No. _____

In the Supreme Court of the United States

UNITED STATES OF AMERICA AND THE STATE OF FLORIDA EX REL. ROBERT V. SMITH,
Petitioner,

v.

JAY A. ODOM AND OKALOOSA COUNTY, BOARD OF COUNTY COMMISSIONERS,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

In 2010, Congress amended the False Claims Act's public-disclosure provision to expand—rather than limit—the class of whistleblowers who may proceed when elements of a fraud have entered the public domain. By redefining "original source" to include those "who [have] knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions," 31 U.S.C. § 3730(e)(4)(B), Congress ensured that meritorious actions would not be foreclosed merely because prior disclosures permitted an inference of fraud. Preserving actions based on independent, non-public information that materially enhances the government's understanding of a fraud ensures that the False Claims Act continues to serve its fundamental purpose—protecting the public fisc by uncovering and deterring fraud against the United States.

The question presented is:

Whether the requirement in 31 U.S.C. § 3730 (e)(4)(B) that a relator have "knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions" requires a distinct inquiry into whether the relator's non-public information meaningfully contributes to the government's understanding or ability to act on the publicly disclosed information, as applied by a majority of circuits, or whether overlap with public disclosures bars the action, as applied by other circuits?

RELATED PROCEEDINGS

FAA Director's Determination:

FAA Director's Determination, *Robert Smith* v. *Okaloosa County,* FAA Docket 16-24-01 (March 20, 2025).[1] Docket available at regulations.gov

United States District Court (N.D. Fl.):

United States of America ex rel Robert V. Smith v. *Jay A. Odom and Okaloosa County, Board of County Commissioners*, No. 3:20cv3678-MCR-ZCB (Oct. 5, 2023) (motion to amend judgment denied)

United States of America ex rel Robert V. Smith v. *Jay A. Odom and Okaloosa County, Board of County Commissioners*, No. 3:20cv3678-MCR-ZCB (Jun. 22, 2023) (dismissal granted)

United States Court of Appeal (CA11):

United States of America ex rel Robert V. Smith v. *Jay A. Odom and Okaloosa County, Board of County Commissioners* No. 23-13670 (Aug. 22, 2025);

United States of America ex rel Robert V. Smith v. *Jay A. Odom and Okaloosa*

[1] The Director's Determination was issued after dismissal by the district court and after oral argument at the Eleventh Circuit Court of Appeals

County, Board of County Commissioners No. 23-13670 (Oct. 21, 2025) (rehearing denied)

TABLE OF CONTENTS

Appendix

TABLE OF AUTHORITIES

Cases

Statutes and Regulations

Other Authorities

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OPINIONS BELOW

The Eleventh Circuit's opinion is reported at 148 F.4th 1322, and is reproduced in the Appendix at App.1-14. The Northern District of Florida's opinion is reproduced in the Appendix at App.87-111.

JURISDICTION

The Eleventh Circuit's opinion was entered August 22, 2025. The Eleventh Circuit denied rehearing on October 21, 2025. This Court has jurisdiction under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant statutory provisions and regulations are reproduced in the Appendix at App.112-114. 31 U.S.C. § 3730(e)(4), in relevant parts:

> (A) The court shall dismiss an action or claim under this section . . . if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed—
>
> . . . unless . . . the person bringing the action is an original source of the information.
>
> (B) For purposes of this paragraph, "original source" means an individual . . . (2) who has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and who has voluntarily provided the

information to the Government before filing an action under this section.

STATEMENT OF THE CASE

I. Legal Background

Destin Executive Airport is a public-use airport in Okaloosa County, Florida. The County is the airport "sponsor" and has received millions of dollars in federal and state grants for airport improvements. App.3. An airport sponsor that accepts federal funds under the Airport Improvement Program must provide written "assurances" to the Federal Aviation Administration (FAA) that it will comply with various statutory and regulatory requirements. See 49 U.S.C. §47107(a). Among other things, the sponsor must certify that it "will not grant an 'exclusive right to use the airport' to any single 'fixed-base operator'" and that it will make the airport available for public use on reasonable conditions and without unjust discrimination. 49 U.S.C. §47107(a)(1), (4).[2] App.3; see also 49 U.S.C. § 40103(e). Each application for, and acceptance of, federal airport funding is supported by certifications that these assurances are being honored. *Ibid*.

The federal False Claims Act, 31 U.S.C. § 3729, *et seq*., makes it unlawful to knowingly submit false or fraudulent claims for payment to the United States, or to make false statements material to such claims. 31 U.S.C. § 3729(a)(1)(A)–(B). App.at 7–8. The Act

[2] A fixed-base operator (FBO) is a commercial entity "providing aeronautical services such as fueling, maintenance, storage, ground and flight instruction, etc. to the public." FAA Order 5190.6B § 8.9 n.25; App.3.

relies heavily on private qui tam relators, who may file civil actions in the name of the United States and share in any recovery. 31 U.S.C. § 3730(b), (d). App.8. At the same time, Congress has long sought to deter "parasitic" suits by opportunistic relators who add nothing to what is already known. The public-disclosure bar therefore requires dismissal of a qui tam action if "substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed" in specified sources, including "news media," unless the relator is an "original source" of the information. 31 U.S.C. § 3730(e)(4)(A). App.8–9.

In 2010, Congress substantially revised this framework. It converted the public-disclosure bar from a jurisdictional rule into an affirmative defense and expanded the definition of "original source" to include an individual whose knowledge is "independent of and materially adds to the publicly disclosed allegations or transactions" and who voluntarily provided the information to the government before filing suit. 31 U.S.C. § 3730(e)(4)(B). As the courts of appeals have recognized, the "materially adds" language was meant to preserve meritorious cases in which some information is already public, by allowing relators who bring genuinely useful additional facts to proceed. See, e.g., *United States ex rel. Moore & Co.* v. *Majestic Blue Fisheries, LLC*, 812 F.3d 294, 306 (CA3 2016); *United States ex rel. Maur* v. *Hage-Korban*, 981 F.3d 516, 525–27 (CA6 2020); *United States ex rel. Reed* v. *Key-Point Gov't Solutions*, 923 F.3d 729, 757–63 (CA10 2019); *United States ex rel. Winkelman* v. *CVS Caremark Corp.*, 827 F.3d 201, 211–12 (CA1 2016). The Eleventh Circuit decision below applied a different

formulation, rendering the "materially adds" language in the statute nugatory.

