No. 15-363

In The Supreme Court of the United States

AT&T INC., et al.,

Petitioners,

v.

UNITED STATES OF AMERICA *ex rel.* TODD HEATH,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The District Of Columbia Circuit

BRIEF OF COALITION FOR GOVERNMENT PROCUREMENT & PROFESSIONAL SERVICES COUNCIL—THE VOICE OF THE GOVERNMENT SERVICES INDUSTRY AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF THE *AMICI CURIAE*[1]

The Coalition for Government Procurement is a non-profit association of small, medium, and large companies that sell commercial services and products to the Federal Government. As the single most effective voice for commercial services and product companies selling in the federal market, the Coalition's members collectively account for a significant percentage of the sales generated through the General Services Administration and Department of Veterans Affairs Multiple Award Schedules programs. Coalition members also are responsible for many of the commercial item solutions purchased directly by numerous federal departments and agencies. The Coalition is proud to have worked with government officials for more than 35 years towards the mutual goal of common-sense acquisition.

The Professional Services Council—The Voice of the Government Services Industry ("PSC") is the national trade association for the government professional and technology services industry. PSC's more than 380 member companies represent small,

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[1] In accordance with Supreme Court Rule 37.6, *amici curiae* certify that no counsel for a party authored this brief in whole or part, and that no party or counsel other than the *amici*, their members, and their counsel, made a monetary contribution intended to fund preparation or submission of this brief. As required by Supreme Court Rule 37.2(a), the parties' counsel of record received timely notice of *amici*'s intent to file this brief, and both counsel of record granted consent.

medium, and large businesses that provide federal departments and agencies with a wide range of professional and technology services, including information technology, engineering, logistics, facilities management, operations and maintenance, consulting, international development, scientific, social, and environmental services. Together, the association's members employ hundreds of thousands of Americans in all 50 states. Many PSC member companies directly support the U.S. Government through contracts with the Department of Defense and other national security or humanitarian-related federal agencies, both domestically and abroad.

The Coalition and PSC each participate as *amicus curiae* in appeals which, like this case, present questions that are exceptionally important to government contractors and the federal procurement system.

* * *

Lured by the prospect of lucrative bounties, private-party relators have been filing an escalating number of False Claims Act *qui tam* suits with alarming abandon. An opportunistic relator can pocket a very generous, statutorily authorized, reward by exacting a multi-million dollar settlement from a federal government contractor without ever having to prove in court that any false or fraudulent claims were knowingly submitted.

Federal Rule of Civil Procedure 9(b)—which requires a party "alleging fraud [to] state with *particularity* the circumstances constituting fraud"—is a crucial safeguard against vague or generalized

qui tam suits (emphasis added). Strict, nationally uniform judicial enforcement of Rule 9(b) is essential in *qui tam* litigation. A *qui tam* suit which fails to satisfy Rule 9(b) should be dismissed at the threshold including where, as here, the United States declines to intervene following a Department of Justice investigation of a relator's allegations.

The alternative to strict enforcement—a relaxed interpretation of Rule 9(b) that allows a *qui tam* complaint to survive a motion to dismiss without having to allege even one false claim with specificity—would pressure many federal government contractors that are unjustifiably targeted by predatory *qui tam* relators to expend substantial sums to settle unfounded claims rather than incur the risk of significant civil penalties, treble damages, and reputational harm. As this *amicus* brief explains, Supreme Court review is needed to ensure that the federal procurement system, which is vital to the functioning of the Federal Government, is not undermined by a lax interpretation that effectively expunges from Rule 9(b) the requirement to plead fraud with *particularity*.

