No. 24-40564

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA, ex rel., BROOK JACKSON,

Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA,

Intervenor Plaintiff-Appellee,

VENTAVIA RESEARCH GROUP, L.L.C.,

Defendant-Appellee.

On Appeal from the United States District Court
for the Eastern District of Texas

BRIEF FOR APPELLEE THE UNITED STATES OF AMERICA

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CERTIFICATE OF INTERESTED PERSONS

A certificate of interested persons is not required, as the United States is a governmental party. 5th Cir. R. 28.2.1.

s/ Sarah N. Smith
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STATEMENT REGARDING ORAL ARGUMENT

Because this case presents a straightforward application of binding Supreme Court precedent, the government believes that oral argument is not necessary to resolve it. The government stands ready to present oral argument, however, if this Court believes that argument would assist the Court's consideration of the issues.

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STATEMENT OF JURISDICTION

In this *qui tam* action, relator Brook Jackson brought claims on behalf of the United States under the False Claims Act (FCA), 31 U.S.C. §§ 3729–3732, as well as federal and state law retaliation claims on her own behalf. Relator invoked the jurisdiction of the district court under 28 U.S.C. § 1331 and 31 U.S.C. §§ 3730 and 3732. ROA.3624; Br. 13. The district court entered final judgment dismissing relator's claims on August 9, 2024. ROA.4959. Relator timely appealed. ROA.4960.

This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUE

Because claims under the FCA belong to the United States, Congress has authorized the United States to intervene in and seek the dismissal of *qui tam* actions even over the objections of the relators who bring those claims. 31 U.S.C. § 3730(c)(2)(A), (3). Ultimate control over litigation allows the government to ensure that *qui tam* actions vindicate the government's interests. Here, relator sued defendant on behalf of the United States under the FCA. Before defendant answered the complaint or moved for summary judgment, the United States invoked its statutory rights to intervene and to seek dismissal.

The question presented is whether the district court properly granted the government's motion to intervene and dismiss under 31 U.S.C. § 3730(c)(2)(A).

PERTINENT STATUTES AND REGULATIONS

Pertinent statutes are reproduced in the addendum to this brief.

STATEMENT OF THE CASE

A. Statutory Background

1. "The [FCA] is the government's primary litigation tool for recovering losses sustained as the result of fraud." *United States ex rel. Marcy v. Rowan Cos.*, 520 F.3d 384, 388 (5th Cir. 2008). The FCA prohibits various forms of fraud involving government funds and property, including knowingly submitting, or causing to be submitted, a "false or fraudulent claim for payment or approval" to the government, as well as knowingly making or using, or causing to be made or used, a "false record or statement material to a false or fraudulent claim." 31 U.S.C. § 3729(a)(1)(A), (B). A person who violates the FCA is liable to the United States for civil penalties and three times the amount of the government's damages. *See id.*

The FCA allows a private person (known as a relator) to file a *qui tam* action on behalf of the United States against any person who knowingly submits a false claim to the government. 31 U.S.C. §§ 3729(a), 3730(b)(1). The relator initially files the complaint under seal and does not serve it on the defendant. *Id.* § 3730(b)(2). Instead, the relator discloses to the government her complaint and material evidence. *Id.* The government then has at least 60 days—extendable for good cause—to investigate the allegations in the complaint. *Id.* § 3730(b)(2), (3). Before the end of the seal period, the government may intervene and litigate the action on its own behalf or may "notify the court that it declines to take over the action, in which case the [relator] shall have the right to conduct the action." *Id.* § 3730(b)(4). Even if the

government initially declines to intervene, it may do so later "upon a showing of good cause." *Id.* § 3730(c)(3).

Once the government intervenes, it assumes "the primary responsibility for prosecuting the action" and is not bound by any act of the relator. 31 U.S.C. § 3730(c)(1). As the party with primary responsibility over the action, the United States may proceed with the action or settle the case over the relator's objection. *Id.* § 3730(c)(2)(B). The government may also "dismiss the action notwithstanding the objections of the [relator] if the [relator] has been notified by the Government of the filing of the motion and the court has provided the [relator] with an opportunity for a hearing on the motion." *Id.* § 3730(c)(2)(A).

2. In the event of a public health emergency, Congress has empowered the Food and Drug Administration (FDA) to authorize the introduction into interstate commerce of unapproved drugs or approved drugs for unapproved uses so long as such drugs are "intended for use" to respond to the emergency. 21 U.S.C. § 360bbb-3(a)(1), (2). The Secretary of the Department of Health and Human Services (HHS) first must declare that circumstances exist justifying emergency use authorization. *See id.* § 360bbb-3(b). The FDA may then issue an emergency use authorization if it determines, "based on the totality of scientific evidence available," that (1) the product to be authorized "may be effective in diagnosing, treating, or preventing" a serious or life-threatening disease or condition, (2) the "known and potential benefits of the product . . . outweigh the known and potential risks," and (3) there is "no

adequate, approved, and available alternative to the product for diagnosing, preventing, or treating" the disease or condition. *Id.* § 360bbb-3(c).

