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United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 2, 2026

VIA ELECTRONIC TRANSMISSION

The Honorable Brett A. Shumate
Assistant Attorney General
Civil Division
Department of Justice

Dear Assistant Attorney General Shumate:

The False Claims Act (FCA) is our Nation’s most powerful tool to fight and deter government fraud and return money to taxpayers. A key part of the FCA is the *qui tam* provision which allows whistleblowers—known as relators—who are typically insiders with knowledge of fraudulent conduct, to sue on the government’s behalf.¹ In many instances, the government wouldn’t have become aware of the fraud if it wasn’t for the whistleblower. Since the updates I authored to the *qui tam* provision were enacted, the FCA has recovered over \$85 billion and saved billions more by deterring would be fraudsters.² According to Justice Department statistics, in 2025 FCA settlements and judgments totaled more than \$6.8 billion.³ An overwhelming majority of this amount, \$5.3 billion, came from whistleblower *qui tam* cases.⁴

On February 7, 2025, I wrote to Attorney General Bondi that the Supreme Court’s decision in *United States Ex Rel. Polansky v. Executive Health Resources, Inc., et al.* may lead the Justice Department to dismiss more *qui tam* cases after initially declining to intervene.⁵ My letter expressed concerns that after initially declining to intervene, the Justice Department could be emboldened by the *Polansky* decision to intervene at any point in litigation, even years into litigation, and dismiss the *qui tam* action for reasons unrelated to the merits.⁶ I requested the Justice Department provide me with statistics on how many *qui tam* cases were dismissed after

¹ 31 U.S.C. § 3730(c).

² Department of Justice, *False Claims Act Settlements and Judgments Exceed \$6.8B in Fiscal Year 2025*, Press Release, (Jan. 16, 2026) <https://www.justice.gov/opa/pr/false-claims-act-settlements-and-judgments-exceed-68b-fiscal-year-2025>.

³ *Id.*

⁴ *Id.*

⁵ Letter from Senator Charles E. Grassley, Chairman, Senate Committee on the Judiciary to Pam Bondi, Attorney General, Department of Justice, (Feb. 7, 2025) <https://www.judiciary.senate.gov/press/rep/releases/grassley-longtime-champion-of-the-false-claims-act-urges-ag-bondi-to-fully-review-biden-harris-doj-pending-qui-tam-case-dismissals>; *United States, ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 143 S. Ct. 1720, 216 L. Ed. 2d 370 (2023) https://www.supremecourt.gov/opinions/22pdf/21-1052_fd9g.pdf.

⁶ *Id.*

the Justice Department initially declined to intervene. I also asked Attorney General Bondi to conduct a review of cases dismissed by the Biden administration to ensure these dismissals were appropriate and in accordance with the relevant facts and law, given the Biden administration's lack of transparency into their dismissal decisions. On March 25, 2025, the Justice Department responded to my letter.⁷ The response said the Justice Department "identified ten cases since January 2020 in which the government sought dismissal after initially declining to intervene."⁸ It said that in these types of cases, the Justice Department intervenes to dismiss "only after it became clear that the case would not advance the public interest."⁹ The Justice Department also agreed to conduct a review of those cases dismissed by the Biden administration.

However, according to reports, in 2025 the Justice Department dismissed a substantially higher number of *qui tam* cases over the objection of relators.¹⁰ According to reports, on January 28, 2026, Civil Division Deputy Assistant Attorney General (DAAG) Brenna Jenny delivered remarks at an American Conference Institute meeting emphasizing that after *Polansky*, DOJ's dismissal authority under "(c)(2)(A) is back."¹¹ Reportedly, DAAG Jenny stated that FCA dismissals over the objection of relators was at a rate of six per year under the prior administration.¹² In 2025 alone, DAAG Jenny said the Justice Department ultimately exercised this authority 25 times.¹³ Further, according to reports, in February 2026 during remarks at the Federal Bar Association's *Qui Tam* Conference, DAAG Jenny emphasized that the Justice Department "is not reluctant to exercise its authority to dismiss and committed to doing so where cases are proven to be meritless or inconsistent with current law and where the allegedly defrauded agency does not support the case."¹⁴

DAAG Jenny's reported remarks and the number of *qui tam* dismissals over the objection of relators raises serious concerns that the Justice Department is in fact emboldened by *Polansky* and potentially dismissing FCA cases for reasons unrelated to the merits. For example, a defrauded agency may not support a *qui tam* action for a multitude of reasons including the apparent embarrassment of failing to discover the fraud uncovered by the whistleblower or to

⁷ Letter from Pam Bondi, Attorney General, Department of Justice to Senator Charles E. Grassley, Chairman, Senate Committee on the Judiciary (Mar. 25, 2025) (on file with Committee staff).

⁸ *Id.*

⁹ *Id.*

¹⁰ See 31 USC § 3730(c)(2)(A).

¹¹ Kayla Stachniak Kaplan, Ryan P. McCarthy, Jaelyn Unis Whittaker, and M. Greta Kaufman, *Commercial Litigation Branch Head Outlines DOJ Enforcement Priorities, Reinforces (c)(2)(a) Dismissal Authority*, Morgan Lewis (Jan. 29, 2026) <https://www.morganlewis.com/pubs/2026/01/commercial-litigation-branch-head-outlines-doj-enforcement-priorities-reinforces-c2a-dismissal-authority>.

