The Civil Rights Fraud Initiative: A Distortion of the False Claims Act Unlikely to Prevail

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In May of 2025, the Department of Justice (DOJ) began promoting use of the False Claims Act (FCA) for whistleblowing on organizations maintaining "divisive" diversity, equity, and inclusion (DEI) policies via its newly minted "Civil Rights Fraud Initiative." In doing so, the DOJ outlined an unprecedented pathway for potential relators to apply the FCA's qui tam *provisions. This Comment argues that deploying the FCA in this manner is a wrongful application of the Act and distorts its intent. Alleged unlawful DEI practices do not constitute false claims under a traditional understanding of the FCA and would likely fail to meet the Supreme Court's materiality and knowledge thresholds for FCA implied certification actions. Therefore, the DOJ's promotion of these FCA actions constitutes an illegitimate and likely unsuccessful legal strategy.*

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INTRODUCTION

On May 19, 2025, the Department of Justice (DOJ) announced the creation of the "Civil Rights Fraud Initiative," encouraging whistleblowers to use the False Claims Act (FCA) against organizations that permit anti-Semitism or promote "divisive" diversity, equity, and inclusion (DEI) policies.[1] In its press release and memorandum, the DOJ vowed to find and pursue claims against recipients of federal funding who engage in purported unlawful DEI and contribute to alleged violations of "basic obligations under federal civil rights law."[2] In the release, then-Deputy Attorney General Todd Blanche emphasized that, as with any *qui tam* FCA action, whistleblowers who file FCA complaints

1. *See* Press Release, Office of Public Affairs, Justice Department Establishes Civil Rights Fraud Initiative (May 19, 2025), https://www.justice.gov/opa/pr/justice-department-establishes-civil-rights-fraud-initiative [https://perma.cc/FN52-V3GN].
2. *See id.*

under this theory could be entitled to a portion of the economic recovery.[3] This Comment argues (1) allegedly unlawful DEI policies, as described by the DOJ, do not constitute a false claim under the FCA, and designating them as such distorts the Act's purpose, and (2) FCA claims raised on the basis of allegedly unlawful DEI policies are unlikely to meet the materiality and knowledge thresholds outlined by the Supreme Court for FCA implied certification actions—an alternate avenue for FCA claims.

I. BACKGROUND: THE CREATION OF THE CIVIL RIGHTS FRAUD INITIATIVE AND A FALSE CLAIMS ACT OVERVIEW

A. THE DEPARTMENT OF JUSTICE CIVIL RIGHTS FRAUD INITIATIVE

Shortly after taking office, President Trump issued Executive Order No. 14173, "Ending Illegal Discrimination and Restoring Merit-Based Opportunity" ("Ending Illegal Discrimination EO").[4] The Order provided guidance to federal agencies on the Administration's views on DEI policies and their perceived incompatibility with federal civil rights legislation.[5] On May 19, 2025, the DOJ announced the creation of the Civil Rights Fraud Initiative (the "Initiative"), encouraging the use of the FCA to whistle blow on organizations that "allow anti-Semitism and promote divisive DE&I policies."[6] In its press release, the DOJ vowed to investigate and pursue claims against recipients of

3. *See id.*

4. *See* Exec. Order No. 14173, 90 Fed. Reg. 8633 (Jan. 21, 2025) ("[I]llegal DEI and DEIA policies not only violate the text and spirit of our longstanding Federal civil-rights laws, they also undermine our national unity, as they deny, discredit, and undermine the traditional American values of hard work, excellence, and individual achievement in favor of an unlawful, corrosive, and pernicious identity-based spoils system.").

5. *See id.*

6. Justice Department Establishes Civil Rights Fraud Initiative, *supra* note 1. As a precursor to the May Civil Rights Fraud Initiative Memo, in January 2025, one day after his second-term inauguration, President Trump issued an Executive Order directing all agencies to combat illegal private sector DEI. Exec. Order No. 14173, *supra* note 4. On February 5, 2025, the Attorney General released a memorandum to all department employees directing the DOJ's Civil Rights Division "to investigate, eliminate, and penalize illegal DEI preferences in the private sector." Memorandum from the Att'y Gen. to Dep't Emps. (Feb. 5, 2025), https://www.justice.gov/ag/media/1388501/dl?inline [https://perma.cc/YX7L-QA9W].

federal funding who engage in this purportedly unlawful DEI, and encouraged reporting under the *qui tam* provision of the FCA.[7]

The apparent goal of these measures is to increase the number of individuals filing *qui tam* actions related to DEI and to provide substantial government resources to investigate and support the suits brought by those relators.[8] Accordingly, the Initiative focuses on federal funding recipients who knowingly engage in racial preferences and directs all U.S. Attorney's Offices to designate an Assistant U.S. Attorney to advance this initiative.[9] The memorandum also *strongly* encourages private parties to file FCA suits.[10] On July 29, 2025, the DOJ doubled down on the Initiative and released a "Guidance for Recipients of Federal Funding" memorandum, encouraging the public to report DEI-related workplace "discrimination."[11]

Regardless of whether claims succeed or even materialize, this Executive Order will probably achieve an unstated aim: prompting organizations to eliminate any DEI policies out of fear of litigation.[12] This chilling effect is likely to strip the employment law landscape of programs designed to protect and empower

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7. *See* Justice Department Establishes Civil Rights Fraud Initiative, *supra* note 1.

8. *See id.*

9. *See* Memorandum from the Att'y Gen. to Off. of the Assoc. Att'y Gen., Civ. Div., Civ. Rts. Div., Crim. Div., Exec. Off. for U.S. Att'ys, and all U.S. Att'ys, (May 19, 2025), https://www.justice.gov/dag/media/1400826/dl?inline [https://perma.cc/V365-RBBU].

10. *See id.* ("The Department recognizes that it alone cannot identify every instance of civil rights fraud . . . [T]he Department also encourages anyone with knowledge of discrimination by federal-funding recipients to report that information to the appropriate federal authorities so that the Department may consider the information and take any appropriate action.").