II. Factual Background[3]

A. The consolidation of both fixed-base operators

For decades, Miracle Strip Aviation was the sole fixed-base operator at Destin, but importantly there was space available on the airport for additional aeronautical providers. In 2009, the County added a second FBO, Destin Jet, owned by respondent Jay Odom. App.3. The second FBO consumed all the remaining FBO suitable land on the airport. App.6a. Petitioner Robert Smith, a commercial pilot who had trained at Destin in 1985, regularly used the Airport and interacted with both FBOs and their employees. App.3-4. Those interactions gave him a detailed understanding of how the Airport and its tenants operated.

In 2012, a company called Regal Capital acquired Miracle Strip. App.4. On paper, Regal Capital was owned by two individuals, Phillip Ward and Jack Simmons. *Id*. According to Smith, however, Odom funded the purchase and Ward and Simmons were merely "strawmen," which allowed Odom to "covertly" gain control of the second FBO while he continued to own Destin Jet outright.[4] App.4, 12-13. The County

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[3] The facts set forth in this Section II are drawn from the Eleventh Circuit's Opinion except where other sources are specifically cited.

[4] Although not specifically addressed in the Eleventh Circuit's Opinion, Smith revealed that Phillp Ward was Odom's uncle from Gulfport, Mississippi enlisted and paid by Odom to conceal Odom's ownership.

learned of the acquisition, but not the alleged strawman scheme, in early 2013 and approved an assignment of Miracle Strip's lease to Regal Capital. Miracle Strip was then re-branded as Regal Air. App.4.

Less than a year later, Sterling Diversified, a company owned by Odom and two others, acquired Regal Capital and thus Regal Air.[5] *Id.* By March 2014, the County knew that Odom now owned both Destin Jet and Regal Air and therefore controlled all FBO locations at Destin. *Id.* Smith alleged this series of transactions, including the initial strawman acquisitions, was never fully disclosed to the FAA and that, during this period, the County continued to certify that it complied with the no-exclusive-rights assurance.

B. Public reporting in 2014 and the County's initial response

On March 29, 2014, the Northwest Florida Daily News reported that "a company associated with Destin Jet owner Jay Odom bought out the competition at Destin Airport."[6] *Id.* The article quoted the airport director as stating that Odom's actions "violated two Federal Aviation Administration grant assurances," and reported that Odom had argued the Airport could not support two FBOs in a declining market. *Id.* A second article in Aviation International News, published

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[5] Smith alleged that Odom's "partners" in Sterling Diversified, Chester Kroeger and Tim Edwards, were both in financial trouble and did not have any aviation experience and were solely involved to conceal Odom's absolute control of Regal Air.

[6] The article refers to the purchase of Regal Air by Sterling Diversified on December 31, 2013, and not the previous covert straw buyer purchase of Miracle Strip by the entity fronted by Odom's uncle.

in May 2014, recounted "county anti-trust safeguards and FAA grant assurance violations that resulted when the owners of Destin Jet allegedly purchased rival provider Regal Air Destin at the end of last year" and reported that airport officials and Destin Jet's owners were resolving the dispute. App.5a. Both articles stated the matter would go to the FAA for review before the County acted.

Smith alleges that in September 2014, the County formally reported the ownership change to the FAA and inquired whether the acquisition would violate its exclusive-rights assurances. *Id*. According to the complaint, the FAA cautioned the County about "issues related to exclusive rights" and suggested that it obtain a legal opinion from the FAA's Office of General Counsel. *Id*. The County did not obtain a legal opinion. Instead, it "moved forward with authorizing Destin Jet and Regal Air to 'operate under common ownership and brand.'" *Id*. The County did not report to the FAA its decision to allow common ownership and branding of the two separate FBOs.

The 2014 articles and informal FAA contacts focused on tenant behavior and the prospect of curing grant-assurance problems. The articles did not encompass all of Smith's allegations, including Odom's initial strawman scheme that lasted from 2012 through December 31, 2013, the long-term implications of the County's subsequent decisions after the articles were published to ratify and extend the monopoly, or the later refusal by the County to disband the monopoly and accommodate new airport providers such as Smith.

C. County ratification, ongoing certifications, and Smith's exclusion

The situation changed after the articles in 2014. Smith alleged that by 2015 the County understood that Odom or his successors controlled both FBO sites under common ownership, yet the County chose to approve and ratify that arrangement instead of unwinding it. App.5-6. The County authorized Destin Jet and Regal Air to operate as a single operation, then approved a merger and later sale of the combined enterprise, which continued to run both FBO locations. *Id*.

During this period, the County repeatedly sought and received additional federal and state funding, certifying falsely each time that it remained in compliance with the conditions attached to those funds, including the exclusive-rights and nondiscrimination assurances. App.3, 6. Smith identified more than forty instances between 2012 and 2019 in which, he alleged, the County made false statements in grant-related documents, resulting in over $30 million in funding. App.6. The later certifications, unlike the 2014 news articles, occurred after the County, having been cautioned by the FAA, ratified in 2015 the illegal arrangement and knowingly continued to falsely certify it was in compliance with its grant assurances.

In 2016, Odom sold the merged Destin Jet/Regal Air operation to a new private owner, but the basic structure remained the same. App.5-6. A single FBO operator continued to control both locations, and the County continued to certify that it was not granting an exclusive right and was complying with its grant-assurance obligations. *Id*.

In 2019, Smith sought to enter the provider market at the airport. He approached the County and proposed to lease one of the two existing FBO sites, which were being run by a single provider, or alternatively, to lease space elsewhere on the Airport to construct a new FBO facility. App.6. The County denied his request, citing existing leases and an asserted lack of "available land." *Id*. It did not offer Smith any meaningful opportunity to compete for space, did not propose alternative sites, and did not abrogate or revise any existing leases to make room for competition, as required by federal statute, FAA regulations and FAA grant assurances. The Eleventh Circuit acknowledged that Smith alleged he was "denied an opportunity to lease or develop a new" operation at the Airport, "which is a separate violation of grant assurances." App.12.