¹² *Id.*

¹³ *Id.*

¹⁴ Jaime L.M. Jones, Kristin Graham Koehler, Hannah Zobair, and Anna M. Schmitt, *DAAG Brenna Jenny Warns Heightened FCA Enforcement Is "The New Normal," Addresses Enforcement Priorities and Policies*, FCA Blog (Feb. 20, 2026) <https://fcablog.sidley.com/2026/02/20/daag-brenna-jenny-warns-heightened-fca-enforcement-is-the-new-normal-addresses-enforcement-priorities-and-policies/>.

potentially shield its decision-making process from scrutiny.¹⁵ Further, these remarks and the Justice Department's apparent liberal use of its dismissal authority under § 3730(c)(2)(A) raises concerns that FCA whistleblowers will be disincentivized from bringing cases, particularly strong ones. Many whistleblowers expend considerable time, effort, energy, and resources litigating an FCA case, often for years. A whistleblower is less likely to put their livelihood and career on the line knowing that the Justice Department could intervene, several years into the litigation and after having materially advanced the matter, and move to dismiss their case, not because it's weak, but for reasons unrelated to the merits and without sufficient explanation. This type of decision shortchanges taxpayers and is contrary to the intent of the FCA and my efforts to support whistleblowers and keep the FCA strong.¹⁶

During your March 26, 2025, nomination hearing, in response to my questions about FCA dismissals after the Justice Department declines to intervene, you responded "[t]he False Claims Act is an essential tool that the department uses to root out fraud, waste and abuse, *qui tam* relators are an essential component of that."¹⁷ You also said that "[i]f I'm confirmed, I will aggressively enforce the False Claims Act and work with the outstanding folks in the fraud section."¹⁸ With respect to these types of cases, I highlighted at that confirmation hearing that "I know after nine years of one case being filed and went into discovery, somebody in the previous administration just stopped it. We can't let things like that happen. If you're going for nine years and going into discovery, you can't let some political person step in and stop the claim, just as one example of some things that have been wrong."¹⁹ Accordingly, to better understand the Civil Division's position with respect to the Justice Department's authority to dismiss *qui tam* cases, including after initially declining to intervene, please provide answers to the following no later than April 16, 2026.

1. For each of the 10 Biden administration FCA *qui tam* cases that were dismissed after the Justice Department initially declined to intervene provide:
 - a. The name of the case;
 - b. Stage of litigation the Justice Department intervened;
 - c. How long the *qui tam* action was pending from when the relator filed the *qui tam* action under seal to the Justice Department intervening and dismissing the case;
 - d. A detailed explanation describing why the Justice Department determined to dismiss the case and how it came to that decision. This response should include but not be limited to a detailed:

¹⁵ See Letter from Senator Charles E. Grassley, Chairman, Senate Judiciary Committee to William Barr, Attorney General, Department of Justice, (Sep. 4, 2019) [https://www.grassley.senate.gov/imo/media/doc/2019-09-04%20CEG%20to%20DOJ%20\(FCA%20dismissals\).pdf](https://www.grassley.senate.gov/imo/media/doc/2019-09-04%20CEG%20to%20DOJ%20(FCA%20dismissals).pdf).

¹⁶ See Jaime L.M. Jones and Matt Bergs, *DOJ Continues to Leverage Polansky in Seeking (c)(2)(A) Dismissals*, FCA Blog (Jul. 2, 2025) <https://fcablog.sidley.com/2025/07/02/doj-continues-to-leverage-polansky-in-seeking-c2a-dismissals/>.

¹⁷ Senate Judiciary Committee, *Nominations Hearing*, (Mar. 26, 2025) <https://www.judiciary.senate.gov/committee-activity/hearings/03/26/2025/nominations>.

¹⁸ *Id.*

¹⁹ *Id.*

- i. Explanation and rationale how the case would not vindicate the government's interest or "advance the public interest;"
 - ii. Explanation of discovery burdens facing the government; and
 - iii. Any cost-benefit analysis of litigation cost to the government, and if no cost-benefit analysis was done, why not?
 - e. The name of the allegedly defrauded agency and whether it supported or recommended dismissing the case, and if it did, a detailed explanation why the agency supported or recommended dismissal and how the agency came to that decision.
2. Is it accurate that the Justice Department dismissed 25 *qui tam* cases pursuant to its authority under § 3730(c)(2)(A) in 2025? If not, how many?
3. For each of the *qui tam* cases the Justice Department dismissed in 2025 pursuant to its § 3730(c)(2)(A) authority, provide:
 - a. The name of the case;
 - b. Stage of litigation the Justice Department intervened and whether the Justice Department initially declined to intervene;
 - c. How long the *qui tam* action was pending from when the relator filed the *qui tam* action under seal to the Justice Department intervening and dismissing the case;
 - d. A detailed explanation why the Justice Department determined to dismiss the case and how it came to that decision. This response should include but not be limited to a detailed:
 - i. Explanation and rationale how the case would not vindicate the government's interest or "advance the public interest;"
 - ii. Explanation of discovery burdens facing the government; and
 - iii. Any cost-benefit analysis of litigation cost to the government, and if no cost-benefit analysis was done, why not?
 - e. The name of the allegedly defrauded agency and whether it supported or recommended dismissing the case, and if it did, a detailed explanation why the agency supported or recommended dismissal and how the agency came to that decision.

Thank you for your prompt review and responses. If you have any questions, please contact Brian Randolph on my Committee staff at (202) 224- 5225.

Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary