe v. Crawford Cnty. Mem'l Hosp.*, 589 U.S. 1080 (2019) (mem.); *U.S. ex rel. Chase v. Chapters Health Sys., Inc.*, 586 U.S. 816 (2018) (mem.); *U.S. ex rel. Ibanez v. Bristol-Myers Squibb Co.*, 584 U.S. 1002 (2018) (mem.); *Med. Device Bus. Servs., Inc. v. U.S. ex rel. Nargol*, 584 U.S. 946 (2018) (mem.); *Victaulic Co. v. U.S. ex rel. Customs Fraud Investigations, LLC*, 583 U.S. 821 (2017) (mem.); *U.S. ex rel. Jallali v. Sun Healthcare Grp.*, 580 U.S. 1099 (2017) (mem.).

Amicus Curiae 22, *Johnson v. Bethany Hospice & Palliative Care LLC*, 143 S. Ct. 351 (2022) (No. 21-462), 2022 WL 1715610 ("*Johnson* U.S. Br."); Br. for the United States as Amicus Curiae 22, *U.S. ex rel. Owsley v. Fazzi Assocs., Inc.*, 143 S. Ct. 362 (2022) (No. 21-936), 2022 WL 4236648 ("*Owsley* U.S. Br."). The Solicitor General explained that the question presented does not implicate a clean circuit split and that "[t]his Court's review . . . could not reasonably be expected to produce a bright-line rule or otherwise eliminate all disuniformity among the courts of appeals." *Owsley* U.S. Br. 21-22. That remains true today, as the Court must have recognized in denying the *Olsen* petition.

As in 2022, the circuit split on which petitioner relies—over whether relators must plead details of specific false claims—in practice reflects courts applying a fact-sensitive legal test to a wide variety of factual circumstances. Although different circuits have articulated that test in different ways, the circuits' disagreements do not present the sort of clean legal question for which this Court's review is needed or likely to be useful.

And even if the Court were inclined to change its mind about the certworthiness of the question presented, this case would be an especially bad vehicle for considering that question. Although petitioner insists (at 27) that this case "cleanly" presents the issue, history proves otherwise. Throughout the fifteen-plus years of this case, petitioner has repeatedly shifted from one falsity theory to another in an unsuccessful effort to plead a viable claim. The theory she ultimately presented to the Eleventh

Circuit was not, as she suggests to this Court, that Quest falsely certified that medically unnecessary tests were medically necessary. Petitioner did not allege or argue that tests for which Quest billed the government were medically unnecessary. Instead, she argued that Quest did not know *whether* tests were medically necessary. Under petitioner's theory, even if Quest's certification of medical necessity was *true*, the claim could be deemed "false" if Quest did not know it was true.

The Eleventh Circuit correctly rejected petitioner's nonsensical theory, which conflates the distinct FCA elements of falsity and scienter. The Eleventh Circuit did not announce or apply any categorical rule for pleading falsity under Rule 9(b). Nor would adopting a different pleading standard save petitioner's case. Even under petitioner's interpretation of Rule 9(b), her scienter-as-falsity theory could not support a viable FCA claim. In the context of this case, therefore, the question petitioner asks this Court to decide would be purely academic.

The Court has denied review in multiple cases that would have been suitable vehicles to decide the question presented. It should not change course now, after thirteen denials in nine years, to grant review in a bad one.

Statement of the Case

1. The FCA imposes liability for knowingly presenting to the government "a false or fraudulent claim for payment or approval." 31 U.S.C. § 3729(a)(1)(A). While the government can bring FCA claims directly, private individuals acting as "relators"

can also prosecute qui tam actions on the government's behalf. 31 U.S.C. § 3730.[2] FCA remedies are unusually draconian—treble damages plus per-claim penalties—and relators are entitled to a share of any recovery plus attorney's fees and expenses. *Id.* §§ 3729(a), 3730(d)(1)-(2).

In light of those potentially exorbitant damages, federal law sets a high bar for what conduct violates the FCA and what a plaintiff must allege in order to state a claim. *See Graham Cnty. Soil & Water Conservation Dist. v. U.S. ex rel. Wilson*, 559 U.S. 280, 295 (2010). The FCA is concerned with fraudulent requests for payment; it is not "a vehicle for punishing garden-variety breaches of contract or regulatory violations." *Universal Health Servs., Inc. v. U.S. ex rel. Escobar*, 579 U.S. 176, 194 (2016). One key check is thus Rule 9(b) of the Federal Rules of Civil Procedure, which requires plaintiffs alleging any fraud-based claim to "state with particularity the circumstances constituting fraud." Fed. R. Civ. P. 9(b).