11. *See* Press Release, Office of Public Affairs, Justice Department Releases Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination (July 30, 2025), https://www.justice.gov/opa/pr/justice-department-releases-guidance-recipients-federal-funding-regarding-unlawful [https://perma.cc/TAD9-WKCU]. The implications of this initiative for organizations contracting with the government or receiving government funds are extreme. *See* Alexander O. Canizares et al., *DOJ's Civil Rights Fraud Initiative Presents New False Claims Act Risks and Considerations for Federal Funding Recipients*, A.B.A. (Oct. 27, 2025), https://www.americanbar.org/groups/public_contract_law/resources/procurement-lawyer/2025-fall/false-claims-act-risks-considerations-federal-funding-recipients/ (on file with the *Columbia Journal of Law & Social Problems*) (noting that the EO and guidance from the DOJ "heighten risks for organizations with DEI programs[:]" which may require a "reassess[ment of] their compliance programs" to meet the "fast-changing legal landscape"). It is likely that, in response to this EO, federal contractors and grant recipients will exist in fear of inadvertently violating this initiative. *See id.*

12. *See* Canizares et al., *supra* note 11 (citing Nat'l Ass'n of Diversity Officers in Higher Educ. v. Trump, 767 F. Supp. 3d 243, 282 (D. Md. 2025) ("[M]embers, and other federal contractors and grantees have shown they are unable to know which of their DEI programs (if any) violate federal anti-discrimination laws, and are highly likely to chill their own speech.").

minority employees.[13] As a result, organizations will be forced to weigh the financial and reputational burdens of *qui tam* lawsuits against their desire to maintain equity-focused human resources and inclusive workplace policies.[14] This arises at a moment when programs promoting the social value of racial diversity, such as affirmative action, have come under attack, and it further erodes established initiatives encouraging diversity.[15]

B. OVERVIEW OF THE FALSE CLAIMS ACT

1. *History of the False Claims Act*

Congress passed the FCA in 1863 as part of the Civil War legislation enacted under President Lincoln to minimize fraud by contractors and profiteers against the Union Army.[16] Private citizens, through the *qui tam* whistleblowing provision, were empowered to identify and combat such fraud, minimize waste, and ensure better supplies for Union soldiers.[17] The FCA's *qui tam* provision permits individuals with independent knowledge of an FCA violation to file a suit on behalf of the Government as "*qui tam* relators."[18] The Act applies to any entity submitting a false claim for payment involving federal funds.[19] After the Civil War, the Act saw limited use for several decades due to misuse by relators, which led to court-imposed limits along with limiting amendments passed in 1946.[20]

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13. *See id.* (describing industry-wide "anticipation of DOJ investigations and qui tam cases scrutinizing [ ] policies and programs relating to DEI").

14. *See infra* note 108 (summarizing several prominent law firm blogs advising clients on how to respond to the threat of FCA claims brought due to unlawful DEI).

15. *See* Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 600 U.S. 181, 230 (2023) (finding affirmative action programs unconstitutional because they "lack sufficiently focused and measurable objectives warranting the use of race, unavoidably employ race in a negative manner, involve racial stereotyping, and lack meaningful end points").

16. *See* Stephen F. Hayes, *Enforcing Civil Rights Obligations through the False Claims Act*, 1 COLUM. J. RACE & L. 29, 32 (2011).

17. *See id.*

18. *See* 31 U.S.C. § 3729. *Qui tam* abbreviates the Latin "qui tam pro domino rege quam pro si ipso in hac parte sequitur," meaning "who pursues this action on our Lord the King's behalf as well as his own." QUI TAM SUITS AND THE CIVIL FALSE CLAIMS ACT, BT MA-CLE 16-1.

19. *See* Hayes, *supra* note 16, at 33–34 ("[T]o establish liability under the FCA, a relator must establish that (1) a false claim or false statement (2) was submitted to the United States for payment (3) with knowledge that the claim or statement in support of the claim was false or fraudulent.").

20. *See id.* at 32.

More than 120 years after its enactment, public revelations of excessive government payments to Department of Defense contractors revived the FCA and prompted Congress to enact the 1986 amendments.[21] These changes gave the Act teeth, making it easier and more economically enticing for relators to use the *qui tam* provisions to bring claims.[22] Historically, relators received at most 10% of a lawsuit's damages remedy if the government intervened in the suit, and a maximum of 25% if it did not.[23] The 1986 amendments increased this to 25% in cases with government intervention and 30% without.[24] Moreover, these amendments imposed new mandatory fines and allowed the government to recover treble damages in civil suits.[25]

Since then, the number of private contractors providing services to the federal government has ballooned, outnumbering federal employees nearly two to one.[26] As a result, opportunities for FCA actions continue to grow.[27] In fiscal year 2024 alone, the DOJ secured over $2.9 billion in judgments and settlements involving FCA claims.[28] FCA violations have historically been awarded for Medicare reimbursement claims and Department of Defense claims relating to inadequate goods or products from military contractors.[29] Emerging sectors for FCA recovery include pandemic-related fraud, with reported judgments exceeding $250

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21. *See id.*
22. *See id.*
23. *See* Ben Depoorter & Jef De Mot, *Whistle Blowing: An Economic Analysis of the False Claims Act*, 14 SUP. CT. ECON. REV. 135, 140 (2006).
24. *See id.*
25. *See id.*
26. *See* Elaine Kamarck, *Is the Government Too Big? Reflections on the Size and Composition of Today's Federal Government*, BROOKINGS INST. (Jan. 28, 2025), https://www.brookings.edu/articles/is-government-too-big-reflections-on-the-size-and-composition-of-todays-federal-government/ [https://perma.cc/XFD5-K55Q].
27. *See id.*
28. *See* Press Release, Office of Public Affairs, False Claims Act Settlements and Judgements Exceed $2.9B in Fiscal Year 2024 (Jan. 15, 2025), https://www.justice.gov/archives/opa/pr/false-claims-act-settlements-and-judgments-exceed-29b-fiscal-year-2024 [https://perma.cc/LQQ9-YNYB].
29. *See* Hayes, *supra* note 16 at 35–36 (noting that Medicare reimbursement claims are often awarded where services were either never performed or performed inaccurately). In the DOJ's press release concluding fiscal year 2024, the department noted that healthcare reports lead FCA recoveries, followed by defense-related fraud. *See* False Claims Act Settlements and Judgements Exceed $2.9B in Fiscal Year 2024, *supra* note 28 (highlighting that healthcare related reports lead FCA recoveries and total just over $1.67 billion); *By the Numbers: Trends in FY 2024 False Claims Act Recoveries*, BERKELEY RSCH. GRP., LLC (July 23, 2025), https://www.thinkbrg.com/insights/publications/by-the-numbers-trends-in-fy-2024-false-claims-act-recoveries/ [https://perma.cc/RV6T-EG95] (highlighting that defense-related fraud averaged $192 million annually over the last decade).