B. Factual Background

In July 2020, the pharmaceutical company Pfizer, Inc. (Pfizer) entered into an agreement with the United States under which Pfizer would deliver 100 million doses of an FDA approved or authorized Covid-19 vaccine for $1.95 billion. ROA.3621. Shortly thereafter, Pfizer launched a clinical trial aimed at obtaining FDA approval or emergency use authorization for its vaccine. ROA.3621. Pfizer contracted with Icon, PLC (Icon), a clinical research organization that managed its vaccine trial. ROA.3621. Pfizer also contracted with Ventavia Research Group, LLC (Ventavia), a testing site operator that operated three testing sites in Texas as part of Pfizer's clinical trial. ROA.3621.

For less than three weeks in September 2020, relator Brook Jackson was employed by Ventavia as Regional Director overseeing two vaccine testing sites. ROA.3655-56, 3687. During that time, relator alleges that she repeatedly witnessed violations of Pfizer's vaccine protocol and FDA regulations, which she reported to management at Ventavia. ROA.3621-23. Relator also reported her concerns to Pfizer and to the FDA. ROA.3687. Relator was terminated from her position on September 25, 2020. ROA.3687.

Pfizer completed its clinical trial and announced favorable results on November 18, 2020. ROA.3998. The FDA granted Pfizer emergency use authorization for its vaccine on December 11, 2020. ROA.3619.

C. Prior Proceedings

1. Relator sued Ventavia, Pfizer, and Icon. ROA.21-101. In her operative complaint, relator alleged four FCA claims on behalf of the United States. ROA.3698-702. Relator theorized that by violating clinical trial protocols, defendants had produced "false, unreliable clinical trial data," the submission of which fraudulently induced the FDA to grant Pfizer emergency use authorization for its vaccine. ROA.3698-700. Relator further claimed that defendants made false statements and submitted false records to obtain payment and presented fraudulent claims for approval. ROA.3700-02. Relator also asserted personal claims against Ventavia for unlawful retaliation under the FCA and Texas law. ROA.3703.

After investigating relator's *qui tam* claims, the United States declined to intervene. ROA.654-56. In the government's Notice of Election to Decline Intervention, the government expressly reserved its right to intervene at a later date for good cause and its right to seek dismissal of the action. ROA.654-55; *see* 31 U.S.C. § 3730(c)(2)(A), (3).

The district court unsealed the action, and all three defendants moved to dismiss. ROA.1342-78, 1721-48, 1778-812. The government filed a Statement of Interest Supporting Dismissal of relator's complaint, urging that the complaint did not

plead sufficient facts that "would support a plausible claim that Ventavia's clinical trial violations masked problems with the vaccine that were so serious that FDA would have withheld or withdrawn its authorization of the vaccine had it known the truth," such that Pfizer's subsequent claims for payment could be considered false or fraudulent under the FCA. ROA.2011. The district court granted the motions to dismiss but later granted relator leave to amend her complaint. ROA.2121-68, 2878-81. All three defendants moved to dismiss the amended complaint, and while those motions were pending, the government moved to intervene and dismiss the *qui tam* claims under 31 U.S.C. § 3730(c)(2)(A). ROA.4315-46, 4348-66, 4368-87, 4520-30. In its motion, the government argued that it had good cause to intervene under 31 U.S.C. § 3730(c)(3) because it was intervening to dismiss relator's *qui tam* claims. ROA.4524-25. The government explained that it was seeking dismissal because it doubted the merits of relator's FCA claims, because the "anticipated discovery and litigation obligations associated with the continued litigation" will impose a significant burden on the government, and because the United States "should not be required to expend resources on a case that is inconsistent with its public health policy." ROA.4526-27.

2. After holding oral argument on the motions, the district court granted the government's motion and dismissed the case. ROA.4935-59. The district court first rejected relator's argument that the government's motion to intervene should be evaluated under the standard for permissive intervention set out in Federal Rule of

Civil Procedure 24(b). ROA.4944. The court instead followed the good cause standard outlined in *United States ex rel. Polansky v. Executive Health Resources, Inc.*, 599 U.S. 419, 429 n.2 (2023), where the Supreme Court described "good cause" under 31 U.S.C. § 3730(c)(3) as "simply a legally sufficient reason." ROA.4943-44. Noting that the United States' "interest is the predominant one" in the litigation, the court concluded that the government's desire to dismiss relator's *qui tam* claims—because it doubted their merit, wished to avoid discovery and litigation costs, and considered the litigation at odds with its public health policy—constituted good cause to intervene. ROA.4946.