2. Respondent Quest Diagnostics is a leading provider of diagnostic testing services to healthcare providers. App.2a. Quest allows doctors to order panels of lab tests through an electronic ordering system called Care360. App.11a. When Quest seeks

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[2] *But see, e.g., U.S. ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 442 (2023) (Kavanaugh, J., joined by Barrett, J., concurring) (explaining that the qui tam device raises Article II concerns); *id.* at 448-50 (Thomas, J., dissenting) (same); *U.S. ex rel. Zafirov v. Fla. Med. Assocs., LLC*, 751 F. Supp. 3d 1293, 1324 (M.D. Fla. 2024) (holding that the qui tam device violates Article II), *appeal docketed*, No. 24-13581 (11th Cir. Oct. 30, 2024) (oral argument held December 12, 2025).

federal reimbursement for these tests, it does so via CMS Form 1500, which contains a certification that the tests "were medically indicated and necessary for the health of the patient." App.3a. Quest relies on the prescribing doctor's order for the tests to establish the requisite medical necessity. App.12a, 23a.

Petitioner worked for Quest from 2005 until 2012, first as a Human Resources Generalist and then as a Compliance Officer for the Southeastern Business Unit. App.2a. She filed this qui tam action in July 2010, alleging that Quest violated the FCA and its Georgia-law counterpart. App.2a. She alleged that Quest violated the FCA through its implementation of lab panels in Care360, which she claimed "made it difficult for doctors to know which tests were included in the custom panel and thus difficult to understand what tests were ordered." App.2a. As a result, petitioner contended, Quest could not know whether all tests for which it submitted claims were medically necessary. App.3a-4a, 14a-15a. She claimed that Quest's alleged lack of knowledge about whether tests were medically necessary rendered "false" Quest's Form 1500 certifications that the tests were medically necessary. App.3a-4a, 14a-15a.

Like all qui tam actions under the FCA, petitioner's suit was filed under seal. What should have happened next was that the government should have investigated petitioner's allegations and made its election regarding whether to intervene and pursue the case within 60 days or such longer period as justified by good cause shown to the district court, 31 U.S.C. § 3730(b)(4), whereupon the case would have been unsealed. Instead, in 2011, a year after the case

was filed, it was "administratively closed." App.3a, 13a. The case then languished under seal for nine more years, until the government declined to intervene in October 2020. App.3a, 13a; *see* D. Ct. Dkt. 25. The district court then reopened and unsealed the case, and petitioner filed her third amended complaint. App.13a. The district court dismissed the third amended complaint under Rule 9(b) because petitioner had not pleaded with particularity that any "fraudulent claim was in fact submitted to the government." D. Ct. Dkt. 77 at 16, 19 (quotation marks omitted). In particular, petitioner alleged no facts showing that Quest had ever billed the government for a test that was medically unnecessary. *Id.* at 10-11.

The district court granted leave to amend, and petitioner filed her fourth amended complaint. App.13a. That complaint continued to assert that Quest falsely certified the medical necessity of its tests on CMS Form 1500. App.4a, 14a-15a. But petitioner still did not allege any facts suggesting that Quest ever billed the government for a test that was medically unnecessary. She identified one supposedly representative claim, for tests provided to a "Patient Y." App.7a. But petitioner provided no details about Patient Y's claim that might establish that Quest's claim was *false*. Most notably, she did not allege that Patient Y's doctor had not intended to order any of the tests or that any test the doctor ordered was not medically necessary.[3]

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[3] Petitioner also described tests allegedly ordered for a "Patient A" and "Patient X." But she did not allege that Patient A or Patient X were Medicare or Medicaid patients or that Quest

Because petitioner could not plead with particularity that Quest ever sought reimbursement for a test that a doctor did not order or that was not medically necessary, she sought to plead falsity exclusively through allegations about Quest's knowledge. App.14a-15a, 20a-25a. She asserted that "it d[id] not matter whether the lab tests were medically necessary" if Quest did not *know* the tests were medically necessary. App.15a. In this way, petitioner sought to make allegations of scienter do the work of her missing allegations of falsity: factually true claims of medical necessity would somehow become "false" claims if Quest did not know they were true.

This represented an explicit change in petitioner's theory of falsity. App.14a-15a. Her third amended complaint had relied on a theory that Quest had billed the government for tests that were *in fact* not medically necessary. App.14a. But she could not allege any facts to support that theory, so she pivoted, asserting for the first time that her "case is not about what doctors might say about a given test or what was or is in their patients' medical records; it is about what Quest knew or did not know about who ordered the tests in a custom profile in Care360 at the time Quest unbundled and billed each test in the profile." App.15a.

