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¶ 273 FEATURE COMMENT: District Court Declares False Claims Act Qui Tam Provisions Unconstitutional

On Sept. 30, 2024, Judge Kathryn Kimball Mizelle of the District Court for the Middle District of Florida declared the qui tam provisions of the False Claims Act unconstitutional in dismissing the complaint in *U.S. ex rel. Zafirov v. Fla. Med. Assocs., LLC*, 2024 WL 4349242 (M.D. Fla. Sept. 30, 2024). This first-of-its-kind decision follows Justice Thomas' dissent in the recent Supreme Court decision, *U.S. ex rel. Polansky v. Exec. Health Res.*, 599 U.S. 419, 428–39 (2023); 65 GC ¶ 181, where he wrote, "[t]here are substantial arguments that the qui tam device is inconsistent with Article II and that private relators may not represent the interests of the United States in litigation." Justice Thomas' provocative dissent, combined with similar language in Justices Kavanaugh and Barrett's concurrence, emboldened defendants in many non-intervened qui tam actions to move to dismiss on constitutional grounds. The 53-page *Zafirov* decision will undoubtedly lead to years of additional litigation on the question of the qui tam provisions' constitutionality as more such motions are filed in FCA qui tam lawsuits brought by relators.

Background and the Decision—*Zafirov* analyzes three primary issues: (1) whether the relief requested in the defendants' motion was properly considered jurisdictional, and if not, if it was (a) timely and (b) not waived; (2) whether the relator was an "officer of the United States" in violation of the Constitution's Appointments Clause; and (3) whether Article II of the Constitution contains a "qui tam exception" to prevent an FCA relator from being considered an "officer of the United States."

The Constitutional Challenges Do Not Implicate Subject Matter Jurisdiction and Defendants Did Not Waive Them by Failing to Assert Them in the Pleadings: The decision first dispatched the relator's arguments that the constitutional challenges to the qui tam provisions were untimely by answering two questions: (a) whether the constitutionality of the qui tam provisions is a subject matter jurisdiction issue; and (b) whether the defendants waived the arguments. Relying on the Supreme Court's analysis in *Vt. Agency of Nat. Res. v. U.S. ex rel. Stevens*, 529 U.S. 765 (2000); 42 GC ¶ 204. Judge Mizelle began by stating that an FCA relator has standing in a lawsuit because the FCA provides a relator with an "interest in the lawsuit, and not merely the right to retain a fee out of the recovery." A relator's standing, therefore, means that a constitutional challenge to the FCA's qui tam provisions does not implicate subject matter jurisdiction.

The analysis next turned to Zafirov's arguments that the constitutional challenges were waived because they were not included in the defendants' responsive pleadings. Judge Mizelle rejected those arguments by confirming that the relator had received notice of the defendants' constitutional affirmative defense "by some means other than pleadings," specifically, by the defendants' motion that was filed "well over a year before the scheduled trial." The Court also noted that the relator had numerous opportunities in writing and at oral argument to rebut the arguments, and therefore, suffered no prejudice.

The ruling that failure to include the constitutional defenses in the pleadings did not prove insurmountable for the defendants in *Zafirov* is good news for defendants in other pending qui tam actions. Going forward, however, defendants should consider an initial motion to dismiss or pleading constitutionality as an affirmative defense (setting aside whether that would be required) to avoid potential arguments of timeliness or waiver and account for how different courts may analyze these procedural questions.

A Relator Is an Officer of the U.S.: Next, the Court analyzed whether an FCA relator is an officer of the U.S. required to be appointed by the Executive Branch under the Appointments Clause. Applying a framework set forth in *Lucia v. Sec. & Exchange Comm'n*, 585 U.S. 237, 245 (2018) (quoting *Buckley v. Valeo*, 424 U.S. 1, 126 n. 162 (1976) and *U.S. v. Germaine*, 99 U.S. 508, 510 (1879)), Judge Mizelle found that FCA relators are such officers. That posed an intractable problem, because in Judge Mizelle's words "no one—not the President, not a department head, and not a court of law—appointed Zafirov to the office of relator. Instead, relying on an idiosyncratic provision of the False Claims Act, Zafirov appointed herself. This she may not do."

The *Lucia* framework identifies an individual as an officer to whom the Appointments Clause applies if that individual (1) exercises significant authority pursuant to the laws of the U.S. and (2) occupies a continuing position established by law. Based on an examination of the powers, responsibilities, and nature of the FCA relator role, Judge Mizelle found that FCA relators both exercise significant authority and occupy a continuing role, emphasizing the FCA relator's exercise of "core executive power" and reasoning that "officials who exercise important duties are more likely to occupy a constitutional office even when their term is temporary or otherwise cabined to circumstances."

A Relator Exercises "Significant Authority." Taking the elements of the *Lucia* framework in turn, the Court first found that an FCA relator's powers satisfied the "significant authority" element, applying a standard articulated in *Buckley v. Valeo*. In that case, the Supreme Court found that members of the Federal Election Commission exercised significant authority in part because they possessed civil enforcement power, "exemplified by [the FEC's] discretionary power to seek judicial relief." Judge Mizelle reasoned that FCA relators likewise possess such power to conduct civil litigation to vindicate public rights. Specifically, relators have independent authority to file complaints and the FCA's qui tam provisions limit the options available to the Federal Government with respect to the same underlying facts. According to Judge Mizelle, that is "core executive power." And the significance of the relator's authority is heightened by the "daunting monetary penalties" associated with FCA liability.

Judge Mizelle rejected a raft of arguments to the contrary raised by Zafirov, an amicus, and the U.S. That included distinguishing Zafirov's citations to appellate court holdings that FCA relators are not officers, noting that among other distinctions, those opinions did not address the question of whether such civil enforcement authority and charging discretion over essentially punitive sanctions were "core executive power." Judge Mizelle noted that previous opinions on this question did not have the benefit of subsequent Supreme Court decisions examining "core executive power": *U.S. v. Texas*, 599 U.S. 670, 679 (2023); *TransUnion LLC v. Ramirez*, 594 U.S. 413, 429 (2021); and *Seila Law LLC v. CFPB*, 591 U.S. 197, 219 (2020). She also rejected Zafirov's and an amicus' claimed distinctions between FCA relators' powers and other roles exercising significant authority, and explained: (1) there is no meaningful distinction between civil and criminal cases when assessing exercise of "core executive power," particularly considering

the harshness of FCA penalties; (2) FCA relators' lack of administrative powers did not reflect a lack of significant authority; (3) FCA relators need not exercise their enforcement authority in multiple actions for it to be considered significant; (4) the Executive Branch's "back-end" ability to supervise a relator's case and exert certain control after intervention does not lessen the force of an FCA relator's "front-end" authority; and (5) FCA relators need not receive federal resources in order to be deemed officers. Judge Mizelle also distinguished the case at bar from the reasoning in *Cochise Consultancy, Inc. v. U.S. ex rel. Hunt*, 587 U.S. 262 (2019); 61 GC ¶ 149, reading the Supreme Court's finding there that relators are not officials of the U.S. "in the ordinary sense of that phrase" and limited to a narrow question of statutory interpretation, rather than carrying force with respect to "the constitutionality of the FCA's qui tam provision." Judge Mizelle also rejected the Government's and an amicus' claim that relators are akin to "ordinary private plaintiffs," given that FCA relators pursue harms to the public, rather than private harms, and do so by performing a "traditional, exclusive function of the government" and seeking severe monetary penalties.

A Relator Occupies a "Continuing Position." Turning to the second element of the *Lucia* framework, the Court found that relators occupy a continuing position established by law. Judge Mizelle explained that the role of FCA relator "possesses all the traditional indicia of holding a constitutional 'office[ ]' " and found the position to be analogous to others that have been deemed officers by the courts.

The "continuing position" inquiry examines a position's tenure, duration, and its statutory duties, powers, and emoluments. Judge Mizelle found that the FCA establishes those duties, powers, and emoluments sufficiently to support a finding that the position of relator was a continuing office. Although that office may not be occupied at all times, Judge Mizelle reasoned that the continued operation of the FCA was sufficient to render the role "continuing and permanent," satisfying one element of qualifying as an officer, as outlined in *Lucia*, 585 U.S. at 245.

To reinforce that conclusion, Judge Mizelle drew analogies to the roles of independent counsel and bank receivers. The role of independent counsel expires at the end of a single assignment with limited jurisdiction but was still found to qualify as at least an inferior officer by a majority of the Supreme Court in *Morrison v. Olson*, 487 U.S. 654 (1988). Judge Mizelle reasoned that the role of FCA relator is even less limited in scope than that of independent counsel, and that FCA relators' ability to "self-appoint as special prosecutors to recover punitive damages against private parties on behalf of the federal government" was analogous to the responsibility of independent counsel. Bank receivers likewise had limited responsibilities tied to a specific insolvent bank and limited by the scope of a particular project, but even so, such receivers were broadly considered to be officers of the U.S. Therefore, Judge Mizelle concluded that FCA relators should be considered officers, too.

The Court further examined the question of whether temporary positions could qualify as continuing officers through the lens of the three factors considered in *U.S. v. Donziger*, 38 F.4th 290, 297 (2d Cir. 2022), cert. denied, 143 S. Ct. 868 (2023): whether "(1) the position is not personal to a particular individual; (2) the position is not transient or fleeting; and (3) the duties of the position are more than incidental." Id. Judge Mizelle found that FCA relators satisfied each factor. First, the FCA permits "any 'person' to bring an FCA action—and thus, to occupy the position of relator" if that person can allege a sufficient claim, indicating that the role is not personal to a particular individual. Next, the fact that some FCA relators serve in that role for years was sufficient to deem the role neither transient nor fleeting, similar to the role of special prosecutor, which was neither "transient [n]or fleeting" in *Donziger*. Id. Finally, harkening back to FCA relators' "significant authority," Judge Mizelle noted that the power of the FCA relator was "far from 'incidental to the regular operations of government.' "

Article II Has No Exception to the Appointments Clause to Save a Relator's Lawsuit: Finally, the Court determined that Article II of the Constitution provides no qui tam exception to "save" a relator from being considered an officer of the U.S. While acknowledging that some early statutes enacted by Congress

contained provisions analogous to the qui tam provisions, Judge Mizelle concluded that the Constitution must prevail over practice, and holding otherwise "would eviscerate longstanding Article II jurisprudence."

Citing Justice Kavanaugh's concurring opinion in *U.S. v. Rahimi*, Judge Mizelle explained that a basic principle of constitutional interpretation requires that "[t]ext controls over contrary historical practices." 144 S. Ct. 1889, 1912 n.2 (2024). That historical patterns or practices may exist to the contrary will not justify a contemporary violation of constitutional guarantees. Judge Mizelle reasoned that only when "unambiguous and unbroken history" leaves "no doubt that the practice ... has become part of the fabric of our society" may historical evidence of a practice prevail over a well-settled understanding of constitutional rights. *Marsh v. Chambers*, 463 U.S. 783, 792 (1983). This rule will only apply to carefully considered and deliberated actions, and Judge Mizelle warned that "[a]n even more careful approach is required when a practice inherited from England implicates the separation of powers."

With respect to the early enactment of provisions analogous to the FCA's qui tam provisions, Judge Mizelle highlighted three key flaws.

First, these early statutes were the product of a "complicated relation between founding-era relators and properly appointed officers." Specifically, these actions were intended to blur the lines between public and private actions to avoid the risk that unpopular actions may be terminated by the president or prevented from being brought in the first instance. Further, at the time, "district attorneys often represented relators in nominally private enforcement actions, which gave the government a potential gatekeeping mechanism and control over a relator's litigation decisions"—a key distinction from today's FCA qui tam provisions.

Second, early qui tam provisions were relatively uncommon, with numbers being falsely inflated by the inclusion of founding-era bounty statutes. These bounty statutes came in three varieties: (1) those that "provided both a bounty and an express cause of action," (2) those that "provided a bounty only," and (3) those "that allowed injured parties to sue in vindication of their own interests." However, according to Judge Mizelle, only the first variety is analogous to the FCA's qui tam provisions in that they permit a relator to perform a "traditional, exclusive function of the government." Accordingly, the plaintiff's reliance on these historical practices to supersede a constitutional analysis was unpersuasive to the Court.

Third, these early statutes never faced a constitutional challenge and there is no indication that historical practices viewed those statutes as compatible with the Constitution's separation of powers. Further, qui tam provisions as they are used in the FCA are not the product of continuous and unbroken practices, but are instead "of relatively modern vintage." In fact, most early qui tam statutes—some of which were explicitly punitive or criminal in nature—have been formally repealed. And for good reason, according to Judge Mizelle, as few today would agree "that Congress could outsource the criminal-prosecution power to the plaintiffs' bar."