D. The FAA Part 16 proceeding and Director's Determination

After the district court dismissed this qui tam action, and while the appeal was pending, Smith pursued a separate administrative remedy. In January 2024, Smith filed a complaint under 14 C.F.R. Part 16 with the FAA, attaching extensive supporting materials that also underlay his False Claims Act allegations. App.19-79. The County opposed Smith's complaint, arguing that Smith had brought a qui tam action based on "the same facts" and "Smith's claims in this proceeding are simply recycled from his qui tam case."

After more than a year of pleadings, record supplements, and factual investigation, the FAA issued a

Director's Determination on March 20, 2025.[7] *Id*. The FAA found that Okaloosa County had violated multiple grant assurances, including Grant Assurance 23 (exclusive rights), Grant Assurance 5 (preserving rights and powers), and, importantly, Grant Assurance 22 (economic nondiscrimination). App.19–20, 23, 45–54, 57–59, 62–66. The FAA concluded that "effectively only one aeronautical service provider has operated the two FBO locations at [Destin] with a monopoly" since at least 2015, that the County had approved lease assumptions, assignments, and ratifications that kept all FBO-suitable space under control of a single operator, and that it had unjustly denied access to Smith and failed to offer alternative space or abrogate existing leases to accommodate competition. *Id*. The Director held that the County's conduct violated Grant Assurance 22 by denying Smith the opportunity to lease or develop facilities for an FBO operation and ordered corrective action. *Id*.

The core facts that Smith brought to the attention of the United States in his qui tam complaint, and later presented to the FAA, led the agency to find that the County's certifications of compliance with federal grant assurances were false and ruled, "[p]ending the FAA's approval of a corrective action plan and implementation by the County, this office will recommend to the Director, the Office of Airport Planning and Programming, to withhold approval of any applications submitted by Okaloosa County for funding for projects authorized under 49 U.S.C. § 47114(d) and authorized under 49 U.S.C. § 47115" App.66. Those developments underscore the significance of Smith's contributions to

[7] The County's appeal of the Director's Determination is pending.

the government's understanding of the ongoing violations.

III. Procedural History

A. District court

In 2020, Smith filed this action under the False Claims Act as a qui tam relator against Odom and Okaloosa County. He alleged that the 2012 strawman purchases, followed by Sterling Diversified's acquisition of Regal Air, created an exclusive right for a single FBO provider, thereby rendering the County's certifications false. App.6. He further alleged that the County maintained that exclusive right by authorizing the merger of Destin Jet and Regal Air, by later approving assignments that kept all FBO space under the control of a single operator, and by denying his 2019 request to establish a competing FBO, all while continuing to certify compliance and obtain federal funds. *Ibid.* Smith also asserted parallel claims under the Florida False Claims Act, which, as the Eleventh Circuit recognized, is modeled on the federal statute and subject to the same analysis. *Id.* n.1.

After Smith amended his complaint, both defendants moved to dismiss. The district court granted the motions and dismissed the amended complaint with prejudice. App.7. It held that the FCA's public-disclosure provision barred Smith's suit because the allegations in his complaint had been publicly disclosed in the 2014 news articles and that the complaint failed to satisfy Rule 9(b)'s heightened pleading standard for fraud claims. *Id.* Smith moved to amend the judgment under Rule 59(e) arguing the court had not adequately addressed the particular information he alleged materially added to the public disclosures and that the

district court as a matter of law incorrectly interpreted the exclusive rights prohibition in the grant assurances and the relevant FAA guidance documents and disregarded the relevant portion of 49 U.S.C. § 40103(e). In its subsequent order, the district court denied the relief requested, explaining, "[i]n any event, even assuming error in this conclusion or in the determination that the Amended Complaint lacked sufficient particularity under Rule 9(b), the pleading deficiencies were noted in the alternative to the decision on the public disclosure bar." App.84–85.

B. The Eleventh Circuit

The Eleventh Circuit affirmed. The court framed the public-disclosure inquiry as involving three questions: whether the same general allegations had been publicly disclosed; whether those allegations were "substantially the same" as those in the complaint; and, if so, whether Smith qualified as an original source whose knowledge was "independent of and materially adds to the publicly disclosed allegations." (quoting 31 U.S.C. § 3730(e)(4)(B)). App.8–9.

On the first two questions, the court held that the news articles were public disclosures within the meaning of the statute and that they "outlined the same scheme that Smith raises in his complaint." App.10–12. The articles, the court explained, reported that "a company associated with Destin Jet owner Jay Odom bought out the competition at Destin Airport" and quoted the airport director as stating that Odom's actions "violated two Federal Aviation Administration grant assurances." App.4, 11. The Aviation International News article likewise spoke of "FAA grant assurance violations that resulted when the owners of

Destin Jet allegedly purchased rival provider Regal Air Destin." App.5, 11.

Although Smith argued that his complaint was broader, because it alleged an earlier, undisclosed strawman scheme and focused on the County's conduct after 2014, the panel rejected that distinction. It acknowledged that the articles "do not discuss any of the County's actions after their publication" and that Smith emphasized two later developments, the County's failure to obtain FAA approval for the consolidated arrangement and its denial of his request to open a competing FBO. App.12. But the court held that those actions "did not change or expand the scheme," because "[Smith's] complaint and the news articles center on the same issue: the lack of competition between the fixed-base operators." *Id*. It therefore concluded that there was "significant overlap" between the complaint and the articles and that the public-disclosure bar was triggered. *Id*. (quoting *United States ex rel. Jacobs* v. *JPMorgan Chase Bank, N.A.,* 113 F.4th 1294, 1302 (CA11 2024)).

Turning to the original-source question, the court recited its prior holdings that if public disclosures "are already sufficient to give rise to an inference of fraud," then "cumulative allegations do not materially add," and that "[b]ackground information and details that help one understand or contextualize a public disclosure" are likewise insufficient. App.12. (quoting *Jacobs*, 113 F.4th at 1303).

