

No. _____

IN THE
SUPREME COURT OF THE UNITED
STATES

HEALTHeSTATE, LLC,

Petitioner,

v.

UNITED STATES AND ASM RESEARCH,
LLC,

Respondents.

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

PETITION FOR A WRIT OF
CERTIORARI

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QUESTIONS PRESENTED

§ 411(b)(1)(A) of the Copyright Act preserves a registration containing inaccurate information unless the applicant included the information “with knowledge that it was inaccurate.” This Court has held that a good-faith mistake of law may excuse an inaccuracy and that willful blindness may establish knowledge. The first question presented is:

1. Whether “willful blindness,” when used to establish the statutory knowledge required by § 411(b)(1)(A), retains the two requirements this Court defined in *Global-Tech Appliances, Inc. v. SEB S.A.*; subjective belief in a high probability of the relevant legal inaccuracy and deliberate action to avoid learning it.

The Contract Disputes Act requires a contractor to submit a “claim” to a contracting officer, but it neither defines “claim” nor uses the phrase “sum certain.” The Federal Acquisition Regulation adds a “sum certain” requirement; the Federal Circuit treats that regulatory phrase as a mandatory prerequisite to relief. The second question presented is:

2. Whether the Contract Disputes Act authorizes the Federal Acquisition Regulation’s “sum certain” requirement as a mandatory prerequisite to a contractor’s monetary claim.

PARTIES TO THE PROCEEDING

Petitioner HEALTHeSTATE, LLC was the plaintiff in the United States Court of Federal Claims and the appellant in the United States Court of Appeals for the Federal Circuit.

Respondents are the United States and ASM Research, LLC. They were defendants-appellees in the Federal Circuit.

CORPORATE DISCLOSURE STATEMENT

Petitioner HEALTHeSTATE, LLC has no parent corporation, and no publicly held company owns 10% or more of its membership interests.

RELATED PROCEEDINGS

U.S. Court of Federal Claims:

HEALTHeSTATE, LLC v. United States, No. 1:18-cv-00034-KCD (November 20, 2023)

U.S. Court of Appeals for the Federal Circuit:

HEALTHeSTATE, LLC v. United States, No. 2024-1336(March 20, 2026)

HEALTHeSTATE, LLC v. United States, No. 2020-137, (September 29, 2020)

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Petitioner HEALTHeSTATE, LLC respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit.

OPINIONS BELOW

The Federal Circuit's opinion is unreported in the Federal Reporter, is available at 2026 WL 787163, and is reproduced at Pet. App. 1a-16a.

The Court of Federal Claims' opinion is reported at 168 Fed. Cl. 624 and is reproduced at Pet. App. 17a-75a.

JURISDICTION

The Federal Circuit entered judgment on March 20, 2026. Pet. App. 1a. A timely petition for rehearing was denied on June 11, 2026. Pet. App. 141a. This petition proceeds contingent on confirmation that the filing deadline remains open. Petitioner is obtaining the current docket and any Rule 13.5 orders; nothing herein assumes timeliness beyond publicly available materials.

The Court of Federal Claims had jurisdiction over Petitioner's contract claim under 28 U.S.C. § 1491(a)(1) and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109, and over Petitioner's copyright claim under 28 U.S.C. § 1498(b). The Federal Circuit had jurisdiction under 28 U.S.C. § 1295(a)(3).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

§ 411(b)(1) of Title 17 provides:

A certificate of registration satisfies the requirements of this section and § 412, regardless of whether the certificate contains any inaccurate information, unless (A) the inaccurate information was included on the application for copyright registration with knowledge that it was inaccurate; and (B) the inaccuracy of the information, if known, would have caused the Register of Copyrights to refuse registration.

§ 7103(a)(1) of Title 41 provides: “Each claim by a contractor against the Federal Government relating to a contract shall be submitted to the contracting officer for a decision.”

For claims exceeding \$100,000, § 7103(b)(1)(C) requires a certification that “the amount requested accurately reflects the contract adjustment for which the contractor believes the Federal Government is liable.”

In 48 C.F.R. § 2.101, the Federal Acquisition Regulation defines “claim,” in relevant part, as:

a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract.

