

No. 26-1530

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

JEAN-CLAUDE FRANCHITTI,
ex rel. UNITED STATES OF AMERICA,

v.

COGNIZANT TECHNOLOGY SOLUTIONS CORPORATION;
COGNIZANT TECHNOLOGY SOLUTIONS U.S. CORPORATION,

Appellants.

On Appeal from the United States District Court for the District
of New Jersey, No. 3:17-cv-06317, Hon. Zahid N. Quraishi

**BRIEF FOR THE CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA AS *AMICUS CURIAE*
IN SUPPORT OF APPELLANTS**

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Corporate Disclosure Statement

The Chamber of Commerce of the United States of America is a non-profit, tax-exempt organization incorporated in the District of Columbia. The Chamber has no parent corporation, and no publicly held company has 10% or greater ownership in the Chamber.

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Interest of *Amicus Curiae*¹

The Chamber of Commerce of the United States of America is the world's largest business organization. As the nation's leading advocate for business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

False Claims Act cases touch on nearly every sector of the economy, including banking, defense, education, healthcare, and technology, and exact a substantial toll on the economy. Given the combination of the FCA's draconian liability provisions—treble damages plus per-claim penalties—and enormous litigation costs, even meritless cases can be used to extract substantial settlements. As a result, cases involving the

¹ No counsel for any party authored this brief in whole or in part, and no entity or person, aside from *amicus curiae*, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief. All parties have consented to the filing of this brief.

proper application of the FCA are of particular concern to the Chamber and its members.

Introduction

As Appellants (“Cognizant”) explain in their brief, the district court’s denial of Cognizant’s motion to dismiss is irreconcilable with the FCA’s text and with the regulations underlying Relator Jean-Claude Franchitti’s claims. By allowing Relator to pursue a “reverse” FCA claim without identifying any legal “obligation” Cognizant had to pay the funds it allegedly withheld, 31 U.S.C. § 3729(a)(1)(G), the district court improperly converted the FCA into an “all-purpose” statute that punishes any alleged “garden-variety breach[] of contract or regulatory violations,” *Universal Health Servs., Inc. v. U.S. ex rel. Escobar*, 579 U.S. 176, 194 (2016) (cleaned up). That expansion of the FCA conflicts with controlling precedent and threatens the nation’s businesses with an explosion of burdensome *qui tam* litigation.

The threat is particularly acute given that every other circuit to have considered the question has rejected the district court’s holding. *U.S. ex rel. Palmer v. Tata Consulting Servs., Ltd.*, 174 F.4th 462, 470-71 (5th Cir. 2026); *U.S. ex rel. Kini v. Tata Consultancy Servs., Ltd.*, 146

F.4th 1184, 1194 (D.C. Cir. 2025); *U.S. ex rel. Billington v. HCL Techs. Ltd.*, 126 F.4th 799, 805 n.5 (2d Cir. 2025); *U.S. ex rel. Lesnik v. ISM Vuzem d.o.o.*, 112 F.4th 816, 820-21 (9th Cir. 2024). If this Court does not reverse, businesses will be exposed to an inconsistent, unpredictable legal regime in which FCA claims that would be rejected in other courts could proceed in courts within this Circuit. That would encourage forum-shopping and undermine the predictability that is essential to our economy. For all these reasons, this Court should reverse the district court's decision and instruct it to dismiss Relator's complaint.

Argument

I. The district court's expansive theory of reverse false claim liability contradicts the FCA's limited scope.

The False Claims Act is not “a vehicle for punishing garden-variety breaches of contract or regulatory violations,” *Escobar*, 579 U.S. at 194, or “a blunt instrument to enforce compliance with all regulations,” *U.S. ex rel. Petratos v. Genentech Inc.*, 855 F.3d 481, 490 (3d Cir. 2017) (cleaned up). Nor is the FCA “an all-purpose antifraud statute.” *Escobar*, 579 U.S. at 194 (quotation marks omitted). Rather, the FCA is specifically focused on fraud in “claims for payment” that are “meant to appropriate

government assets.” *U.S. ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 423-24 (2023).