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submitted claims for their tests to any government payor. App.12a n.1, 15a, 22a & n.7. Petitioner even disclaimed any assertion that Quest submitted a false claim for Patient X, describing Patient X as merely "demonstrat[ing] the nature of the scheme." App.12a n.1.

The district court dismissed petitioner's claims.[4] The court rejected petitioner's new knowledge-based falsity theory because it conflated the FCA's distinct falsity and scienter elements. App.20a-25a. The court explained that "[i]f the tests were medically indicated and necessary, then the billing claim certification was true regardless of Quest's knowledge or lack thereof regarding the tests' medical necessity." App.25a (emphasis omitted). "[I]n order for Quest's express certification to have been *false*, the tests must *not* have been 'medically indicated and necessary for the health of the patient.'" App.20a. But despite having had over fourteen years to investigate her claims, petitioner still "provided no factual allegations to indicate that doctors later discovered, or even now believe, that they were tricked or confused into ordering medically unnecessary tests or tests they did not intend to order." App.20a.

3. On appeal, petitioner continued to rely on her scienter-as-falsity theory, arguing that "a defendant may be liable under the FCA for acting with deliberate ignorance or reckless disregard, *even when the underlying claim is otherwise true*." C.O.A. Br. 27 (emphasis added). As a backstop to that bizarre theory, petitioner also tried to revive an implied-certification theory of falsity that she had expressly disclaimed in the district court, D. Ct. Dkt. 75 at 8:21-

[4] Quest had also moved to dismiss the complaint based on prejudice from the nearly ten-year delay between petitioner's filing of her complaint and the government's declining to intervene, including the nine-year period of "administrative closure" under seal, an action the FCA does not authorize. D. Ct. Dkt. 127 at 3. The district court did not decide that motion.

25-9:1, and to assert a fraudulent-inducement theory that she had never mentioned in any earlier filing, C.O.A. Br. 19-20.

The Eleventh Circuit unanimously affirmed the district court's decision in a nonprecedential opinion. App.2a. The court did not address the new theories petitioner had not preserved in the district court, and it agreed with the district court's rejection of her theory that Quest's claims were false solely because "Quest did not know if the services were medically necessary." App.7a. The Eleventh Circuit concluded that this theory was not sufficient "to show why the custom panel for Patient Y was not medically necessary and why, therefore, any certification to the contrary was false." App.7a. The court next held that petitioner could not "work around this issue" with allegations about her "personal knowledge." App.7a. Although petitioner alleged that she reviewed Quest's billing system and reimbursement claims, she did not link her experience to any claim submitted for a test that was not in fact "medically indicated and necessary for the health of the patient." App.8a (quotation marks omitted).

4. Petitioner filed a petition for rehearing en banc, which the Eleventh Circuit denied without dissent. C.O.A. Dkt. 45.

Reasons for Denying the Petition

This Court has already denied numerous petitions seeking review of the question presented in this case—including many arising from the Eleventh Circuit. *E.g.*, *Johnson v. Bethany Hospice & Palliative Care LLC*, 143 S. Ct. 351 (2022) (mem.); *U.S. ex rel. Chase*

v. Chapters Health Sys., Inc., 586 U.S. 816 (2018) (mem.)*; U.S. ex rel. Jallali v. Sun Healthcare Grp.*, 580 U.S. 1099 (2017) (mem.); *U.S. ex rel. Mastej v. Health Mgmt. Assocs., Inc.*, 575 U.S. 1037 (2015) (mem.); *Jallali v. Nova Se. Univ., Inc.*, 568 U.S. 1250 (2013) (mem.); *U.S. ex rel. Hopper v. Solvay Pharms., Inc.*, 561 U.S. 1006 (2010) (mem.); *U.S. ex rel. Corsello v. Lincare, Inc.*, 549 U.S. 810 (2006) (mem); *see also supra* note 1. Just last month, the Court denied a "complementary" petition filed by petitioner's counsel, which "present[ed] the same issue." Pet.*i*; *see Olsen*, 2026 WL 80010. There is no more reason to grant the petition in this case than in any of those other cases—to the contrary, this would be an exceptionally bad vehicle for review.

