

The top half of the image features a dynamic, abstract background of flowing, wavy lines in various shades of red and orange, creating a sense of movement and depth. The lines are more densely packed on the right side and become more sparse towards the left.

JOSEPH GREENWALD & LAAKE

NANNIS WHISTLEBLOWING REPORT

By Veronica Nannis

What does False Claim Act (FCA) enforcement look like nine months into President Donald Trump's second term? It's a mixed bag. Some cases the administration is pursuing are tried and true areas of fraud enforcement while others are brand new and still being developed. Some of the priority cases so far from 2025 are summarized below.

For whistleblowers and their counsel, there is some measure of consistency with previous policies and priorities in FCA cases. This includes continued prosecution of health care and cybersecurity fraud, both of which are priorities from past administrations that seem to be holding their places in this new dynamic. Several settlements and verdicts announced so far this year are the classic health care fraud the government has championed for decades – regardless of presidents – like unlawful kickbacks, charging for services not rendered, upcoding, and useless services. These cases are a fairly consistent through-line between administrations, and we are seeing them hold in 2025.

There are also new policies and priorities that differ or break from the past. This administration has made tariffs a focal point of not only international relations policy but also domestically for the Department of Justice. We have seen a flurry of FCA enforcement and settlement activity already involving allegations of failing to pay tariffs or other custom duties. Another new tactic announced by this administration is using the FCA for the first time to go after recipients of federal dollars who have any “illegal diversity, equity, and inclusion” practices, causing uncertainty and apprehension in the government contractor space about what constitutes illegal DEI.

While this article does not discuss every case or policy initiative relating to the FCA, it attempts to provide a snapshot of how FCA cases are faring so far under the new administration, as well as how both whistleblower counsel and the defense bar are litigating hot-button FCA issues in 2025.

Key 2025 Jury Verdicts and Appeals

Relatively speaking, most FCA cases do not get litigated. Most either settle before litigation or are declined by the government and dismissed by relators. However, more and more often whistleblowers and experienced FCA counsel are litigating declined cases and reaping the rewards of these hard-fought battles. Several high-profile jury verdicts made headlines this year, including in cases the government declined.

Is the *qui tam* provision unconstitutional? In January, several appeal briefs were filed in the U.S. Court of Appeals for the 11th Circuit on both sides of *U.S. ex rel Zafirov v. Physician Partners et al.*, Case No. 8:19-CV-01236 (M.D. FL 2024), in which an outlier ruling from a district court in Florida that found the FCA's *qui tam* provision to be unconstitutional. In that declined case, the whistleblower alleged that the providers submitted false risk adjustment data to the Centers for Medicare & Medicaid Services, resulting in higher reimbursement than was owed. Ending the case before trial, the district court entered judgment on the pleadings in favor of the defense, finding for the first time in over 200 years that the FCA's *qui tam* provision is unconstitutional.

That provision is, of course, the unique aspect of the FCA that allows – and in fact encourages – ordinary citizens to file suit on the government's behalf when they have personal knowledge of fraud. Last year saw the highest number of *qui tam* actions ever filed, according to the [DOJ](#). This year, defendants are filing

motions to dismiss citing *Zafirov*, though the majority are still denied around the country. The DOJ, the relators' bar, and friendly parties (including Republican Sen. Charles Grassley) all weighed in to support the *qui tam* provision. Meanwhile, those arguing that it is unconstitutional include the U.S. Chamber of Commerce, the Washington Legal Foundation, and several large and influential industry groups, medical providers, and insurers. With heavy-hitting amici lining up on both sides of this issue, anyone interested in the FCA needs to follow this appeal closely as it appears destined for the Supreme Court.

