This material from *The Government Contractor* has been reproduced with the permission of the publisher, Thomson Reuters. Further use without the permission of the publisher is prohibited. For further information or to subscribe, call 1-800-328-9352 or visit https://legal.thomsonreuters.com. For information on setting up a Westlaw alert to receive *The Government Contractor* in your inbox each week, call your law librarian or a Westlaw reference attorney (1-800-733-2889).

THE GOVERNMENT CONTRACTOR®

Information and Analysis on Legal Aspects of Procurement

MARCH 18, 2026 | VOLUME 68 | ISSUE 11

¶ 62 FEATURE COMMENT: The Top FCA Developments Of 2025

Last year, we observed that 2025 would likely bring increased False Claims Act actions and recoveries as well as expansive efforts by the Government to wield the FCA's investigatory and enforcement mechanisms to support new or shifting policies and priorities. And so it was. 2025 saw not just record recoveries from preexisting cases but a wave of new Executive Branch policies with express direction to the Department of Justice and other agencies to utilize the FCA to enforce those priorities and incentivize the relator's bar to follow suit. As a result, the FCA continues to gain notoriety far beyond traditional industries such as defense and healthcare as the Government seeks to enforce its prerogatives in areas like DEI, civil rights, trade and tariffs, and more. This Feature Comment discusses the top FCA developments of 2025 and looks to what's in store for Government contractors and others as the year progresses.

Recovery Statistics and Notable Settlements—Fiscal Year 2025 was unprecedented in terms of FCA recoveries and settlements with a total of more than $6.88 billion in settlements, recoveries, and judgments (note that some judgments are still on appeal). That is the highest total ever reported by DOJ, smashing even the prior highest total of $5.7 billion set in 2021 by more than $1.1 billion. The 2025 numbers reflect the Government's stated FCA priorities and focus on the (1) federal healthcare system, (2) procurement, loan, and grant programs, and (3) improper avoidance of tariffs and customs duties. As usual, the lion's share of the total FY 2025 recoveries—nearly $5.7 billion—came from the healthcare industry.

FY 2025 also set a new record for the number of FCA lawsuits filed in a single year at 1,698 newly filed cases. Of those, 1,297 matters, representing more than 76 percent of the total, were filed by relators. That leaves 401 cases filed by the Government, which represents one of the few numbers in DOJ's reported statistics to decrease from FY 2024 to FY 2025 when the Government filed 498 and 401 cases, respectively, a decrease of nearly 20 percent.

There was also a decline in relators' shares of the settlements and recoveries from prior years. In FY 2025, of the $6.88 billion total, $5.6 billion was the result of qui tam lawsuits originally filed by relators, but relators received only $330 million in relator share awards. That $330 million comprises $286 million awarded in qui tam suits where the Government intervened and only $44 million where the Government declined to intervene. Those numbers are significant decreases from FY 2024 where relator share awards totaled $486 million comprising more than $393 million in intervened cases and $86 million in declined cases. One reason for the decline may be that some of the judgments included in DOJ's statistics are still on

appeal and may not yet have a relator's share allocated. Even so, considering the huge volume of new qui tam cases filed in FY 2025, we expect that the relators' awards will rebound in FY 2026 and beyond, particularly as relators continue to take forward non-intervened cases.

Notable Settlements and Enforcement Trends—2025 saw significant settlements in several key DOJ enforcement areas, including procurement, cybersecurity, small businesses, pandemic-related loans, trade and customs, healthcare, and more.

Procurement Fraud: Procurement fraud as usual remained an area of focus for DOJ in 2025. New Executive Branch policies specifically targeted federal contractors, resulting in a number of new cases, significant settlements, and sweeping industry changes. As in prior years, pricing, billing, and contract requirements remained common theories of procurement fraud liability; but 2025 also introduced new potential avenues of FCA risk for federal contractors such as in the area of civil rights (discussed more below).

On the settlement side, in the DRI Relays Inc. (DRI) settlement, a contractor agreed to pay $15.7 million to resolve FCA allegations that it supplied parts that did not meet military specifications. DRI, a subsidiary of TE Connectivity Corp. (TEC), manufactures electrical relays and sockets for military platforms. In January 2021, TEC proactively disclosed to the Department of Defense that it had not conducted certain required tests on relays and sockets. Following a subsequent Government investigation, DOJ alleged that DRI had fraudulently invoiced DOD for military grade electrical relays and sockets despite knowing that those relays and sockets did not meet the testing requirements to be deemed military grade.