The panel then summarized Smith's asserted additions. It noted that he alleged Odom had engaged in a strawman scheme to "covertly" gain control of Regal Air before Sterling Diversified formally acquired it,

that "actual economic conditions at [the Airport] did not justify a merger" of the two FBOs, and that he was "denied an opportunity to lease or develop a new" operation at the Airport, which he claimed was "a separate violation of grant assurances." App.12–13. Having recited those allegations, the court concluded that "[t]hese are details, not material additions." App.13. In the panel's view, "[t]he articles established that one entity controlled both fixed-base operators at the airport and that this was a violation of the County's FAA grant assurances. Smith's new filings provide background information and additional details—but that's it. . . . The heart of Smith's complaint and the articles is the same." *Id.*

On that reasoning, the Eleventh Circuit held that Smith was not an original source because, although his knowledge may have been independent, his allegations did not materially add to the public disclosures, because "[t]he heart of Smith's complaint and the articles is the same." App.13–14a. The court therefore affirmed dismissal of his federal and state False Claims Act claims on public-disclosure grounds and, having done so, found it unnecessary to address Rule 9(b) or the district court's denial of leave to amend on the merits. App.7, 13 n.2, 13–14. The Eleventh Circuit denied Smith's petition for rehearing and rehearing en banc.

REASONS FOR GRANTING THE PETITION

Each point that follows goes to the same question: whether section 3730(e)(4)(B) requires courts to undertake a distinct original-source inquiry that gives independent force to Congress's 'materially adds'

language, or whether, as here, that inquiry may be collapsed into the public-disclosure bar.

I. The Question Presented Is Important and Recurring.

Congress has repeatedly relied on the False Claims Act as a central protection of the federal fisc, and this Court has frequently intervened to clarify the statute's structure and limits. Since 2010 this Court has twice granted certiorari in cases that addressed the public-disclosure bar, but both of those cases addressed the bar under the pre-amended statute. See *Graham County Soil & Water Conservation District* v. *United States ex rel. Wilson*, 559 U.S. 280 (2010), and *Schindler Elevator Corp.* v. *United States ex rel. Kirk,* 563 U.S. 401 (2011), interpreting what counted as a "public disclosure" under subsection (A) of the pre-amended statute. The Court last addressed the original source prong of § 3730(e)(4)(B) in *Rockwell Intern. Corp.* v. *US*, 549 US 457 (2007) under the pre-amended statute. Since 2010, the Court has considered the first-to-file bar, the implied false-certification theory, the seal requirement, the statute of limitations, government dismissal authority, and the scienter standard, but it has not yet addressed the revised original-source exception to the public disclosure bar.

The 2010 amendments broadened the definition of "original source" to include individuals who have "knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions." 31 U.S.C. § 3730(e)(4)(B). Congress deliberately ensured that meritorious suits would not be barred simply because some elements of a fraud had entered the public domain, so long as the relator's

independent information materially improved the government's understanding or revealed additional, related misconduct. The practical question in many declined cases is whether the relator's nonpublic information "materially adds" in the sense Congress intended.

The Eleventh Circuit's approach, under which any allegations that follow public disclosures sufficient to support an "inference of fraud" are categorically relegated to "background information and additional details," cannot be reconciled with congressional intent. The question as to whether § 3730(e)(4)(B)'s "materially adds" requirement establishes a distinct and substantive inquiry into how the facts provided by the relator might add to public disclosures to bring actionable fraud to light—apart from the "substantially the same" test—recurs frequently, produces inconsistent results across circuits, and goes to the heart Congress' 2010 amendments to the text of the original-source exception.

II. The Decision Deepens a Square and Outcome-Determinative Conflict Over the Meaning of "Materially Adds."

The courts of appeals are now openly divided over what it means for a relator's information to "materially add[] to the publicly disclosed allegations or transactions" for purposes of the original-source exception to the False Claims Act's public-disclosure bar. 31 U.S.C. § 3730(e)(4)(B). In one group of circuits, "materially adds" is a distinct, second-order inquiry that asks whether a relator's independent, nonpublic information significantly improves the government's understanding of a fraud that has been partially

disclosed. In another group, including the Eleventh Circuit, "materially adds" is effectively satisfied or defeated by the same high-level comparison that triggers the public-disclosure bar in the first place.

In the Third Circuit, the leading decision is *Moore*, which adopts perhaps the broadest reading of the original-source exception among the courts of appeals. 812 F.3d 294. *Moore* holds that a relator materially adds when he "contribute[s] significant additional information to that which has been publicly disclosed so as to improve its quality," focusing on whether the relator's nonpublic information significantly enriches the "essential factual background"—the "who, what, when, where and how of the events at issue"—rather than merely echoing public allegations. In *Moore*, public sources already outlined Korean companies' use of nominally American entities to obtain fishing licenses, but the relator still qualified as an original source because his independent information about who specifically owned and controlled the sham American entities, how they were structured, and how the scheme operated in practice materially added to those disclosures by supplying nonpublic answers to the "who, what, when, where and how" questions at the core of the fraud.

The Sixth Circuit has adopted a similar "adds value" formulation. In *Maur*, the court asked whether the relator's information "might actually affect the government's decision-making," and stated, "[i]n other words, the relator must bring something to the table that would add value for the government." 981 F.3d at 525, 527. The court emphasized that even "allegations that a substantially similar scheme has continued or restarted could provide the government with

'knowledge that is independent of and materially adds' to the public disclosures" pointing out "what was once a hot trail of fraud must cool at some point." *Id.* at 525, 529.

The Tenth Circuit's analysis in *Reed* is to the same effect. 923 F.3d 729. *Reed* recognized that news reports and government audits had disclosed fraud allegations in the background-investigation industry that were "substantially the same" as those in the relator's complaint, so the public-disclosure bar was triggered. *Id.* at 747–53. The court still held that Reed could proceed, because her allegations about fraud in KeyPoint's "Telephone Testimony Program," coupled with evidence that management had concealed problems from the government, "added material information" to what was already public and were "capable of influencing the behavior of the recipient," namely, the United States. *Id.* at 757, 761–63 (cleaned up). *Reed* explicitly criticized the Seventh Circuit's narrower approach because it "has the effect of collapsing the materially-adds inquiry into the substantially-the-same inquiry," which "renders nugatory" Congress's decision to create a separate original-source path for relators with valuable additional information. *Id.* at 757 (quoting *Winkelman*, 827 F.3d at 211–12).

