No. 25-893

In the Supreme Court of the United States

ROBERT V. SMITH,

Petitioner,

v.

JAY A. ODOM, ET AL.,

Respondents.

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

REPLY BRIEF OF PETITIONER

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ARGUMENT

I. Petitioner did not claim the Eleventh Circuit "adopted" *Bellevue*; the court arrived at a similar rule by following *Osheroff* and *Jacobs*, illustrating divergent post-2010 split amongst circuits.

Odom and the County assert Petitioner accused the Eleventh Circuit of "adopting" the Seventh Circuit's decision in *Bellevue* v. *Universal Health Servs. of Hartgrove, Inc.,* 867 F.3d 712 (CA7 2017). Odom Br. in Opp. 2; County Br. in Opp. 10. The petition does not make that assertion. This distinction matters and goes to the core of the circuit conflict.

The petition explained that the Seventh Circuit's decisions in *Bellevue* and *Cause of Action* v. *Chicago Transit Auth.,* 815 F.3d 267 (CA7 2016) interpreted post-2010 "materially adds" language in a way that effectively collapses the original-source inquiry into the "substantially the same" inquiry. Pet. 19–20. The petition explained that the Eleventh Circuit, following its own earlier decisions in *United States ex rel. Osheroff* v. *Humana Inc.,* 776 F.3d 805 (CA11 2015) and *United States ex rel. Jacobs* v. *JPMorgan Chase Bank, N.A.,* 113 F.4th 1294 (CA11 2024), which relied on pre 2010 case law, has now embraced the same logic, without grappling with Congress's 2010 change to §3730(e)(4)(B). Pet. 20, 26–32.

The Eleventh Circuit expressly held that where public disclosures are "already sufficient to give rise to an inference of fraud, cumulative allegations do not materially add to the public disclosures," and that "[b]ackground information and details that help one

understand or contextualize a public disclosure" are "insufficient to grant original source status." *Smith*, 148 F.4th at 1330. The Eleventh Circuit framed the test, holding that "if the public disclosures are already sufficient to give rise to an inference of fraud, cumulative allegations do not materially add to the public disclosures." *Smith*, 148 F.4th at 1330 (quoting *Jacobs*, 113 F.4th at 1303). This is the same inference-of-fraud rule the Seventh Circuit applied in *Cause of Action* and *Bellevue*, and it is precisely the rule that the First, Third, Sixth, Tenth, and D.C. Circuits have rejected as inconsistent with Congress's 2010 amendments.

The Eleventh Circuit here imported that same inference-of-fraud rule and treated it as dispositive of the original-source question. *Smith*, 148 F.4th at 1330. Once the court determined the 2014 articles sufficed to support an inference that consolidation of Destin Jet and Regal Air might violate grant assurances, it declared Petitioner's additional allegations—about the earlier undisclosed straw-man acquisition, the County's post-2014 ratification, continuing certifications, and even the separate denial-of-access violation occurring five years later—"details, not material additions," because they "merely supplement and contextualize the core fraud hypothesis already disclosed." Id. at 1331.

This reasoning is functionally indistinguishable from the Seventh Circuit's approach in *Cause of Action*, which held that if the relator's "allegations are substantially similar to those contained in the public disclosures," they cannot "materially add" to those disclosures because the overlap itself defeats materiality. 815 F.3d at 283. The Eleventh Circuit did not need to cite *Bellevue* to demonstrate that, in substance, it

chose the same path. For purposes of certiorari, what matters is that two circuits now treat overlap with public disclosures once an inference of fraud is found as a bar to original-source status, while a majority of circuits insist that "materially adds" remains a distinct inquiry even when substantial-sameness is satisfied.

The divergence is especially stark. *Smith* alleged the County continued submitting certifications for years despite knowing a single operator controlled all FBO locations. Pet. App. 3–6, 87–106. He further alleged a distinct, later violation occurring five years after the articles, when the County denied him any meaningful opportunity to enter the market. The Eleventh Circuit recognized this conduct that *Smith* alleged would constitute "a separate violation of grant assurances" if proven. *Smith*, 148 F.4th at 1331. Yet, under the Eleventh Circuit's inference-of-fraud rule, all of these events were automatically recategorized as background or "details," and thus legally incapable of satisfying "materially adds," because "[t]he heart of *Smith's* complaint and the articles is the same." *Id*. at 1331.