Similarly, L3 Technologies Inc. (L3) agreed to pay $62 million plus interest to settle allegations that its division, Communications System West, violated both the FCA and the Truth In Negotiations Act by knowingly making false statements and submitting and causing the submission of false claims by failing to disclose accurate, current, and complete cost or pricing data for communications equipment sold to various DOD agencies. L3 manufactures communications equipment to operate unmanned vehicles and retrieve data and visuals for military operations and intelligence via devices known as remote operations video enhanced receivers, Video-Oriented Transceivers for Exchange of Information, and Soldier Intelligence, Surveillance, and Reconnaissance receivers. Through both fixed-price direct contracts and subcontracts, the Government purchased all three types of devices and associated versions and kits from L3. According to the settlement, between January 2006 and February 2014, L3 allegedly failed to disclose accurate, complete, and current cost or pricing data relating to the labor, material, and other costs associated with manufacturing the three devices and falsely certified that it had done so in dozens of Government contract proposals.

Cybersecurity: In 2025, the Government and relator's bar continued to prioritize pursuing cybersecurity-related fraud under its Civil Cyber-Fraud Initiative. The Government recovered more than $50 million across nine FCA cybersecurity-fraud settlements, which more than tripled the prior year's total. The settlements focused on allegations regarding failures to implement required security controls, false self-assessment scores, and software supply chain gaps and confirmed that DOJ's enforcement reach extends beyond defense contractors providing traditional cybersecurity services.

For example, in March 2025, DOJ announced that defense contractor MORSECORP Inc. (MORSE) agreed to pay $4.6 million to resolve allegations that MORSE failed to comply with Defense Federal Acquisition Regulation Supplement clauses 252.204-7008, 252.204-7012, 252.204-7019 and 252.204-7020. The settlement resolved allegations in *U.S. ex rel. Berich v. MORSECORP, Inc.*, et al., No. 23-cv-10130-GAO (D. Mass.), a qui tam action initiated by MORSE's former head of security and facility security officer. According to the settlement, MORSE allegedly violated the cybersecurity requirements in the DFARS because it (1) used a third-party service for email hosting that did not meet security requirements equivalent to the FedRAMP Moderate baseline, (2) did not fully implement National Institute of Standards and

© 2026 Thomson Reuters

Technology (NIST) Special Publication (SP) 800-171, (3) did not have a consolidated written plan, otherwise known as a systems security plan (SSP), and (4) failed to update its self-assessment score in a Government database in a timely manner after third-party consultants notified the company that its score was significantly lower than reported.

In July, DOJ announced the first FCA settlement involving claims that a medical manufacturer, Illumina, Inc., failed to incorporate adequate product cybersecurity into its software design and development. The allegations were first made in *U.S. ex rel. Lenore v. Illumina Inc.*, No. 1:23-cv-00372 (D.R.I.), a qui tam action filed by Illumina's former director for platform management, on-market portfolio in September 2023. The relator alleged that, between February 2016 and September 2023, Illumina knowingly sold genomic sequencing systems to Government agencies without adequate security programs or quality systems to identify and address software vulnerabilities. According to the Government, Illumina submitted, and caused to be submitted, false claims to the Government because it knowingly failed to incorporate product cybersecurity into the lifecycle of its genomic sequencing systems, including design, development, and post-market monitoring; failed to support and resource the personnel, systems, and processes responsible for product security; failed to correct design features that introduced known cybersecurity vulnerabilities; and falsely certified compliance with cybersecurity standards published by the International Organization for Standardization and NIST in representations to federal agencies.