million in fiscal year 2024, and cyber fraud, which saw increased reporting following the 2021 launch of the DOJ's Civil Cyber Fraud Initiative.[30] Federal civil rights law violations were not traditionally a major source of FCA claims until the DOJ memorandum issued during President Trump's second term.[31]

2. *Legal Standard Under the False Claims Act*

To establish liability under the FCA, the relator must show that (1) a false statement or false claim, (2) was submitted to the federal government for payment, and (3) that it was submitted by a party who had knowledge that the claim was fraudulent.[32] Here, knowledge does not require a specific intent to defraud the government, but is sufficiently satisfied by "reckless[ly] disregarding the truth or falsity of the information."[33]

An FCA relator must also follow a defined procedure to file their FCA suit.[34] The complaint must be served on the government, accompanied by material evidence.[35] The government then has 60 days when it may take over the action or decline to participate, allowing the relator to continue moving the case forward.[36] If the government takes over the action, the relator may become a party to the suit, and the government may opt to dismiss, but only after

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30. *See* False Claims Act Settlements and Judgements Exceed $2.9B in Fiscal Year 2024, *supra* note 28 (emphasizing that "resolutions in fiscal year 2024 also reflect the Department's focus on key enforcement priorities, including . . . fraud in pandemic relief programs, and violations of cybersecurity requirements in government contracts"); Press Release, Office of Public Affairs, Deputy Attorney General Lisa O. Monaco Announces New Civil Cyber-Fraud Initiative (Oct. 6, 2021), https://www.justice.gov/archives/opa/pr/deputy-attorney-general-lisa-o-monaco-announces-new-civil-cyber-fraud-initiative [https://perma.cc/QPD5-WZSL]. The Civil Cyber-Fraud Initiative suggested that it would "hold accountable entities or individuals that put U.S. information or systems at risk by knowingly providing deficient cybersecurity products or services," and outlined that submitting inaccurate scores, overstating a company's compliance, misrepresenting compliance, delaying or ignoring efforts aimed at remediation, ignoring negative findings of reports or audits, or taking internal action to cover up actions impacting compliance, could amount to an FCA violation. *Id.*

31. *See* discussion *supra* Part I.A.

32. *See* QUI TAM SUITS AND THE CIVIL FALSE CLAIMS ACT, *supra* note 18.

33. *See id.*; 31 U.S.C. § 3729. Subsequently, in order to submit a cause of action for retaliation to submission of an FCA action, a plaintiff needs to establish (1) they are covered by the scope of the FCA's protection, (2) they engaged in a protected activity under said statute, (3) they faced retaliation, and (4) said retaliation was the cause of the FCA protected activity. 31 U.S.C. § 3730(h).

34. *See* Hayes, *supra* note 16, at 34.

35. *See id*.

36. *See id*.

the relator has a chance to be heard on the motion.[37] The government also has the power to settle the suit if it sees fit, so long as the court finds the settlement fair, regardless of any objection from the relator.[38]

3. *Legal Standard Under Implied Certification Theory*

In recent years, new FCA claims have been pursued through an "implied certification theory" under which parties may be held liable if they certify their compliance with certain federal government payment conditions and then breach those terms.[39] This theory rests on the premise that acceptance "impliedly certifies [a party's] continued compliance with those conditions."[40] Implied certification typically applies to federal programs requiring organizations to certify that they "attest[ ] to certain facts in order to participate" therein.[41] In 2016, in *Universal Health Services Inc. v. United States ex. rel. Escobar*, the Supreme Court held that implied certification is a valid theory of FCA liability.[42] *Escobar* outlined that the government may recover under this theory only where (1) "the defendant knowingly violate[s] a requirement" that (2) "the defendant knows is material to the Government's payment decision."[43]

Under the FCA, materiality is defined as "having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property."[44] Courts worked thereafter to further clarify the materiality standard and outlined several non-determinative factors to consider.[45] These are colloquially known as the "*Escobar* factors" and include (1) whether the violated requirement in question was a "condition of payment," (2) whether the essence of the bargain was mooted by the violation, (3) whether

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37. *See id.*
38. *See id.*
39. *See* Susan C. Levy, Daniel J. Winters & Aaron M. Forester, *The Use of the Implied Certification Theory in FCA Cases*, FOR THE DEF. (Sep. 2007), https://www.jenner.com/a/web/vauXg5qfxWJymBHgCDoCRr/4HRMZQ/FTD_0907_LevyWintersForester.pdf?1315403299 [https://perma.cc/YJ6C-TETW].
40. *See id.*
41. *See id.*
42. *See* Universal Health Servs., Inc. v. United States *ex. rel.* Escobar, 579 U.S. 176, 181 (2016).
43. *See id.*
44. *See* 31 U.S.C. § 3729(b)(4).
45. *See* United States *ex rel.* Mei Ling v. City of Los Angeles, 389 F. Supp. 3d 744, 753 (C.D. Cal. 2019).

the violation was substantial, and (4) what actions the Government took upon learning of the violation or similar infractions.[46]

The knowledge requirement, though present in every FCA iteration, was clarified only recently in the 2023 case *United States ex rel. Schutte v. SuperValu Inc.*[47] There, the Supreme Court emphasized that FCA liability depends on a defendant's *subjective* understanding of their compliance, or lack thereof, rather than on an objective reasonableness test.[48] This means that to bring an FCA suit under an implied certification theory, the government (or relator) must show that the particular defendant was *actually aware* of the violation.[49]

II. THE INTERSECTION OF FEDERAL CIVIL RIGHTS LAW AND THE FALSE CLAIMS ACT

A. THE FALSE CLAIMS ACT AND FEDERAL CIVIL RIGHTS LAWS PRE-2025

Historically, the FCA has rarely been used to enforce federal civil rights laws—though it is not unheard of.[50] In 1995, in *United States v. Inc. Village of Island Park*, a federal district court in New York successfully used the FCA to penalize the knowing misappropriation of federal Fair Housing Act funds.[51] In 2012, in

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46. *See id.* (describing application of the "Escobar" factors); *Escobar*, 579 U.S. at 180 (reviewing a claim raised under the "implied false certification" FCA liability theory).

47. *See* United States *ex rel.* Schutte v. SuperValu Inc., 598 U.S. 739, 748–49 (2023).

48. *See id.* Here, the plaintiffs sued retail pharmacies SuperValu and Safeway under the FCA, claiming these organizations defrauded Medicare and Medicaid by offering discounts to customers but reporting higher non-discounted prices to the government. *Id.* at 743–44. Defendants were granted summary judgment after alleging they did not act knowingly, with the court questioning their knowledge of "usual and customary" drug pricing. *Id.* at 743–45. Upon review, the Supreme Court unanimously held the scienter requirement under the FCA is one of *subjective* knowledge and belief, not an objective reasonableness test. *Id.* at 748.

49. *SuperValu Inc.*, 598 U.S. at 748.

50. *See* United States v. Inc. Vill. of Island Park, 888 F. Supp. 419, 439 (E.D.N.Y. 1995) (providing an example of using the FCA to enforce federal civil rights laws); discussion *infra* Part I.B.1 (reviewing the history of the False Claims Act).

51. *See id.* In 1995, in *Village of Island Park*, a federal district court judge in New York found an FCA violation when the municipality received federal funds for a subsidized housing program, and only pre-selected white applicants. *Id.* at 439–40. Here, the district court held that FCA provisions ought to be read broadly to encompass not only claims "by a person who makes a false statement or a false record to get the government to pay a claim, but also by one who engages in a fraudulent course of conduct which causes the government to pay a claim for money." *Id.* The district court found that "claims for payment submitted

United States ex rel. Anti-Discrimination Center v. Westchester, a federal court saw the first deployment of the FCA to enforce a local government's obligation to affirmatively further fair housing under a federally subsidized housing program.[52] Finally, as described below, a recent case alleging Housing and Urban Development (HUD) violations was brought under the FCA's implied certification theory and offers a helpful model for analyzing allegations under this framework.[53] Prior to the Civil Rights Fraud Initiative, as articulated throughout this case law, civil rights-related FCA suits predominantly involved governmental guarantees regarding fair housing.[54]

B. CASE STUDY #1: *UNITED STATES EX REL. LING V. CITY OF LOS ANGELES*

In 2024, in *United States ex rel. Ling v. City of Los Angeles*, a federal district court judge in California approved a $38.2 million settlement where the plaintiffs claimed that the city advanced an affordable housing project funded by the federal government without meeting disability requirements that were a condition of the funding.[55] Here, after taking over from a *qui tam* relator, the federal government alleged that HUD granted Los Angeles

under the rigged contract constitute false claims within the meaning of the False Claims Act," where an agent of the city, "knowing that it was improper and illegal," pre-selected purchasers and gave them advanced notice on when to deliver their letters to city hall. *Id.* Ultimately, the court held that the "fraudulent pre-selection scheme" in question "clearly constitute[d] the type of fraudulent conduct which the False Claims Act was intended to reach." *Id.* It also found that the fraudulent conduct and false statements constituted an FCA offense once filed with the federal government. *Id.*

52. *See* United States *ex rel.* Anti-Discrimination Ctr. of Metro N.Y., Inc. v. Westchester Cnty., 2012 WL 1574819, at *1 (S.D.N.Y. May 3, 2012). In 2012, a case was brought against Westchester County after a nonprofit raised an FCA suit via a *qui tam* relator. *Id.*; *See* Hayes, *supra* note 16, at 40. The organization claimed Westchester knowingly submitted false certifications it claimed would work to affirmatively further fair housing. *See id.* The district court granted summary judgment on most major issues in the case, except whether the FCA's knowledge requirement was met. *Id.* at 42. Before proceeding to trial on the knowledge element, the federal government intervened and reached a settlement with the County for over $51 million. *Id.*

53. *See* discussion *infra* Part II.A.1.

54. *See Inc. Vill. of Island Park*, 888 F. Supp. at 439; *Anti-Discrimination Ctr.*, 2012 WL 1574819, at *1; United States *ex rel.* Mei Ling v. City of Los Angeles, 389 F. Supp. 3d 744, 749 (C.D. Cal. 2019).

55. *See* Press Release, City of Los Angeles Agrees to Pay $38.2M to Resolve False Claims Act Suit for Alleged Misuse of Department of Housing and Urban Development Grant Funds (Aug. 26, 2024), https://www.justice.gov/archives/opa/pr/city-los-angeles-agrees-pay-382m-resolve-false-claims-act-suit-alleged-misuse-department [https://perma.cc/VA7X-E3VZ]; *Mei Ling*, 389 F. Supp. 3d at 749.

millions of taxpayer dollars after the city made false promises to build affordable and accessible housing.[56] Instead, the city used the money to "discriminate against people with disabilities in Los Angeles by depriving them of an equal opportunity to participate in assisted housing programs."[57]

1. *Materiality*

In *Ling*, the district court applied the *Escobar* factors to assess whether compliance with the relevant statutes and regulations was "material" to HUD's decision to award funding to the defendants.[58] First, the district court found that the "condition of payment" factor was satisfied, because the funds were clearly conditioned on compliance with federal accessibility laws.[59] Regarding the second *Escobar* factor, the court found that the "essence of the bargain" was violated.[60] This was because federal housing grants expressly aimed at "remedy[ing] an array of social ills," including challenges faced by persons with disabilities, were instead used to discriminate, subverting the grant's aims.[61] On the third factor, the "significance of the violation," the district court deemed the violation severe, noting that over two hundred alleged accessibility violations were submitted, along with a systematic failure by defendants to provide accessibility services over fifteen years.[62] Finally, the district court held that the government's actions after learning about non-compliance did not remedy the circumstances.[63] Even after learning of alleged violations, HUD continued to grant funding via the entitlement programs.[64] Generally, under this *Escobar* factor, evidence that the government fully paid a claim, despite knowing the recipient violated its requirements, provides "very strong evidence that

56. *See Mei Ling*, 389 F. Supp. 3d at 749.
57. *See id.*
58. *See id.* at 753; Universal Health Servs., Inc. v. United States *ex. rel.* Escobar, 579 U.S. 176, 181 (2016).
59. *See* United States *ex rel.* Mei Ling v. City of Los Angeles, 389 F. Supp. 3d 744, 753–54 (C.D. Cal. 2019).
60. *See* United States *ex. rel.* Mei Ling v. City of Los Angeles, 2018 WL 3814498, at *15 (C.D. Cal. July 25, 2018).
61. *See id.*
62. *See Mei Ling*, 389 F. Supp. 3d at 755–56.
63. *Id.* at 756–59.
64. *See* United States *ex rel.* Mei Ling v. City of Los Angeles, 389 F. Supp. 3d 744, 756–59 (C.D. Cal. 2019).