The district court rejected relator's argument that intervention after the seal period requires changed circumstances, observing that the text of § 3730(c)(3) imposes no such requirement. ROA.4946. The district court also held that the government's motion did not offend the Constitution. ROA.4948-49. The court explained that relator has no First Amendment right to bring a *qui tam* suit on behalf of the government, that it does not violate separation of powers for a court to allow the government to intervene in and dismiss its own suit, and that there was "no indication beyond the Relator's conjecture" that the government's reasons for intervening were arbitrary, capricious, or fraudulent such that they would violate substantive due process or equal protection principles. ROA.4948-49.

Having concluded that the government had good cause to intervene, the district court then considered the motion to dismiss. ROA.4950. Because the

government filed its motion to dismiss before defendants filed answers or motions for summary judgment, the court applied Federal Rule of Civil Procedure 41(a)(1), which entitles the government to dismiss its own case and leaves "no adjudicatory role" for the court to play. ROA.4950 (quoting *Polansky*, 599 U.S. at 436 n.4); Fed. R. Civ. P. 41(a). The only question before the district court was whether § 3730(c)(2)(A)'s procedural requirements—notice and "an opportunity for a hearing on the motion"—were satisfied. ROA.4950; 31 U.S.C. § 3730(c)(2)(A). The district court concluded that relator received notice of the government's motion when it was filed and that the hearing the court held on the motion satisfied § 3730(c)(2)(A)'s hearing requirement. ROA.4950, 4952. During that hearing, the court "heard arguments" from the parties, "asked counsel numerous questions regarding their positions," pressed the government on its "reasons for wanting to intervene and dismiss the case" and inquired into the relator's opposition and her constitutional arguments. ROA.4952. Finding that § 3730(c)(2)(A)'s procedural requirements were satisfied, the district court dismissed the *qui tam* claims with prejudice as to the relator. ROA.4953.

The district court also dismissed with prejudice relator's FCA retaliation claim for failure to state a claim. ROA.4956. Having dismissed all federal claims, the district court declined to exercise jurisdiction over relator's state-law retaliation claim, which it dismissed without prejudice. ROA.4958.

SUMMARY OF ARGUMENT

A. The district court properly granted the government's motion to intervene. The FCA allows the government to intervene in a *qui tam* action after the seal period "upon a showing of good cause." 31 U.S.C. § 3730(c)(3). The district court correctly held that the government's desire to dismiss relator's claim constituted good cause to intervene. The government explained that it wished to dismiss relator's claims because it had determined that her suit was unlikely to succeed, that the litigation would impose substantial discovery and litigation burdens on the government, and that the case was at odds with the United States' public health policy. The district court did not abuse its discretion in granting the government's motion to intervene on these grounds.

B. Nor did the district court abuse its discretion in granting the government's motion to dismiss relator's *qui tam* claims. Once the government intervenes in an FCA case, it may dismiss the action, even if the relator objects, so long as the relator is given notice of the motion and an "opportunity for a hearing." 31 U.S.C. § 3730(c)(2)(A). And where, as here, the government moves to dismiss *qui tam* claims before an answer is filed, dismissal is required so long as the government's motion does not offend basic constitutional constraints on government action. The district court correctly determined that the government's motion to intervene and dismiss did not violate relator's constitutional rights and that (c)(2)(A)'s notice and hearing requirements were satisfied.

STANDARD OF REVIEW

This Court reviews the grant of a motion for voluntary dismissal for abuse of discretion. *Hyde v. Hoffmann–La Roche, Inc.*, 511 F.3d 506, 509 (5th Cir. 2007); *see also United States ex rel. Polansky v. Executive Health Res., Inc.*, 599 U.S. 419, 438 (2023) ("A district court's Rule 41 order is generally reviewable under an abuse-of-discretion standard . . . .").

ARGUMENT

THE DISTRICT COURT PROPERLY GRANTED THE UNITED STATES' MOTION TO INTERVENE AND DISMISS.

A. The district court did not abuse its discretion in granting the United States' motion to intervene.

1. If the government declines to intervene during the seal period, the relator may proceed with the action, but "even then, the relator is not home free." *United States ex rel. Polansky v. Executive Health Res., Inc.*, 599 U.S. 419, 425 (2023). Because the United States is the "real party in interest" in a *qui tam* suit, the government may intervene at any point in the proceedings "upon a showing of good cause." *Id.* at 425-26 (quoting *United States ex rel. Eisenstein v. City of New York*, 556 U.S. 928, 930 (2009)); 31 U.S.C. § 3730(c)(3). "[S]howing 'good cause' is neither a burdensome nor unfamiliar obligation" but is instead "a uniquely flexible and capacious concept, meaning simply a legally sufficient reason." *Polansky*, 599 U.S. at 429 n.2 (quoting *Polansky v. Executive Health Res. Inc*, 17 F.4th 376, 387 (3d Cir. 2021)). Applying this standard, the Third Circuit in *Polansky* held that the government's "request to dismiss