STATEMENT OF THE CASE

I. Congress protected copyright registration validity through a safe harbor that preserves registrations absent actual knowledge.

A copyright owner ordinarily must register a work before bringing an infringement action. 17 U.S.C. § 411(a). Registration requires an application and a deposit identifying the work claimed. 17 U.S.C. §§ 408-409. Congress nevertheless directed that a registration certificate remains effective despite inaccurate information unless two conditions are satisfied: the applicant included the inaccurate information “with knowledge that it was inaccurate,” and the Register would have refused registration had the truth been known. 17 U.S.C. § 411(b)(1).

That safe harbor matters because registration applications frequently require nonlawyers to answer mixed questions of fact and law. In *Unicolors, Inc. v. H&M Hennes & Mauritz, L.P.*, 595 U.S. 178 (2022), this Court held that § 411(b)(1)(A) excuses a good-faith mistake about either the facts or the law. An applicant who is unaware of the legal rule that makes information inaccurate does not include that information with statutory “knowledge.” *Id.* at 184–86.

Unicolors also recognized that courts may examine circumstantial evidence and that willful blindness may support a finding of actual knowledge. *Id.* at 187–88. But the Court did not redefine willful blindness. Under *Global-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754, 769 (2011), that doctrine has two “basic

requirements”: the defendant must subjectively believe that there is a high probability that a fact exists and must take deliberate action to avoid learning that fact. Those requirements keep willful blindness distinct from recklessness and negligence. *Ibid.*

II. Petitioner registered the software at issue and was held willfully blind to a deposit-copy rule.

Petitioner develops digital healthcare systems for government and commercial clients. From 2006 through 2011, Petitioner adapted government healthcare software for civilian use and released versions under the HEALTHeSTATE name. Pet. App. 2a–3a. Petitioner later worked as a subcontractor to ASM Research, LLC to develop the Remote Online Veterinary Record, or ROVR, for Army veterinarians. The parties’ subcontract recognized Petitioner’s ownership of the HEALTHeSTATE baseline software incorporated into ROVR. *Id.* at 3a.

After disputes arose concerning the Government and ASM’s continued use of the software, Petitioner filed this action in the Court of Federal Claims. Petitioner obtained two Copyright Office registrations, one for HEALTHeSTATE and one for ROVR. *Id.* at 4a. The deposit copies were assembled from Petitioner’s working servers. They included later patches and updated material, and some third-party references had been removed as the software evolved for customer use. *Id.* at 13a–14a.

The Register advised the trial court that the applications would have been refused had the Office known of the asserted inaccuracies. The dispute therefore centered on § 411(b)(1)(A): whether Petitioner knew the submitted deposits were legally inaccurate.

Petitioner's chief executive, Barry Greene, did not deny the underlying chronology of the working code. He explained that the code pulled from Petitioner's servers could contain later patches and updates. Pet. App. 14a. Greene personally prepared the copyright-registration applications without counsel's assistance in completing the registrations. He contacted Copyright Office personnel concerning application processing and deposit-submission mechanics, including the acceptable format for deposit files; those communications did not address which historical version of the software the law required him to deposit. Greene swore that he submitted what he believed were the accurate versions of the software, that he had no cause to question the accuracy of the defendants' build-number labeling, and that he acted according to what he understood the Copyright Office to be asking of him. *Id.* at 15a. .

The Court of Federal Claims nevertheless held that Petitioner was willfully blind to the law. It relied on the asserted significance of the deposit-copy requirement, the perceived clarity of the Copyright Office's Compendium § 1509.1(C), the availability of Copyright Office assistance, the speed with which the applications were prepared, and the absence of counsel. 168 Fed. Cl. at 651–653.