those requirements are not material."[65] The court emphasized that no single factor in *Escobar* was intended to be determinative and thus conducted a balancing test, ultimately finding that materiality was adequately pled.[66]

2. *Knowledge*

Next, the court found that the FCA's scienter requirement was easily satisfied because the city knew the representations were false when it certified compliance.[67] Here, although no specific city employee was identified as making misrepresentations, the court deemed this nonfatal because the complaint identified the specific programs to which Los Angeles submitted false claims, the specific funding requests and applications, and the city's failures to comply with federal accessibility laws.[68] Thus, because the city *was* aware of its false representations, and those misrepresentations were material to the awarding of grant funds, the district court denied the city's motion to dismiss.[69]

III. THE CIVIL RIGHTS FRAUD INITIATIVE: INCOMPATIBLE WITH FCA INTENT AND THE IMPLIED CERTIFICATION LIABILITY ELEMENTS

A. THE INITIATIVE DISTORTS THE TRADITIONAL PURPOSE AND HISTORICAL INTENT OF THE FALSE CLAIMS ACT

First, based on the text and legislative intent of the FCA, this newly encouraged avenue for FCA *qui tam* actions distorts the FCA's purpose. DEI efforts do not per se constitute financial fraud.[70] When passing the FCA's 1986 Amendments, the Senate report clarified that the Act's purpose is to empower the Federal Government to recover "false claims for *money or property* upon the United States," or from the submission of false information that

65. *See* Universal Health Servs., Inc. v. United States *ex. rel.* Escobar, 579 U.S. 176, 195 (2016).

66. *See Mei Ling*, 389 F. Supp. 3d at 766 (finding that the other *Escobar* factors weighed in favor of materiality).

67. *See* United States *ex. rel.* Mei Ling v. City of Los Angeles, 2018 WL 3814498, at *10 (C.D. Cal. July 25, 2018).

68. *See id.* at *11.

69. United States *ex rel.* Mei Ling v. City of Los Angeles, 389 F. Supp. 3d 744, 748 (C.D. Cal. 2019).

70. *See* discussion *infra* Part III.A.

supported those claims.[71] In discussing the FCA, the report emphasized that the Act is intended to target fraudulent attempts "to cause the Government to pay out sums of money or to deliver property or services."[72] The report described the impetus for the proposed amendment as the proliferation of fraud cases raised against some of the nation's largest contractors at the time.[73] The amendment responded to a severe fraud problem within government contracting, which urgently called for modernizing the FCA to combat government waste.[74] The report communicates that the FCA aims to target waste and financial fraud and requires a showing of monetary loss resulting from defrauding the government.[75]

The Senate report also provides several examples of "false claims" that qualify under the act.[76] These include: claims for goods or services not provided (or provided in violation of contract terms, specifications, statutes, or regulations); false claims for reimbursement under Medicare or Medicaid; false applications for a loan from a government agency; fraudulently cashing a government check; and fraudulent attempts to pay the government less than it is owed for goods or services.[77] Government contractors or recipients of federal funding who possess DEI policies do not fit squarely within any conceivable definition or example of a "false claim" as articulated in the report.[78] Put simply, possessing a DEI policy is not an act of financial fraud, and doing so poses real challenges in quantifying monetary damages or loss for the

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71. *See* S. REP. NO. 99-345, at *8 (1986).

72. *See id.* at *9.

73. *See id.*

74. *See id.* at *1–2. The report cites a steady increase in fraud across multiple government programs including welfare and benefits, disaster relief, and crop subsidies—especially noteworthy was the increase plaguing defense contracting. *Id.* An investigation, largely prompting the proposed reform, showed "45 of the 100 largest defense contractors, including 9 of the top 10, were under investigation for multiple fraud offenses." *Id.*

75. *See id.* The point is driven home by statistics from 1980, showing as much as ten percent of the annual budget was drained by fraud. *Id.* at *3. Though the Civil Rights Fraud Initiative flags universities as potential hotbeds of fraud, the entire Department of Education was estimated to have spent only $190.64 billion in budgetary resources in 2025: just 1.4% of the federal budget. *Agency Profile: Department of Education*, USA SPENDING (Sep. 29, 2025), https://www.usaspending.gov/agency/department-of-education?fy=2025 [https://perma.cc/JJ7T-EPKC].

76. *See* S. REP. NO. 99-345, at *9 (1986).

77. *See id.*

78. *See id.* (describing false claims under the FCA as those which "cause the Government to pay out sums of money or to deliver property or services").

government.[79] Thus, the most logical theory on which FCA claims could be pursued in this space is the implied certification theory.[80] As articulated below, however, recovery under this theory is also unlikely.[81]

B. THE INITIATIVE'S SUGGESTED USES ARE UNLIKELY TO SURVIVE THE IMPLIED CERTIFICATION THEORY'S MATERIALITY AND KNOWLEDGE REQUIREMENTS

For FCA suits based on alleged unlawful DEI to succeed, the most likely path is under the newer implied certification theory, which asserts that government contractors or recipients of federal funding implicitly agree not to violate federal civil rights law guidelines, as a condition of receiving those funds.[82] To succeed on this theory, the government, or a *qui tam* relator, would need to show (1) that the condition in question was "material" to the agreement and influenced the government's decision to provide funds, and (2) that the Act's knowledge requirement was satisfied.[83]

1. *Materiality*

On its face, the language of the Ending Illegal Discrimination EO, released several months before the formal establishment of the Civil Rights Fraud Initiative, appears intended to subvert analysis under the FCA's materiality requirement.[84] The order

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79. *See* Khorri Atkinson, *Legal Hurdles Await False Claims Act Attacks on Corporate DEI*, BLOOMBERG L. (June 5, 2025), https://news.bloomberglaw.com/daily-labor-report/legal-hurdles-await-false-claims-act-attacks-on-corporate-dei [https://perma.cc/6X4Z-NCB8] (predicting that deployment of the FCA to target DEI-related misrepresentation will likely prove challenging because harms created by diversity efforts are often subjective or qualitative, and larger workplace hiring or HR efforts may be difficult to quantify); Michael Shaheen & Spencer Bruck, *The Complexities of Assessing Damages in FCA Cases*, CROMWELL & MORING LLP (Jan. 23, 2024), https://www.cmhealthlaw.com/2024/01/the-complexities-of-assessing-damages-in-fca-cases/ [https://perma.cc/DR4F-NWTM] (reviewing, writ large, the difficulty with quantifying and assigning damages under the False Claims Act).