By contrast, the majority of courts take the opposite view and insist that once substantial-sameness is established, the original-source exception still requires the court to ask whether the relator's independent, non-public information is significant enough to influence the government's understanding of the fraud or decision to proceed. *United States ex rel. Moore & Co.* v. *Majestic Blue Fisheries, LLC,* 812 F.3d 294, 306-308 (CA3 2016); *United States ex rel. Winkelman* v. *CVS Caremark Corp.,* 827 F.3d 201, 211-212 (CA1 2016); *United States ex rel. Reed* v. *KeyPoint Gov't Sols.,* 923

F.3d 729, 757-763 (CA10 2019); *United States ex rel. Maur* v. *Hage-Korban,* 981 F.3d 516, 525-527 (CA6 2020); *United States ex rel. O'Connor* v. *U.S. Cellular Corp.,* 153 F.4th 1272, 1288-1290 (CADC 2025) at 1288–1290. The Eleventh Circuit's did not conduct this analysis; instead, it treated overlap as dispositive, quoting *Jacobs* "'[b]ackground information and details that help one understand or contextualize a public disclosure'—those too are 'insufficient to grant original source status.'" This approach is precisely what the majority courts have rejected and is the split the petition described.

II. The County and Odom misconstrue the very cases they invoke, underscoring the depth of the split on what "materially adds" means.

The County insists that the Eleventh Circuit's decision "was consistent with the majority view among the Circuit Courts of Appeal." County Br. in Opp. 7. Odom asserts that "[o]f the five circuit cases cited favorably by Petitioner on the original source issue, four of the cases found that the qui tam plaintiffs did not meet the definition of original sources." Odom Br. in Opp. 4.

The County's and Odom's repeated suggestion that the circuits have uniformly denied original-source status in the cases Petitioner cites is inaccurate.

The Third Circuit in *Moore* held that *Moore's* information "added significant details to the essential factual background of the fraud," concluding that "*Moore* is an original source under the post-PPACA public disclosure bar." 812 F.3d at 307–308. *Moore* thus stands as a clear example of a court applying the 2010 "materially adds" language to hold that a relator with

overlapping but deeper information about a previously discussed fraud qualifies as an original source. Odom's efforts to distinguish *Moore* overlooks that *Smith*, like *Moore*, supplied facts needed to prove fraud, not merely the existence of common ownership.

Odom is simply wrong about *Reed*. There, the Tenth Circuit agreed that *Reed's* claims were "substantially the same as those in the publicly disclosed sources," because those disclosures were "sufficient to set the government on the trail" of the alleged fraud without her assistance. 923 F.3d at 748–749, quoting *United States ex rel. Ondis* v. *City of Woonsocket,* 587 F.3d 49, 54 (CA1 2009). But, that did not end the analysis. The court went on to "expound on the meaning of the 'materially adds' language," surveying the First and Third Circuit decisions and expressly rejecting the Seventh Circuit's approach in *Cause of Action*., 923 F.3d at 755–757.

Reed adopted the First Circuit's understanding in *Winkelman*, which drew on the ordinary legal meaning of "material," as something "of such a nature that knowledge of the item would affect a person's decision-making," or is "significant" or "essential." 923 F.3d at 756, quoting *Winkelman*, 827 F.3d at 211; see also *Maur*, 981 F.3d at 527. The court concluded that a relator "materially adds" if her information is "sufficiently important to influence the behavior of the recipient," in this context the government. *Id.* The Tenth Circuit also cited *Moore's* holding that to "materially add" to "the publicly disclosed allegation or transaction of fraud, a relator must contribute significant additional information to that which has been publicly disclosed so as to improve its quality." *Reed*, 923 F.3d at 756, quoting *Moore*, 812 F.3d at 306.

Having adopted that standard, *Reed* then applied it to the allegations and held that, although substantial-sameness was satisfied, the relator nonetheless "qualif[ied] as an original source." 923 F.3d at 763. What tipped the balance for the court was *Reed's* detailed allegations of scienter and her focus on a particular Telephone Testimony Program that had not been the subject of any public disclosure. Those allegations, the court explained, "satisfy the materially-adds standard" because they supplied something the government did not otherwise have. *Id*. at 760, 763. Here, *Smith* alleged scienter on the part of the County, whereas the news articles only disclosed compliance issues created by a tenant, and that the County intended to regain compliance.