The Federal Circuit affirmed. It acknowledged *Unicolors*'s rule that lack of knowledge of law can excuse an inaccuracy. Pet. App. 14a–15a. The trial court found actual knowledge of the underlying deposit facts but held petitioner at least willfully blind to the legal requirement, and the Federal Circuit affirmed based on factors including the asserted clarity and availability of guidance, speed of preparation, lack of counsel, consultation with the Office, and the significance of the error. *Id.* at 15a–16a. The panel did not identify evidence that Greene subjectively believed there was a high probability that the deposits violated the governing legal rule or that he deliberately avoided learning the answer. The Court of Federal Claims independently excluded petitioner's sole copying expert and entered summary judgment; the Federal Circuit affirmed on other grounds and did not reach that alternative basis. *Id.* at 16a. An Eighth Circuit decision addressing software deposits applied *Global-Tech*'s two-part willful-blindness standard and reversed summary judgment where the record did not establish subjective awareness or deliberate avoidance. *LADS Network Solutions, Inc. v. Agilis Systems, LLC*, 138 F.4th 1059, 1062–1063 (8th Cir. 2025).

III. The Federal Circuit treated the FAR's "sum certain" language as a mandatory element of petitioner's CDA claim.

The same litigation included a contract claim arising from the Government's continued use of Petitioner's software. After ASM delivered ROVR source code to the Government and obtained additional work, Petitioner submitted a written demand to the Government on February 9, 2015. The

demand asked the Government to terminate ASM's sole-source award and "compensate [petitioner] for the use of its code from 7 May 2014 forward." Pet. App. 4a. Among the supporting documents was the parties' subcontract modification, which provided Petitioner a minimum of 25% and up to 50% of new ROVR work. *Id.* at 9a. Petitioner argued that the minimum amount could be determined by multiplying the relevant contract value by 25%.

The Court of Federal Claims held that the submission did not state a "sum certain." The Federal Circuit affirmed. Its analysis began from a proposition not found in the CDA: "The CDA does not define the elements of a claim, so this court looks to the Federal Acquisition Regulation ('FAR') for guidance." Pet. App. 7a. Because FAR 2.101 uses the phrase "sum certain," the panel treated that regulatory phrase as a mandatory element whose absence required dismissal. *Id.* at 7a–10a.

The panel separately addressed contract formation. It concluded that no authorized government representative assented to an end-user license agreement embedded in the software, and it declined to consider Petitioner's reliance on Contract No. W911QY-09-C-0128 because the panel viewed that theory as waived. *Id.* at 10a–12a. The panel identified four compensation theories, held the EULA unassented-to by an authorized official, and deemed the 0128-contract theory waived. Those rulings do not alter the threshold legal rule announced and applied to Petitioner's administrative claim: that the FAR may add a mandatory claim-defeating condition to the CDA. Petitioner preserved its presentment challenge

by establishing that its written demand provided an objectively calculable sum certain based on the mandatory 25% contractual floor applied to government contract values. Appellant’s Brief at 23, 26–27, 29; Pet. App. 7a–10a.

REASONS FOR GRANTING THE PETITION

I. THE FEDERAL CIRCUIT’S § 411(b) HOLDING CONFLICTS WITH THIS COURT’S ACTUAL-KNOWLEDGE PRECEDENTS AND WITH THE EIGHTH CIRCUIT’S APPLICATION OF THOSE PRECEDENTS.

Three precedents control the first question presented. *Unicolors* holds that § 411(b)(1)(A) excuses good-faith mistakes of law. *Intel Corp. Investment Policy Committee v. Sulyma*, 589 U.S. 178 (2020) confirms that “actual knowledge” means actual awareness, not constructive notice. *Global-Tech* limits willful blindness to cases where both of its elements are established. The Federal Circuit’s decision below departs from each of these limits—with consequences that will recur whenever creators and small businesses complete registrations without specialized counsel.

A. § 411(b)(1)(A) requires subjective knowledge of the legal inaccuracy.

Congress chose a demanding scienter requirement. A registration remains effective “regardless of whether” it contains inaccurate information unless the applicant included the information “with knowledge that it was inaccurate.” 17 U.S.C. § 411(b)(1)(A). The statute does not say “should have

known,” “had reason to know,” or “could have discovered.” It says “knowledge.”

§ 411(b)(1)(A)’s scienter is knowledge of legal inaccuracy not merely knowledge of the underlying facts. An applicant may know every fact relevant to a registration and still lack the knowledge the statute requires if the applicant does not know that those facts make the application legally inaccurate.