80. *See* discussion *infra* Part III.B.

81. *See* discussion *infra* Part I.B.3.

82. *See* discussion *infra* Part III.C.

83. *See* Universal Health Servs., Inc. v. United States *ex. rel.* Escobar, 579 U.S. 176, 181 (2016).

84. *See* Exec. Order No. 14173, 90 Fed. Reg. 8633 (Jan. 21, 2025) (mandating government agencies must include terms within contracts of grants stating compliance with non-discrimination *is* material to payment decisions).

directs agency heads to include in every grant or contract a term requiring the recipient to "agree that its compliance in all respects with all applicable federal anti-discrimination laws is material to the government's payment decisions" for purposes of the FCA.[85] Yet it is questionable whether the government's mere assertion that the materiality requirement is satisfied actually makes it so, given that the Supreme Court has articulated a test for evaluating materiality.[86] If courts choose to proceed with the Supreme Court's materiality analysis, they will likely analyze the four *Escobar* factors instead.[87]

Suits brought as directed by the Civil Rights Fraud Initiative will probably satisfy the first *Escobar* factor: the "condition of payment" requirement, given the express language of the Ending Illegal Discrimination EO.[88] Under that EO, contractors and grant recipients must certify that they do not have programs that promote DEI in violation of federal anti-discrimination laws.[89] Where the Federal Government has established its aversion to allegedly discriminatory DEI programs as a condition of receiving funding, this element will likely be satisfied.[90]

Under the second prong of *Escobar*, however, relators may face a challenge.[91] It is doubtful that a company's DEI policies (or lack thereof) can be considered "central" to the bargain, for example, in the case of a defense contractor providing surveillance systems to the Government, or a healthcare organization seeking Medicaid reimbursements.[92] In *Ling*, the central bargain was violated when

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85. *Id.*

86. *See Escobar*, 579 U.S. at 181 (evaluating and "clarify[ing] how that rigorous materiality requirement should be enforced").

87. *See* United States *ex rel.* Mei Ling v. City of Los Angeles, 389 F. Supp. 3d 744, 753 (C.D. Cal. 2019). (describing the *Escobar* four-part standard for assessing materiality under implied certification theory).

88. *See* Universal Health Servs., Inc. v. United States *ex. rel.* Escobar, 579 U.S. 176, 181 (2016). (emphasizing that, per the condition of payment requirement, "what matters is not the label the Government attaches to a requirement, but whether the defendant knowingly violated a requirement that the defendant knows is material to the Government's payment decision"); *See* Exec. Order No. 14173, *supra* note 84.

89. *See* Exec. Order No. 14173, *supra* note 84.

90. *Id.*

91. *See Mei Ling*, 389 F. Supp. 3d at 753 (coining the second *Escobar* factor as whether the "violation went to the essence of the bargain"); *Escobar*, 579 U.S. at 193 (couching analysis of materiality in the likely impact of the supposed misrepresentation).

92. *See* United States *ex. rel.* Mei Ling v. City of Los Angeles, 2018 WL 3814498, at *15 (C.D. Cal. July 25, 2018) ("[B]efore a violation of the FCA can be found based on a certification theory, the Court must find the false statement sought to undermine a fundamental or core purpose of the statute governing the contract." (quoting United States

federal housing grants—aimed expressly at providing support to persons with disabilities—were used to discriminate, directly subverting the grant's aims.[93] The same level of contravention is unlikely to be seen in many of the violations suggested under the Civil Rights Fraud Initiative.[94] Unless the central bargain of the grant or contract at issue is similarly rooted in equity, as in *Ling*—unlikely for most federal contracts—this tenet will go unfulfilled.[95]

Third, one must consider whether the violation was substantial.[96] Here, it is questionable whether DEI initiatives aimed at promoting egalitarian, equal-opportunity workplaces would constitute significant violations of federal civil rights laws.[97] In *Ling*, one factor in determining that the violation was substantial was the length of the non-compliance period, which spanned more than fifteen years.[98] Here, where the newly enacted guidance is only several months old, the short duration of the non-compliance weighs against a determination of this nature.[99]

Finally, the fourth prong, which evaluates the government's actions upon learning of the violation or a similar one, could also cut either way.[100] While President Trump's administration has taken sweeping action against some organizations, namely private universities as grant recipients, whose DEI and other policies violate the administration's theory of federal civil rights law, the

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ex rel. Humane Soc'y of U.S. v. Hallmark Meat Packing Co., 2013 WL 5753784, at *15 (C.D. Cal. Apr. 30, 2013)) (internal quotations marks omitted)).

93. *See id.*

94. *See id.* at *15–16 (noting the government's stated core purpose of its statute at issue was to support disabled applicants, ultimately holding that "the Court cannot conclude at this time that the Government received the benefit of its bargain").

95. *See id.*

96. United States *ex rel.* Mei Ling v. City of Los Angeles, 389 F. Supp. 3d 744, 753 (C.D. Cal. 2019).

97. *See* Universal Health Servs., Inc. v. United States *ex. rel.* Escobar, 579 U.S. 176, 193 (2016) ("[T]he False Claims Act is not 'an all-purpose antifraud statute,' or a vehicle for punishing garden-variety breaches of contract or regulatory violations . . . [a] misrepresentation cannot be deemed material merely because the Government designates compliance with a particular statutory, regulatory, or contractual requirement as a condition of payment.") (citing Allison Engine Co., Inc. v. United States *ex rel.* Sanders, 553 U.S. 662, 672 (2008)).

98. *See* United States *ex. rel.* Mei Ling v. City of Los Angeles, 2018 WL 3814498, at *11 (C.D. Cal. July 25, 2018) ("[T]he Government's complaint identifies more than two hundred accessibility violations at thirty-five of the City's housing projects, failure at the programmatic level to create accessible programs and services, and a period of noncompliance spanning over a decade and a half.").

99. *See id.* (noting that the violations in *Mei Ling* spanned over fifteen years, in contrast with potential Civil Rights Fraud Initiative violations, which would be short-term and current breaches).