In September, DOJ announced that Georgia Tech Research Corporation (GTRC) agreed to pay $875,000 to settle allegations that it violated the FCA by failing to meet cybersecurity requirements under certain Air Force and Defense Advanced Research Projects Agency contracts. The allegations arose from a qui tam lawsuit (captioned *U.S. ex rel. Craig et al. v. Georgia Tech Research Corp. et al.*, Civil Action No. 22-cv-02698) filed by two former members of Georgia Tech's cybersecurity team under the FCA's whistleblower provisions. The U.S. intervened and primarily alleged that violations of DFARS 252.204-7012, 252.204-7019, and 252.204-7020 occurred at Georgia Tech's Astrolavos Laboratory. Specifically, the Government alleged that, until December 2021, GTRC and Georgia Tech knowingly failed to install, update, or run anti-virus and anti-malware tools on devices and networks involved in performing sensitive cyber-defense research for DOD as required by NIST SP 800-171, and that, until at least February 2020, there was no SSP in place for the Astrolavos Lab as required by DFARS 7012. GTRC and Georgia Tech also allegedly submitted a false, inflated DFARS 7019/7020 assessment score to DOD. The Government contended that this score was based on a "fictitious" or "virtual" environment and did not reflect Georgia Tech's implementation of NIST SP 800-171 on information systems that handled Controlled Unclassified Information (CUI).

The last settlement of 2025 reflects DOJ's emphasis on utilizing the FCA to pursue alleged cybersecurity noncompliance across all levels of the defense industrial base and illustrates the critical intersection of two regulatory frameworks that defense suppliers must navigate: DFARS cybersecurity requirements and the International Traffic in Arms Regulations (ITAR). In December, DOJ announced that Swiss Automation Inc., an Illinois-based precision machining company, agreed to pay $421,234 to resolve allegations that it inadequately protected technical drawings for parts delivered to DOD prime contractors. The enforcement action stems from a qui tam lawsuit filed on Aug. 16, 2022, by a former quality-control manager at Swiss Automation, in the U.S. District Court for the Northern District of Illinois, captioned *U.S. ex rel. Gomez v. Swiss Automation, Inc.*, Civil Action No. 22-C-4328. The relator's complaint predominately focused on alleged ITAR violations, alleging that Swiss Automation knowingly submitted invoices containing false certifications of ITAR compliance despite awareness of compliance deficiencies. The complaint detailed multiple alleged violations, including failing to adequately safeguard ITAR-controlled articles and technical data, including blueprints and machining diagrams, and transmitting ITAR-controlled technical data through unencrypted emails. DOJ linked the alleged ITAR noncompliances to DFARS 252.204-7012 and asserted that Swiss Automation knowingly failed to implement adequate cybersecurity for the technical

© 2026 Thomson Reuters

drawings, in accordance with protections for CUI, as set forth in the clause.

Trade: While enforcement of customs fraud under the FCA has steadily increased in past years, the Government has signaled a clear interest in further expanding FCA enforcement in trade. In late summer 2025, DOJ and Department of Homeland Security launched a cross-agency Trade Fraud Task Force, consistent with DOJ's intention to "aggressively" enforce the FCA, with a particular focus on "illegal foreign trade practices." Later in 2025, the Government announced a $54.4 million settlement with Ceratizit USA, LLC, which is believed to be the largest ever customs-related FCA resolution. Ceratizit, a distributor of tungsten carbide products, resolved allegations that the company violated the FCA by evading customs duties on products imported from China. The alleged conduct Ceratizit resolved through the settlement agreement highlights three distinct categories of customs violations that can lead to FCA exposure for U.S. importers. Ceratizit resolved allegations that it had knowingly (1) misrepresented the origin of products that had been manufactured in China and transshipped through Taiwan, thereby avoiding Section 301 duties; (2) misclassified products under the Harmonized Tariff Schedule, thereby reducing the applicable general duty rate to zero; and (3) imported merchandise that was not properly marked with the country of origin and failed to pay required marking duties before distributing the unmarked products to U.S. consumers.

Small Business Fraud: Small business fraud cases remained a recovery area for the Government in 2025. As in prior years, small business standards and eligibility remained common theories of liability for small business fraud causes.