A similar pattern appears in *Maur* and *Winkelman*, which the County cites as if those outcomes support the Eleventh Circuit's reasoning. On the contrary, after conducting the distinct inquiry demanded by the statute, the courts found that the specific allegations, unlike here, were truly only background or additional examples and did not add anything of decision-making significance. *Maur*, 981 F.3d at 527–528; *Winkelman*, 827 F.3d at 212. Neither court suggested that overlap itself is disqualifying, and both emphasized that "materially adds" asks whether the relator's information would "affect the government's decision-making," not whether it is duplicative in some abstract sense. *Winkelman*, 827 F.3d at 211; *Maur*, 981 F.3d at 527.

The D.C. Circuit's recent decision in *O'Connor* is even more analogous to this case. There, the court acknowledged the apparent tension between "substantially the same" and "materially adds," and

candidly noted that one court of appeals—the Seventh Circuit—had resolved that tension by concluding, "as a matter of law," satisfaction of substantial-sameness negates materially-adds. *O'Connor*, 153 F.4th at 1288–1289, citing *Cause of Action*, 815 F.3d at 283. The D.C. Circuit rejected that approach, explaining that it "would eliminate the second prong of the original-source exception" and thus "cannot be right." 153 F.4th at 1289.

As the *O'Connor* court explained: "[i]n *King Street*, we adopted a standard for "materially adds" that is demanding yet flexible enough to avoid any surplusage problem" . . . "[s]omething is material if it is likely to influence a reasonable person's behavior." 128 F.4th at 288, adopting explicitly the same framework as the First, Sixth, and Tenth Circuits. Under that standard, the *O'Connor* court held, merely adding "detail or color" or "background information" is not enough, but providing information "that adds in a significant way to the essential factual background of the fraud" can suffice, as *Moore* illustrates. *O'Connor*, 153 F.4th at 1289, quoting *Moore*, 812 F.3d at 307. The court then engaged, claim by claim, with the relators' allegations and concluded that they had adequately alleged original-source status. *Id*. at 1289–1290.

The cases above did two things the Eleventh Circuit did not. First, they acknowledge that "materially adds" requires independent work even when substantial-sameness is satisfied. Second, the courts examined each category of the relator's allegations to distinguish true background from information that would matter to the government.

The Eleventh Circuit, by contrast, did neither. It quoted *Jacobs* for the proposition that "cumulative

allegations" and "background information and details that help one understand or contextualize a public disclosure" do not "materially add," and then simply placed all of *Smith's* allegations in that box because the 2014 articles were already sufficient to create an "inference of fraud." *Smith*, 148 F.4th at 1331, citing *Jacobs*, 113 F.4th at 1303; *Osheroff*, 776 F.3d at 815. The Court did not analyze whether any of the following meaningfully influenced the government's understanding of the scope, duration, and nature of the alleged fraud: (i) the undisclosed straw-man acquisition, (ii) the County's post-2014 consultations with the FAA and conscious ratification of common ownership and branding, (iii) the more than twenty certifications after the 2014 articles, (iv) *Smith's* allegations of concealment and scienter, or (v) the distinct denial-of-access violation occurring years after the public disclosures.

In short, the County's and Odom's characterization of these cases does not demonstrate that a split does not exist. Contrary to their characterization, the majority of circuits have directly interpreted "materially adds" after 2010 and have taken care to preserve a meaningful second-step inquiry that turns on whether the relator's independent information matters to the government's enforcement choices. The Eleventh Circuit, following *Osheroff* and *Jacobs*, has adopted an inference-of-fraud rule that treats overlap itself as dispositive and thus removes that second step from the analysis.

III. The County's argument against materiality, including its disregard of the FAA Director's Determination, is misguided.

The County goes so far as to say that "[n]one of the information would rise to the level where it would be pertinent to a government decisionmaker," County Br. in Opp. 10, as if Congress meant "materially adds" to ask whether the Department of Justice chose to intervene in this particular case. Notably, neither the District Court nor the Eleventh Circuit decided this case on materiality.