I. This case presents no review-worthy circuit split.

Petitioner is just the latest of many litigants who have asked this Court to decide what Rule 9(b) requires FCA relators to plead. But as the Solicitor General explained in 2022, there is less to the circuit split touted by petitioner than first meets the eye: "[W]hile courts of appeals have expressed different degrees of willingness to infer the submission of false claims from probability, circumstantial evidence, and logic, the courts' statements generally appear to reflect different judges' subjective assessments of the reliability of the particular allegations at issue, rather than a choice among competing legal standards." *Owsley* U.S. Br. 20.

Nothing relevant has changed in the few short years since this Court denied the petition in *Owsley* and three other materially identical petitions. *U.S. ex*

rel. Owsley v. Fazzi Assocs., Inc., 143 S. Ct. 362 (2022) (mem.); *Johnson*, 143 S. Ct. 351; *Molina Healthcare of Ill., Inc. v. Prose*, 143 S. Ct. 352 (2022) (mem.). Although the circuits have expressed some disagreement over how to phrase the Rule 9(b) pleading standard, no circuit has adopted a per se rule requiring representative examples or direct firsthand knowledge of false claims. That is likely why the Court also denied the recent *Olsen* petition, which sought review of the same question as petitioner based on the same circuit split. That split did not support review in *Olsen*, and it does not support review here.

1. Contrary to petitioner's account (at 18), the Eleventh Circuit does not require "direct, firsthand knowledge of actual false claims that were submitted to the government." *See Johnson* U.S. Br. 9-10, 15.

The Eleventh Circuit recognizes that "[w]hether an allegation is reliable depends on context." *Vargas v. Lincare, Inc.*, 134 F.4th 1150, 1157 (11th Cir. 2025). It thus "evaluate[s] whether the allegations of a complaint contain sufficient indicia of reliability to satisfy Rule 9(b) on a case-by-case basis." *U.S. ex rel. Atkins v. McInteer*, 470 F.3d 1350, 1358 (11th Cir. 2006). So while "[p]roviding exact billing data—name, date, amount, and services rendered—or attaching a representative sample claim is one way a complaint can establish the necessary indicia of reliability," there "is no per se rule that an FCA complaint must provide exact billing data or attach a representative sample claim." *U.S. ex rel. Mastej v. Health Mgmt. Assocs., Inc.*, 591 F. App'x 693, 704 (11th Cir. 2014), *cert. denied*, 575 U.S. 1037. Under the Eleventh Circuit's "nuanced, case-by-case approach, other

means are available to present the required indicia of reliability." *Id.*

In *Vargas*, for example, the Eleventh Circuit permitted the relators to pursue a claim that the defendants fraudulently upcoded medical equipment for reimbursement even though "the relators ha[d] no firsthand knowledge of the claims." 134 F.4th at 1158. The court held that Rule 9(b) does not require a relator to "identify[] specific claims submitted to the government" when the relator otherwise "pleads the submission of a claim with 'sufficient indicia of reliability.'" *Id.* at 1157 (quoting *Atkins*, 470 F.3d at 1358-59). And the court found sufficient indicia based on the relators' allegations "that they audited patient files[,] including billing correspondence and authorizations for payment," which allowed them to plead "specific instances of upcoding" with particularity. *Id.* at 1159. At the same time, the court rejected the relators' other theories of liability because the relators failed to allege facts showing *any* link between the supposed fraud and the actual submission of false claims to the government. *Id*. at 1159-62.

Similarly, in *United States ex rel. Matheny v. Medco Health Solutions, Inc.*, 671 F.3d 1217, 1225 (11th Cir. 2012), the Eleventh Circuit held that the relators did not "need to further support their well-pled factual allegations" of false claims "with some other 'factual basis,' such as personal knowledge of the submission." And in *United States ex rel. Walker v. R&F Properties of Lake County, Inc.*, 433 F.3d 1349 (11th Cir. 2005), *cert. denied sub nom. R&F Props. of Lake Cnty., Inc. v. Walker*, 549 U.S. 1027 (2006), the

court allowed a relator to pursue her claims without firsthand knowledge of a representative false claim because she "described specific conversations and observations that supported her belief that a particular defendant submitted false claims," *Vargas*, 134 F.4th at 1157 (citing *Walker*, 433 F.3d at 1360).

The Eleventh Circuit cases petitioner cites do not support a different conclusion. While petitioner seeks to read those cases broadly, they simply reflect specific applications of the court's "nuanced, case-by-case approach" to Rule 9(b). *Mastej*, 591 F. App'x at 704. In *United States ex rel. 84Partners, LLC v. Nuflo, Inc.*, 79 F.4th 1353, 1361 (11th Cir. 2023), the court acknowledged that firsthand knowledge of specific false claims is not "always required." But the relators had not alleged *any* information sufficient to show "the necessary connection between an underlying fraudulent scheme and the actual presentment or payment of a false claim." *Id.* at 1361-62. The court even distinguished *Matheny* and *Walker*, finding that the relators in those cases "alleged specific details that provided the indicia of reliability necessary under Rule 9(b)." *Id.* at 1362 (quotation marks omitted).