SUMMARY OF ARGUMENT

This appeal concerns the application of Federal Rule of Civil Procedure 9(b) to the False Claims Act, 31 U.S.C. §§ 3729–3733, *not* to some sort of imaginary "fraudulent scheme" statute. This distinction has enormous significance to all *qui tam* defendants—including especially government contractors, which provide an endless variety of services and products to federal departments,

agencies, and commissions. Rule 9(b), which is indisputably applicable to *qui tam* suits, is specifically designed to be a heightened, pleading-stage hurdle. It requires plaintiffs to disclose information in order to place defendants on notice of alleged false claims, and it protects defendants from having to litigate or settle opportunistic relators' speculative or vague allegations of fraud.

During the past decade, *qui tam* suits have surged. Because so much is at stake for government contractors and other *qui tam* defendants—the threat of heavy civil penalties, multi-million dollar treble damages judgments, and reputational harm that can affect a company's ability to compete for contracts—there is immense pressure to settle even a baseless *qui tam* suit that survives a motion to dismiss. Relators also are motivated to settle, since they receive a 15%-30% share of settlement proceeds without having to incur the costs and risks of litigation. This pressure to enter into pretrial settlements of *qui tam* suits is all the more reason for federal courts to vigorously enforce Rule 9(b)'s particularity requirement in the False Claims Act context.

A lax interpretation of Rule 9(b), such as the D.C. Circuit's view that a *qui tam* complaint can satisfy the rule without alleging even one false claim with specificity, would frustrate the purpose of the rule. That in turn would impair the operation of the federal procurement system: Competition for government contracts would be diminished by companies that are unwilling to risk being forced to settle or litigate specious *qui tam* complaints, or that

are blocked from obtaining government work by injudicious contracting officers influenced by *qui tam* relators' vague allegations. Companies that still are willing and able to bid on government contracts would increase their prices as a hedge against the persistent threat of runaway *qui tam* suits. At the least, the mutual trust and working relationship between the Federal Government and the contractors on which it so dependent would be eroded.

Where, as here, the United States declines to intervene in a *qui tam* suit, a district court is obligated to dismiss a *qui tam* suit if it fails to satisfy the Rule 9(b) particularity requirement. The filing under seal of even a deficient *qui tam* complaint requires an investigation to be conducted by the Department of Justice, which in conjunction with potentially affected departments and agencies, has ample statutory authority to probe allegations of fraud.

ARGUMENT

REVIEW SHOULD BE GRANTED BECAUSE NATIONALLY UNIFORM ENFORCEMENT OF RULE 9(b) IN *QUI TAM* LITIGATION IS NEEDED TO MAINTAIN THE VIABILITY OF THE FEDERAL PROCUREMENT SYSTEM

A. Rule 9(b) Protects *Qui Tam* Defendants From Generalized Allegations Of Fraud

Federal Rule of Civil Procedure 9(b) establishes "an elevated pleading standard" for alleging fraud. *Ashcroft v. Iqbal*, 556 U.S. 662, 686 (2009). To comply with the rule, "a party must state with

particularity the circumstances constituting fraud." Fed. R. Civ. P. 9(b); *see Iqbal*, 556 U.S. at 686 (comparing "the particularity requirement applicable to fraud" with the same rule's statement that "[m]alice, intent, knowledge, and other conditions of a person's mind may be alleged generally") .

According to the D.C. Circuit's opinion below, "the point of Rule 9(b) is to ensure that there is sufficient substance to the allegations to both afford the defendant the opportunity to prepare a response and to warrant further judicial process." Pet. App. 24a. True, but that description does not adequately explain the *entire* purpose of the rule. Because fraud is a "subject[] understood to raise a high risk of abusive litigation," *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 569 n.14 (2007), Rule 9(b)'s particularity requirement "is necessary to safeguard potential defendants from lightly made claims charging the commission of acts that involve some degree of moral turpitude." 5A Charles Alan Wright et al., Federal Practice and Procedure § 1296 (3d ed. 2004). "The Rule acts as a safety valve to assure that only viable claims alleging fraud . . . are allowed to proceed to discovery." *In re BP Lubricants USA Inc.*, 637 F.3d 1307, 1310 (Fed. Cir. 2011). Rule 9(b) "thus guards against the institution of a fraud-based action in order to discover whether unknown wrongs actually have occurred—the classic fear of 'fishing expeditions.'" 5A Federal Practice and Procedure, *supra*.