100. *See Mei Ling*, 389 F. Supp. 3d at 753.

method of identifying and penalizing violators has been arbitrary.[101] Penalizing some organizations while failing to penalize others with similar policies would seemingly run counter to the materiality argument under the fourth prong.[102] Thus, in summation, where three of the four *Escobar* factors may be unsatisfied, it is dubious whether a claim could proceed on these grounds.[103]

2. *Knowledge*

Regardless of whether courts find the materiality requirement satisfied, the scienter requirement is unlikely to be met in many cases arising from the Civil Rights Fraud Initiative.[104] Under the subjective knowledge requirement articulated in *SuperValu Inc.*, institutions facing *qui tam* relators alleging unlawful DEI are unlikely to meet this threshold.[105] If an organization reasonably believed that its DEI practices met federal standards at the time of its alleged violation, the knowledge standard would not be met.[106]

It is doubtful that most organizations partnering with the federal government, whether as grant recipients or federal contractors, believe their policies violate federal civil rights laws.[107] At present, many of these organizations are working swiftly to ensure compliance with federal guidance to shield

101. *See* Peter Eisler et al., *Trump's Campaign of Retribution: At Least 470 Targets and Counting*, REUTERS (Nov. 26, 2025) (on file with the *Columbia Journal of Law & Social Problems)* (noting that a total of 470 people and organizations "have been targeted for retribution since Trump took office – an average of more than one per day," and characterizing these efforts as a "vengeance campaign").

102. *See id.* (emphasizing the lack of predictability when organizations are penalized for their DEI policies); United States *ex rel.* Mei Ling v. City of Los Angeles, 389 F. Supp. 3d 744, 753 (C.D. Cal. 2019).

103. *See id.* at 753; Universal Health Servs., Inc. v. United States *ex. rel.* Escobar, 579 U.S. 176, 180 (2016).

104. *See* United States *ex rel.* Schutte v. SuperValu Inc., 598 U.S. 739, 749 (2023) ("FCA's scienter element refers to respondents' knowledge and subjective beliefs—not to what an objectively reasonable person may have known or believed."). Thus, the Government would need to show not that each violator *should have* known their DEI policies violated federal guidelines, but that they *actually knew* a violation had occurred. *Id.*

105. *See id.* (noting that the scienter requirement is "subjective"). Thus, whether grant recipients or federal contractors, *subjectively* believe they are violating federal laws is presently at issue. *See id.*

106. *See* Atkinson, *supra* note 79 (hypothesizing "if an entity reasonably believed its DEI practices met federal law at the time of the alleged violation, that belief may defeat claims of submitting false information").

107. *See infra* note 108.

themselves from litigation.[108] Over the past several months, countless national law firms have published memoranda and guidance for clients or prospective clients on how best to protect themselves and their businesses from potential FCA violations on this basis.[109] The landscape is rapidly evolving, as the language of the federal guidelines is unclear and subject to change.[110] The Ending Illegal Discrimination EO denounces "programs promoting DEI" without a clear definition, while mentioning "mandates," "preferences," and "workforce balancing" as violations without defining those terms or explaining how to satisfy them.[111] Overall, companies and the law firms advising them remain uncertain about their compliance with federal standards.[112]

In the first months of President Trump's second term, multiple conflicting definitions of DEI were used across executive orders and White House statements, making it difficult for organizations to know, per the statute's requirement, when a violation has occurred.[113] For example, Executive Order 13985, "Ending Radical Indoctrination in K–12 Schooling," defines "discriminatory equity

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108. *See* Erin Connell & David Rhinesmith, *What Does the DOJ Guidance on Unlawful DEI Signal About False Claims Act Enforcement?*, ORRICK, HERRINGTN & SUTCLIFFE LLP (Sep. 4, 2025), https://www.orrick.com/en/Insights/2025/09/What-Does-the-DOJ-Guidance-on-Unlawful-DEI-Signal-About-False-Claims-Act-Enforcement [https://perma.cc/P97V-CFNA]; Michael S. Arnold et al., *The False Claims Act and President Trump's DEI Executive Order: Federal Contractor Employers Must Take Notice*, MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C. (Feb. 7, 2025), https://www.mintz.com/insights-center/viewpoints/2226/2025-02-07-false-claims-act-and-president-trumps-dei-executive [https://perma.cc/D2MA-CKFB]; Lysa C. Dykstra et al., *Strategy Considerations for Companies Assessing Risks of Fraud Liability for DEI Programs*, MORGAN, LEWIS & BOCKIUS LLP (June 23, 2025), https://www.morganlewis.com/pubs/2025/06/strategy-considerations-for-companies-assessing-risks-of-fraud-liability-for-dei-programs [https://perma.cc/WLK3-C57J]; Meghan E. Flynn et al., *DOJ Guidance Aims to Clarify "Illegal DEI" Raising the Stakes for Potential Investigation and Enforcement*, K&L GATES LLP (Aug. 4, 2025), https://www.klgates.com/DOJ-Guidance-Aims-to-Clarify-Illegal-DEI-Raising-the-Stakes-for-Potential-Investigations-and-Enforcement-8-4-2025 [https://perma.cc/38WW-PCQ3].

109. *See* Atkinson, *supra* note 79.

110. *See* Guy Brenner & Olympia Karageorgiou, *Government Contractor Compliance & Regulatory Update*, PROSKAUER ROSE LLP (Feb. 12, 2025), https://www.governmentcontractorcomplianceupdate.com/2025/02/12/dei-and-government-contractors-a-high-stakes-shift/ [https://perma.cc/32UG-9NN3] (describing the "high stakes shift" that has occurred for federal contractors as a result of President Trump's recent executive orders); Debo Adegbile, et al., *President Trump's Second Term: Anti-DEI Executive Orders*, WILMER CUTLER PICKERING HALE AND DORR LLP (Jan. 22, 2025), https://www.wilmerhale.com/en/insights/client-alerts/20250122-president-trumps-second-term--anti-dei-executive-orders [https://perma.cc/4XXP-8ZEW] (summarizing five anti-DEI executive orders issued in the first month of President Trump's second term).

111. *See* Exec. Order No. 14173, 90 Fed. Reg. 8633 (Jan. 21, 2025).

112. *See supra* note 108.