The First Circuit has articulated essentially the same standard. In *Winkelman*, the court explained that information "materially adds" if it is "sufficiently significant or essential" so as "to influence the behavior of the recipient," and it relied on this Court's observation in *Universal Health Services, Inc.* v. *United States ex rel. Escobar* that materiality turns on whether the information is likely to affect the government's decisions. 579 U.S. 176, 195-96 (2016); see

Winkelman, 827 F.3d at 211. Finding, "information that a particular defendant is acting 'knowingly' (as opposed to negligently) sometimes may suffice as material addition." *Id.* at 213. Although the relators in *Winkelman* ultimately failed to satisfy the standard on the facts, the court's articulation of "materially adds" is firmly aligned with *Moore* and *Reed*: it treats the original-source exception as a distinct, second inquiry, and looks to whether the relator's non-public information meaningfully improves the government's understanding of the fraud or its incentives to act. See *Winkelman*, 827 F.3d at 211–12.

The D.C. Circuit has now joined this "majority" in a case decided after the Eleventh Circuit's decision here. In *United States ex rel. O'Connor* v. *USCC Cellular Corp.,* the court held that the "substantially the same" question under section 3730(e)(4)(A) and the "materially adds" question under section 3730(e)(4)(B) are distinct. 153 F.4th 1272 (CADC 2025) Even when public disclosures are sufficient to support an inference of fraud, the court explained, later information can still materially add if it contributes independent facts that are significant to the government's evaluation, that is, information "likely to influence a reasonable person's behavior." *Id*. at 1281. The D.C. Circuit rejected the Seventh Circuit's reasoning in *Cause of Action* v. *Chicago Transit Authority*, 815 F.3d 267, 283 (CA7 2016) that satisfaction of the public-disclosure prong automatically forecloses original-source status, and it recognized that collapsing the two inquiries would impermissibly strip "materially adds" of its independent force and "reducing the second prong to surplusage cannot be right." *O'Connor*, 153 F.4th at 1281.

Under these standards, Smith qualifies as an original source. The Eleventh Circuit itself recognized that Smith alleged a concealed 2012 strawman scheme through which Odom secretly obtained control of both FBOs, followed by new rounds of County certifications after 2015 when the County knew it had sanctioned an illegal exclusive right, thereby pleading ongoing fraud and scienter that was not present in the public disclosures. App.12–13. Those allegations include who orchestrated the consolidation, how the ownership structure was hidden, and when the County continued certifying compliance despite that knowledge, supplying the "significant additional information" *Moore* demands, 812 F.3d at 306, the "sufficiently significant or essential" information described in *Winkelman*, 827 F.3d at 211, and *Maur*, 981 F.3d at 525–27, and the value-adding scienter allegations *Reed* presumes to materially add value, 923 F.3d at 760–761. By detailing the County's knowing ratification of the illegal exclusive right and the 2019 denial of Smith's FBO proposal which occurred 5 years after the 2014 news articles, Smith's submissions enabled the FAA in its subsequent Part 16 enforcement decision, which for the first time gave the agency a full understanding of who was committing fraud, when, and how—an understanding that was not supplied by the bare 2014 public disclosures in the two news articles.

The Seventh Circuit, however, takes a distinct approach that effectively eliminates the "materially adds" provision. In *Bellevue* v. *Universal Health Services of Hartgrove, Inc.*, the Seventh Circuit held that if allegations are "substantially similar to" public disclosures such that the public-disclosure bar is triggered, then they cannot materially add to what the

public already knows. 867 F.3d 712, 721 (CA7 2017) (citing *Cause of Action*, 815 F.3d at 283) Under that interpretation, the two statutory inquiries collapse into one: once a court finds that the allegations are "substantially the same" as public disclosures, section 3730(e)(4)(A), it necessarily follows that the relator's information does not "materially add[]," § 3730(e)(4)(B), and the original-source exception is unavailable in the only cases where it matters. *Bellevue* reached that result by focusing on the word "allegations" in both phrases, reasoning that because both provisions refer to "allegations or transactions," they must be "measuring the same thing." 867 F.3d at 717, 721.

The Eleventh Circuit has now embraced that same logic and extended it to the post-2010 amendments. In earlier cases, the court held that when public disclosures already provide enough information "to infer fraud," a relator's allegations are not materially additive if they consist of "background information and details that help one understand or contextualize a public disclosure," and it labeled such allegations "cumulative." *United States ex rel. Osheroff* v. *Humana Inc.*, 776 F.3d 805, 814–815 (CA11 2015); *Jacobs*, 113 F.4th at 1303. Here, it applied that inference-of-fraud rule to Smith's allegations. The court first held that two 2014 newspaper articles "outlined the same scheme that Smith raises in his complaint," namely, the conflict created by Odom's acquisition of the competing FBO and the resulting violation of the County's grant assurances, and that there was "significant overlap" between those articles and the complaint. App.10–12. It then turned to the original-source inquiry and, while expressly acknowledging that Smith alleged a

strawman scheme to "covertly" gain control of Regal Air, that "actual economic conditions at [the Airport] did not justify a merger," and that he was "denied an opportunity to lease or develop a new" operation at the Airport "which is a separate violation of grant assurances," the court dismissed all of those facts as "details, not material additions." *Id.* at 12a–13a. Because the court understood the "heart" of the complaint and the articles to be the same, it held that Smith could not, as a matter of law, materially add to the public disclosures. *Id.*

In reaching that conclusion, the Eleventh Circuit did not treat the original-source exception as a distinct, second inquiry, and it did not analyze whether the specific elements Smith alleged—the 2012 strawman acquisitions, the County's post–2015 scienter and ongoing false certifications, the 2019 denial of access and the separate Grant Assurance 22 violation sustained by the FAA—satisfied the materially-adds requirement under the majority standards. The panel cited none of the decisions in which other courts of appeals have held that new information about continuing or renewed fraud, new episodes of misconduct, or new scienter can materially add even when a general scheme has been publicly aired. See, e.g., *Maur*, 981 F.3d at 525; *Reed*, 923 F.3d at 761-63; *Moore*, 812 F.3d at 306-08; *O'Connor*, 153 F.4th at 1280-83. Instead, relying on its *Osheroff*/*Jacobs* standard, it treated the existence of an "inference of fraud" based on the 2014 articles as dispositive of both the public-disclosure and original-source inquiries. It is not simply that the Eleventh Circuit undervalued the facts, but that it never asked whether those facts "materially add[] to the publicly disclosed allegations or transactions."