the suit—based on its weighing of discovery burdens against likelihood of success—itself established good cause to intervene." *Id.* The Sixth Circuit has similarly held that the government demonstrates good cause to intervene where it wishes to dismiss a *qui tam* action because continuing the litigation would impose "significant monitoring costs" on the government that are not justified by the strength of the relator's case. *United States ex rel. USN4U, LLC v. Wolf Creek Fed. Servs., Inc.*, No. 24-3022, 2025 WL 1009012, at *7 (6th Cir. Mar. 31, 2025); *see also United States ex rel. Carver v. Physicians Pain Specialists of Ala., P.C.*, No. 22-13608, 2023 WL 4853328, at *6-7, *6 n.4 (11th Cir. July 31, 2023) (per curiam) (explaining that "the same grounds that support dismissal" of the case—the relator's failure to prosecute the claim and significant discovery burdens placed on the government—"also provide good cause to intervene under 31 U.S.C. § 3730(c)(3)"); *Brutus Trading, LLC v. Standard Chartered Bank*, No. 20-2578, 2023 WL 5344973, at *2 (2d Cir. Aug. 21, 2023) (construing the government's motion to dismiss to include a motion to intervene and noting that the Third Circuit had determined that the government's desire to dismiss constituted good cause to intervene in *Polansky*). The government thus has good cause to intervene whenever it believes that its interests will not be served if the relator continues to pursue claims on its behalf.

The district court here properly found that the government had established good cause. In its motion to intervene and dismiss, the government explained that it had "investigated and evaluated" relator's claims, and that while "a defendant's fraud

in inducing FDA to authorize or approve a product" could serve as the basis for a claim under the FCA, the government had concluded that relator's claim was not viable for two reasons. ROA.4526-27. First, the FDA was aware of the protocol violations allegedly witnessed by relator before it granted Pfizer emergency use authorization for its vaccine. ROA.4526. Second, the government explained that it has "had continued access" to the Pfizer vaccine clinical trial data, and in the FDA's view, Pfizer's vaccine is effective. ROA.4526-27. The government further explained that discovery and litigation obligations associated with the case would place significant burdens on FDA, HHS, and the Department of Justice, and that the government should not be required to bear such burdens on a case "inconsistent with its public health policy." ROA.4527. The district court, "recognizing that the Government's interest is the predominant one," correctly concluded that the government's "desire to dismiss the case—because of its doubt as to the case's merits, differing assessment of the Pfizer vaccine data, desire to avoid discovery and litigation obligations, and belief that it should not have to expend resources in a case that is contrary to its public health policy—constitutes good cause to intervene." ROA.4946.

2.a. Relator's arguments to the contrary are unpersuasive. She incorrectly contends that the government must "provide the court with evidence, affidavits or some other submission to establish the good cause for intervention." Br. 36. In support of this argument, she relies on § 3730(b)(3), which provides that the government may, "for good cause shown, move the court" to extend the seal period

and it "may" support its motion with affidavits or other submissions in camera. 31 U.S.C. § 3730(b)(3); Br. 36-37. But this provision does not establish that a "showing" of good cause under § 3730(c)(3) requires affidavits or evidentiary submissions. On the contrary, the fact that the government "may"—not must—support its motion to extend the seal period with "affidavits or other submissions," indicates that "good cause" can be "shown" without such submissions. 31 U.S.C. § 3730(b)(3).

Relator is similarly mistaken when she asserts (Br. 38-39) that where courts have found good cause based on the government's desire to dismiss, they have done so after making "specific factual findings" that support the government's assessment of discovery burdens or the strength of the relator's claims. None of the cases on which relator relies support that proposition. In *Polansky*, for example, the government established good cause simply by explaining its reasons for seeking dismissal. *Polansky*, 17 F.4th at 392-93 (explaining that "by thoroughly examining the Government's stated reasons for moving to dismiss and granting the motion, the District Court necessarily found the Government had shown the 'legally sufficient reason' for intervening that good cause requires").[1] And although the standard for

[1] Relator claims that the Supreme Court in *Polansky* "identified the specific reasons established in [the] record" that established good cause, but relator cites from the portion of the Court's opinion discussing the standard for post-answer dismissal under Rule 41, not good cause to intervene. Br. 38 (citing *Polansky*, 599 U.S. at 438). In any event, the Court explained that the government satisfied its burden by giving "good grounds" for thinking that the relator's *qui tam* action would not further its

Continued on next page.

good cause was not at issue in *Brutus Trading*, the Second Circuit strongly implied that the government's desire to dismiss, by itself, constitutes good cause. 2023 WL 5344973, at *2 (construing the government's motion to dismiss as including a motion to intervene and noting that the Third Circuit in *Polansky* concluded that "the government's request to dismiss the suit 'itself established good cause to intervene'" (quoting *Polansky*, 599 U.S. at 429 n.2)). Relator's reliance on *Borzilleri v. Bayer Healthcare Pharmaceuticals, Inc.*, 24 F.4th 32 (1st Cir. 2022), is likewise misplaced, as intervention was not at issue in that case. *Id.* at 38 n.7 (explaining that the relator on appeal did not challenge the government's failure to intervene prior to dismissal, nor did the relator argue that the government lacked good cause for intervention).

The government need only provide a "legally sufficient reason" to establish good cause to intervene, and it did so here. *Polansky*, 599 U.S. at 429 n.2 (quoting *Polansky*, 17 F.4th at 387). The government explained that it sought to dismiss relator's claims because it doubted their merit, wished to avoid burdensome discovery and litigation obligations, and determined that the action was inconsistent with the nation's public health policy. ROA.4526-27. Nothing more was required.

b. Relator also errs (Br. 40-41) in arguing that motions for intervention pursuant to § 3730(c)(3) must be evaluated under the standards for permissive

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interests. *Polansky*, 599 U.S. at 438. The Court never suggested that the government was required to submit evidence substantiating its reasons for seeking dismissal.

intervention set out in Rule 24(b).[2] Specifically, relator contends that the district court was required to consider whether intervention by the government would prejudice "the original parties" to the action. Br. 40; *see* Fed. R. Civ. P. 24(b)(3) ("In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.").

The district court correctly concluded that Rule 24(b) does not apply to motions to intervene under § 3730(c)(3). ROA.4944. First, as explained above, *Polansky* provides the standard courts should apply when evaluating good cause under § 3730(c)(3). Neither the Supreme Court nor the Third Circuit suggested that the "good cause" standard is supplemented by Rule 24(b). ROA.4943-44. Second, as the district court explained, Rule 24 intervention is simply not analogous to intervention by the government under § 3730(c)(3). ROA.4944. While Rule 24 governs permissive intervention by non-parties, intervention under § 3730(c)(3) "pertains to the Government, on whose behalf the relator brings the action, intervening to prosecute the action itself." ROA.4944. The court further explained that in the context of § 3730(c)(3) intervention, "the injury asserted belongs 'exclusively' to the Government, the purpose of the action is to 'vindicate the Government's interests,' and the relator's right to conduct the action is always subject to the Government's

[2] The government did not "waiv[e] any argument against application of Rule 24," as relator claims, Br. 40. *See* ROA.4893-94 (Reply in Support of United States' Motion to Intervene and Dismiss) (explaining that courts after *Polansky* have not "looked beyond the flexible 'good cause' standard set forth in § 3730(c)(3)").

rights, including the right to intervene down the road." ROA.4944 (quoting *Polansky*, 599 U.S. at 425, 427). Given that the government's interest is the predominant one in *qui tam* suits, the district court rightly determined that the standards governing permissive intervention under Rule 24 do not apply when the government seeks to intervene under § 3730(c)(3).[3]

c. Relator's contention that the government must establish "changed circumstances" to intervene after the seal period (Br. 42-43) also lacks merit. Section 3730(c)(3) permits the government to intervene after the seal period "upon a showing of good cause." 31 U.S.C. § 3730(c)(3). As the district court observed, nothing in the statute's text "indicate[s] that good cause requires changed circumstances." ROA.4946. The district court also correctly noted that neither the Supreme Court's decision in *Polansky* nor the Department of Justice's Granston memorandum, on which relator relies (Br. 43), support her position. ROA.4946. The Court in *Polansky* explained that Congress permitted intervention after the seal period

[3] For these same reasons, the district court did not abuse its discretion in concluding that intervention would be appropriate, even if Rule 24 applied. ROA.4944 n.2. As the court explained, relator's rights to conduct this action were "always . . . subject to the Government's rights," including the United States' right to intervene. ROA.4944 n.2. The court also noted that because discovery had been stayed, relator's financial investment was limited. ROA.4944 n.2. And the court rightly concluded that, to the extent relator experiences any prejudice from intervention, it is outweighed by the government's arguments for intervention, because "it is the Government's interests that are ultimately being vindicated—not the Relator's" in a *qui tam* action. ROA.4944 n.2.

because it "knew that circumstances could change," but nothing in *Polansky* suggests that such a change in circumstances is required under § 3730(c)(3). ROA.4946 (quoting *Polansky*, 599 U.S. at 435). Similarly, the Granston memorandum acknowledges that intervention after the seal period might be warranted, "particularly when there has been a significant intervening change in the law or evidentiary record." ROA.4872. But as the district court explained, nothing in the memorandum indicates "that the Government can only move for intervention after changed circumstances." ROA.4947. And, in any case, the memorandum, which is intended to provide a "general framework" for Department attorneys, does not bind the government or alter the plain text of § 3730(c)(3). ROA.4866, 4947.