Unicolors gave that word its ordinary meaning. The applicant there knew the underlying business facts but did not know that those facts made its application legally inaccurate. This Court held that the applicant lacked the knowledge § 411(b)(1)(A) requires. 595 U.S. at 184–86. The Court emphasized that copyright forms ask mixed legal and factual questions and are completed by creators “without legal training.” *Id.* at 186. Congress did not protect factual mistakes while exposing good-faith legal mistakes to forfeiture. *Ibid.*

That holding controls here. The disputed mental state is not whether Greene knew that petitioner’s working servers contained later updates. The Federal Circuit found that he did. Pet. App. 14a–15a. The disputed question is whether he knew the legal proposition that made those facts disqualifying: that the deposit had to consist of identifying portions of a particular historical version, without the intervening patches and changes found in the working code.

The court below did not find actual awareness of that proposition. It instead inferred legal knowledge from the availability and supposed clarity of Copyright Office guidance. Pet. App. 15a–16a. That is the same substitution *Unicolors* rejected. Knowledge

of facts does not equal knowledge of legal inaccuracy, and an applicant's ability to locate a legal rule does not establish that the applicant actually understood it.

This Court made the latter distinction explicit in *Intel Corp. Investment Policy Committee v. Sulyma*, 589 U.S. 178 (2020). There, documents disclosing information had been furnished to the plaintiff, and the information was readily available. The Court nonetheless held that actual knowledge requires actual awareness; treating information as known merely because it could be acquired with reasonable effort converts an actual-knowledge statute into a constructive-knowledge regime. *Id.* at 184–187. The same principle applies here. The Compendium's availability may be evidence. It cannot itself supply the statutory mental state.

Unicolors and *Sulyma* permit reliance on circumstantial evidence, but circumstantial inferences about clarity or availability of guidance cannot replace proof of both *Global-Tech* elements—subjective awareness of a high probability and deliberate avoidance.

B. Willful blindness cannot substitute for actual knowledge unless both *Global-Tech* elements are established.

Unicolors said that willful blindness “may” support actual knowledge. 595 U.S. at 187. The phrase invokes a settled doctrine, not a free-floating permission to impute knowledge whenever a court believes an applicant should have investigated more carefully. *Global-Tech* is that doctrine—willful blindness

requires both (1) a subjective belief that there is a high probability the relevant proposition is true and (2) deliberate action to avoid learning the truth. 563 U.S. at 769. The first element is subjective, while the second element requires purposeful avoidance. Together they give willful blindness a “limited scope that surpasses recklessness and negligence.” Ibid.

Neither element appears in the decision below. The Federal Circuit did not identify evidence that Greene suspected a high probability that the particular deposit copies were legally noncompliant. Nor did it identify deliberate conduct designed to avoid confirmation. The facts the Federal Circuit cited point elsewhere. Greene contacted the Copyright Office for guidance. Pet. App. 15a. Seeking guidance is not deliberate avoidance. Circumstantial considerations, such as the ones the Federal Circuit identified, may inform the willful blindness inquiry, but they cannot replace either element.

The panel did not identify and apply Global-Tech’s two requirements. Circumstantial evidence may prove knowledge. The question is what that evidence must establish before a court may find willful blindness. *Global-Tech* requires both subjective belief in a high probability of the relevant proposition and deliberate action to avoid learning it. Consulting the office, working quickly, and proceeding without counsel are not “deliberate action to avoid learning the fact” under *Global-Tech*. At most, preparing applications quickly and without counsel may support an inference of carelessness, but it does not establish a plan to remain ignorant. Additionally, the public availability of a Compendium shows only that an applicant could have learned more, not that the

applicant consciously avoided a truth already perceived as highly probable.

The decision below therefore eliminates the features that make willful blindness a permissible substitute for actual knowledge. The argument is not that clarity or availability are irrelevant, but that this record and these opinions fail to identify both *Global-Tech* elements. Once public guidance, perceived clarity, importance, haste, and lack of counsel suffice, virtually every remediable registration mistake by a nonlawyer becomes “willful blindness.” The safe harbor then protects only applicants whose errors arise from genuinely obscure rules or unavailable information. That is the opposite of the rule Congress enacted and *Unicolors* construed.

C. The Eighth Circuit required the missing elements in a closely analogous software-registration case.

The courts of appeals now materially diverge over the evidentiary showing needed to convert a software-deposit mistake into willful blindness.