SuperValu ends in a defense win. In March, an Illinois jury returned a verdict in favor of defendant SuperValu after a 14-year battle defending against a whistleblower's allegations that the grocery store offered discounts to customers for generic drugs that it did not also offer to Medicare and Medicaid, thereby overcharging the government. Before the jury verdict, this case took a detour to the Supreme Court in 2023, which overruled the Seventh Circuit and confirmed that whether a defendant has scienter sufficient for FCA liability depends on the defendant's *subjective* knowledge. While that opinion was a victory for whistleblowers and the FCA, the SuperValu whistleblower's tortured saga ultimately ended in a defense verdict.

Omnicare faces trebling and penalties. In April, a unanimous jury in New York returned a verdict against Omnicare, the nation's largest long-term care pharmacy, and parent CVS Health Corporation in one of the largest [damages verdicts](#) ever returned by a jury in a FCA case. After a month-long trial, the civil jury found that Omnicare billed the government for over 3 million false claims, resulting in \$135,592,814 in damages. Under the FCA, the government is entitled to three times that amount plus statutory penalties to be determined by the court.

Janssen seeks relief from billion-dollar judgment. In July, Janssen Pharmaceuticals appealed a \$1.6 billion judgment from a federal court in New Jersey. After a six-week trial prosecuted by a whistleblower after the government declined to intervene, the jury had returned a verdict finding that Janssen submitted 159,574 false claims and awarding \$120 million in damages. The district court upheld the award and added \$360 million in treble damages plus \$8,000 per claim, amounting to an eye-popping \$1.63 billion judgment. Janssen's appeal to the Third Circuit Court of Appeals claims that the judgment is excessive and, echoing *Zafirov*, the *qui tam* provision of the FCA is unconstitutional. The appeal is now pending.

CVS Caremark tagged with \$289 million judgment. In August, a federal court in Pennsylvania assessed post-trial damages after a \$95 million verdict against CVS Caremark Corporation. The case was brought by a whistleblower who proved that Caremark knowingly caused certain Medicare Part D sponsors to misrepresent to the government the amount that Part D beneficiaries paid for prescription drugs at Walgreens and Rite Aid in 2013 and 2014. After applying statutory treble damages and civil penalties, the court [entered final judgment](#) for \$289,873,500.

Jury hands Eli Lilly \$183 million judgment. In September, the Seventh Circuit Court of Appeals [upheld a jury verdict](#) of \$61.23 million against Eli Lilly that was increased to \$183.7 million after statutory trebling under the FCA. The appeals court concluded the jury had reasonably found that the company knowingly concealed having retroactively increased its prices on some drugs and thereafter failed to rebate Medicaid on the higher prices. Though it upheld the verdict, the court rejected the whistleblower's argument that the judgment should have been higher because the trial court miscounted the number of FCA violations.

Settlements

FCA settlements are far more common than jury verdicts. This year has shown no sign of slowing down as several significant settlements were published.

Health care fraud

Health care fraud cases continue their prominence in FCA enforcement matters. In June, the United States [announced](#) the largest national health care fraud takedown ever, involving of 324 defendants charged with over \$14.6 billion in alleged fraud. This historic takedown involved various allegations, including fraudulent wound care, prescription opioid trafficking, telemedicine fraud, fraudulent genetic testing, kickbacks and bribes, and services that were not delivered as billed.

Other large health care fraud settlements announced so far in 2025 include the following, with many involving unlawful kickbacks:

- A \$17 million [settlement](#) with a group of medical supply companies to resolve whistleblower allegations of kickback-related fraud that involved providing free samples and discounts to encourage urology practice groups to use the defendants' prescription form for prescribing catheters. As typical in kickback cases, DOJ warned of the "use of inducements to influence a physician's medical decisions" as a risk to the physician-patient relationship.
- A \$59.7 million [settlement](#) arising from whistleblower allegations that Pfizer gave health care providers kickback payments to encourage them to prescribe the migraine medication Nurtec ODT.
- A \$29 million [settlement](#) stemming from a whistleblower suit against a New York hospital to resolve allegations that it knowingly retained erroneously received payment from the Department of Defense for services provided to retired military members and their families. This case represents a "reverse false claim," which alleges that a company mistakenly received federal funds and identified the overpayment but nevertheless retained the funds without disclosing and returning them to the government.
- A \$62 million [settlement](#) to resolve whistleblower allegations that a Medicare Advantage provider and its former president violated the FCA by causing the submission of false diagnostic codes for spinal conditions that its patients did not actually have in order to increase Medicare Advantage (Medicare Part C) payments.
- A \$350 million [settlement](#) with Walgreens related to whistleblower allegations that the pharmacy filled illegal opioid prescriptions.
- A \$202 million [settlement](#) with Gilead Sciences stemming from whistleblower allegations that it paid kickbacks to doctors to induce them to prescribe Gilead's HIV drugs. Uniquely, Gilead admitted to certain allegations, including paying for speaking fees, lavish dinner programs, and all-expense-paid trips.

- A \$31.5 million [settlement](#) initiated by a whistleblower against a health system for allegedly paying kickbacks to physicians in the form of extravagant benefits to induce patient referrals. This settlement resolved allegations of violations of both the Anti-Kickback Statute and the Stark Law.
- A \$9.2 million [settlement](#) stemming from three separate whistleblower lawsuits alleging that a hospice provider paid illegal kickbacks to medical directors, including monthly stipends and signing bonuses, to induce them to refer patients.
- A \$18.5 million [settlement](#) involving a substance abuse treatment facility that allegedly compensated Medicaid patients for seeking addiction treatment in violation of the federal Anti-Kickback Statute and FCA.
- A \$37 million [settlement](#) to resolve whistleblower allegations that a device company and its distributor falsely claimed that their devices were reimbursable by Medicare and marketed them as such, knowing they were not covered. The device company also entered into a five-year Corporate Integrity Agreement with HHS-OIG, requiring ongoing monitoring by the government and reporting by the device company.

Cybersecurity

In 2021, DOJ [announced](#) a Civil Cyber-Fraud Initiative that would use the FCA to pursue government contractors and grant recipients who allegedly committed cybersecurity-related fraud. Since then, cybersecurity cases have been on the rise, getting the attention of DOJ and cyber companies alike. So far in 2025, DOJ has announced at least three cyber case settlements that are sure to pave the way for more cases in the future. Notably, while most – if not all – of these cases involve government contracts, they are not necessarily breach of contract matters but instead focus on alleged violations of Defense Federal Acquisition Regulations.

The first settlement, [announced](#) in May, involved an agreement by Raytheon, RTX Corporation, and Nightwing Group to pay \$8.4 million to resolve allegations of noncompliance with cybersecurity requirements in federal contracts with the Department of Defense – specifically, that Raytheon used its noncompliant internal systems to develop, use, and store unclassified defense information.

The second involved Illumina Inc., which [agreed to pay](#) \$9.8 million to resolve FCA allegations arising from cybersecurity vulnerabilities in genomic sequencing systems. Illumina stood accused of selling systems to the government that had inadequate security programs and insufficient quality systems. In its press release, the government noted that, “HHS-OIG and our law enforcement partners remain dedicated to ensuring that entities who do business with the government uphold their cybersecurity obligations.” Illumina’s former director for platform management was the whistleblower and received a \$1.9 million relator share in the settlement.

Though a smaller settlement, the defense contractor Aero Turbine and private equity company Gallant Capital Partners [agreed to pay](#) \$1.75 million to resolve allegations that they knowingly failed to comply with cybersecurity requirements in a contract with the Air Force. This settlement was fairly novel in that it did not stem from a whistleblower but appeared to be a result of Aero Turbine and Gallant’s cooperation,

for which they received significant credit. This settlement also marked a rather rare instance of an FCA settlement against a private equity firm in addition to the contracting firm.