Judge Mizelle then turned to the history of the FCA itself, noting that, while the statute dates back to 1863, there are few reported FCA decisions prior to 1943. She explained that the FCA "briefly saw some use in the 1930s and 40s when lawyers realized they could recover generous bounties by filing 'parasitical' suits that copied federal criminal indictments." However, in response, Congress enacted amendments to discourage the use of the FCA for these purposes, effectively shutting down use of the FCA until 1986 when the statute was famously amended again, ushering in a "new era of qui tam litigation." Judge Mizelle explained that the Constitutional limitations on core executive power are clear—and "[w]hen the Constitution is clear, no amount of countervailing history overcomes what the States ratified."

* * *

Based on this analysis of the Appointments Clause and purportedly analogous statutes, Judge Mizelle concluded that an FCA relator inherently possesses powers of an officer of the U.S., and those powers are subject to the Appointments Clause. And, at its most

permissive, the Appointments Clause allows Congress to "by law" vest the appointment of inferior officers "in the President alone, the head of an executive department, or a court." As no such appointment is made to delegate an FCA relator, this appointment and the resultant powers are unconstitutional.

Survey of the Current Landscape—While *Zafirov* is almost certain to invigorate defendants facing qui tam actions, Judge Mizelle's opinion is the only one to reach this conclusion to date. Every other district court opinion considering the issue—mostly post-dating *Polansky*—has found the FCA qui tam provisions to be constitutional.

All Other District Courts to Consider the Issue Have Rejected Constitutional Challenges to the Qui Tam Provisions: *Zafirov* is, so far, the only decision to find the qui tam provisions unconstitutional. In fact, a neighboring court examined many of the same questions at issue in *Zafirov* a few weeks prior but reached an opposite conclusion. In *U.S. ex rel. Butler v. Shikara*, 2024 WL 4354807 (S.D. Fla. Sept. 6, 2024), Judge Donald Middlebrooks of the Southern District of Florida found that the structure of the FCA qui tam provisions does not "usurp[] the boundaries of any section of Article II of the Constitution." Id. at *13. In that case, a defendant argued that the qui tam mechanism improperly delegates enforcement of laws—an executive act—to private individuals in violation of the Appointments Clause and the Take Care Clause. Judge Middlebrooks rejected that argument on several grounds also considered in *Zafirov*. For instance, Judge Middlebrooks found that qui tam relators did not have any "of the defining qualities of an officer of the United States" or of "an inferior officer." Id. at *12. In support of that conclusion, he cited the "significant control" exercised by the U.S. over a relator's lawsuit, among other distinctions between relators and officers. Id.

In so holding, Judge Middlebrooks cited multiple times the long history of the qui tam mechanism and the consistent lack of decisions finding it to be unconstitutional. Id. at *11. He also noted that while the Supreme Court had not yet ruled on the Article II question, it had held there was "no room for doubt that a *qui tam* relator" had Article III standing. Id. (citing *Stevens*, 529 U.S. at 778).

Other district courts have reached similar conclusions to Judge Middlebrooks in the wake of *Polansky*. In *U.S. ex rel. Miller v. ManPow, LLC*, a judge in the Central District of California found that "the history of qui tam lawsuits is 'conclusive' on the constitutionality of the FCA qui tam provisions with respect to Defendant's Article II challenges." 2023 WL 8290402, at *3 (C.D. Cal. Aug. 30, 2023). *Miller* also rejected the argument that qui tam relators are officers of the U.S. Id. at *4 (citing *Riley v. St. Luke's Episcopal Hosp.*, 252 F.3d 749, 757 (5th Cir. 2001)).

A decision from the Northern District of Alabama likewise found that relators are not officers of the U.S., reasoning that relators do not have permanent authority to litigate under the FCA and hold only temporary duties. *U.S. ex rel. Wallace v. Exactech, Inc.*, 703 F. Supp. 3d 1356, 1364 (N.D. Ala. 2023). Notably, *Wallace* also found that *Buckley v. Valeo* "does not govern" the officer inquiry, in contrast to the finding in *Zafirov*. Id. And the *Wallace* court found that "the FCA, 'taken as a whole,' allows the executive branch to maintain 'sufficient control' of relators," such that it does not violate the Take Care Clause. Id. at 1365 (citing *Morrison*, 487 U.S. at 693).