In *LADS Network Solutions, Inc. v. Agilis Systems, LLC*, 138 F.4th 1059 (8th Cir. 2025), the copyright owner registered software and deposited source code that contained references to technology created after the asserted date. The Copyright Office had expressly informed the applicant of the governing legal requirement. *Id.* at 1061–1062. The applicant therefore knew the law, and the dispute concerned whether it knew the decisive temporal fact.

The Eighth Circuit reversed summary judgment. It began with *Sulyma*, which held that actual knowledge means actual awareness. *Id.* at 1062. It then applied *Global-Tech*'s two-part test, stressing that willful blindness requires awareness of a high probability and deliberate action to avoid learning the fact, and that negligence or recklessness is insufficient. *Ibid.* The presence of later-developed references in the code did not establish the employee's subjective awareness of when those references were created. *Id.* at 1062–1063.

LADS illustrates the proper application in the software-deposit context: courts must link proof to the applicant's subjective awareness and to deliberate conduct, rather than treating objective clarity or availability of guidance as dispositive. The decisions reveal a consequential methodological divergence. The Eighth Circuit expressly applied *Global-Tech*'s two requirements to § 411(b), while the Federal Circuit affirmed a willful-blindness finding without articulating or applying those requirements.

Here, the two halves of *Unicolors* are reversed, but the legal question is the same. Petitioner was found aware of the underlying chronology, while knowledge of the legal deposit rule was disputed. The Federal Circuit nevertheless affirmed summary judgment without requiring evidence of subjective high probability or deliberate avoidance. It treated access to guidance and the court's own view of the rule's clarity as sufficient. Pet. App. 15a–16a. This Petition does not assert a square circuit split; rather, it identifies a consequential divergence in how courts assess the sufficiency of evidence to meet §

411(b)(1)(A)’s actual-knowledge requirement via willful blindness.

The conflict is thus not over labels. Both courts used the words “actual knowledge” and “willful blindness.” The conflict concerns whether those words retain the elements this Court assigned them. That divergence warrants review. Copyright is national law. A software registration containing a disputed historical deposit should not survive in one circuit and fail in another because courts apply materially different thresholds for the same statutory scienter requirement.

D. The question is recurring and important to the copyright registration system.

§ 411(b) was designed to prevent technical errors from becoming automatic forfeitures. *Unicolors*, 595 U.S. at 186–187. The question presented determines whether that protection remains meaningful for the people most likely to need it: creators and small businesses that complete registrations without specialized copyright counsel.

Software registrations make the problem acute. Programs change continuously. Working repositories contain patches, updates, branches, dependencies, and customer-specific modifications. The legal task of identifying and depositing the exact historical version corresponding to an asserted completion or publication date is not self-defining. If a later court may infer legal knowledge merely because the Compendium was online and the rule appears clear in hindsight, the safe harbor offers little protection.

Converting most nonlawyer registration mistakes into willful blindness would collapse § 411(b)'s actual-knowledge protection into a constructive-knowledge regime, contrary to Congress's text and this Court's holding in *Unicolors* that good-faith legal mistakes do not invalidate a registration. This approach inverts § 411(b)'s protection for nonlawyer applicants and turns ordinary, remediable errors into dispositive findings of willful blindness.

The decision below also creates perverse incentives. It counted petitioner's consultation with the Copyright Office as part of the willful-blindness calculus. Pet. App. 15a. Applicants should be encouraged to seek guidance, not told that asking for help can later support an inference that they deliberately avoided the law. The same is true of proceeding without counsel. *Unicolors* identified nonlawyer applicants as a reason to read "knowledge" subjectively. 595 U.S. at 186. The decision below turned lack of counsel into evidence against the applicant. The Federal Circuit recited Greene's rapid preparation of the applications, the absence of counsel's assistance in completing the registrations, his contact with the Copyright Office, and the availability of published guidance. It ultimately agreed with the CFC's willful-blindness conclusion based principally on the asserted significance of the legal error and clarity of the deposit-copy requirements. Neither court, however, identified and applied Global-Tech's separate requirements of subjective high-probability belief and deliberate avoidance

The issue extends beyond software. Registration forms routinely ask applicants to classify publication, authorship, work-made-for-hire status, derivative content, and compilations. Those are legal questions built on facts. Unless this Court supplies the missing limit, lower courts can recast a good-faith legal mistake as willful blindness whenever guidance existed somewhere, and the rule appears important after litigation begins.