B. The district court did not abuse its discretion in granting the United States' motion to dismiss relator's *qui tam* claims.

Once it has intervened, the government may dismiss a *qui tam* action "notwithstanding the objections of the [relator] if the [relator] has been notified by the Government of the filing of the motion and the court has provided the [relator] with an opportunity for a hearing on the motion." 31 U.S.C. § 3730(c)(2)(A). In *Polansky*, the Supreme Court clarified the standard for reviewing (c)(2)(A) motions, holding that Rule 41(a), which governs voluntary dismissals in federal civil litigation, provides the applicable standard. 599 U.S. at 435-39; Fed. R. Civ. P. 41(a). As the Court explained, prior to the filing of an answer or summary judgment motion by defendants, "Rule 41 entitles the movant to a dismissal; the district court has no

adjudicatory role." 599 U.S. at 436 n.4. In that posture, unless a relator credibly alleges that dismissal would violate "bedrock constitutional constraints on Government action," a district court must grant a (c)(2)(A) motion. *See id.* at 436 & n.4 (quotation marks omitted). As this Court recently summarized, a district court has "no adjudicatory role in disposing of a pre-answer (c)(2)(A) motion and no discretion to deny dismissal absent a claim that the Constitution forbids it." *Vanderlan v. United States*, ---F.4th---, 2025 WL 1143390, at *6 (5th Cir. Apr. 18, 2025); *see also United States ex rel. Doe v. Credit Suisse AG*, 117 F.4th 155, 161 (4th Cir. 2024) (recognizing that courts have "no adjudicatory role" in resolving pre-answer (c)(2)(A) motions (quotation marks omitted)).[4] Here, the district court properly granted the government's pre-answer motion to dismiss after concluding that (1) relator had not credibly alleged that dismissal of her *qui tam* claims would violate the Constitution, and (2) § 3730(c)(2)(A)'s procedural requirements were satisfied.

[4] Relator errs in arguing that the government must offer a "reasonable argument for why the burdens of continued litigation outweigh its benefits" to obtain dismissal. Br. 55 (quoting *Polansky*, 599 U.S. at 438). That standard applies when the government moves to dismiss *after* the defendant files an answer or moves for summary judgment. *Polansky*, 599 U.S. at 436-38. Here, the government moved for dismissal before defendants filed answers or moved for summary judgment, ROA.4950, and "[i]n that context, Rule 41 entitles the [government] to a dismissal," *Polansky*, 599 U.S. at 436 n.4.

1. The government's motion did not violate relator's constitutional rights.

Although the district court has "no adjudicatory role" when the government seeks dismissal of *qui tam* claims before an answer is filed, the government's motion to dismiss is nevertheless subject to basic constitutional constraints on government action. *Polansky*, 599 U.S. at 436 n.4 ("Rule 41's standards 'rest atop the foundation of bedrock constitutional constraints on Government action.'" (quoting *Polansky*, 17 F.4th at 390 n.16)). Here, the district court rightly determined that the government's motion to dismiss did not violate relator's constitutional rights.[5]

a. First, the district court rejected relator's argument that the government's motion to dismiss violated her First Amendment right to petition the government. The First Amendment guarantees "the right of the people . . . to petition the Government for a redress of grievances." U.S. Const. amend. I. The Petition Clause "protects the right of individuals to appeal to courts and other forums established by the government for resolution of legal disputes." *Borough of Duryea v. Guarnieri*, 564 U.S. 379, 387 (2011). But, as the district court correctly observed, the First Amendment "does not give the Relator the right to petition the government on the United States' behalf—only her own." ROA.4948. Relator seems to acknowledge as much in her brief, noting that it is Congress—not the Constitution—that has partially

[5] The government did not waive its response to relator's constitutional arguments, *contra* Br. 49. *See* ROA.4894-95 (Reply in Support of United States' Motion to Intervene and Dismiss).

assigned relators the right to bring FCA claims. Br. 49. That assignment of rights is "substantially limited by the United States' own rights over a *qui tam* action." ROA.4948; *see* 31 U.S.C. § 3730. In seeking to intervene and dismiss this case, the government is exercising its independent authority to control a *qui tam* suit brought in its name. *Polansky*, 599 U.S. at 434-35 (explaining that because the government's interest is the "predominant one" in a *qui tam* action, Congress provided that the government can intervene in the action after the seal period and can—at any time—dismiss the suit if its continuation would not serve the United States' interests). Dismissal of this suit, brought on the government's behalf, does not in any way limit relator's right to speak or petition the government through other appropriate avenues available to her.