The practical effect is to produce divergent outcomes for functionally identical cases. Under *Moore*, *Reed*, *Winkelman*, *Maur*, and *O'Connor*, Smith's independent information about previously undisclosed ownership structures, new rounds of false certifications years after the initial disclosures, and a distinct, later denial-of-access violation that prompted a formal FAA enforcement action would be more than enough to qualify him as an original source. Relators who bring precisely the type of valuable, later-arising information Congress sought to protect—information that changes the government's understanding of ongoing fraud—may proceed in the First, Third, Sixth, Tenth, and D.C. Circuits, yet are barred at the threshold in the Seventh and Eleventh. That is an intolerable result for a federal statute that Congress has repeatedly amended to encourage whistleblowers, and it is one that only this Court can resolve by restoring independent meaning to the "materially adds" requirement and ensuring uniform application of the False Claims Act nationwide.

The sharp divergence between the standards applied by the D.C. Circuit and the Eleventh Circuit in 2025 decisions, after fifteen years of post-amendment percolation, underscores the need for this Court to decide which standard Congress intended.

III. The Statutory Text Requires a Distinct Original-Source Inquiry That Gives Full Effect to: "Materially Adds to the Publicly Disclosed Allegations or Transactions."

Section 3730(e)(4) establishes a two-step framework. Subsection A directs dismissal of a qui tam action if "substantially the same allegations or

transactions as alleged in the action or claim were publicly disclosed" in specified sources, "unless" the relator is an "original source of the information." 31 U.S.C. § 3730(e)(4)(A). Subsection (B) then defines "original source" to include a relator whose "knowledge is independent of and materially adds to the publicly disclosed allegations or transactions" and who voluntarily provided that information to the government before filing. 31 U.S.C. § 3730(e)(4)(B).

These provisions describe a two-step framework, not a single blended test. First, under subsection (A), a court asks whether "substantially the same allegations or transactions" underlying the relator's suit have been publicly disclosed. If not, the bar never comes into play. If so, the statute then poses a distinct question under subsection (B): whether, despite that overlap, the relator's "knowledge" is both independent and materially adds to the publicly disclosed allegations or transactions. Congress thus used the public-disclosure provision to define when defendants may invoke an affirmative defense, and the original-source exception to define when that defense must yield to a relator who brings genuinely valuable additional information.

The text confirms this division of labor. Subsection A speaks of "allegations or transactions as alleged in the action or claim" and compares them to "allegations or transactions" that have been publicly disclosed. 31 U.S.C. § 3730(e)(4)(A). Subsection (B) refers to "the publicly disclosed allegations or transactions" as the object of the relator's materially additive knowledge. 31 U.S.C. § 3730(e)(4)(B). In the first step, the complaint is the reference point; in the second, the public record is. The use of the same "allegations or

transactions" phrase in both subsections, and the shift in what those words refer to, underscores that "materially adds" is a distinct, second-order inquiry.

The 2010 amendments reinforce this understanding. Before 2010, the statute defined "original source" more narrowly, as someone with "direct and independent knowledge of the information on which the allegations are based." This Court's decisions in *Wilson*, 559 U.S. 280 and *Kirk*, 563 U.S. 401, interpreted that earlier regime. In *Schindler*, the Court observed that the phrase "allegations or transactions" in § 3730(e)(4)(A) "suggests a wide-reaching public disclosure bar," because Congress covered not only "allegations" but also "transactions," a term with a broad meaning. When Congress amended § 3730(e)(4), it rewrote the original-source definition to include individuals whose knowledge, although not first in time, "is independent of and materially adds to the publicly disclosed allegations or transactions." 31 U.S.C. § 3730(e)(4)(B). By repeating the same "allegations or transactions" formulation from subsection (A), Congress confirmed that the broad universe of publicly disclosed allegations or transactions described in *Schindler* is also the realm to which a relator may contribute materially additive information.

If any overlap between the complaint and the public record automatically prevented a relator's knowledge from materially adding to what is public, the "materially adds" clause would never operate in the setting in which Congress placed it. As the Third Circuit explained in *Moore*, that "cannot be right," because it "would read out of the statute the original source exception," which "comes into play only when some facts regarding the allegation or transaction have been

publicly disclosed." 812 F.3d at 306. The Tenth Circuit in *Reed* likewise rejected an approach that "has the effect of collapsing the materially-adds inquiry into the substantially-the-same inquiry" and would thus render nugatory Congress's decision to create a separate path for relators with valuable additional information. 923 F.3d at 757.

The plurality of "allegations" and "transactions" in both subsections of the revised text reinforces that understanding. Congress did not speak of "the allegation" or "the transaction." It referred to sets of allegations and sets of transactions and used "or" to indicate that either can suffice. In subsection (A), the question is whether "substantially the same allegations or transactions" as those "alleged in the action" have been publicly disclosed, a formulation that anticipates multiple misrepresentations and underlying dealings. 31 U.S.C. § 3730(e)(4)(A). In subsection (B), Congress then asks whether the relator's knowledge materially adds "to the publicly disclosed allegations or transactions," again in the plural and disjunctive. *Id*. That language comfortably covers situations in which some publicly disclosed allegations or transactions are already known, but the relator's independent knowledge materially adds to others—for example, by adding new actors, extended time periods, different legal theories, or new evidence of scienter. Nothing in the text limits "materially adds" to allegations or transactions wholly outside the public record.

Courts that have focused on the statutory text have treated the public-disclosure and original-source inquiries as analytically separate and, once "substantially the same" is satisfied, have asked whether the relator's knowledge nonetheless materially adds

something of significance to what is already known. See *Moore*, 812 F.3d at 306–08; *Reed*, 923 F.3d at 757–63; *Winkelman*, 827 F.3d at 211–12; *United States ex rel. Maur* v. *Hage-Korban*, 981 F.3d 516, 525–27 (CA6 2020); *United States ex rel. O'Connor* v. *USCC Cellular Corp.*, No. 23-7041, slip op. 12-14 (CADC Sept. 26, 2025).

The inference-of-fraud rule applied by the Eleventh Circuit does not give independent content to § 3730(e)(4)(B) and cannot be reconciled with that structure.

IV. The Eleventh Circuit Erred.

The Eleventh Circuit's first interpretation of the 2010 amendment to the original-source exception, which is now binding in the Circuit unless overturned en banc or by this Court, rests on case law interpreting the pre-amendment statute and does not properly apply the 2010 changes. The pre–2010 version of § 3730(e)(4) defined "original source" more narrowly. Congress deliberately revised that framework in 2010 and broadened the original-source definition to include any relator "who has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions" and who has voluntarily provided that information to the government before filing. 31 U.S.C. § 3730(e)(4)(B). Under the amended statute, once the public-disclosure bar is triggered, the statute asks not whether the "heart" of the scheme was already public, but whether the relator's independent knowledge materially adds to what those public disclosures revealed.

The Eleventh Circuit's first post–2010 construction of the original-source exception, in *Osheroff*, never grappled with the language Congress actually added in the 2010 amendments and instead relied on pre-amendment authority that interpreted a materially different statute. 776 F.3d 805. *Osheroff* framed the question under section 3730(e)(4)(B) almost entirely in terms of whether public disclosures already provided enough information "to infer fraud," and held that Osheroff's information did not "materially add" when he offered "background information and details," reasoning that this conclusion was similar to its prior holdings that, "background information that helps one understand or contextualize a public disclosure is insufficient to grant original source status under the previous version of the statute." *Id.* at 814–815. In reaching that conclusion, the Eleventh Circuit cited and borrowed its analytical framework from older cases decided under the superseded version of § 3730(e)(4), which defined "original source" as someone with "direct and independent knowledge of the information on which the allegations are based," without the "materially adds" formulation that Congress later enacted. *Osheroff* thus imported the pre-amendment standard into the revised statutory framework, in which Congress had broadened the original-source category.

This approach was reaffirmed and extended in *Jacobs*,113 F.4th 1294 (CA11 2024). *Jacobs* described the public-disclosure analysis as involving three questions: whether public disclosures occurred, whether they were "substantially the same" as the relator's allegations, and, if so, whether the relator was an original source. But when the court turned to the third

question, it largely collapsed it into the second. Citing *Osheroff*, the panel held that if public disclosures are already "sufficient to give rise to an inference of fraud," then "cumulative allegations do not materially add," and that "[b]ackground information and details that help one understand or contextualize a public disclosure" are categorically insufficient to satisfy section 3730(e)(4)(B). This formulation is not grounded in the amended text of the statute. It does not ask, as the statute does, whether the relator's independent knowledge materially adds "to the publicly disclosed allegations or transactions," 31 U.S.C. § 3730(e)(4)(B), in the sense of contributing significant, value-adding facts.

The Eleventh Circuit has not meaningfully addressed the 2010 amendments related to the "materially adds" prong. It has not explained how its inference-of-fraud rule can be reconciled with Congress's decision to expand the original-source definition or with the statutory structure that makes "materially adds" a separate, second-order inquiry. The Eleventh Circuit's retained reliance on its earlier, pre-amendment logic in *Osheroff* and *Jacobs* cannot be squared with the text, structure, or purpose of the amended statute. Even if the outcomes in *Osheroff* and *Jacobs* might have been defensible in those cases, the interpretive framework they carried forward is not the test Congress enacted when amending 31 U.S.C. § 3730(e)(4)(B) in 2010. Neither decision asks whether the relator's independent knowledge "materially adds to the publicly disclosed allegations or transactions," as the text now requires; both ask whether public disclosures already support an inference of fraud and relabel any overlapping facts as "details."

This case illustrates, in concrete terms, how the Eleventh Circuit's *Osheroff*/*Jacobs* standard fails to implement the amended statute. The court of appeals did not question that Smith's allegations were independent of the 2014 articles or that he voluntarily disclosed his information to the government. The court acknowledged that Smith alleged a covert 2012 straw-buyer scheme through which Odom secretly obtained control of the second FBO, that Okaloosa County, after being cautioned by FAA staff, knowingly ratified and extended that illegal monopoly while continuing to certify compliance and obtain federal funds, that in 2019 the County denied his request to lease or develop FBO facilities, and that this denial constituted a separate economic-nondiscrimination violation under Grant Assurance 22. Under the standards applied by the Third, First, Sixth, Tenth, and D.C. Circuits, Smith's allegations readily qualify as materially adding to the publicly disclosed allegations or transactions.

In *Moore*, nonpublic details about who owned and controlled the sham entities and how the scheme actually operated in practice were held sufficient to materially improve the quality of the public disclosures. 812 F.3d at 306–08. In *Winkelman*, information "sufficiently significant or essential" so as "to influence the behavior of the recipient" satisfied the materially-adds requirement. 827 F.3d at 211–12. In *Maur*, the court explained that allegations showing that a substantially similar scheme had continued or restarted, or that the defendant's conduct post-dated the public disclosures, could "add value for the government" or "affect the government's decision-making," pointing out, "what was once a hot trail of fraud must

cool at some point." 981 F.3d at 525–29. See also *United States ex rel. Ibanez* v. *Bristol-Myers Squibb Co.*, 874 F.3d 905, 919 (CA6 2017) ("It cannot be assumed that the government is aware a fraudulent scheme continues (or was restarted) simply because it had uncovered, and then resolved, a similar scheme before."). *Reed* treated particularized allegations about a discrete program and management cover-ups, beyond general industry-wide reports, as materially additive. 923 F.3d at 757–63. The court there held, "Reed's allegations of scienter make us especially confident that her allegations . . . satisfy the materially adds standard." *Id.* at 760–761, quoting Joel D. Hesch, *Restating the "Original Source Exception" to the False Claims Act's "Public Disclosure Bar" in Light of the 2010 Amendments,* 51 U. OF RICH. L. REV. 991, 1027 (2017) ("[R]egardless of how well defined the fraud allegations are in a qualifying public disclosure, when a relator brings forth knowledge of scienter that is not specifically contained in a qualifying public disclosure it should be presumed to materially add value."). Moreover, *O'Connor* held that even when public disclosures already revealed enough to infer fraud, later allegations materially added where they supplied independent facts likely to affect the government's response 153 F.4th at 1281-82.

The Eleventh Circuit reached the opposite conclusion not because Smith's allegations were trivial, but because its *Osheroff*/*Jacobs* framework left no room for them to matter once the court determined that the 2014 articles already supported an inference of fraud. After holding that those articles disclosed "substantially the same" scheme—Odom-associated entities acquiring the competing FBO, one operator

controlling both locations, county officials acknowledging tenant created grant-assurance problems—the court concluded that Smith's additional allegations were "details, not material additions," because, in its view, the "heart" of his complaint and the articles was the same. The court in effect treated satisfaction of subsection (e)(4)(A) of section 3730 as foreclosing satisfaction of subsection (e)(4)(B).