E. This case cleanly presents the legal question.

The Federal Circuit squarely decided whether petitioner was willfully blind to copyright law. It acknowledged *Unicolors*, identified the circumstantial considerations it deemed sufficient, and affirmed summary judgment on that basis. Pet. App. 14a–16a. No factual trial or credibility determination obscures the issue. The question is whether the Federal Circuit applied the legal definition of willful blindness this Court established in *Global-Tech*.

At summary judgment, respondents bore the burden to produce evidence that satisfies both *Global-Tech* elements; evidence of carelessness or negligence cannot substitute for deliberate avoidance and subjective awareness of a high probability.

The Court need not decide whether Petitioner ultimately had actual knowledge. It need only hold that willful blindness requires the two elements *Global-Tech* identifies and remand for application of that standard. That is a conventional legal question suitable for certiorari review.

The trial court’s alternative copying ruling does not prevent review. The Federal Circuit affirmed the copyright judgment on registration validity and expressly declined to reach petitioner’s challenge to the exclusion of its copying expert. Pet. App. 16a. That alternative ground therefore remains unresolved. If this Court corrects the § 411(b) scienter standard, the appropriate disposition is vacatur and remand, leaving the Federal Circuit to address the preserved expert-exclusion and related judgment issues in the first instance. Petitioner does not ask this Court to decide those issues.

II. THE COURT SHOULD ALSO DECIDE WHETHER THE FAR MAY ADD A MANDATORY “SUM CERTAIN” CONDITION THAT CONGRESS DID NOT ENACT.

A. The CDA specifies the prerequisites for contractor claims without imposing a “sum certain” rule.

The CDA creates a comprehensive process for resolving claims relating to federal contracts. A contractor must submit its claim to the contracting officer for a decision. 41 U.S.C. § 7103(a)(1). Claims over \$100,000 must be certified, including a certification that “the amount requested accurately reflects the contract adjustment” the contractor believes is due. § 7103(b)(1)(C). The Act addresses decisions, deadlines, interest, appeals, and judicial review. §§ 7103–7109. That comprehensive framework reinforces that Congress specified when and how monetary demands must be presented—without prescribing a single-number “sum certain”—

leaving no gap for a regulation to impose a new claim-defeating prerequisite.

Congress never used the phrase “sum certain.” It did not direct that every monetary claim contain one final dollar figure, prohibit ranges, or prescribe the consequences of a claimed lack of numerical precision. It instead required submission of a claim and, for larger claims, an accurate certification of “the amount requested.”

The Federal Circuit’s own pre-regulation formulation tracked that statutory function. A contractor need not use any particular form or wording; it must provide a “clear and unequivocal statement” giving the contracting officer adequate notice of the claim’s basis and amount. *Contract Cleaning Maintenance, Inc. v. United States*, 811 F.2d 586, 592 (Fed. Cir. 1987). Adequate notice is a functional inquiry. It does not itself make one final dollar figure an extra-statutory element of every monetary claim.

The regulatory text goes further. FAR 2.101 defines a monetary claim as a written demand seeking payment “in a sum certain.” The Federal Circuit has converted that phrase into a mandatory claim-processing rule. *ECC International Constructors, LLC v. Secretary of the Army*, 79 F.4th 1364, 1376–1380 (Fed. Cir. 2023). A contracting officer may deny a claim, and a board or the Court of Federal Claims may dismiss it for failure to state a claim, solely because the submission does not satisfy the regulatory requirement. *Id.* at 1380.

That rule cannot be justified merely by observing that the CDA leaves “claim” undefined. Statutory silence is the beginning of the inquiry, not a delegation to an agency to add a claim-defeating condition.

***B. Loper Bright* requires independent judicial judgment about delegated authority.**

In *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), this Court held that courts must exercise independent judgment in deciding whether an agency acted within its statutory authority. A court may not treat ambiguity or silence as permission to accept an agency’s preferred rule. *Id.* at 394–395. Agency discretion exists only where the best reading of the statute shows that Congress conferred it, and any resulting rule must remain within the boundaries of that delegation. *Ibid.*

The panel enforced FAR 2.101’s “sum certain” language as mandatory based on statutory silence—precisely the approach *Loper Bright* rejects.

