Appeal Nos. 25-4070 and 25-4083

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA ex rel. KATIE BROOKS and NANNETTE WRIDE,
Appellants and Cross-Appellees,
v.
STEVENS-HENAGER COLLEGE, INC.; CALIFORNIA COLLEGE SAN DIEGO, INC.; COLLEGEAMERICA DENVER, INC.; COLLEGEAMERICA ARIZONA, INC.; CENTER FOR EXCELLENCE IN HIGHER EDUCATION, INC.; CARL BARNEY, Appellees and Cross-Appellants, and SHAW, MUMFORD & CO., P.C.; SHAW & CO., P.C.; PRICEWATERHOUSECOOPERS LLP; and WEWORSKI & ASSOCIATES,
Appellees.

On Appeal from the United States District Court
for the District of Utah
No: 2:15-cv-00119
The Honorable Jill Parrish, Presiding

BRIEF OF *AMICUS CURIAE* THE ANTI-FRAUD COALITION IN SUPPORT OF APPELLANTS

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INTEREST OF AMICUS CURIAE

Amicus curiae The Anti-Fraud Coalition ("TAF Coalition") is a non-profit public interest organization dedicated to combating fraud against the Government and protecting public resources through public-private partnerships. TAF Coalition is committed to preserving effective antifraud legislation at the federal and state levels. TAF Coalition educates the public and the legal community about the *qui tam* provisions of the False Claims Act ("FCA"), 31 U.S.C. §§ 3729-3733, and provides testimony to Congress about ways to improve the FCA. It regularly participates in litigation as *amicus curiae,* and has defended the FCA against challenges to its constitutionality in federal district courts, courts of appeals and the Supreme Court.

TAF Coalition is supported by *qui tam* relators and their counsel, by membership dues and fees, and by private donations. TAF Coalition is the 501(c)(3) arm of Taxpayers Against Fraud, which was founded in 1986. TAF Coalition has more than 400 members who, in partnership with the Department of Justice and state attorneys general, have represented whistleblowers in *qui tam* matters that have generated tens of billions of dollars in public recoveries. This brief addresses the district court's holding that a relator may not pursue non-intervened claims when the Government partially intervenes in a qui tam case. The brief draws on the TAF Coalition's unparalleled experience in the development of

FCA practice over the past four decades to explain why the district court's holding is a misreading of the text of the FCA, has been rejected by every other court that has considered it, and undermines the purposes of the FCA.[1]

SUMMARY OF THE ARGUMENT

This brief addresses the district court's holding that when the government intervenes in some, but not all, of a relator's claims the relator may not proceed with the non-intervened claims. The brief makes three points to demonstrate why that holding is incorrect. First, the text of the False Claims Act does not require that result when it refers to the Government proceeding with an "action." As courts have recognized in a variety of contexts, the FCA's reference to an "action" encompasses multi-claim and multi-defendant cases. Just as the FCA's use of that term does not preclude the government from proceeding with fewer than all of a relator's claims, it does not preclude a relator in that situation from pursuing non-intervened claims. The FCA also provides mechanisms for the government to

[1] Relator has consented to the filing of this brief. PricewaterhouseCoopers has consented to the filing of this brief. Stevens-Henager College, Inc., California College San Diego, Inc., CollegeAmerica Denver, Inc., CollegeAmerica Denver, Inc., CollegeAmerica Arizona, Inc., Center for Excellence in Higher Education, Inc., and Carl Barney have indicated that they do not consent. Shaw, Mumford & Co., P.C., Shaw & Co., P.C., and Weworski & Associates have not indicated whether they consent or do not consent. No party or their counsel contributed to this brief and no person other than *amicus curiae*, its members, or its counsel contributed to this brief.

control the action and prevent the relator's non-intervened claims from interfering with the government's efforts. That reading of the statute is consistent with the purposes of the FCA, which is to enlist private citizens in the Government's fraud enforcement effort.

Second, the district court's contrary holding is an outlier, as no other court that has addressed this issue has reached the same conclusion. Indeed, many courts have adjudicated cases involving both intervened and non-intervened claims without even considering this to present an issue of concern.

Finally, relators pursuing non-intervened claims in cases where the government has partially intervened have produced recoveries for the government where under the district court's reading of the statute those claims would have remained unaddressed. Declined cases generally have returned substantial recoveries for the government and there is no reason to assume that declined claims in partially intervened cases would categorically be unlikely to support the government's fraud enforcement efforts.

ARGUMENT

I. Allowing a Relator to Proceed with Non-intervened Claims When the Government Intervenes in Some but Not all Claims is Consistent with the Text and Purposes of the FCA.

A. The FCA's Text Permits the Government's Partial Intervention and a Relator's Parallel Pursuit of Non-Intervened Claims.

The FCA is the government's primary enforcement tool to recover funds lost to fraud. H.R. Rep. No. 99-660, at 18 (1986). Cases under the FCA may be initiated either by the government, or by a private individual, known as a "relator," acting on behalf of the government. Such private actions, known as "*qui tam*" actions, are a key feature of the Act, which was intended to "allow and encourage assistance from the private citizenry" to "bolster[] the Government's fraud enforcement effort." S. Rep. No. 99-345, at 8 (1986).

A *qui tam* action is initially filed under seal to enable the government to investigate and decide whether to intervene and "proceed with the action." 31 U.S.C. § 3730(b)(2). If the government intervenes, the action "shall be conducted by the Government." § 3730(b)(4)(A). The government has the right to amend the relator's complaint "to clarify or add detail to the claims in which the Government is intervening." 31 U.S.C. § 3731(c). When the government intervenes, the relator has "the right to continue as a party to the action," subject to specific limitations. 31 U.S.C. § 3730(c)(1). Those limitations include the government's right to settle or dismiss "the action," provided the relator is given an opportunity to be heard. The

government may also seek to limit the participation of the relator "during the course of the litigation" in various ways. 31 U.S.C. § 3730(c)(1).

Nothing in the text of the FCA requires the government to choose between proceeding with all or none of the claims contained in a relator's complaint. If anything, the Act contemplates that the government may intervene with respect to only some claims by expressly providing that the government may "clarify or add detail to the claims in which the Government is intervening." 31 U.S.C. § 3731(c). And if the government partially intervenes, nothing in the text of the Act requires dismissal of the remaining claims or precludes a relator from proceeding with the non-intervened claims.

Although the FCA provides that the government may proceed with "the action," courts have recognized that this term must be interpreted in context, which is that an action will often include more than one claim and more than one defendant. As then judge, now Justice Alito observed in *United States ex rel. Merena v. SmithKline Beecham Corp*., 205 F.3d 97, 101 (3d Cir. 2000), as amended (Apr. 21, 2000), "the draftsmanship of the *qui tam* statute has its quirks…and one of those quirks is that the statute is based on the model of a single-claim complaint." But as the court recognized in that case, complaints often include multi-claims and multi-defendants.

Courts have thus interpreted the FCA's use of the term "action" in the context of multi-claim actions in a variety of contexts under the FCA, to permit evaluation of an action on a claim-by-claim basis. For example, in the context of evaluating the relator share to which relators were entitled following government settlement of an "action," the Third Circuit analyzed each individual claim. Although relators had recovered a share on some claims in a multi-claim action, the court determined that the relators were not entitled to a share attributable to an individual claim that was precluded by the public disclosure bar. Noting that the FCA authorizes a relator to file "a civil action for a violation of section 3729," the court concluded that the FCA surely contemplates that a relator may bring a single action "containing multiple claims, each of which alleges a separate violation." *Id*. at 102. The court proceeded to observe that:

> the government often decides to take over only certain claims in a multi-claim action, and we are aware of no decision holding that this is improper. The statute authorizes the government to "dismiss *the action*" and "settle *the action*," 31 U.S.C. § 3730(c)(2)(A) and (B), but again, we are aware of no decision holding that the government may not settle or dismiss only some of the claims in a multi-claim complaint, and we can think of no reason why the government should not be permitted to do so.

Id.

For the same reasons, nothing in the Act suggests the relator cannot proceed with individual non-intervened claims. When a relator does so, the government is still proceeding with "the action," the government still has

primary responsibility for "the action," and the relator still remains a party to "the action."

B. Permitting a Relator to Pursue Non-intervened Claims When the Government Partially Intervenes Enhances the Government's Resources.

This understanding of the FCA's text as allowing for the reality that an action will often involve multiple claims and multiple defendants is consistent with the purposes of the FCA, which is intended to incentivize whistleblowers to support and assist the government's law enforcement efforts, including by bringing their own resources to bear. The government is often constrained to concentrate on a limited number of claims or defendants, but supports the relator attempting to prove other claims. Indeed, the FCA contemplates that the government may reassess its initial intervention decisions in light of new information the relator develops. 31 U.S.C. § 3730(b)(3) (providing that when the government does not proceed with the action it may intervene later upon a showing of "good cause"); *see also United States ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 435, 439 (2023) (citing S. Rep. No. 99-345, at 26 (1986)). Because the government may lack the time, resources, or access to fully develop all underlying facts and theories of liability during the seal period, preserving the relator's ability to litigate the remaining claims promotes a fuller presentation of the alleged fraud. The government's ability to reassess non-intervened claims would be substantially

impaired if relators were barred from pursuing those claims once the government intervened in some, but not all, claims. Allowing relators to proceed with non-intervened claims alongside the government also supports efficient allocation of government resources by enabling the government to focus on the claims it elects to pursue directly, while encouraging the relators to continue pursuing fraud claims unless the government acts to prevent them from doing so.

Nor does permitting relators to pursue non-intervened claims alongside the government's intervened claims undermine the government's ability to control "the action." There is still one "action" and the government remains in control of it. *United States ex rel. Bennett v. Biotronik, Inc.*, 876 F.3d 1011, 1020 (9th Cir. 2017) (explaining in context of government action bar that a *qui tam* action cannot be artificially divided and remains one action controlled by the government). The statute provides the mechanism for addressing any concerns that the relator's pursuit of the claims could interfere with the government's conduct of the action. 31 U.S.C. § 3730(c)(2) (authorizing limitations on the relator's participation in the action). The government also has the ability to seek dismissal of individual claims it does not wish to proceed. *See, e.g.*, *United States ex rel. Eichner v. Ocwen Loan Servicing, LLC*, 787 F. Supp. 3d 331, 351 (E.D. Tex. 2025) (holding that the government may dismiss *qui tams* on a claim-by-claim basis as opposed to an "all-or-nothing dismissal approach.").

In sum, the text of the statute does not preclude relators from proceeding with non-intervened claims alongside the government when it partially intervenes, and allowing them to do so serves the Act's purposes of enlisting the private citizenry in the government's fraud enforcement efforts.

II. The Decision Below is an Outlier and Other Courts Have Correctly Rejected its Reasoning

Numerous courts have permitted relators to proceed with non-intervened claims when the government has partially intervened and the decision below appears to be the only exception. Indeed, several courts have characterized the decision below as an "outlier." *See, e.g.*, *United States ex rel. Ormsby v. Sutter Health*, 444 F. Supp. 3d 1010, 1077 (N.D. Cal. 2020) ("Given the clear weight of authority that allows a relator to pursue non-intervened claims, the court follows that approach (and not *Brooks*) as persuasive. The government can pursue some or all of a relator's claims, and a relator can pursue claims that government does not."); *Sullivan v. Murphy Med. Ctr., Inc.*, No. 1:25-cv-155, 2026 WL 657192, at *14 (E.D. Tenn. Mar. 9, 2026) ("The *Brooks* argument is an outlier."); *United States ex rel. Rauch v. Oaktree Med. Ctr., P.C.*, No. 6:15-cv-1589-DCC, 2020 WL 1065955, at *9 (D.S.C. Mar. 5, 2020) ("[T]he Court declines to adopt the reasoning of the *Brooks* court, which is an outlier in a large body of FCA case law."); *United States v. Community Health Network*, No. 1:14-cv-1215-RLY-DLP, 2020 WL

13954725, at *5 (S.D. Ind. 2020) (rejecting "sole case" holding that relators may not pursue non-intervened claims when government partially intervenes).

As these courts recognized, the district court's decision below is based on a narrow reading of the term "action" without considering the context of the statute as a whole. Many courts have concluded that the term "action" cannot logically be read to mean the government must always intervene in all or none of a relator's case, or that if it partially intervenes the remaining claims are automatically dismissed. *See, e.g.*, *United States ex rel. Shemesh v. CA, Inc.*, 89 F. Supp. 3d 36, 55–56 (D.D.C. 2015) (noting that while courts, post-intervention, may dismiss a relator's "substantially similar claims[,]" such "dismissal is not automatically triggered by the government's intervention"); *United States ex rel. Sansbury v. LB B Assocs., Inc.*, 58 F. Supp. 3d 37, 47 (D.D.C. 2014) (holding that the relator's initial complaint was the operative complaint for all non-intervened claims while the government's partial complaint-in-intervention remained the operative complaint for all intervened claims); *United States ex rel. Feldman v. City of New York*, 808 F. Supp. 2d 641, 648 (S.D.N.Y. 2011) (*"*[I]f the Government only partially intervenes in an action, a relator may retain standing to prosecute those aspects of his or her complaint as to which the Government has not intervened."); *cf. United States v. Exagen, Inc*., No. 21-cv-10950-ABD, 2025 WL 959460 (D. Mass. Mar. 31, 2025) (allowing the relator to proceed with non-intervened claims