In August 2024, DOJ forged new ground with its first intervention in a cybersecurity FCA case against the Georgia Tech Research Corporation and related parties for work performed at the Georgia Institute of Technology. The government alleged that the defendants failed to meet cybersecurity requirements in connection with certain Air Force and Defense Advanced Research Projects Agency contracts. This included allegations of missing or antiquated antivirus and antimalware programs and the absence of a security plan. On September 30, 2025, DOJ announced a [settlement](#) of \$875,000 to resolve these allegations.

Customs and Tariff

DOJ announced a new Trade Fraud Task Force in August, bringing together its civil and criminal divisions and the Department of Homeland Security to pursue actions against parties who evade tariffs and duties and engage in smuggling. Before the announcement, DOJ had already settled at least four customs and tariffs cases during the first part of the year, including:

- An \$8.1 million [settlement](#) brought by a whistleblower against an importer of multilayered wood flooring that allegedly evaded customs duties on imports from China.
- A \$6.8 million [settlement](#) with an importer of plastic resin who voluntarily disclosed that it had failed to pay customs duties on products from China.
- A \$4.9 million [settlement](#) brought by a whistleblower against a patio furniture company accused of violating the FCA by evading antidumping and countervailing duties on items made of extruded aluminum originating in China.
- A \$12.4 million [settlement](#) brought by a whistleblower against a supplier of countertop and cabinetry products and its president to resolve allegations of evading antidumping and countervailing duties owed to the government on quartz surface products imported from China.

As a key priority for this administration, more customs and tariff settlements are expected in the remainder of this year, next year, and beyond.

Initiatives

In May, DOJ [announced](#) the establishment of the Civil Rights Fraud Initiative, which will use the FCA to eliminate so-called “illegal DEI” programs. This initiative seeks to use the FCA to investigate and prosecute recipients of federal money who knowingly violate federal civil rights laws, defined by this administration as antisemitism and “inherently divisive policies like DEI.” This is an unprecedented effort to use the FCA to enforce an administration’s *interpretation* of federal civil rights laws and one that has FCA, employment, and government contract practitioners seeking clarity and guidance. It follows Executive Orders [14151](#) and [14173](#), repealing previous decades-old executive orders that promoted antidiscrimination policies and encouraged DEI programs. Several entities voluntarily discarded or scaled back their DEI programs in immediate reaction to these orders. To date, no settlements have been announced under this new rubric, but this is certainly one to watch unfold in 2026.

In July, DOJ [announced](#) a new working group to combat health care fraud, largely using the power of the FCA. As has been typical of any new administration, this working group announced its top health care enforcement priorities:

- Medicare Advantage.
- Drug, device, or biologics pricing, including discounts.
- Barriers to patient access to care.
- Kickbacks.
- Materially defective medical devices that impact patient safety.
- Manipulation of electronic health records systems to drive inappropriate utilization of Medicare products and services.

Several of these areas, like kickbacks, have been a priority enforcement area for government attorneys for decades. This initiative touts interagency coordination in these enforcement efforts and also strongly encourages relators with knowledge of fraud to identify and report it. With this initiative, we can expect DOJ’s annual enforcement numbers to skew toward health care cases as they almost always do.

Key Takeaways

This administration so far appears to support the FCA and its *qui tam* provision. In the few months remaining this year and into 2026, we are certain to see more settlements in FCA cases, including in the health care, cybersecurity, customs and tariffs, and public-private partnership spaces, among others. There are no signs that any of these cases or administration priorities will ease up any time soon.

At the same time, however, we continue to see more FCA cases being litigated, including those prosecuted by whistleblowers without government intervention, and tried to verdict and appeal. It appears that both sides of the “V” in these cases are more willing to try their luck in front of a jury than was typically seen in previous decades. With these trial verdicts and appeals, we would hope to get some finality regarding familiar defense arguments that the FCA’s statutory damage and penalties are excessive under the Eighth Amendment and that the *qui tam* provision of the FCA is unconstitutional. A handful of cases that take up these questions are on appeal right now, and we will continue to watch for developments, including a possible Supreme Court showdown over the constitutionality of the *qui tam* provision.



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