The rule's other equally important, interrelated objectives include "protect[ing] defendants from harm to their goodwill and reputation." *United States ex*

rel. Nathan v. Takeda Pharms. N. Am., Inc., 707 F.3d 451, 456 (4th Cir. 2013) (citation and internal quotation marks omitted) (alteration in original); *see Ackerman v. Northwestern Mut. Life Ins. Co.*, 172 F.3d 467, 469 (7th Cir. 1999) ("Greater precomplaint investigation is warranted in fraud cases because public charges of fraud can do great harm to the reputation of a business firm or other enterprise (or individual)."); *see also* 5A Federal Practice and Procedure, *supra* (discussing Rule 9(b)'s purposes); 2 James Wm. Moore et al., Moore's Federal Practice § 9.03[1][a] (3d ed. 2015) (same); 2 John T. Boese, Civil False Claims and *Qui Tam* Actions § 5.04 (4th ed. 2012-1 Supp.) (same).

"[B]ecause the essence of a False Claims Act case is fraud," Civil False Claims, *supra*, "[t]he applicability of Rule 9(b) to *qui tam* actions is by now beyond dispute." *Id.* § 5.04[A][2] (2014-1 Supp.) & n.244 (collecting cases). "[P]articularized allegations of an actual false claim is an indispensable element of a [False Claims Act] violation, and must be specifically pled if a complaint is to survive Rule 9(b) scrutiny." *United States ex rel. Bledsoe v. Cmty. Health Sys., Inc.*, 501 F.3d 493, 505 (6th Cir. 2007). More specifically, Rule 9(b)'s particularity requirement means that "a plaintiff asserting a claim under the [False Claims] Act 'must, at a minimum, describe the time, place, and contents of the false representation, as well as the identity of the person making the misrepresentation.'" *Nathan*, 707 F.3d at 455-56 (quoting *United States ex rel. Wilson v. Kellogg Brown & Root, Inc.*, 525 F.3d 370, 379 (4th Cir. 2008)); *see also* Civil False Claims, *supra*, § 5.04[B] (2014-1 Supp.) (a *qui tam* complaint must

"present the 'who, what, when, where, and how' of the fraud"). By "requiring detailed information about the actual false claims submitted to be pled," Rule 9(b) "allows a determination to be made as to whether the complaint should be dismissed on jurisdictional (i.e., under the first-to-file or public disclosure bars) or other grounds." *Id.* §§ 5.04, 5.04[B]. Indeed, "[t]he multiple purposes of Rule 9(b) . . . may apply with particular force in the context of the [False Claims] Act, given the potential consequences flowing from allegations of fraud by companies who transact business with the government." *Nathan*, 707 F.3d at 456.

B. Opportunistic *Qui Tam* Relators Are Increasingly Targeting Government Contractors

"The potential for astronomical profits, as well as the ever-expanding theories of liability, makes [*qui tam*] actions the fastest-growing area of federal litigation." Sean Elameto, *Guarding the Guardians: Accountability In Qui Tam Litigation Under The Civil False Claims Act*, 41 Pub. Cont. L.J. 813, 844 (2012). Prospective relators (and their counsel) have every incentive for pursuing government contractors until they agree to settle, no matter how vague, speculative, or unfounded a *qui tam* complaint's allegations may be.