The FCA’s targeted focus on frauds that take money from the public fisc extends to the statute’s reverse false claims provision. *Miller v. U.S. ex rel. Miller*, 110 F.4th 533, 545-46 (2d Cir. 2024). To assert a claim under that provision, a plaintiff “must show that the ... defendants ‘knowingly and improperly avoided or decreased an obligation to pay or transmit money or property to the Government.’” *U.S. ex rel. Petras v. Simparel, Inc.*, 857 F.3d 497, 502 (3d Cir. 2017) (cleaned up) (quoting 31 U.S.C. § 3729(a)(1)(G)); *see also U.S. ex rel. Atkinson v. Pa. Shipbuilding Co.*, 473 F.3d 506, 513 n.12 (3d Cir. 2007) (holding that “[r]everse false claims are centered around an alleged fraudulent effort to reduce a liability owed to the government”). The reverse false claim provision thus does not prohibit all regulatory violations or misrepresentations to the government. *U.S. ex rel. Quinn v. Omnicare Inc.*, 382 F.3d 432, 446 (3d Cir. 2004). The provision applies only when the defendant makes a misrepresentation or engages in other misconduct in order to “avoid or decrease a legal *obligation*.” *Id.* (emphasis added).

An obligation to pay the government, in turn, “is not established just because a violation of the law occurs.” *Miller*, 110 F.4th at 545. The FCA defines “obligation” as “an established duty” to make a payment to the government. 31 U.S.C. § 3729(b)(3). Accordingly, this Circuit and every other hold that the alleged “obligation” must “exist[] at the time of the improper conduct.” *Petras*, 857 F.3d at 506. An obligation cannot be “contingent” or “dependent on a future discretionary act”; then it would be merely a *potential* obligation. *Id.* at 505-06.² Thus, there can be no “obligation” for purposes of reverse false claim liability “in the absence of [legal] authority” requiring immediate payment of the allegedly withheld funds. *Quinn*, 382 F.3d at 434; *see also id.* at 445-46 (holding that a reverse false claim violation requires a “clear obligation” to pay or a “regulation that explicitly bars” the withholding of payment); *Miller*,

² *Accord Palmer*, 174 F.4th at 468 (“[O]bligations to pay that are merely potential or contingent’ cannot create reverse false claim liability.” (quoting *U.S. ex rel. Barrick v. Parker-Migliorini Int’l, LLC*, 878 F.3d 1224, 1231 (10th Cir. 2017)); *Billington*, 126 F.4th at 804 (“[A]n established duty to pay or transmit money or property to the Government must be one that is already secured or settled. ... [A] duty to pay is established only when it triggers an *immediate* and *self-executing* duty to pay.” (cleaned up)); *Lesnik*, 112 F.4th at 820 (“[A] legal obligation to pay the government [must] be ‘established’ at the time the false statement or record is made.” (quoting 31 U.S.C. § 3729(b)(3))).

110 F.4th at 545-46 (“There is no obligation to pay unless and until the government has determined that a fine must be paid.”); *U.S. ex rel. Simoneaux v. E.I. duPont de Nemours & Co.*, 843 F.3d 1033, 1039 (5th Cir. 2016) (“[U]nassessed regulatory penalties are not obligations under the FCA.”).

As Cognizant argues, and as every circuit to have addressed the question has held, the district court’s decision in this case disregards these statutory limits on reverse false claim liability. *Palmer*, 174 F.4th at 470-71; *Kini*, 146 F.4th at 1194; *Billington*, 126 F.4th at 805 n.5; *Lesnik*, 112 F.4th at 820-21. Relator contends that Cognizant avoided payments to the government by applying for cheaper visas than it allegedly should have. But the regulations Relator cites “merely require payments corresponding to the visas *actually sought*; they create no freestanding obligation to pay fees for a specific visa type.” *Palmer*, 174 F.4th at 469. Cognizant thus “had no ‘established’ duty to pay higher visa fees corresponding to visas for which it never applied.” *Id.* (quoting 31 U.S.C. § 3729(b)(3)); *accord Kini*, 146 F.4th at 1194; *Billington*, 126 F.4th at 805-06; *Lesnik*, 112 F.4th at 820-21. The same is true of Relator’s claim that Cognizant underpaid H-1B wages and associated taxes, because “the

regulations at issue do not impose any ‘obligation to transmit money or property’ to the Government.” *Palmer*, 174 F.4th at 472 (citing 31 U.S.C. § 3729(a)(1)(G)); *accord Kini*, 146 F.4th at 1192-93; *Billington*, 126 F.4th at 804-05.