Atkins did not, as petitioner claims (at 18), reject the relator's claims merely because he lacked firsthand knowledge of specific false claims. Instead, the court found that "rumors from staff" and the relator's subjective beliefs were insufficiently reliable to satisfy Rule 9(b). 470 F.3d at 1359; *see Vargas*, 134 F.4th at 1157-58 (describing *Atkins*). Likewise, in *Corsello v. Lincare, Inc.* 428 F.3d 1008, 1013-14 (11th Cir. 2005) (per curiam), *cert. denied*, 549 U.S. 810, the Eleventh Circuit simply found that the relator's bare

assertions that he was "aware" of "improper practices" were too "vague" to satisfy Rule 9(b). And in *United States ex rel. Sanchez v. Lymphatx, Inc.*, 596 F.3d 1300, 1302-03 & n.4 (11th Cir. 2010) (per curiam), the court held only that a relator could not state a claim through "vague allegations that she 'found [unspecified] documentation' and 'discovered' or 'learned' that the defendants had submitted false claims."

This Court has not previously found the Eleventh Circuit's context-sensitive application of Rule 9(b) to warrant review, and it should not do so now. In the nonprecedential decision below, the Eleventh Circuit neither announced nor enforced any categorical legal rule for pleading an FCA claim. The court simply rejected petitioner's attempt to conflate falsity and scienter—as if allegations that "Quest did not know if the services were medically necessary," App.7a, showed that the services *were not* medically necessary. The fundamental problem with petitioner's case is that her falsity theory was legally invalid because she made no attempt to plead that any test "was not medically necessary and why, therefore, any certification to the contrary was false." App.7a.

The Eleventh Circuit thus affirmed the dismissal of petitioner's complaint not because she lacked firsthand knowledge of a specific false claim, but because she did not plead *any* facts showing that *any* "doctors later discovered, or even now believe, that they were tricked or confused into ordering medically unnecessary tests or tests that they did not intend to order." App.7a (quoting App.20a). When the court addressed petitioner's allegations of "personal

knowledge," it did so only to explain why those allegations could not substitute for the required allegations—which petitioner never made—that Quest ever billed the government for a test that was medically unnecessary. App.7a-8a. The court noted that petitioner did not "claim to have observed the submission of an actual false claim" or to have "personally participate[d] in submitting false claims," but the court did not hold that such allegations are *required*. App.8a. The problem was that none of petitioner's knowledge allegations included "any facts" showing that any test for which Quest billed the government was not "medically indicated and necessary for the health of the patient." App.8a (quotation marks omitted).

2. The Eleventh Circuit's decision below is consistent with other circuits' similarly fact-sensitive application of Rule 9(b) to FCA cases.

a. Neither the Eighth Circuit nor the Sixth Circuit categorically requires relators to plead firsthand knowledge of specific false claims. *Contra* Pet.20-23. In the Eighth Circuit, 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." *U.S. ex rel. Strubbe v. Crawford Cnty. Mem'l Hosp.*, 915 F.3d 1158, 1163 (8th Cir. 2019) (citation omitted), *cert. denied*, 589 U.S. 1080 (2019) (mem.) (quoting *U.S. ex rel. Thayer v. Planned Parenthood of Heartland*, 765 F.3d 914, 917 (8th Cir. 2014)). The Sixth Circuit, too, has made clear that "'particular' allegations of fraud may demand different things in different contexts." *U.S. ex rel. Hirt v. Walgreen Co.*, 846 F.3d 879, 881

(6th Cir. 2017). The Sixth Circuit has accordingly approved complaints that do not allege firsthand knowledge of specific false claims. *E.g.*, *U.S. ex rel. Prather v. Brookdale Senior Living Communities, Inc.*, 838 F.3d 750, 768-69 (6th Cir. 2016).