The False Claims Act promises relators a rich pot of gold without ever having to prove fraud: Relators receive between 15% and 25% "of the proceeds of the action *or settlement* of the claim" if the United States intervenes. 31 U.S.C. § 3730(d)(1) (emphasis added). They receive an even larger award, between 25% and

30% of the proceeds or settlement, if following the Justice Department's investigation, the United States declines to intervene. *Id.* § 3730(d)(2). All this if a relator's complaint survives a defendant's motion to dismiss for failure to satisfy Rule 9(b), and then, as is typical, the defendant caves in to settlement pressures rather than endures the burdens, costs, and risks of litigating the relator's allegations. According to one commenter, the median relator recovery as of 2012 was $3 million, with a range of $100,000 to $42 million. Elameto, *supra* at 843. And members of the rapidly growing "*qui tam* bar" usually collect between 30%-50% of relator recoveries. *Ibid.*

Justice Department statistics reflect the booming *qui tam* industry. From 1987 (following enactment of significant False Claims Act amendments) through 2014, a total of 4,205 *qui tam* suits were filed (excluding *qui tam* actions alleging submission of false claims to the Department of Health and Human Services ("DHS")). *See* DoJ Fraud Statistics – Overview (Oct. 1, 1987 – Sept. 30, 2014), http://tinyurl.com/nfa2anm. Almost half (2,073) of those *qui tam* suits were filed during the past 10 years. *Ibid.* Between 1987-2014, *qui tam* settlements and judgments (excluding matters involving submissions to DHS) totaled more than $7.04 billion. *Ibid.* Relators were awarded more than $1.2 billion of that amount. *Ibid.* In 2014 alone, *qui tam* settlements and judgments (again excluding DHS matters) were $762 million, and relator share awards totaled $93 million. *Ibid.* No wonder "[t]he publicity garnered by large settlements . . . serves to encourage additional would-be

whistleblowers, many of whom are looking to get rich quick." Elameto, *supra* at 843-44.

The federal procurement market provides an enormous resource for ambitious *qui tam* relators and their counsel. For example, 2014 Department of Defense spending on products and services prime contracts awarded to a multitude of contractors exceeded $284 billon. *See* Bloomberg Gov't, Annual Review of Government Contracting (2015 ed.), http://tinyurl.com/pjlrjdd. Along the same lines, federal departments and agencies spend $30 billion annually through the General Services Administration Schedules Program, *see* Beginners Guide To GSA Schedule Contracts, http://tinyurl.com/nvetcyr, and nearly $11 billion annually through the Department of Veterans Affairs Schedules Program, *see* U.S. Dep't of Veterans Affairs website, VA Federal Supply Schedule Service, http://www.fss.va.gov.

In their quest for *qui tam* bounties, relators have seized upon the broad range of contractual and regulatory requirements imposed on contractors (and subcontractors) by filing *qui tam* suits alleging false certifications of compliance. Contractors are required to provide and annually update at least 29 separate representations and certifications. *See* 48 C.F.R. § 4.1202. Unlike private-sector commercial contracts, federal procurement of commercial items involves many regulatory and contractual obligations unique to government contracts, ranging from limitations on the countries where a product can be manufactured, *see id.* § 52.225-5, to a requirement for "affirmative action by the contractor to employ and

advance in employment qualified . . . veterans," *id.* § 52.222-35(b). Contracts for products or services that are not commercial items contain dozens of additional clauses. *See* 48 C.F.R. pt. 52 ("solicitation provisions and contract clauses"). Under the controversial "implied certification" theory of liability adopted by the majority of circuits, any of the required representations and certifications, and any regulatory or contractual requirement, can provide a basis for a False Claims Act case. *See* Christopher L. Martin, Jr., *Reining in Lincoln's Law: A Call to Limit the Implied Certification Theory of Liability Under the False Claims Act*, 101 Cal. L. Rev. 227 (2013).