b. The district court also rightly determined that the government's motion does not offend the Constitution's separation of powers. ROA.4948-49. Relator contends that the district court abdicated its judicial power by deferring to the executive's determination that the *qui tam* claims should be dismissed. Br. 52-54. But as the district court explained, relator's argument is at odds with *Polansky*, where the Supreme Court "explicitly stated that 'the Government's views are entitled to substantial deference' when it comes to dismissal of a *qui tam* action." ROA.4948 (quoting *Polansky*, 599 U.S. at 437); *see also Polansky*, 599 U.S. at 437-38 (instructing that district courts "should think several times over before denying a motion to dismiss," and that courts should grant a motion to dismiss if the government "offers a

reasonable argument for why the burdens of continued litigation outweigh its benefits . . . even if the relator presents a credible assessment to the contrary"). As the Supreme Court explained, this deference is appropriate because *qui tam* claims are "on behalf of and in the name of the Government" and are meant to redress "injury to the Government alone." *Polansky*, 599 U.S. at 437.

Relator argues that closer scrutiny is warranted in this case because she alleges that the government has acted to protect former officials' "personal interests." Br. 52. The district court properly rejected that argument, noting that the "Government has offered frequently cited and reasonable grounds for intervening and dismissing this case," and relator has not shown that those reasons "are a façade for protecting executive officials' personal interests." ROA.4949.

c. Finally, the district court properly concluded that the government's motion does not violate relator's rights to due process or equal protection. ROA.4949. Relator contends that the government's motion is "arbitrary in the constitutional sense" and "shocks the conscience," because, in her view, the government did not "coherently explain its desire to dismiss this action" and no "legitimate, rational basis existed for interfering with her meritorious case." Br. 54-55 (quotation marks omitted). The district court rejected this characterization, noting that the government has "provided multiple reasons for its desire" to intervene and dismiss and that other courts have found such reasons sufficient to permit intervention and dismissal. ROA.4949. Further, the court noted that "there is no indication beyond the Relator's

conjecture that the Government's desire to intervene" is due to improper motives, and relator's differing perspective on Pfizer's vaccine trial data and the merits of her claims "are insufficient to establish that the Government's reasons . . . are arbitrary, capricious, and fraudulent." ROA.4949. The district court's analysis was correct in all respects.

2. The district court conducted a more-than-adequate hearing.

a. The FCA requires only that a relator be given notice of the government's motion to dismiss and "an opportunity for a hearing on the motion." 31 U.S.C. § 3730(c)(2)(A). This Court recently held that "hearing" in subparagraph (c)(2)(A) "only requires a hearing on the briefs." *Vanderlan*, 2025 WL 1143390, at *4. The Second, Fourth, and Sixth Circuits read (c)(2)(A) the same way. *See Credit Suisse*, 117 F.4th at 162; *Wolf Creek Fed. Servs.*, 2025 WL 1009012, at *8; *Brutus Trading*, 2023 WL 5344973, at *2-3. Congress knows how to require a live hearing. *See, e.g.*, *United States v. Florida E. Coast Ry. Co.*, 410 U.S. 224, 234-38 (1973) (explaining that an agency properly conducts a "hearing" by considering only written submissions unless Congress requires a hearing "on the record").[6] It did not do so here. Rather, as with any motion to dismiss, Congress has required only that the opposing party "be given

[6] *See also United States ex rel. Siller v. Becton Dickinson & Co. ex rel. Microbiology Sys. Div.*, 21 F.3d 1339, 1350 (4th Cir. 1994) (interpreting parallel language in § 3730(e)(4)(A)); *United States ex rel. Springfield Terminal Ry. Co. v. Quinn*, 14 F.3d 645, 652 (D.C. Cir. 1994) (same); *United States ex rel. Stinson, Lyons, Gerlin & Bustamante, P.A. v. Prudential Ins. Co.*, 944 F.2d 1149, 1155-57 (3d Cir. 1991) (same).

the opportunity to present its views to the court." *Greene v. WCI Holdings Corp.*, 136 F.3d 313, 316 (2d Cir. 1998) (per curiam) (collecting cases); Fed. R. Civ. P. 12(i); *see, e.g.*, *Allied Chem. Corp. v. Mackay*, 695 F.2d 854, 856 (5th Cir. 1983) (per curiam).