Some additional opinions have addressed and rejected the qui tam constitutionality issue, albeit more briefly. The same day that *Zafirov* was decided, a judge in the Central District of Illinois rejected a dismissal bid on the grounds that defendants had cited no precedent in support of their Article II argument, the Supreme Court had found that private relators had standing under Article III, and defendants had not followed proper procedure for such a constitutional challenge. See *U.S. & the State of Ill. ex rel. Lagatta v. Reditus Labs., LLC, et al.*, 2024 WL 4351862, at *7 (C.D. Ill. Sept. 30, 2024). A ruling from the District of Arizona "summarily reject[ed]" arguments that the FCA violates Article II, among other provisions of the Constitution, because defendants' "conclusory and underdeveloped" arguments essentially only cited the *Polansky* dissent. *U.S. ex rel. Thomas v. Mercy Care*, 2023 WL 7413669, at *4 (D. Ariz. Nov. 9, 2023). A District of New Jersey opinion denied an Appointments Clause and separation of powers challenge to the FCA qui tam provisions "because the Government maintains 'suf-

ficient control' over" actions brought by qui tam relators. *U.S. v. Riverside Med. Grp., P.C.*, 2024 WL 4100372, at *5 (D.N.J. Sept. 6, 2024). Finally, a previous Middle District of Florida opinion from 2014 held that the qui tam provisions did not violate the Appointments Clause because relators met none of the elements of the definition of officer—"tenure, duration, emolument, and duties"—laid out by the Supreme Court. See *U.S. v. Halifax Hosp. Med. Ctr.*, 997 F. Supp. 2d 1272, 1278–79 (M.D. Fla. 2014) (citing *U.S. ex rel. Stone v. Rockwell Int'l Corp.*, 282 F.3d 787, 805 (10th Cir. 2002) and *U.S. v. Germaine*, 99 U.S. 508, 511–12 (1878)).

The Potential for the Supreme Court to Take Up Zafirov Is Real—But It Will Take Time: It will likely be quite some time before any of the above decisions create a direct circuit split. While *Zafirov* is likely to be appealed in short order, it could be 2026 before a ruling from the Eleventh Circuit. The other decisions—denials of dismissal bids—could only be appealed through the interlocutory appeal process. Even so, it is possible that affirmance of *Zafirov* on its own could be enough to create a split, because a set of existing circuit court decisions have ruled on at least some of the arguments raised in *Zafirov*. In *Zafirov*, relator cited four appellate decisions as having found the qui tam provisions to be constitutional under the Appointments Clause: *U.S. ex rel. Kelly v. Boeing Co.*, 9 F.3d 743, 757–59 (9th Cir. 1993); *U.S. ex rel. Taxpayers Against Fraud v. Gen. Elec. Co.*, 41 F.3d 1032, 1041 (6th Cir. 1994); *Riley*, 252 F.3d at 757–58; and *Stone*, 282 F.3d at 804–05. While Judge Mizelle distinguished those cases as having considered only some of the arguments she relied upon to rule against FCA relators, in *Halifax Hospital Medical Center*, Judge Gregory Presnell described those four opinions as having rejected an Appointments Clause challenge to the constitutionality of the qui tam provisions, citing them in support of his own conclusion that the provisions survived such a challenge. See 997 F. Supp. 2d at 1278.

The Supreme Court could also take up *Zafirov* after an Eleventh Circuit appeal—or any other decision on the constitutionality of the FCA's qui tam provisions that reaches it sooner—based on the significance of the question presented. Given the current makeup of the Supreme Court, and that three of its members have already directly indicated an interest in considering the issue, it seems likely that one way or another, the FCA's qui tam provisions will see Supreme Court attention within the next several years.

For now, the relators' bar, defense bar, and the Government will likely be paying close attention to *Zafirov* as it likely heads to an Eleventh Circuit appeal.