Congress spoke by prescribing the CDA’s prerequisites—submission of a claim and, above a threshold, certification of “the amount requested”—and by omitting any “sum certain” mandate. That statutory design leaves courts to apply the best reading of § 7103, not to import a regulatory definition as a claim-defeating condition. Under *Loper Bright*’s independent-judgment requirement, agency text cannot supply what the statute withholds; only a congressional delegation can authorize converting a definitional gloss into a mandatory element that extinguishes otherwise adequate claims.

That independent judgment is essential here because the panel began from the opposite premise. It reasoned that because the CDA does not define the elements of a claim, the court “looks to the Federal Acquisition Regulation (‘FAR’) for guidance.” Pet. App. 7a. That CDA-silence-to-FAR shortcut is precisely what *Loper Bright* forbids. The question is not whether the FAR contains the words “sum certain.” It does. The question is whether Congress authorized the Executive Branch to make those words a condition that defeats a statutory claim.

ECC does not answer that question. It held before *Loper Bright* that the sum-certain requirement is nonjurisdictional but mandatory and forfeitable. 79 F.4th at 1376–1380. Its analysis focused on the jurisdictional label and the timing of an objection. It did not independently determine whether the CDA delegates authority to create the requirement in the first place.

Nor does the Federal Circuit’s later en banc decision in *Lesko v. United States*, 161 F.4th 1352 (Fed. Cir. 2025), resolve this case. *Lesko* upheld an agency writing requirement for federal overtime because the statute itself required overtime to be “officially ordered or approved,” language the court found presupposed a formal authorization process, and because separate statutes delegated authority to prescribe regulations necessary for administration. *Id.* at 1359–1364. The CDA contains no comparable textual premise that a contractor’s claim must take the form of one exact number. Congress itself prescribed the formality it wanted for a monetary claim—a submitted claim and, above a specified

threshold, a certification of the amount requested. A “sum certain” was not required.

General authority to administer procurement cannot silently become authority to narrow the adjudicatory remedy Congress created. Agencies may prescribe procedures that facilitate review. They may not elevate an administrative preference for precision into a mandatory element that extinguishes otherwise adequate claims unless the statute, independently construed, authorizes that consequence.

C. The issue is nationally important and recurring.

The FAR governs procurement throughout the Executive Branch. The Federal Circuit has exclusive appellate jurisdiction over the Court of Federal Claims and nationwide authority over the principal boards of contract appeals. Its sum-certain rule therefore controls federal contractors across the country.

The consequences are substantial. The rule is no longer called jurisdictional, but it remains mandatory when timely invoked. *ECC*, 79 F.4th at 1380. It can defeat a claim after performance, after the agency has received the demand, and after litigation has begun—not because the contractor lacked a contractual right, but because a court later decides the request was not numerically precise enough.

That consequence is especially severe where damages depend on information held by the Government or a prime contractor. A subcontractor or software owner may know the governing royalty,

percentage, rate, or formula but lack access to the Government's total payments. The CDA's adequate-notice function can be satisfied by an objective formula even when the final dollar amount depends on government records. An inflexible regulatory rule risks converting informational asymmetry into forfeiture.

This Court's review is needed to identify the line *Loper Bright* requires: when does a procurement regulation administer a statutory claim, and when does it add a substantive prerequisite Congress did not enact? The question affects every board of contract appeals, the Court of Federal Claims, and every contractor required to use the CDA process.

D. This case concretely presents the statutory-authority question.

Petitioner's written demand identified the conduct at issue, requested compensation from a specified date, and included the contractual compensation provision governing new ROVR work. Pet. App. 4a, 9a. Petitioner maintained that the 25% minimum supplied an objective calculation once the value of the relevant government work was known. The Federal Circuit did not hold that no monetary relief was requested. It held that the request failed because the regulatory "sum certain" rule demanded greater finality. *Id.* at 7a–10a.