C. Lax Enforcement Of Rule 9(b) Would Undermine The Federal Procurement System

"[S]ubstandard [*qui tam*] cases in no way serve the public interest." Elameto, *supra* at 827. Relaxing Rule 9(b)'s pleading standard "may permit relators with little knowledge of fraud to make speculative allegations," which then "could be used to extract settlements from defendants who hope to avoid even more expensive litigation costs." *Id.* at 823, 824. Allowing a poorly pleaded, non-intervened *qui tam* suit to proceed in this manner would "produce unwanted social costs," including "serious economic and reputational harm" to government contractors that have not violated the False Claims Act. *Id.* at 826; *see also* Michael Lockman, Comment, *In Defense of a Strict Pleading Standard for False Claims Act Whistleblowers*, 82 U. Chi. L. Rev. 1559, 1607 (2015) ("The threats of socially suboptimal

fraud enforcement, warped actor incentives and gamesmanship, and systemic agency inefficiency should make courts think twice before tossing the strict pleading standard of Rule 9(b) into the wastebasket of procedural history.").

If Rule 9(b) is interpreted in a way that would "open the door to more speculative and frivolous [*qui tam*] suits," risk-averse companies "may not wish to do business with the Government, thereby eroding the Government's goal of obtaining maximum competition in contracting" and "negatively impact[ing] the economy as a whole." Elameto, *supra* at 823, 827. Similarly, federal departments and agencies may not be able to do business with particular contractors, even though they are unwarranted targets of inadequately pleaded *qui tam* complaints.

"Like private contracting parties, the federal government generally 'enjoys the unrestricted power . . . to determine those with whom it will deal[] and fix the terms and conditions upon which it will make needed purchases.'" Kate M. Manuel, Cong. Research Serv., R40633, *Responsibility Determinations Under the Federal Acquisition Regulation: Legal Standards and Procedures* 1 (2013) (quoting *Perkins v. Lukens Steel Co.*, 310 U.S. 113, 127 (1940)) (alterations in original). One of the federal procurement system's foundational principles is that the government will conduct business with, i.e., award contracts to, only "*responsible* prospective contractors." 48 C.F.R. § 9.103(a) (emphasis added); *ibid.* ("Purchases shall be made from, and contracts shall be awarded to, responsible prospective

contractors only."). "No purchase or award shall be made unless the contracting officer makes an affirmative determination of responsibility." *Id.* § 9.103(b); *see also id.* § 14.408-2(a) ("The contracting officer shall determine that a prospective contractor is responsible . . . before awarding the contract."). "To be determined responsible, a contractor must," *inter alia*, "[h]ave a satisfactory record of integrity and business ethics." *Id.* § 9.104-1(d).

Federal contracting officers "determine prospective contractors' responsibility prior to each contract award," and "have substantial discretion" in making such determinations. Manuel, *supra* at Summary. Before making an affirmative determination of responsibility, federal procurement regulations require or encourage contracting officers to consider information from multiple sources. *See* 48 C.F.R. § 9.105-1(c)(5); *see also John C. Grimberg Co. v. United States*, 185 F.3d 1297, 1303 (Fed. Cir. 1999) ("[T]he contracting officer is the arbiter of what, and how much, information he needs.").

False Claims Act allegations, including those contained in *qui tam* complaints, are among the "sources of information," 48 C.F.R. § 9.105-1(c), that contracting officers consider when determining whether a prospective contractor has "a satisfactory record of integrity and business ethics." *Id.* § 9.104-1(d); *see, e.g.*, *In re FCi Fed., Inc.*, B-408558.4 et al., 2014 WL 5374675 (Comp. Gen. Oct. 20, 2014) (contract award protest sustained where contracting officer made favorable contractor responsibility determination without adequately investigating allegations in pending *qui tam* suit); *see also* 48

C.F.R. § 52.209-5 (contracting officer must consider whether a contractor is currently civilly charged by a government entity with fraud when making a responsibility determination). At the least, a prospective contractor targeted in a *qui tam* suit may be confronted with the task of persuading a contracting officer that despite the relator's allegations, it has sufficient integrity to qualify for the affirmative responsibility determination needed to be awarded a contract. Convincing the contracting officer may be problematic if a district court, contrary to Rule 9(b), has denied a motion to dismiss a *qui tam* complaint that consists only of vague and generalized allegations concerning some sort of fraudulent scheme. If the contracting officer issues a "determination of nonresponsibility," the prospective contractor will be deemed ineligible for the contract (or subcontract) award. *Id.* § 9.103(b).

Allowing a poorly pleaded *qui tam* complaint to survive a motion to dismiss based on failure to satisfy Rule 9(b)'s heightened pleading standard can have consequences that are even more draconian for a government contractor. A pending or successful *qui tam* suit can subject a contractor to suspension from eligibility to receive *any* federal contracts or subcontracts. *See* 48 C.F.R. § 9.407-2(a) (federal agency "suspending official may suspend a contractor suspected, upon adequate evidence of . . . [c]ommission of fraud . . . in connection with . . . performing a public contract or subcontract"). Suspension can include "all divisions or other organizational elements of the contractor" and "any affiliates of the contractor if they are . . . specifically named." *Id.* § 9.407-1. Moreover, if a

contractor targeted by a poorly pleaded *qui tam* complaint that has survived a Rule 9(b)-based motion to dismiss decides to take the substantial risk of litigating rather than settling, and then is subjected to civil penalties and a treble-damages judgment, the contractor also can suffer the death-blow of being debarred from eligibility to bid on government contracts. *See id.* § 9.406-2(a)(1) (causes for debarment include a "civil judgment for . . . [c]ommission of fraud . . . in connection with . . . performing a public contract or subcontract").

Insofar as a lax standard for judicial enforcement of Rule 9(b) in *qui tam* litigation deters qualified contractors from bidding on government work, or results in an unwarranted determination of nonresponsibility or even suspension or debarment, the federal procurement system is unnecessarily and unjustifiably undermined—ironically, by exploitation of a statute, the False Claims Act, intended to bolster the procurement system.

D. The United States Has Ample Authority For Investigating and Prosecuting False Claims

Amici agree that the public interest can be served by properly pleaded *qui tam* complaints. Indeed, Rule 9(b)'s particularity requirement does not pose an obstacle for achieving the *qui tam* provisions' purpose, which is to motivate individuals with actual, first-hand knowledge of false or fraudulent submissions to seek redress on behalf of the United States. Regardless of whether a relator's complaint satisfies Rule 9(b), however, the Department of Justice is fully capable of

investigating alleged False Claims Act violations. Indeed, the Civil Division's Principal Deputy Assistant Attorney General recently emphasized that "[t]he Justice Department is committed to vigorously pursuing all those who knowingly submit false claims under government contracts." Press Release, DOJ Office of Public Affairs, Defense Contractor Agrees to Pay $4.63 Million to Settle Overcharging Allegations (Sept. 28, 2015), http://tinyurl.com/ns7uoru; *see also* Press Release, DOJ Office of Public Affairs, U.S. Files False Claims Act Complaint Against Western New York Contracting Company, Two Owners and an Employee (Oct. 9, 2015), http://tinyurl.com/nbg8lo2.

The filing of a *qui tam* complaint—even one that ultimately is dismissed for failure to meet Rule 9(b)'s particularity requirement—triggers a Justice Department investigation of the relator's allegations. "In a *qui tam* suit under the [False Claims Act], the relator files a complaint under seal and serves the United States with a copy of the complaint and a disclosure of all material evidence." *Kellogg Brown & Root Servs., Inc. v. United States ex rel. Carter*, 135 S. Ct. 1970, 1973 (2015) (citing 31 U.S.C. § 3730(b)(2)). The complaint remains sealed "for at least 60 days," 31 U.S.C. § 3730(b)(2), and often considerably longer, *see id.* § 3730(b)(3). The period under seal enables the Justice Department to investigate the relator's allegations and then determine what course to follow—intervene and assume primary responsibility for prosecuting the action, *id.* § 3730(b)(4)(A); decline to take over the action, *id.* § 3730(b)(4)(B); dismiss the action, *id.* § 3730(c)(1); or settle the action, *id.* § 3730(c)(2)(B).