Key Takeaways from Zafirov and Implications Going Forward—This decision is certain to have ripple effects in qui tam cases nationwide and could ultimately have enormous consequences for the FCA as we know it. While it is far too soon to predict the long-term impacts that *Zafirov* and related decisions may have, several immediate takeaways are:

1. Nobody Panic! At this point, *Zafirov* is a district court decision without precedential value. And, as discussed above, several other district courts have recently denied similar challenges to the FCA's qui tam provisions in the wake of Justice Thomas' *Polansky* dissent. Because *Zafirov* granted a motion to dismiss with prejudice, it will likely be appealed to the Eleventh Circuit in short order, and that court will weigh in. *Zafirov*'s potential impact may come into more focus once the Court of Appeals addresses the constitutionality of the FCA's qui tam provisions head-on.

2. Setting the Stage for Another Landmark Supreme Court Decision? In light of *Zafirov*, it is possible if not likely that the constitutionality of the FCA's qui tam provisions is going to be before the Supreme Court before long. Following an Eleventh Circuit ruling in an appeal of *Zafirov*, that decision would likely be appealed to and taken up by the Supreme Court. Indeed, given that three members of the Court, Justices Thomas, Kavanaugh, and Barrett, have already signaled that they view the constitutionality of the qui tam provisions to be an important question, a grant of certiorari seems at least reasonably probable even if a formal circuit split has not yet developed by the time of a petition. That

said, it could be two years or more before the Supreme Court grants such a petition.

3. Preservation of the Issues and Opportunities. Defendants litigating FCA qui tam suits should consider a motion to dismiss on constitutional grounds, if only to preserve the issue on appeal. As noted above, currently *Zafirov* is only one ruling in one district in one circuit, but it provides a reasoned starting point for what is a pure legal question. The posture of *Zafirov* supports a defendant making such a challenge even after other pleadings arguments like Rule 12(b)(6) motions have been denied, such as by moving for judgment on the pleadings under Rule 12(c), and affords defendants another shot at complete disposition ahead of summary judgment or a trial. And while appellate rulings in any circuit are at best far off, defendants should consider filing if only to head off arguments that they have waived such a challenge.

4. Potential for Increase in Government Enforcement? If *Zafirov* is affirmed on appeal, it might not be all good news for defendants. For example, it is possible that the Department of Justice could leverage its resources—in light of the billions of dollars recovered in FCA matters annually—to directly initiate more FCA investigations and lawsuits to avoid any potential qui tam constitutionality questions. Incentive programs that would not run afoul of the constitutionality questions might provide an additional way to continue motivating whistleblowers. And in the near term, part of the Government's response to *Zafirov* might be to intervene in more qui tam suits to dissuade defendants from moving to dismiss on the basis of the relator being considered an "officer of the United States" in violation of the Appointments Clause (although the initiation of the suit through the relator might still be challenged). The prospect of trying an FCA case against the Department of Justice as opposed to a relator's counsel is typically of concern to any defendant. These are theoretical concerns for now, but there should be little doubt that the Government will be considering all its options to continue reaping the benefits from FCA enforcement in the event that the FCA's qui tam provisions are ultimately struck down.

5. How Will the Relator's Bar Respond? If they were not already concerned by Justice Thomas' dissent in *Polansky*, relators now face an increased risk of their qui tam action being dismissed on constitutional grounds as more defendants file motions citing the *Zafirov* decision and its detailed analysis as support. This may lead relators to press harder for intervention by the Government but could also provide more reason for negotiation in pending actions. In addition, relators might seek to use the FCA's relatively broad venue provisions to file their qui tams in circuits where (1) *Zafirov* has not been analyzed; (2) district courts have rejected recent qui tam constitutionality challenges filed in the wake of *Polansky*; or (3) the circuit precedent suggests that the court of appeals would reject a constitutional challenge to the FCA's qui tam provisions when and if presented with it. Last, it is also possible that the relator's bar will add *Zafirov* and the prospect of a constitutional challenge to the other factors counsel consider before taking up a prospective whistleblower's claims. Time will tell.

Looking further ahead to the potential effects of *Zafirov*, there are some key questions that remain open even now. Could the entirety of the qui tam provisions be struck down, or is it possible for some portion of the FCA's qui tam provisions to survive, with a declination by the Government triggering the end of such actions? Is a relator always an "officer of the United States" or is it only whether the Government takes a back seat in a litigation? Could a relator sometimes be "an officer of the United States" and other times not one in the exact same lawsuit? *Zafirov* does not directly address these and other questions, both legal and practical. As such, this case will be one to watch on appeal, as will the increase of defendants filing motions and courts dealing with the constitutionality of the FCA's qui tam provisions.

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