In the R&K Enterprises Inc. settlement, a Virginia contractor agreed to pay $2.6 million to resolve claims that it had fraudulently represented its eligibility for certain small-business set-aside contracts. Specifically, R&K represented and certified in a contract bid that it met the size standard for the General Services Administration's One Acquisition Solution for Integrated Services (OASIS) Small Business Pool 1 Contract. R&K subsequently received a contract under the OASIS Small Business Pool. As part of its effort to appear that it met the required size standard, R&K allegedly novated a contract to another company, K&P Management Inc., and represented that it was not related to or affiliated with K&P, even though: (1) the spouse of the owner of R&K owned K&P; (2) all of K&P's revenue came from R&K; (3) R&K and K&P shared executives; and (4) R&K exercised control over K&P. According to the press release, had R&K disclosed its affiliation with K&P, it would not have been eligible for the OASIS Small Business Pool. The settlement amount represented a combination of claims for payment submitted under the contract, restitution, and interest.

Similarly, Vimaan Robotics, Inc. agreed to pay $1.5 million to settle allegations that it improperly accepted and drew down funds from a grant award that it was ineligible to receive. In 2020, Vimaan had received a Small Business Innovation Research (SBIR) Phase II grant from the National Science Foundation. Prior to receiving that grant, Vimaan allegedly became majority-owned by one or more venture-capital operating companies, which would have precluded Vimaan from eligibility. Vimaan subsequently submitted 14 requests for disbursement of funds from the SBIR award, each of which required it to re-certify that it was eligible to receive the SBIR award. The settlement amount represented a combination of repayment of funds, restitution, and interest.

In addition, 2025 saw a continuing trend from prior post-pandemic years with the resolution of many cases alleging the fraudulent receipt of a Paycheck Protection Program (PPP) loans under the Coronavirus Aid, Relief, and Economic Security Act. PPP cases remain particular fodder for relators who have mined data released by the Small Business Administration to initiate qui tam cases against groups of defendants alleging that their receipt of PPP loans was improper because they were not qualifying small businesses, resulting in some notable settlements of these cases. For example, a group of defendants that collectively own and operate several healthcare facilities that provide long-term care and assisted living services to patients in California and Arizona agreed to pay $18 million to settle claims that they fraudulently received approximately $15 million in PPP loans,

© 2026 Thomson Reuters

$12 million of which were forgiven in full. According to the settlement, the defendants were allegedly too large to qualify for PPP loans once common ownership and affiliations were considered. But, by failing to disclose this common ownership and affiliations, the defendants had allegedly fraudulently certified that they were eligible to receive these PPP loans.

DEI and the Civil Rights Fraud Initiative: In January 2025, President Trump sent shockwaves that reverberated far beyond the Government contracting community with Executive Order 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, also referred to as the "Anti-DEI Executive Order." EO 14173 seeks to end "illegal" diversity, equity, and inclusion (DEI) efforts by recipients of federal funding. Most significant, EO 14173 directed agencies to include a certification in every federal contract or grant award requiring the contractor to acknowledge that compliance with federal anti-discrimination laws is material to the Government's payment decisions for purposes of the FCA materiality element and certify that it does not operate any programs promoting DEI that violate applicable federal anti-discrimination laws.

Just a few months later, on May 19, 2025, Deputy Attorney General Todd Blanche issued a Memorandum https://www.justice.gov/dag/media/1400826/dl creating the Civil Rights Fraud Initiative to "utilize the False Claims Act to investigate and … pursue claims against any recipient of federal funds that knowingly violates federal civil rights laws." The Initiative is co-led by the DOJ Civil Rights Division and the Civil Division's Fraud Section, with each of the U.S. Attorney's Offices around the country to identify an Assistant U.S. Attorney to advance the Initiative's efforts, and coordination is expected with DOJ's Criminal Division, federal agencies, and states attorneys general and local law enforcement to pursue enforcement actions. In addition to direct Government enforcement, the Initiative "strongly encourages" private individuals to file qui tam actions in the name of rooting out alleged civil rights fraud.

The issuance of EO 14173 triggered numerous legal challenges across the country, many of which are ongoing. One of the multiple attacks lodged against the EO was the lack of clarity as to what kind of DEI programs or conduct constitutes "illegal discrimination." On July 29, 2025, Attorney General Bondi issued new guidance to all federal agencies purporting to clarify how programs or initiatives such as those labeled DEI might unlawfully discriminate. In particular, the guidance identified "Best Practices" articulating the administration's view of unlawful DEI and related practices, including issues such as unlawful proxy discrimination, diversity training creating a hostile environment, awarding contracts based on protected characteristics, and failing to maintain sex-separated athletic competitions and facilities.