Here, the district court provided far more process than the FCA requires before granting the government's (c)(2)(A) motion. The court considered briefing by the parties and conducted a live hearing at which relator was able to present argument. ROA.5094-200. During the hearing, the court "asked counsel numerous questions regarding their positions," including questions probing the government's reasons for seeking intervention and dismissal and the relator's constitutional arguments. ROA.4952. And although the court did not hold an evidentiary hearing, relator submitted affidavits in support of her response, which the court considered in ruling on the motion. ROA.4588-97. These proceedings satisfy (c)(2)(A)'s hearing requirement. *See Vanderlan*, 2025 WL 1143390, at *4-5 (holding that (c)(2)(A)'s hearing requirement was satisfied where the district court allowed multiple rounds of briefing, held a live hearing in which the relator presented argument, and permitted relator to submit evidence).

b. The district court did not abuse its discretion in declining to hold an evidentiary hearing. The hearing requirement in § 3730(c)(2)(A) does not compel a live hearing, much less an evidentiary one. *Vanderlan*, 2025 WL 1143390, at *5. Relator argues that the district court is required to hold an evidentiary hearing if the relator shows a "substantial and particularized need," citing a 1986 Senate Report on

proposed amendments to the FCA. Br. 47 (quoting S. Rep. No. 99-345, at 26 (1986)). But the language on which relator relies is from a provision Congress declined to adopt, which would have allowed relators to "file objections with the court and petition for an evidentiary hearing to object . . . to any motion to dismiss filed by the Government." S. 1562, 99th Cong. § 2 (1986); *see* S. Rep. No. 99-345, at 26 (explaining that under proposed subsection (c)(1), a *qui tam* plaintiff may formally object to motions to dismiss and such motions "may be accompanied by a petition for an evidentiary hearing on those objections" which the court should grant if the plaintiff shows a "substantial and particularized need" for a hearing). The fact that Congress did not adopt this language and instead required only that the relator be given an "opportunity for a hearing" defeats relator's argument that an evidentiary hearing was required here. 31 U.S.C. § 3730(c)(2)(A). The district court fully complied with (c)(2)(A)'s hearing requirement before granting the government's motion to dismiss.[7]

[7] The district court did not abuse its discretion in dismissing the *qui tam* claims with prejudice as to relator, *contra* Br. 56. Although Rule 41(a) dismissals are typically without prejudice, a dismissal without prejudice as to relator would undermine the government's right to dismiss under § 3730(c)(2)(A) by allowing relator to renew her claim. Where, as here, the government has explained that its interests are not served by plaintiff continuing the litigation, dismissal with prejudice as to the relator is proper. *See Vanderlan*, 2025 WL 1143390, at *3-4 (concluding that the Court had appellate jurisdiction to review district court's order granting government's motion to dismiss because relator's claims were dismissed with prejudice).

CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

Respectfully submitted,

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April 2025

CERTIFICATE OF SERVICE

I hereby certify that on April 28, 2025, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. Service will be accomplished by the appellate CM/ECF system.

s/ Sarah N. Smith
Sarah N. Smith

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 6,138 words. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Word for Microsoft 365 in Garamond 14-point font, a proportionally spaced typeface.

/s/ Sarah N. Smith
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ADDENDUM

TABLE OF CONTENTS

31 U.S.C. § 3729

§ 3729. False claims.

(a) LIABILITY FOR CERTAIN ACTS.

(1) IN GENERAL.

Subject to paragraph (2), any person who—

(A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

(B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;

(C) conspires to commit a violation of subparagraph (A), (B), (D), (E), (F), or (G);

(D) has possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property;

(E) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(F) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge property; or

(G) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government,

is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Public Law 104-410), plus 3 times the amount of damages which the Government sustains because of the act of that person.

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31 U.S.C. § 3730

§ 3730. Civil actions for false claims.

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(b) ACTIONS BY PRIVATE PERSONS.

(1) A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government pursuant to Rule 4(d)(4) of the Federal Rules of Civil Procedure. The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The government may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.

(3) The Government may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure.

(4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3), the Government shall—

(A) proceed with the action, in which case the action shall be conducted by the Government; or

(B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

(5) When a person brings an action under this subsection, no person other than the Government may intervene or bring a related action based on the facts underlying the pending action.

(c) RIGHTS OF THE PARTIES TO QUI TAM ACTIONS.

(1) If the Government proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the

person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2).

(2)

(A) The Government may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the Government of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

(B) The Government may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(C) Upon a showing by the Government that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Government's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as—

(i) limiting the number of witnesses the person may call;

(ii) limiting the length of the testimony of such witnesses;

(iii) limiting the person's cross-examination of witnesses; or

(iv) otherwise limiting the participation by the person in the litigation.

(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(3) If the Government elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the Government so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the Government's expense). When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the Government to intervene at a later date upon a showing of good cause.

(4) Whether or not the Government proceeds with the action, upon a showing by the Government that certain actions of discovery by the person initiating the action would interfere with the Government's investigation or prosecution of a

criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the Government has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(5) Notwithstanding subsection (b), the Government may elect to pursue its claim through any alternate remedy available to the Government, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the United States, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(d) AWARD TO QUI TAM PLAINTIFF.

(1) If the Government proceeds with an action brought by a person under subsection (b), such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2) If the Government does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) Whether or not the Government proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of section 3729 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under paragraph (1) or (2) of this subsection, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the violation of section 3729, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the United States to continue the action, represented by the Department of Justice.

(4) If the Government does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

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