The subsequent FAA Part 16 Director's Determination underscores the Eleventh Circuit's misstep. After the district court dismissed this qui tam action, Smith filed a Part 16 complaint based on the same core factual record, and the FAA Director determined that Okaloosa County had violated multiple grant assurances, including the exclusive-rights and economic-nondiscrimination requirements, in part by allowing a single operator to control all FBO-suitable space and by denying Smith an opportunity to establish a competing FBO in 2019, five years after the public disclosures. The FAA Director's Determination was submitted to the Eleventh Circuit as supplemental authority. The point is not that the FAA's view controls the False Claims Act analysis, but that the same factual record that the Eleventh Circuit dismissed as merely "background information and additional details," were sufficiently significant to prompt a formal enforcement action and to require corrective measures by the airport sponsor.

The Part 16 process does not incorporate a public-disclosure bar. But when the agency charged with administering the underlying grant-assurance regime treats a relator's information as material to its enforcement decisions, it is difficult to reconcile a judicial conclusion that the same information, for

purposes of the False Claims Act's original-source exception, cannot as a matter of law materially add to publicly disclosed allegations, where the FAA already possessed the information in the public disclosures, but that information alone was not enough to raise suspicions of fraud by different actors that would continue for years after the public disclosures. The dissonance arises not from any factual dispute but from the Eleventh Circuit's adherence to *Osheroff* and *Jacobs*, which rest on pre–2010 rationale.

By applying a rule that treats any overlapping allegations as "details" once public disclosures support an inference of fraud, the Eleventh Circuit deprived § 3730(e)(4)(B) of the independent force Congress gave in its 2010 amendment and barred a relator who would have proceeded in the First, Third, Sixth, Tenth, and D.C. Circuits. Correcting that misinterpretation would reverse the judgment here and restore the original-source exception Congress intended and enacted.

V. This Case Presents a Clean and Focused Vehicle for Resolving the Meaning of "Materially Adds" in the Post-2010 Original-Source Provision.

The only ground on which the court of appeals affirmed dismissal of petitioner's federal False Claims Act claims was the public-disclosure defense and its conclusion that petitioner is not an original source because his allegations "do not materially add" to the 2014 news articles. The Eleventh Circuit held that those articles publicly disclosed "substantially the same" scheme, then applied its *Osheroff*/*Jacobs* standard to reject original-source status on the view that

petitioner's independent facts were merely "background information and additional details," rather than material additions. The court did not rest its judgment on Rule 9(b), on any alternative statutory ground, or on any case-specific defect unrelated to the interpretation of section 3730(e)(4).

The factual record is straightforward and well developed. The court of appeals described the 2012 acquisition, the subsequent consolidation of the two FBOs, the County's continuing grant-assurance certifications, and petitioner's unsuccessful 2019 effort to enter the market, and it acknowledged that petitioner alleged nonpublic facts about a strawman ownership scheme, post–2015 scienter and certifications, a denial of access to lease or develop FBO facilities a separate economic-nondiscrimination violation. The public disclosures themselves consist of two news articles published in 2014 whose content is undisputed, and there is no disagreement about what those articles reported. The case therefore squarely presents, without factual complications, the legal question—whether a relator whose independent allegations extend a scheme in time, identify concealed ownership and scienter, and add a distinct theory of liability—an economic nondiscrimination violation occurring five years later—can "materially add" to public disclosures that already support an inference of related fraud.

Subsequent developments further confirm the suitability of this case as a vehicle to resolve the proper application of "materially adds." After the district court's dismissal and while the appeal was pending, the FAA issued a Director's Determination in a Part 16 enforcement proceeding based on the same core factual allegations and record materials Smith

marshaled in this case. The FAA held that the County violated multiple grant assurances, including the exclusive-rights and economic-nondiscrimination requirements, in part by allowing a single FBO operator to control all suitable space and by denying Smith an opportunity to establish a competing operation in 2019. The FAA Director's Determination, submitted to the court of appeals as supplemental authority, demonstrates that petitioner's information was not merely cumulative color, but was sufficiently significant to affect the federal government's actual enforcement response. There is no vehicle problem arising from that administrative proceeding: the FAA's action does not inject a new legal issue. The Part 16 process has no public-disclosure bar, but it confirms that, as a matter of real-world enforcement, the facts Smith brought forward "materially add" to what was publicly known through the news articles in the ordinary sense of that term.

This Court previously declined to grant Certiorari on a similar question in *Bellevue*, 867 F.3d 712 (CA7 2017). In *Bellevue*, the Seventh Circuit affirmed its ruling in *Cause of Action* "that because the plaintiff's allegations were 'substantially similar to' the publicly disclosed allegations, the plaintiff did not 'materially add' to the public disclosure and could not be an original source." Bellevue alleged continuing, knowing fraud beyond the timeframe of the public disclosures. But in *Bellevue*, the Seventh Circuit found "Bellevue's allegations pertain to the same entity and describe the same contested conduct as the publicly disclosed information" and that although the relator argued "that his allegation that Hartgrove knowingly" committed fraud constituted new information, the court found

that "scienter can be inferred from" the public disclosures. That is not the case here. It is undisputed that no allegations of fraud had been made against the County before Smith's complaint.

This case turns on the law, not a dispute over the record. Smith does not ask this Court to reweigh the facts. Smith requests that the Court to require that, once the public-disclosure bar is triggered, the original-source inquiry be conducted at a finer level of specificity than the broad level of generality that determines whether the allegations or transactions are "substantially the same."

Because the Eleventh Circuit resolved the appeal exclusively on the interpretation and application of section 3730(e)(4)'s public-disclosure and original-source provisions, and because the record cleanly frames how "materially adds" operates when some aspects of a scheme have been publicly reported but critical elements remain nonpublic, this case is an ideal vehicle for the Court to clarify the meaning of the 2010 amendment and to restore uniformity to an area of the False Claims Act that recurs with frequency in declined cases nationwide.

CONCLUSION

For these reasons, the petition for writ of certiorari should be granted.

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