The impact of the EO-directed certifications, including the resolution of legal challenges against them, will take time to assess from an FCA enforcement perspective, just as it will be some time before the response from the relator's bar in initiating qui tam suits in this area surfaces. Even so, contractors across industries as well as universities have already become the subject of DOJ investigations into DEI and related practices, and with the FCA's lengthy statute of limitations, the scope of DOJ's investigations will likely be extensive.

Healthcare: As noted above, nearly $5.7 billion of the total $6.88 billion in 2025 recoveries are related to the healthcare industry. A December 2025 settlement associated with a "large-scale wound-care scheme" illustrates how healthcare schemes even relatively short-lived, are often huge drivers of recoveries. According to the press release, the scheme took place over just 18 months and involved the submission of approximately $1.2 billion in false and fraudulent claims to health insurance programs. The co-conspirators, owners of several Arizona wound graft companies, pled guilty, faced over a billion dollars in restitution and forfeiture payments, and agreed to pay $309 million to resolve civil FCA liability.

Constitutionality of the Qui Tam Provisions on Appeal—Following the now infamous decision by Judge Kathryn Kimball Mizelle in *U.S. ex rel. Zafirov v. Fla. Med. Assocs., LLC*, 751 F. Supp. 3d 1293 (M.D. Fla. 2024); 66 GC ¶ 273, which, for the first time ever, held the qui tam provisions of the

© 2026 Thomson Reuters

FCA unconstitutional in violation of Article II's Appointments Clause, in 2025, courts throughout the country continued to hear constitutionality arguments. Notably, 2025 saw the first appellate arguments since the district court's *Zafirov* decision, and oral argument has already been heard in that case with another oral argument scheduled. Based on the timing of briefing and argument, we could see the first court of appeals rulings on this significant issue sometime in 2026, with a petition for certiorari to the Supreme Court likely inevitable, regardless of which side is successful.

In *Zafirov*, No. 24-13581 (11th Cir.), the Eleventh Circuit heard oral argument in December 2025 on the relator's and Government's appeals of Judge Mizelle's decision in the Middle District of Florida. The Eleventh Circuit panel consisted of Circuit Judges Robert J. Luck and Elizabeth L. Branch, and Senior District Judge Federico A. Moreno of the Southern District of Florida. During argument, the panel probed the scope of a relator's authority as it relates to the Appointments Clause and what weight the court should give the history of bounty statutes as analogs to the FCA's qui tam provisions. Beginning with the Appointments Clause arguments, the panel focused on a relator's ability to dictate how the U.S. uses its investigative resources and the fact that nearly 80 percent of qui tam lawsuits are litigated after the Government declines to intervene in the case. Turning next to the historical analog arguments, the panel appeared unconvinced that history was dispositive, particularly as it has been decades since any federal appeals court or the Supreme Court has addressed the qui tam provisions, and several current Justices have expressed skepticism about the qui tam provisions and willingness to hear arguments about the constitutional questions. The *Zafirov* panel also pressed the Government's positions that apparently changed between filing the opening and reply briefs. Specifically, the panel asked the Government to confirm that it had retreated from its initial argument that a non-employee could not act as an "officer" for purposes of Article II considerations. The Eleventh Circuit took the arguments under consideration, and the appeal is ripe for disposition.

Zafirov is not the only constitutionality challenge percolating at the appellate level. In the Third Circuit, Janssen Products LP appealed a historic $1.6 billion FCA judgment against the company in *U.S. v. Janssen Prods.*, No. 25-1818 (3rd Cir.). Janssen made two constitutionality arguments in its appeal: (1) the qui tam provisions violate the Takings, Vesting, and Appointments Clauses of Article II, a particularly egregious issue in that case because it had a historically large judgment in a non-intervened case; and (2) the civil penalties imposed violate the Due Process Clause of the Fifth Amendment or Excessive Fines Clause of the Eighth Amendment. As was the case with *Zafirov* at the Eleventh Circuit, the Government has intervened in the Janssen appeal to argue the qui tam provisions' constitutionality. Briefing has concluded, and the case is currently docketed on the oral argument calendar for March 2026.