The statutory-authority question was passed upon below. The panel made the challenged proposition the first premise of its analysis: the CDA does not define claim elements, so the court looks to the FAR. Pet. App. 7a. Whether that premise survives *Loper Bright*

is a pure question of federal law fairly included in Petitioner's challenge to dismissal of its CDA claim. Petitioner flagged the statutory-authority question in a footnote of its petition for rehearing en banc, reserving it 'for further briefing if this petition is granted.' Pet. for Reh'g En Banc at 4 n.1.

To be sure, the panel identified separate obstacles to Petitioner's recovery under alternative theories—no assent by an authorized government representative to the embedded EULA and waiver of reliance on Contract No. W911QY-09-C-0128. Pet. App. 10a–12a. But those rulings do not render the statutory-authority question immaterial: the sum-certain ruling stands as an independent, threshold ground for rejecting petitioner's administrative claim, and the precedential rule the panel applied continues to govern future cases through ECC. Vacating that ruling would restore the statutory framework and permit the lower courts to address any remaining contract issues without an agency-created bar. The existence of additional issues for remand is not a reason to leave a nationwide claim-processing rule insulated from review, and even if the panel's alternative holdings ultimately control the outcome on remand, the case remains an apt vehicle to decide whether a regulatory definition in FAR 2.101 may operate as a mandatory, claim-extinguishing precondition absent congressional authorization.

III. THE TWO QUESTIONS WARRANT REVIEW IN THIS CASE.

Both holdings reflect the same recurring judicial error: treating administrative materials as though

they supply legal consequences that Congress reserved to statute.

For § 411(b), Copyright Office guidance may be relevant evidence, but it cannot replace Congress's requirement of actual knowledge or the two elements of willful blindness. For the CDA, the FAR may facilitate claim administration, but its text cannot become a mandatory claim-extinguishing condition without a statutory delegation identified through independent judicial judgment.

The Federal Circuit's decision presents both questions directly. On copyright, it affirmed willful blindness based on public guidance, clarity, significance, haste, consultation, and lack of counsel without identifying evidence satisfying both *Global-Tech* elements. Pet. App. 15a–16a. On contract, it held that statutory silence justified looking to the FAR and enforcing the regulation as a mandatory element. *Id.* at 7a–10a.

The first question independently warrants plenary review because it asks whether the summary-judgment record satisfied this Court's actual-knowledge and willful-blindness standards.

The second question presents an important post-*Loper Bright* issue of national procurement law. At minimum, the Court should grant review of the first question and vacate the judgment so the Federal Circuit can apply the correct scienter standard and consider the remaining preserved issues. The Court should also resolve the second question to prevent a regulatory definition from continuing to operate as a

claim-defeating rule without a judicial determination that Congress authorized it.

Both questions present clean vehicles for review. The unresolved expert-exclusion issue does not preclude review of the first question under Rule 10, and the panel's separate contract-formation and waiver holdings do not diminish the materiality of the second.

CONCLUSION

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

The Court should grant review of the first question, vacate the judgment below, and remand for application of the correct § 411(b)(1)(A) willful-blindness standard under *Unicolors* and *Global-Tech*. On remand, the court of appeals may address the unresolved expert-exclusion issue.

The Court should also grant review to resolve whether the FAR's "sum certain" language in 48 C.F.R. § 2.101 may operate as a mandatory, claim-defeating prerequisite under the Contract Disputes Act absent statutory authorization.

Respectfully submitted,

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September 8, 2026

No. _____

IN THE
SUPREME COURT OF
THE UNITED STATES

HEALTHeSTATE, LLC,

Petitioner,

v.

UNITED STATES AND ASM RESEARCH,
LLC,

Respondents.

As required by Supreme Court Rule 33.1(h), I, Bryant S. Banes, a member of the Bar of this Court, certify that the Petition for a Writ of Certiorari in the above-referenced case contains **5,361** words, excluding the parts of the petition exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 8, 2026.

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NO. _____

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Respondents.**

PROOF OF SERVICE

As required by Supreme Court Rule 29, I, Bryant S. Banes, a member of the Bar of this Court, certify that on this 8th day of September 2026, three copies of the Petition for a Writ of Certiorari and Appendix were served via third-party commercial carrier for delivery within 3 calendar days, and via electronic service, upon:

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