In holding that Cognizant had an obligation to pay the alleged fees and taxes, the district court relied on an unexplained “implied contractual” or “fee-based” obligation. *Franchitti v. Cognizant Tech. Sols. Corp.*, 555 F. Supp. 3d 63, 71 (D.N.J. 2021) (quotation marks omitted). But the court “never identified any legal authority that would establish such an obligation.” *Lesnik*, 112 F.4th at 820. The court relied on “precedent involving reverse false claims outside the visa context” and “never so much as cited the labor regulations that purportedly give rise to [Cognizant’s] obligation[s] in this case.” *Palmer*, 174 F.4th at 470. Without identifying any statute or regulation imposing an immediate obligation to pay the government, the district court effectively held that Cognizant’s obligation was “established just because a violation of the law [allegedly] occur[ed].” *Miller*, 110 F.4th at 545. That erroneous holding improperly converted the FCA’s reverse false claim provision into “an all-purpose antifraud statute” and “a vehicle for punishing garden-

variety breaches of contract or regulatory violations.” *Escobar*, 579 U.S. at 194 (quotation marks omitted); *accord Petratos*, 855 F.3d at 490.

II. The district court’s decision threatens an explosion of meritless and costly *qui tam* actions.

By expanding the FCA’s reverse false claim provision far beyond its proper scope, the district court opened the gates to a flood of *qui tam* actions that will impose deadweight costs on business, courts, the government, and U.S. taxpayers.

1. The FCA’s *qui tam* provisions create extraordinary incentives for relators to bring even weak claims. Those provisions authorize private citizens who have suffered no injury to bring actions for treble damages and per-claim penalties of \$14,308–\$28,619—remedies that “are essentially punitive in nature.” *Vt. Agency of Nat. Res. v. U.S. ex rel. Stevens*, 529 U.S. 765, 784 (2000). If the United States intervenes, a relator keeps 15 to 25 percent of any recovery, as well as attorneys’ fees and costs; if the United States declines to intervene, a relator keeps up to 30 percent of any recovery, plus fees and costs. 31 U.S.C. § 3730(d)(1)-(2). Even if a *qui tam* suit is doomed to fail, defendants face tremendous pressure to settle because the costs of litigating are so high and the

potential downside is so great. *U.S. ex rel. Atkins v. McInteer*, 470 F.3d 1350, 1359-60 (11th Cir. 2006).

These potential remedies, along with the ability to extract *in terrorem* settlements from innocent defendants, have led to an explosion in *qui tam* litigation. More than 70% of the nearly 26,000 FCA actions filed from 1986 through September 2025 were *qui tam* suits. U.S. Dep’t of Just., Civ. Div., Fraud Statistics—Overview: October 1, 1986 – September 30, 2025, at 4 (Jan. 16, 2026), <https://tinyurl.com/3ujmzny5> (“DOJ Fraud Statistics”). That statistic, moreover, does not capture the dramatic increase in *qui tam* suit filings in recent years. Indeed, in the twelve months leading up to September 2025, alleged “whistleblowers filed 1,297 *qui tam* lawsuits, the highest number in a single year.” Press Release, U.S. Dep’t of Just., Off. of Pub. Affs., False Claims Act Settlements & Judgments Exceed \$6.8B in Fiscal Year 2025 (Jan. 16, 2026), <https://tinyurl.com/bd54vu2r>. That represents a 32% increase over 2024 *qui tam*-driven lawsuits. See DOJ Fraud Statistics at 3.