The Court's view is inconsistent with the decisions discussed herein and with the D.C. Circuit's careful reminder in *O'Connor* that the government's non-intervention "says very little about the materiality of the relators' new information." 153 F.4th at 1289–1290, citing *Heckler* v. *Chaney,* 470 U.S. 821, 831 (1985). Under the amended statute, courts must decide materiality for themselves rather than inferring it from intervention decisions. *O'Connor*, 153 F.4th at 1289–1290. This is consistent with Congress's definition of "material" as information having "a natural tendency to influence, or [being] capable of influencing, the payment or receipt of money or property." 31 U.S.C. §3729(b)(4); *Universal Health Servs., Inc.* v. *United States ex rel. Escobar,* 579 U.S. 176, 193–194 (2016).

The Eleventh Circuit did not analyze the FAA Director's Determination, which, after a full Part 16 investigation, concluded that the County had in fact violated grant-assurance obligations years after the 2014 articles based on the same core information

Petitioner brought forward. Pet. App. 19–79. The FAA Determination demonstrates, in concrete regulatory practice, that *Smith's* allegations did "rise to the level where [they] would be pertinent to a governmental decisionmaker," contrary to the County's assertion. County Br. in Opp. 10. A court applying the standard articulated in *Winkelman*, *Maur*, *Reed*, *Moore*, and *O'Connor* would have treated the post-article regulatory finding as powerful evidence that *Smith's* information "materially adds" to what was already public. The Eleventh Circuit's failure even to consider it underscores how far its inference-of-fraud rule departs from the statute's text and from the majority approach.

Here, the FAA's actions refute the County's assertion that *Smith's* additional information did not matter to the government. The 2014 press reports focused on Odom's tenant-level conduct and on airport officials' initial concerns about whether the acquisition of Regal Air might create grant-assurance issues. Pet. App. 3–5. Years later, after *Smith* filed his qui tam action and then pursued a Part 16 complaint, the FAA Director issued a detailed Determination finding that the County had, in fact, violated its federal grant obligations, based not simply on the existence of a single operator but on the County's own decisions to ratify that structure, to continue to falsely certify compliance, and to deny a qualified new entrant access to the market. Pet. App. 19–79.

The Director's Determination is not a substitute for a False Claims Act judgment, but it is powerful evidence that the government regarded the County's post-2014 conduct as a significant and ongoing problem requiring formal enforcement, long after the earlier media coverage. This is precisely the sort of

later-arising, deeper information that Congress had in mind in 2010, when it amended §3730(e)(4)(B) to ensure that meritorious cases would not be foreclosed merely because some elements of a fraud had reached the public domain.

IV. The importance of the "materially adds" question extends beyond this airport and this case.

The False Claims Act is the government's principal tool for policing fraud across the federal fisc. Congress crafted the 2010 amendments precisely to keep the public-disclosure bar from foreclosing relators, like *Smith*, who bring genuine value to the government's understanding of ongoing or deepening fraud schemes. If the Seventh and Eleventh Circuits are correct that any overlap with sufficient public disclosures renders independent information non-material as a matter of law, then potential relators will be barred even when they alone can provide years of additional facts, distinct false certifications, and later violations that the government would otherwise lack.

By contrast, in the First, Third, Sixth, Tenth, and D.C. Circuits, those same relators can proceed, subject to the exacting standards those courts have articulated for what it means to "materially add." A relator who would qualify as an original source in Boston, Philadelphia, Cincinnati, Denver, or Washington, D.C., cannot bring the same case in Chicago or Atlanta. The County dismisses this conflict as involving only a "sub-sub-subsection" of the statute (County Br. in Opp. 11), but Congress in 2010 chose to amend that subsection to expand the class of whistleblowers who may proceed when some information is already public.

Treating this provision as a minor "nuance" ignores Congress's deliberate judgment about how best to balance the deterrence of parasitic suits with the encouragement of insiders to assist the government.

This case is an ideal vehicle to resolve the Circuit split. The Eleventh Circuit's opinion squarely construes §3730(e)(4) in a published decision, applies the inference-of-fraud rule in a way that fully reveals its consequences, and does so against the backdrop of an extensive record, including a subsequent FAA enforcement action that illuminates the real-world importance of the relator's additional information. The courts and the parties fundamentally disagree about what "materially adds" means and whether the 2010 amendment has independent force in cases where public disclosures have already pointed toward potential fraud. This is a question of national importance.

CONCLUSION

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

Respectfully submitted,

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