Elsewhere, in *In Re TriHealth, Inc.*, Nos. 25-0306 and 25-0307 (6th Cir.), the Sixth Circuit denied TriHealth's petition for interlocutory appeal seeking review of two decisions from the Southern District of Ohio that denied TriHealth's Rule 12(b)(1) and 12(b)(6) motions to dismiss. TriHealth argued that the FCA qui tam provisions violate the Appointments and Take Care Clauses, and that the relators lacked Article III standing to bring the lawsuit. In denying the motions, Judge Douglas Cole noted that he was bound by existing precedent in *U.S. ex rel. Taxpayers Against Fraud v. General Elec. Co.*, 41 F.3d 1032, 1041 (6th Cir. 1994), on the question of constitutionality, but certified the questions for interlocutory appeal. The Sixth Circuit, however, denied the petition on the grounds that TriHealth's constitutionality argument failed the Sixth Circuit's three-factor test for review: (1) whether the to-be-appealed order involves a controlling question of law, (2) whether a substantial ground for difference of opinion exists regarding the correctness of the decision, and (3) if an immediate appeal may materially advance the ultimate termination of the litigation. The Sixth Circuit noted that while the first and third factors may be met, the second was not as *Taxpayers Against Fraud* was controlling precedent and left no substantial ground for disagreement on the question of constitutionality.

Judges on the Fifth Circuit also identified concerns about qui tam constitutionality in 2025, but

© 2026 Thomson Reuters

only in non-binding statements. First, Judge Stuart Kyle Duncan concurred in *U.S. ex rel. Montcrief v. Peripheral Vascular Assocs., P.A.*, 133 F.4th 395, 412 (5th Cir. 2025), stating that the Constitution "does not allow this outsourcing of prosecutorial power to a private person," but "that is precisely what happens when a private person brings a *qui tam* action under the FCA." Judge Duncan also urged the Fifth Circuit to reconsider its decades-old precedent in *Riley v. St. Luke's Episcopal Hosp.*, 252 F.3d 749 (5th Cir. 2001) (en banc), noting that *Riley* prevents the Fifth Circuit from addressing the constitutional flaws in the qui tam device. Second, approximately eight months later, Judge James Ho concurred in *U.S. ex rel. Gentry v. Encompass Health Rehabilitation Hosp. of Pearland, LLC*, 157 F.4th 758 (5th Cir. 2025), writing, "*Qui tam* relators … presume to represent the United States government in federal court, and to defend the interests of the United States Treasury against fraud" but "are neither appointed by, nor accountable to, the President." Because of those constitutional issues, and like Judge Duncan, Judge Ho suggested the Fifth Circuit should reconsider *Riley* and "revisit whether there are serious constitutional problems with the qui tam provisions of the False Claims Act."

Other Notable Decisions—*Rule 9(b)*: The Eleventh Circuit issued a potentially significant decision regarding the ability of a relator to rely on discovery to satisfy Rule 9(b) and therefore avoid dismissal. In *U.S. ex rel. Sedona Partners LLC v. Able Moving & Storage Inc.*, 146 F.4th 1032 (11th Cir. 2025), the defendants had moved to dismiss and the parties jointly moved to stay discovery pending resolution of the motion. The district court denied the motion to stay and opened discovery, later granting the motion to dismiss, in part because the relator failed to allege any specific conduct by any individual defendant. Relying on information obtained during discovery, the relator amended and set forth factual allegations of conduct by the defendants. The defendants moved to dismiss again and moved to strike those discovery-derived allegations—both of which motions the district court granted. The district court reasoned that allowing information learned through discovery to satisfy pleading standards would render Rule 9(b) "a nullity" by allowing relators to "make baseless allegations" that they could attempt to substantiate through discovery.

On appeal, however, the Eleventh Circuit reversed, reasoning that Rule 9(b) "does not prohibit pleaders from using, or courts from considering, allegations based on information obtained during discovery." The court held that a contrary interpretation would impermissibly allow policy arguments to "supplement the rule's plain meaning." The Eleventh Circuit also held that the district court abused its discretion by striking the allegations, which did not fall within the enumerated categories under Rule 12(f).