These third-party “informer” actions are “highly subject to abuse.” *Stevens*, 529 U.S. at 775. “As a class of plaintiffs, *qui tam* relators are different in kind than the Government. They are motivated primarily by

prospects of monetary reward rather than the public good.” *Hughes Aircraft Co. v. U.S. ex rel. Schumer*, 520 U.S. 939, 949 (1997). So it is no surprise that most *qui tam* actions are meritless. The government intervenes in a small minority of *qui tam* actions, but the vast majority of the amounts recovered under the FCA since 1986 has come from that small subset of intervened cases. DOJ Fraud Statistics at 4. The much larger universe of declined cases has produced just 9% of the total recovery. *Id.*; see also *U.S. ex rel. Hunt v. Cochise Consultancy, Inc.*, 887 F.3d 1081, 1087 (11th Cir. 2018) (“about 10 percent of non-intervened cases result in recovery”), *aff’d*, 587 U.S. 262 (2019).

Meritless *qui tam* actions impose enormous costs. Many of *amicus’s* members are in industries where businesses interact with the government and therefore invest substantial resources in efforts to ensure compliance and avoid FCA exposure. Meritless *qui tam* litigation adds to those costs, and not only in the form of lost money. The harms are also reputational, as even a false “public accusation of fraud can do great damage to a firm.” *U.S. ex rel. Grenadyor v. Ukrainian Vill. Pharm., Inc.*, 772 F.3d 1102, 1105-06 (7th Cir. 2014).

Nor are defendants the only ones who pay the price for meritless *qui tam* cases—with the government involved in some manner in nearly every sector of the economy, the burdens of FCA litigation weigh on the economy as a whole. Judicial time and attention are finite, so every meritless case detracts from a court’s ability to focus on the rest of its docket. Executive branch resources are finite too, and every declined *qui tam* action requires government monitoring and often, if a case gets past the pleading stage, involvement in discovery. Thousands of *qui tam* actions are regularly pending under seal awaiting the government’s decision as to whether to intervene; the government nearly always obtains an extension of the statutory 60-day deadline to make that decision, and often many years’ worth of extensions. *See, e.g., U.S. ex rel. Senters v. Quest Diagnostics, Inc.*, 2024 WL 4297469, at *2 (N.D. Ga. Aug. 23, 2024) (dismissing declined *qui tam* action that was “administratively closed for over nine years, from 2011 to 2020, while the government investigated the case”), *aff’d*, 2025 WL 1951196 (11th Cir. July 16, 2025) (per curiam); *U.S. ex rel. Brasher v. Pentec Health, Inc.*, 338 F. Supp. 3d 396, 403-04 (E.D. Pa. 2018) (denying government’s extension motion

after ten extensions over five years). And all these costs are ultimately borne by taxpayers and consumers.

2. The district court's decision, if approved by this Court, would exacerbate the spread of meritless *qui tam* suits and impose further unwarranted burdens on the U.S. economy. As explained above, the district court effectively held that a relator can unlock discovery merely by alleging a violation of some statute or regulation that involves payments to the government, without having to show that the defendant had an established obligation to pay the government. Left in place, that holding would "mean[] the FCA permits blanket trebling of all federal penalties, so long as the violator knowingly conceals his violation of the regulation." *Miller*, 110 F.4th at 545 (cleaned up) (quoting *Simoneaux*, 843 F.3d at 1039). Such a result, in addition to conflicting with the FCA's text and purpose, would be disastrous for U.S. businesses.

To begin, the district court's holding risks enormous potential liability for companies seeking to hire foreign workers. American companies submit tens of thousands of temporary work-based visa applications for their prospective employees every year. *See* DHS, USCIS, I-129 – Petition for a Nonimmigrant Worker by Fiscal Year,

Month, and Case Status: October 1, 2015 - June 30, 2021, perma.cc/SSG5-QTV5. Under the district court's theory, *every one* of those applications represents a potential reverse false claim lawsuit that would survive a motion to dismiss, so long as a relator alleges that the employer should have sought an H-1B visa instead. That amounts to billions in new potential statutory penalties alone—to say nothing of treble damages—for *a single year* of visa applications. *See* 28 C.F.R. § 85.5 (penalty of over \$23,000 per violation).