While the complaint is under seal, "[t]he Attorney General diligently shall investigate a violation under section 3729 ["False claims"]." *Id.* § 3730(a); *see also* DoJ, The False Claims Act: A Primer (Apr. 22, 2011), http://tinyurl.com/pblrjld ("The government is required to investigate the allegations in the complaint."). Because "the government uses the complaint as a springboard rather than as an exhaustive manual," a "complaint's deficiency under Rule 9(b) will not necessarily impede the government's ability to launch an investigation. Brian D. Howe, Note, *Conflicting Requirements of Notice: The Incorporation of Rule 9(b) Into the False Claims Act's First-To-File Bar*, 113 Mich. L. Rev. 559, 576, 577 (2015).

The False Claims Act facilitates the Justice Department's investigation of a *qui tam* complaint's allegations by authorizing the Attorney General or her designee to issue a "civil investigative demand" ("CID") to "any person [who] may be in possession, custody, or control of any documentary material or information relevant to a false claims law investigation." 31 U.S.C. § 3733(a)(1); *see* 2 Civil False Claims § 5.07[A][1] (2011 Supp.) & 5.07[A][2] (2013-2 Supp.). The Department of Justice frequently utilizes this broad investigative tool to require any person with relevant documents or information to produce documentary evidence, answer written interrogatories, and/or give oral testimony. *See* 31 U.S.C. § 3733(a)(1). If it so chooses, the Department can share with a *qui tam* relator any information that it obtains through issuance of CIDs. *Ibid.*

The Justice Department also can and frequently does obtain relevant information from the department or agency to which false or fraudulent claims allegedly were submitted. For example, as reflected in their semiannual reports to Congress,[2] Inspectors General at the Department of Defense, General Services Administration, Department of Veterans Affairs, and other federal departments and agencies vigorously exercise their broad authority under the Inspector General Act of 1978 to issue administrative subpoenas for investigating procurement-related fraud and other statutory, regulatory, or contractual violations, both at the request of the Justice Department and independently. *See* 5 U.S.C. App. 3, § 6; *see also* 2 Civil False Claims § 5.07[B] (2013-2 Supp.).

Thus, where a district court grants the defendants' motion to dismiss a relator's complaint (or amended complaint) for failure to satisfy Rule 9(b)'s requirement, the public can have confidence that the Justice Department investigated the complaint's allegations before notifying the court that the United States will not be intervening. And even following such a dismissal, the United States can file its own False Claims Act suit based on its own investigation—subject, of course, to Rule 9(b)'s pleading requirements. *See* 31 U.S.C. §§ 3730(a) & (b)(5).

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[2] *See, e.g.*, DoD IG Semiannual Report to the Congress (Oct. 1, 2014 - Mar. 31, 2015), at 19; GSA OIG Semiannual Report to the Congress (Oct. 1, 2014 - Mar. 31, 2015), at 37; VA OIG Semiannual Report to Congress (Oct. 1, 2014 - Mar. 31, 2015), at 60, 63.

E. Supreme Court Review Is Needed To Achieve Strict, Nationally Uniform Enforcement of Rule 9(b) In *Qui Tam* Litigation

The petition well demonstrates both the deep split of authority concerning how Rule 9(b) should be applied in *qui tam* suits and the frequent recurrence of that question. *See* Pet. at 9-19 & App. D. As this *amicus* brief explains, this issue is exceptionally important to a multitude of federal government contractors, as well as to other companies that submit claims for payment to the Federal Government. Only this Court can establish a nationally uniform rule that will eliminate *qui tam* relator forum-shopping and ensure that Rule 9(b) is applied in a way that achieves its objectives.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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