The ruling is a victory for relators who file suits without sufficient knowledge or details but find a court unwilling to stay discovery until the pleading stage is complete. Notably, the Eleventh Circuit observed that the determination to stay or open discovery while a motion to dismiss is pending is in the district court's discretion, potentially increasing the initial impact of the specific judge overseeing a qui tam action.

Retaliation: The First Circuit reaffirmed its standard for FCA retaliation claims in *U.S. ex rel. Morgan-Lee v. Therapy Res. Mgmt, LLC*, 129 F.4th 93 (1st Cir. 2025). After a bench trial solely on retaliation claims, the district court concluded that the relator had not proven that her employer discharged her in violation of 31 USCA § 3730(h) because she did not show "that but for her protected conduct she would not have been discharged." The First Circuit affirmed. The appellate court held that many of the relator's arguments were waived or that she was estopped from asserting them because, before the trial court, she either did not argue them or argued conflicting positions. Nonetheless, the First Circuit affirmed multiple important retaliation principles: compliance employees must typically do more to show that their employer knew that their conduct was protected activity (rather than just doing their job), and retaliation claims are subject to a but-for causation standard.

Customs Fraud: In a protracted FCA qui tam action between competitors, the Ninth Circuit held in *Island Indus., Inc. v. Sigma Corp.*, 151 F.4th 1003

© 2026 Thomson Reuters

(9th Cir. 2025), that relators may bring cases to recover customs duties in federal district court, not just the Court of International Trade (CIT), and that they may do so under the FCA, not just the Tariff Act. See id. at 1014.

At issue in *Island Industries* were defendant Sigma Corp.'s imports of products from China that were described as steel couplings, but were allegedly in fact welded outlets, which are subject to nearly 200 percent antidumping duties. Relator—a domestic competitor of Sigma—filed suit against Sigma and five other companies in the industry alleging that the defendants made false statements declaring that their imports were not subject to antidumping duties and mischaracterizing the products being imported. DOJ declined to intervene, but relator proceeded to litigate and eventually prevailed at trial, convincing the jury that Sigma violated the FCA under a reverse false claims theory.

On appeal, the Ninth Circuit considered and ruled on a number of issues that will surely impact future customs fraud cases. First, the Ninth Circuit dealt with threshold questions of jurisdiction. It held that even though 28 USCA § 1582 gives the CIT exclusive jurisdiction over "civil action[s] … commenced by the United States … to recover customs duties," when a *relator* files suit regarding customs fraud, that does not qualify as an action "in which 'the United States' filed the complaint." It also held that 19 USCA § 1592—part of the Tariff Act that "prohibits the importation of merchandise by means of a material false statement or omission"—is not "an exclusive remedy" and does not "irreconcilabl[y] conflict" with the FCA, appealing to the canon against implied repeal to find that claims may be brought to "recover[] fraudulently avoided customs duties" under both statutes. The Supreme Court's ruling in *U.S. ex rel. Schutte v. SuperValu Inc.*, 598 U.S. 739 (2023); 65 GC ¶ 156, played a central role in the Ninth Circuit's holding that "[e]ven if the [antidumping duty order at issue] were ambiguous enough that some hypothetical reasonable person could have believed that it did not cover [defendant's products]," that was not enough to rule as a matter of law on scienter in defendant's favor, because even if "[a]n 'honest mistake' may preclude liability, … it must be the *defendant's* honest mistake, not a hypothetical honest mistake made by someone else." Rejecting defendant's argument that limitations in the liquidation process—which is one mechanism through which the Government may collect duties owed—meant that the allegedly owed duties could not be collected through the FCA, the Ninth Circuit also found that the "obligation to pay" duties under the Tariff Act is "independent of the details of the liquidation process," enough to satisfy that element of the FCA.

Anti-Kickback Statute Causation: In February 2025, the First Circuit resolved a fundamental question that has loomed over FCA cases involving the Anti-Kickback Statute (AKS) since a 2010 amendment to that statute. In *U.S. v. Regeneron Pharm., Inc.*, 128 F.4th 324 (1st Cir. 2025), the First Circuit held that an FCA plaintiff may prove liability for an alleged AKS violation under the 2010 amendment by showing that the violation was the "but-for" cause of a change in treatment provided by a physician, as opposed to applying a more-permissive standard permitting such claims when a causal link could be shown. That theory now stands in addition to the "pathway to FCA liability" based on false certification of compliance "with a material requirement that there be no AKS violation in connection with the claim."