Contrary to petitioner's characterization of *Prather* as an outlier (at 21), the Sixth Circuit's "other decisions have not undermined *Prather*; they have simply concluded, based on the particular facts alleged in the relevant complaints, that the relators had not given the defendants adequate notice of particular false claims that were alleged to be fraudulent." *Owsley* U.S. Br. 13. Even in the recent, nonprecedential case on which petitioner relies, the Sixth Circuit reaffirmed *Prather* and described the requirement of "identify[ing] a representative claim" as a "default rule." *U.S. ex rel. VIB Partners v. LHC Grp., Inc.*, No. 24-5393, 2025 WL 1103997, at *3 (6th Cir. Apr. 14, 2025) (quotation marks omitted). The court noted that it has recognized exceptions to that rule, but the relator failed to "provide enough detail to infer a plausible claim" even "under a relaxed standard." *Id.*

b. Although petitioner contends (at 23) that the First, Second, and Fourth Circuits "generally require" examples of specific false claims, she admits they recognize "exceptions." Those exceptions undermine petitioner's claim of a clean split among the circuits.

The First Circuit has held that, at least "where the defendant allegedly induced third parties to file false claims with the government," a "relator could satisfy Rule 9(b) . . . without necessarily providing details as to each false claim." *U.S. ex rel. Nargol v.*

DePuy Orthopaedics, Inc., 865 F.3d 29, 38-39 (1st Cir. 2017) (cleaned up), *cert. denied sub nom. Med. Device Bus. Servs., Inc. v. U.S. ex rel. Nargol*, 584 U.S. 946 (2018) (mem.). The precise contours of that exception remain to be explored in future cases; contrary to petitioner's argument, the First Circuit has never held that the "more flexible standard" is *limited* to cases involving third-party submissions. Pet.23-24 (quoting *Nargol*, 865 F.3d at 39). The case petitioner cites, *U.S. ex rel. Flanagan v. Fresenius Med. Care Holdings, Inc.*, 142 F.4th 25 (1st Cir. 2025), nowhere described or applied a categorical requirement of firsthand details. The First Circuit simply held that the relator did not make "*any* allegations" about "what [the defendant] actually submitted in [its] reports" to Medicare. *Id.* at 37 (emphasis added).

The Second Circuit has also "decline[d] to require that every *qui tam* complaint allege on personal knowledge specific identified false invoices submitted to the government." *U.S. ex rel. Chorches v. Am. Med. Resp., Inc.*, 865 F.3d 71, 86 (2d Cir. 2017). Instead, relators can "satisfy Rule 9(b)'s particularity requirement by making plausible allegations creating a strong inference that specific false claims were submitted to the government and that the information that would permit further identification of those claims is peculiarly within the opposing party's knowledge." *Id.* The Second Circuit has thus recognized that its approach to Rule 9(b) is consistent with that of the other circuits. *Id.* at 89-93.

As for the Fourth Circuit, it recently clarified that it does *not* require firsthand allegations about specific false claims when "a plaintiff can allege a pattern of

conduct that would necessarily have led to submission of false claims to the government for payment." *U.S. ex rel. Nicholson v. MedCom Carolinas, Inc.*, 42 F.4th 185, 194 n.8 (4th Cir. 2022) (emphasis omitted) (quoting *U.S. ex rel. Grant v. United Airlines Inc.*, 912 F.3d 190, 197 (4th Cir. 2018)).

c. Even the supposedly "lenient" circuits—the Third, Fifth, Seventh, Ninth, Tenth, and D.C. Circuits—do not invariably eschew strict application of Rule 9(b). *See Chorches*, 865 F.3d at 90 (finding decisions "from the Circuits adopting a more 'lenient" standard" to be "nuanced"). While they have criticized some language in other circuits' opinions, they all require relators to plead, at a minimum, "reliable indicia that lead to a strong inference that claims were actually submitted." *Owsley* U.S. Br. 16 (quoting *U.S. ex rel. Grubbs v. Kanneganti*, 565 F.3d 180, 190 (5th Cir. 2009)). And in at least some circumstances, the Seventh Circuit has held that "specific representative examples of fraudulent claims *are* required." *U.S. ex rel. Sibley v. Univ. of Chi. Med. Ctr.*, 44 F.4th 646, 659 (7th Cir. 2022) (emphasis added).

3. As the above discussion reflects, no "sharp" conflict exists among the courts of appeals over how Rule 9(b) applies to FCA suits. *Chorches*, 865 F.3d at 90. To be sure, different circuits have offered different articulations of the Rule 9(b) standard. But in *applying* that standard, "courts have largely converged on an approach that allows relators *either* to identify specific false claims *or* to plead other sufficiently reliable indicia supporting a strong inference that false claims were submitted to the government." *Owsley* U.S. Br. 8. Thus, the extent of

any disagreement among circuits stems not from different verbal formulations of the standard but from the case-specific, fact-intensive details such as "the kinds of allegations that can adequately substitute for representative examples in supplying reliable indicia" or "subjective assessments of the reliability of the particular allegations at issue." *Id.* at 19-20.

This lack of a clean legal split presumably explains why this Court has already denied so many petitions raising the same question as petitioner. Nothing has changed that could support a different result now, as the Court recognized last month by denying the "complementary" *Olsen* petition. Pet.*i*. The courts of appeals continue to apply "a fact-sensitive standard to a range of different types of allegations," *Owsley* U.S. Br. 8, producing only the sorts of "divergent results" that "would be expected from the application of a[ny] fact-intensive standard," *id.* at 20-21. As the Solicitor General has explained, there is little this Court could do to "eliminate [that] disuniformity." *Id.* at 21-22. Any disagreement over the question presented, therefore, does not warrant this Court's review.

II. This case is a poor vehicle for the question presented.

Because there is no certworthy split, this Court should deny review. But even if the Court were inclined to decide the question presented at some point, it should do so in a case where the answer matters. It does not matter here.

This case does not "cleanly present[] the question" for review. Pet.27. Over the last decade-plus,

petitioner has repeatedly shifted from one falsity theory to another in an unsuccessful effort to make something stick. In her original 2010 complaint, petitioner proffered a conventional falsity theory: that Quest sought government reimbursement for tests that were not medically necessary while falsely certifying on the claim form that the tests were medically necessary. D. Ct. Dkt. 1 ¶¶ 14-16. Over the next decade, petitioner filed four amended complaints premised on this same theory. D. Ct. Dkts. 6, 12, 37, 80.

But after the district court dismissed petitioner's third amended complaint, she shifted entirely to her theory that Quest's certifications of medical necessity counted as "false" if Quest did not know whether they were true. App.14a-15a. That scienter-as-falsity theory was the only theory the district court addressed when dismissing petitioner's fourth amended complaint. App.23a.

On appeal, petitioner continued to press her scienter-as-falsity theory. But she also tried to supplement it with other falsity theories that she had either disclaimed below (implied certification) or never raised (fraudulent inducement). The Eleventh Circuit properly ignored those unpreserved theories, addressing only petitioner's doomed attempt to plead a valid claim that Quest's certifications were false through allegations that Quest did not know whether they were true. App.7a-8a.

Petitioner now tries to sweep this history under the rug and revive the traditional falsity theory she abandoned in her fourth amended complaint. But she did not present that theory to the Eleventh Circuit,

and the Eleventh Circuit did not decide it. It is not true that the Eleventh Circuit affirmed "solely because petitioner did not allege direct, firsthand knowledge of actual false claims submissions." Pet.27. The Eleventh Circuit instead rejected petitioner's theory that Quest's claims were false because "Quest did not *know if* the services were medically necessary." App.7a (emphasis added). That focus on Quest's knowledge, the Eleventh Circuit held, could not substitute for particularized allegations that Quest ever billed the government for a test that was not in fact "medically indicated and necessary for the health of the patient." App.7a-8a (quotation marks omitted).

For that reason, the decision below does not actually conflict with petitioner's interpretation of Rule 9(b). Nor would adopting petitioner's interpretation save her claims. She cites no case from any circuit permitting a relator to rely on allegations of scienter as a proxy for falsity, and this Court's cases make clear that falsity and scienter are distinct elements of an FCA claim. *See U.S. ex rel. Schutte v. SuperValu Inc.,* 598 U.S. 739, 747 (2023). Under any Rule 9(b) standard applied by any court in the country, petitioner's scienter-as-falsity allegations would fail to state a viable FCA claim. A true certification of a test's medical necessity is true; it is not "false" no matter how particularly a relator may plead that the submitter did not know it was true.

This case is therefore a far worse vehicle to decide what Rule 9(b) requires than *Olsen*, the "complementary" petition filed by petitioner's counsel (Pet.*i*) that the Court denied last month. Rule 9(b), moreover, is not the only basis for dismissing

petitioner's claims. This case was administratively closed for nearly ten years after petitioner filed her initial complaint. D. Ct. Dkts. 18, 38. The district court expressed "serious concerns" about both the "age of this case" and the fact that "the Government delayed in making its determination" whether to intervene, D. Ct. Dkt. 77 at 21, and Quest moved to dismiss based on the prejudice caused by this delay, D. Ct. Dkt. 127. The district court's grant of Quest's motion to dismiss for failure to state a claim mooted that motion, which would still have to be resolved if this Court reversed the decision below.

III. The decision below is correct.

Although the Court should deny review whether or not it agrees with the decision below, that decision is unimpeachable. Petitioner's contrary arguments lack merit.