But the district court's theory of liability is by no means limited to the immigration context. To the contrary, its logic applies *whenever* the government dispenses benefits of different classes, with different corresponding application fees, to different entities or individuals. Such instances are endemic in the modern regulatory state. Relator's theory might ensnare, for example, a small New Jersey farmer who applies for a non-commercial permit to fill a ditch instead of a commercial permit,³ or a non-profit organization that submits a permit application to conduct a "First Amendment demonstration" on the National Mall when a

³ *See* U.S. Army Corps of Eng'rs, N.Y. Dist., Regulatory Program Applicant Information Guide 17 (2014), perma.cc/Z9JP-X3GE.

bounty-hunting relator contends that the event is better classified as a “parade.”⁴

There are myriad other examples throughout state and federal law. Any time a regulatory scheme provides for different types of licenses or other benefits with different requirements and application fees, the district court’s decision threatens massive FCA liability at the urging of self-interested private relators.

III. This Court should not create a circuit split by affirming the district court.

This Court should also reverse the district court to repair the split that has developed as multiple circuits have rejected the district court’s decision. *Palmer*, 174 F.4th at 470-71; *Kini*, 146 F.4th at 1194; *Billington*, 126 F.4th at 805-06; *Lesnik*, 112 F.4th at 820-21. If this Court affirmed the district court in conflict with every other court to have addressed the issue, it would undermine legal uniformity and predictability and encourage forum-shopping.

⁴ Compare Nat’l Park Serv., *First Amendment Demonstration Permits* (Mar. 31, 2021), perma.cc/5L74-UQ9Q (free application), with Nat’l Park Serv., *Special Event Permits* (Apr. 6, 2021), perma.cc/T54R-6YP7 (\$120 fee).

Predictability in the law is crucial in the modern business environment, where businesses partner with governments and transact business across multiple jurisdictions in the United States. The Supreme Court has recognized that “[p]redictability is valuable to corporations making business and investment decisions.” *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010). Businesses must be able to reliably ensure their compliance with the FCA and assess the costs and risks of doing business with the government, which is not possible when the same conduct could expose a business to FCA liability in some jurisdictions but not others. Such uncertainty will stunt economic growth and prevent businesses from efficiently delivering the goods and services they provide to the government—and could deter them from participating in federal programs altogether. In turn, a reduction in qualified entities willing to deal with the government deprives the government of choice, and reduced competition means that the government very likely will pay higher prices, receive worse products or services, or both.

Circuit splits related to the FCA are particularly problematic given relators’ unusual ability to forum-shop for favorable circuit precedent.

The FCA’s broad venue provision permits *qui tam* cases to “be brought in any judicial district in which the defendant ... can be found, resides, transacts business, or in which any act proscribed by [the FCA] occurred.” 31 U.S.C. § 3732(a). Numerous national companies, including many of the Chamber’s members, do business in states within the Circuit, including Delaware, where many companies are incorporated, and New Jersey, home to a large number of pharmaceutical and biotechnology companies. If this Circuit becomes the first to approve the district court’s novel approach to reverse false claim liability, relators no doubt will rush into the Circuit to bring claims they could not pursue anywhere else. This Court should not encourage such “attempts at forum shopping,” which “constitute the opportunistic and parasitic behavior that the FCA seeks to preclude,” *Bailey v. Shell W. E&P, Inc.*, 609 F.3d 710, 721 n.3 (5th Cir. 2010).

Conclusion

The Court should reverse the district court's decision and instruct it to dismiss Relator's complaint.

Respectfully submitted,

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June 8, 2026

Certificate of Compliance

1. Pursuant to Local Rule 28.3(d), I hereby certify that I am a member of the bar of this Court.

2. This brief complies with the type-volume requirements of Federal Rules of Appellate Procedure 29(a)(5) because it contains 3,202 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

3. The brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) and 3d Cir. L.A.R. 32.1(c) because it has been prepared in a proportionally spaced typeface using Microsoft Word 365 ProPlus in Century Schoolbook 14-point font.

4. Pursuant to Local Rule 31.1(c), I hereby certify that the text of the electronic brief is identical to the text in the paper copies, and that it has been scanned for viruses using Microsoft Defender and no virus was detected.

Dated: June 8, 2026

/s/ Jeffrey S. Bucholtz
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Certificate of Service

I hereby certify that on June 8, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Third Circuit by using the CM/ECF system. I certify that all participants in the appeal are registered CM/ECF users and service will be accomplished by the CM/ECF system.

/s/ Jeffrey S. Bucholtz
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