after intervened claims were settled); *United States ex rel. White v. Mobile Care EMS & Transp., Inc.*, No. 1:15-cv-555, 2021 WL 6064363, at *12 (S.D. Ohio Dec. 21, 2021) (holding "'the action' when read in context, does not mean the entire lawsuit in the context of a multi-defendant FCA case.").[2]

To the extent the district court rested its decision on a concern that allowing non-intervened claims to move forward would mean the "ship has two masters," that concern was misplaced. The FCA places control of the entire action in the hands of the government, which has the ability to seek limitations on the relator's participation or dismiss their separate claims.

III. Relators Proceeding with Non-Intervened Claims Have Benefitted the Government's Fraud Enforcement Efforts.

The FCA's *qui tam* provisions are premised on the reality that the government lacks the resources to pursue every meritorious claim. Courts have recognized that the government's decision not to intervene in a case is not a

[2] Courts have also ruled on non-intervened claims without noting that this even presents an issue. *See, e.g.*, *United States ex rel. Ketroser v. Mayo Found.*, 729 F.3d 825, 826 (8th Cir. 2013); *United States ex rel. Fallon v. Accudyne Corp.*, 97 F.3d 937, 938 (7th Cir. 1996) (explaining that "[t]he Attorney General took over the prosecution of Count I, see 31 U.S.C. § 3730(b)(4)(A), but left Count II in the hands of the relators."); *United States v. Berkeley Heartlab, Inc.*, 225 F. Supp. 3d 487, 493 (D.S.C. 2016) (explaining the consolidation of three overlapping *qui tam* actions and the government's intervention as to certain claims against certain defendants from each); *United States ex rel. Simmons v. Samsung Electronics. Am., Inc.*, 116 F. Supp. 3d 575, 577 (D. Md. 2015) (discussing the government's intervention against and settlement with one named defendant and not another).

decision on the merits, and that is no less true when the government intervenes in some, but not all, of a relator's claims. *See, e.g.*, *United States ex rel. Williams v. Bell Helicopter Textron, Inc*., 417 F.3d 450, 455 (5th Cir. 2005). As one court observed, given the reality that the government cannot pursue every meritorious claim, if relators could not pursue non-intervened claims in a partially intervened case, then for some meritorious cases there would be "no recourse at all." *Ormsby*, 444 F. Supp. at 1077. With the exception of the district court in this case, courts have permitted relators to proceed with non-intervened claims, and those efforts have produced recoveries for the government.

For example, in *United States v. Community Health Network*, a *qui tam* action that alleged violations of the Anti-Kickback and Stark Statutes, the government partially intervened and settled claims against one defendant for $345 million. Press Release, U.S. Dep't of Justice, Indiana Health Network Agrees to Pay $345 Million to Settle Alleged False Claims Act Violations (Dec. 19, 2023), https://www.justice.gov/archives/opa/pr/indiana-health-network-agrees-pay-345-million-settle-alleged-false-claims-act-violations. The relator in that case continued to litigate non-intervened claims, ultimately settling them for $135 million, substantially increasing the recovery for the public fisc. Li Yu, *Kickbacks and Stark Act Self-Referral Violations Continue to Be Key Focus Areas for Healthcare Fraud Enforcement*, THE ANTI-FRAUD COAL. (Sept. 19, 2025),

https://www.taf.org/kickbacks-and-stark-act-self-referral-violations-continue-to-be-key-focus-areas-for-healthcare-fraud-enforcement/.

In *United States ex rel. Ormsby v. Sutter Health*, the government settled the case for $90 million, which included resolution of some of the non-intervened claims the relator pursued after the government partially intervened in the case. Press Release, U.S. Dep't of Justice, Sutter Health and Affiliates to Pay $90 Million to Settle False Claims Act Allegations of Mischarging the Medicare Advantage Program (Aug. 30, 2021), https://www.justice.gov/archives/opa/pr/sutter-health-and-affiliates-pay-90-million-settle-false-claims-act-allegations-mischarging.