1. As just explained, petitioner's complaints about the Eleventh Circuit's pleading standard in FCA cases are irrelevant to the correctness of its decision. In the district court and on appeal, petitioner abandoned any argument that Quest had submitted claims for medically unnecessary tests. C.O.A. Br. 27. Instead, she argued Quest was liable for submitting even "true" claims because Quest did not *know* the claims were true. *Id.* That theory is incoherent, and the Eleventh Circuit was right to reject it. The *False Claims* Act requires *false claims*, and a claim cannot be false if it is *true*. The core problem with petitioner's case was her reliance on a legally invalid theory of falsity—not the application of a pleading standard to an otherwise valid theory of falsity.

But even if, as petitioner incorrectly maintains, the Eleventh Circuit had considered a traditional and otherwise valid falsity theory, its decision was correct. Because Quest's allegedly false certification was that its tests were medically necessary, petitioner could plead falsity only by alleging with particularity that Quest sought reimbursement for tests that were *not* medically necessary. App.7a. The Eleventh Circuit correctly held that petitioner had not done so. None of her supposed personal-knowledge allegations revealed a single instance of a claim for a medically unnecessary test. App.8a. The only identified patient for whom Quest allegedly billed the government was Patient Y, but petitioner nowhere alleged that Patient Y's tests were not medically necessary. App.7a. The Eleventh Circuit was plainly correct to hold that petitioner did not allege with particularity that any test "was not medically necessary and why, therefore, any certification to the contrary was false." App.7a.

2. Even if the proper articulation of the standard for pleading FCA claims under Rule 9(b) were relevant here, the Eleventh Circuit's approach is correct.

As already explained, petitioner misstates the Eleventh Circuit's precedent. It has not, as petitioner contends (at 28), held that "attaching a copy of a bill is always required." *84Partners*, 79 F.4th at 1361. Nor does it expect a relator "to actually prove his allegations" at the pleading stage. *U.S. ex rel. Clausen v. Lab'y Corp. of Am., Inc.*, 290 F.3d 1301, 1313 (11th Cir. 2002) (emphasis omitted). Rather, the Eleventh Circuit requires relators to plead with particularity "sufficient indicia of reliability" that the defendant submitted an actual false claim for payment. *Atkins*,

470 F.3d at 1358. And there are several "means" for a relator to do so, including *but not limited to* "[p]roviding exact billing data . . . or attaching a representative sample claim." *Mastej*, 591 F. App'x at 704.

What a relator in the Eleventh Circuit cannot do is ask a court to simply "infer[]" the submission of a false claim "from the circumstances." *Corsello*, 428 F.3d at 1013. And that is surely correct. After all, the FCA creates liability only where a "provider knowingly asks the Government to pay amounts it does not owe." *Clausen*, 290 F.3d at 1311-12 & n.21; *accord Escobar*, 579 U.S. at 190. So "the circumstances constituting fraud" that a relator must plead with particularity, Fed. R. Civ. P. 9(b), to state a violation of the False Claims Act always include the submission of an actual *false claim*.

The Eleventh Circuit's standard thus honors Rule 9(b)'s text and the FCA's elements, while petitioner would "strip[] all meaning from Rule 9(b)'s requirements of specificity." *Clausen*, 290 F.3d at 1312 n.21. Petitioner contends (at 29) that her allegations are sufficient because Quest "knows what it is accused of," but Rule 9(b) does not permit mere notice pleading.[5] It requires *particularity*, in order to "safeguard potential defendants from lightly made claims" and "protect[] the defendant's reputation and goodwill from frivolous and unfounded allegations." 5A Wright & Miller, Federal Practice and Procedure § 1296 (4th ed.). "When a plaintiff does not specifically

[5] Besides, given petitioner's serial revisions of her theories, what Quest "is accused of" has been a constantly moving target.

plead the minimum elements of their allegation, it enables them to learn the complaint's bare essentials through discovery and may needlessly harm a defendant[']s goodwill and reputation by bringing a suit that is, at best, missing some of its core underpinnings, and, at worst, [contains] baseless allegations used to extract settlements." *Clausen*, 290 F.3d at 1313 n.24.

That is precisely what petitioner sought to do here. In the nearly sixteen years since petitioner filed this suit, she has never been able to allege facts supporting the most basic element of an FCA suit: that Quest ever submitted any false claim for payment to a government payor. The Eleventh Circuit correctly rejected her inadequate allegations, and there is no good reason for this Court to upset that decision.

Conclusion

The petition for certiorari should be denied.

Respectfully submitted,

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