The *Regeneron* case originated from allegations by the Government that Regeneron Pharmaceuticals, Inc., covered certain patients' copayments, thereby violating the AKS by knowingly inducing prescriptions that were reimbursed via the Medicare Part B program. The Government alleged that physicians' claims for Eylea prescriptions to those covered patients "resulted from" Regeneron's alleged AKS violation.

The connection between Regeneron's alleged conduct and the submission of related claims gave rise to the central question in this case, tied to the language used in the 2010 AKS amendment. That amendment specified that any "claim that includes items or services resulting from a violation of [the AKS] constitutes a false or fraudulent claim for purposes of [the FCA]." There was ambiguity over what degree of causation was required by the words "resulting from" to fall within the conduct referenced in the 2010 amendment.

© 2026 Thomson Reuters

In reaching its decision to apply a but-for causation standard, the First Circuit considered a number of arguments. Among its standout holdings, the First Circuit found that the Government failed to "show that the text of the 2010 amendment itself contraindicates a but-for causation standard." It also reasoned that the statutory history showed enough distinctions between the pathways to demonstrate that the 2010 amendment ran "on a separate track than do claims under a false-certification theory." And the First Circuit rejected the Government's arguments regarding the difficulty that would be faced in proving but-for causation, finding that imposing that but-for standard was not so strict as to render the 2010 amendment practically powerless.

Regeneron has quickly made an impact, with over 15 cases citing the opinion in the year since it was released. See, e.g., *U.S. ex rel. Wilkerson v. Allergan Ltd.*, 782 F. Supp. 3d 658, 676 (N.D. Ill. 2025) (subsequent history omitted). And the decision aligns the First Circuit with the Sixth and Eighth Circuits, both of which reached the same conclusion regarding but-for causation in recent years in decisions cited favorably in the district court decision. See *U.S. v. Regeneron Pharms., Inc.*, No. CV 20-11217-FDS, 2023 WL 6296393, at *11 (D. Mass. 2023), aff'd, 128 F.4th 324 (1st Cir. 2025) (citing *U.S. ex rel. Martin v. Hathaway*, 63 F.4th 1043 (6th Cir. 2023) and *U.S. ex rel. Cairns v. D.S. Med. LLC*, 42 F.4th 828, 834–35 (8th Cir. 2022); 64 GC ¶ 258). While the Third Circuit remains the only federal appellate court to reach the alternate conclusion, it is possible that *Regeneron* marks enough of a circuit split to draw the attention of the U.S. Supreme Court. And review may be made more complex—and necessary—by a need to clarify whether and how the First Circuit's emphasis on the alternative pathway of false-certification liability bears on AKS FCA cases, as that framing was not examined in any depth by the Sixth or Eighth Circuits in their decisions.

2026 Vision—The Year Ahead for the FCA—2026 sees FCA enforcement at high levels as DOJ pursues an even more expansive reach for this civil statute with both traditional enforcement areas and Administration priorities driving investigations, litigation, and settlements. At the same time, 2026 should bring at least one if not two court of appeals decisions assessing whether the FCA's qui tam provisions that drive FCA enforcement violate the Constitution in one or more ways, setting the stage for the Supreme Court itself to take up this issue for what would potentially be a landmark decision that could shape the scope of civil fraud matters for years to come. No matter what, we are certain the Government will continue to look for new avenues to pursue contractors and others receiving Government funds with the FCA's treble damages hammer.

♦

This Feature Comment was written for THE GOVERNMENT CONTRACTOR by* Brian Tully McLaughlin, *a partner in the Government Contracts practice group and co-chair of the firm's False Claims Act practice;* Lyndsay Gorton *and* Nkechi Kanu, *both partners in the Government Contracts group;* Neil Nandi, *a partner in the Litigation group;* Payal Nanavati *and* Will Tucker, *both counsel in the Government Contracts and Health Care groups; and* Amanda McDowell, *an associate in the Government Contracts group. All authors are attorneys at Crowell & Moring LLP.

© 2026 Thomson Reuters