In *United States ex rel. Osinek v. Permanente Medical Group, Inc.*, the government partially intervened and settled the matter for $556 million. Press Release, U.S. Dep't of Justice, Kaiser Permanente Affiliates Pay $556M to Resolve False Claims Act Allegations (Jan. 14, 2026), https://www.justice.gov/opa/pr/kaiser-permanente-affiliates-pay-556m-resolve-false-claims-act-allegations. The relators proceeded with the declined claims and ultimately settled for an undisclosed amount. *United States ex rel. Osinek v. Permanente Medical Group, Inc.*, No. 13-cv-03891-EMC, 2026 WL 970482 (N.D. Cal. Apr. 10, 2026) (discussing that there were two settlements, one with the government's complaint-

in-intervention, and one with the matters where the government did not intervene).[3]

Even in smaller cases, a relator's pursuit of non-intervened claims can substantially increase the government's recovery when there otherwise might be "no recourse." For example, in a case involving a non-emergency medical transportation provider, Mobile Care, and a broker, Modivcare, the relator significantly increased the government's recovery by pursuing non-intervened claims. In that case, the government intervened in the claims against Mobile Care and secured a $475,000 settlement. Settlement Announcement, Helmer, Martins, Tate & Garrett, Defunct Ohio Medical Transportation Provider pays $475,000.00 to Resolve False Claims Act Allegations (Apr. 5, 2023), https://fcalawfirm.com/mobilecaresettlement/. While the government declined to intervene in the claims against Modivcare, the relators pursued those claims and ultimately reached a $3,750,000 settlement. Settlement Announcement, Helmer, Martins, Tate & Garrett, Nation's Largest NEMT Broker pays $3.75 Million to Resolve False

[3] In a similar case, procedurally, *United States ex rel. Kuney v. Cablexpress Corp.*, the government intervened and settled some of the relator's claims, and the relator continued to pursue the non-intervened claims, eventually settling the claims. *See*, Press Release, PR Newswire, *CXtec Agrees To $2 Million Partial Settlement Of Qui Tam Whistleblower Case* (Apr. 16, 2012), https://www.prnewswire.com/news-releases/cxtec-agrees-to-2-million-partial-settlement-of-qui-tam-whistleblower-case-147591065.html.

Claims Act Allegations (Apr. 5, 2023), https://fcalawfirm.com/modivcaresettlement/.

As these cases illustrate, relators' pursuit of non-intervened claims when the government partially intervenes in a case can expand the government's enforcement efforts and recoveries, which should not be surprising. Declined cases generally have returned billions to the federal government even though the government did not pursue them,[4] and there is no reason to assume that declined claims in partially intervened cases are categorically unlikely to be helpful to the government's fraud enforcement efforts. A relator's pursuit of non-intervened claims when the government has not intervened in all claims furthers the purpose of the FCA by allowing the government to directly pursue those claims which it has had the time and resources to develop during the seal period, while allowing relators to continue to pursue potentially meritorious claims using private resources for the benefit of the government.

[4] In Fiscal Year 2025 alone, recoveries arising out of settlements and judgments in matters where the United States declined to intervene, amounted to $2,288,271,506 and have recovered almost $8 billion since 1986. *See* U.S. Dep't of Justice, *Fraud Statistics – Overview* (2026), https://www.justice.gov/opa/media/1424121/dl.

CONCLUSION

The government's partial intervention in a *qui tam* action does not preclude a relator from pursuing non-intervened claims in the same case. Rather, the FCA contemplates a relator pursuing non-intervened claims even in light of partial government intervention. Preventing relators from pursuing non-intervened claims would frustrate the key objectives of the FCA and risk stymying the most effective fraud-fighting tool at the government's disposal. The court should reverse the district court's holding that a relator may not proceed with non-intervened claims once the government intervenes in their case.

CERTIFICATE OF COMPLIANCE

(Fed. R. App. P. 29(a)(5); 32(a); & 32(g)(1))

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 3521 words, excluding the parts of the document exempted under Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5), and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 365, a 14-point font size, and the Times New Roman type style.

Dated: April 29, 2026

/s/Jacklyn DeMar
Jacklyn DeMar

Attorney for *Amicus Curiae* The Anti-Fraud Coalition

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing brief for *amicus curiae* The Anti-Fraud Coalition with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit by using the appellate CM/ECF system on April 29, 2026. All participants in the case are registered CM/ECF users, and services will be accomplished by the appellate CM/ECF system.

Dated: April 29, 2026 */s/ Jacklyn DeMar*
Jacklyn DeMar