113. See *infra* notes 114–118 and accompanying text.

ideology" as an doctrine that "treats individuals as members of preferred or disfavored groups, rather than as individuals, and minimizes agency, merit, and capability in favor of immoral generalizations."[114] Executive Order 14185, "Restoring America's Fighting Force," defines a DEI office as an office established to "influenc[e] hiring or employment practices at the institution with respect to race, sex, color, or ethnicity, other than through the use of color-blind and sex-neutral hiring processes."[115] On February 5, 2025, Attorney General Pam Bondi defined unlawful DEI as "programs, initiatives, or policies that discriminate, exclude, or divide individuals based on race or sex."[116] Most vaguely, in a statement made that same month, the White House defined DEI as "factors that favor some Americans over others."[117] These orders illustrate the confusion organizations are likely facing, reducing the likelihood that they will be found to have knowingly violated federal guidance.[118]

C. CASE STUDY #2: *THORNTON V. NATIONAL ACADEMY OF SCIENCES*

In November 2025, in *Thornton v. National Academy of Sciences*, the D.C. district court dismissed an FCA suit alleging the discriminatory use of federal funding.[119] While not precisely a case of alleged unlawful DEI, as suggested by the Civil Rights Fraud Initiative, it offers the closest preview of how future FCA cases brought under this theory may fare.[120]

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114. *See* Exec. Order No. 13985, 90 Fed. Reg. 8853 (Jan. 29, 2025).

115. *See* Exec. Order No. 14185, 90 Fed. Reg. 8763 (Jan. 27, 2025).

116. *See* Memorandum from the Att'y Gen. to All Fed. Agencies, (Feb. 5, 2025), https://www.justice.gov/ag/media/1409486/dl [https://perma.cc/7GBN-GW6B].

117. *See* Jessica Guynn, *'Kick in the Teeth': Disabled Federal Workers Fear for their Jobs After Trump Remarks*, USA TODAY (Feb. 5, 2025), https://www.usatoday.com/story/money/2025/02/05/disabled-federal-employees-dei-trump/77976332007/ [https://perma.cc/AMG9-DEWG].

118. *See* Brenner & Karageorgiou, *supra* note 110 (explaining that federal contractors are unclear about the contours of unlawful DEI).

119. *See* Thornton v. Nat'l Acad. of Scis., 2025 WL 3123732, at *1 (D.D.C. Nov. 7, 2025).

120. *See id.* (describing a case of discrimination raised under the FCA); Lyndsay A. Gordon et al., *A Sign of What's to Come? Court Dismisses FCA Retaliation Complaint Based on Alleged Discriminatory Use of Federal Funding*, CROWELL & MORING LLP (Nov. 21, 2025), https://www.crowell.com/en/insights/client-alerts/sign-of-whats-to-come-court-dismisses-fca-retaliation-complaint-based-on-alleged-discriminatory-use-of-federal-funding [https://perma.cc/LND2-GB9Q].

White male plaintiff Thomas Thornton was an employee of the National Academy of Sciences (NAS), which received federal funding.[121] Thornton alleged that NAS retaliated against him for complaining about racial discrimination in violation of the FCA.[122] Thornton's complaints do not allege that his employer engaged in unlawful DEI, but rather that NAS, after assembling a team focused on "integrat[ing] Western Science and Indigenous and Local Knowledge of environmental change," effectively silenced Indigenous voices during the study.[123] Though Thornton did not submit an FCA suit to advance the goals of President Trump's DOJ, he followed the same playbook that the government promotes.[124] Thornton alleged that "use of federal funds . . . to support a racist study was a misuse of funding and constituted a violation of the Federal False Claims Act."[125]

Ultimately, the district court granted NAS's motion to dismiss for failure to state a claim.[126] In reaching its holding, the court emphasized that for an FCA claim to be viable, it must include "*some* evidence of 'false certifications . . . in connection with funding claims.'"[127] The court rejected Thornton's theory that "engaging in discriminatory conduct while performing a federally funded study necessarily constitutes the misuse of federal funds in violation of the False Claims Act,"—the very theory the DOJ suggests future *qui tam* relators follow.[128] This case, one of the first to address the question under the new regime established by the Ending Illegal Discrimination EO, demonstrates that a discrimination complaint alone, even when linked to federal funding, may be insufficient to assert an FCA claim.[129]

121. *See Thornton*, 2025 WL 3123732, at *1. NAS is a recipient of federal funding, partially provided by the National Aeronautics and Space Administration (NASA). *Id.*

122. *See id.* (alleging violations of the FCA, D.C. Human Rights Act, and D.C. common law).

123. *See id.* at *1 (claiming NAS "ignored or silenced Indigenous voices during the study," and removed a prominent Indigenous scholar from the committee).

124. *See* Justice Department Establishes Civil Rights Fraud Initiative, *supra* note 1 (strongly encouraging "anyone with knowledge of discrimination by federal funding recipients to consider filing a qui tam action under the False Claims Act"); Thornton v. Nat'l Acad. of Scis., 2025 WL 3123732, at *2–3 (D.D.C. Nov. 7, 2025) (demonstrating how said playbook was followed).

125. *See Thornton*, 2025 WL 3123732, at *1

126. *See id.* at *2.

127. *See id.*

128. *See id.*; Justice Department Establishes Civil Rights Fraud Initiative, *supra* note 1 (describing the process for submitting FCA claims based on alleged discrimination).

129. *See* Gordon et al., *supra* note 120 (hypothesizing future FCA outcomes).

Conclusion

When the Department of Justice announced the Civil Rights Fraud Initiative in May 2025, it sent shockwaves through government contractors and recipients of federal funding nationwide. Organizations were apprehensive that disgruntled employees, perhaps those passed over for promotion, would become *qui tam* relators if their employer retained any semblance of a DEI policy. While the DOJ strongly encouraged whistleblowing targeting these purported civil rights violations, this avenue deviates from the primary purpose of the False Claims Act. Moreover, the likelihood of success on these claims under the FCA is low. Diversity, equity, and inclusion policies do not present the type of financial fraud or waste the government sought to combat when enacting the FCA, and they stretch the Act's intended purpose. As such, alleged discriminatory conduct, absent any alleged false certifications related to funding claims, is unlikely to constitute a viable FCA violation. And even if pursued under the implied certification theory, these FCA claims are unlikely to meet the required materiality and knowledge thresholds. Regardless of whether these claims succeed, however, the Ending Illegal Discrimination EO is likely to achieve one of its fundamental aims: it will push organizations to retreat from all DEI policies out of fear of litigation.[130]

130. *See supra* Part I.A.