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Escobar at Ten: A Decade of False Claims Act Confusion

Matthew D. Benedetto, Sam McHale, and Josh Schapiro*

In this article, the authors explore how Universal Health Services v. Escobar *reshaped False Claims Act litigation in three areas—falsity, materiality, and scienter—and examine why the questions the Supreme Court left open remain important.*

Ten years after *Universal Health Services v. Escobar* was decided, one of the Supreme Court's most important recent False Claims Act (FCA) decisions continues to baffle litigants and courts alike. What was billed as a case that could have killed the implied false-certification theory of FCA liability did no such thing. Instead, the Supreme Court breathed a new but confounding life into the theory. In doing so, the Court also elevated scienter and materiality as "demanding" requirements designed to balance out the expanded way for *qui tam* plaintiffs and the government to prove falsity when claims for payment themselves did not present literal falsity. Ten years later, the result of the *Escobar* decision is that FCA liability often turns on jurisdiction-specific approaches to the FCA's core elements of falsity, materiality, and scienter—creating meaningful litigation, compliance, and reputational risks for companies that do business with the government.

This uncertainty matters because *Escobar* did not narrow the FCA battleground so much as shift the theater of war. Before *Escobar*, the principal debate was whether implied false certification was a viable theory of falsity at all. After *Escobar*, the focus shifted to where that theory begins and ends, how demanding materiality really is, and what a defendant must know to have acted with scienter. Ten years of lower-court litigation have produced a more developed body of law, but not a uniform one. This article explores how *Escobar* reshaped FCA litigation in three areas—falsity, materiality, and scienter—and examines why the questions the Court left open remain important.

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Falsity: What *Escobar* Resolved—And What It Did Not

A wartime measure enacted to prevent contractors from bilking the Union Army at the Civil War's nadir, the FCA would become the United States' most powerful civil weapon to combat fraud against the government.[1] It authorizes private citizens, called relators, to bring *qui tam* actions on the government's behalf and provides for extraordinary remedies, including treble damages and mandatory civil penalties. Today, the FCA is the government's primary civil fraud enforcement tool. Although historically its causes of action have been brought most frequently against companies and individuals in the healthcare and defense-contracting industries, the statute has a broad reach, imposing liability on any person who knowingly submits, or causes the submission of, a materially false or fraudulent claim for payment to the government.[2]

The central question in any FCA case is whether the defendant submitted a false claim for payment. This is straightforward when a claim contains an express falsehood—as when a contractor bills the government for gunpowder but delivers only sawdust. But fraud is not always so blatant. By the time *Escobar* reached the Supreme Court, the circuits were divided on the viability and scope of another, more complicated theory of falsity called an "implied false certification." That theory treats a claim for payment to the government as an implicit assurance that the contractor has complied with all the material legal requirements to be entitled to payment, and holds that the failure to disclose a knowing violation of a material legal requirement renders the claim misleading—and therefore false under the FCA—even when the claim itself is facially truthful.

The Seventh Circuit had rejected implied false certification entirely, holding that the theory lacked support in the FCA's text.[3] The First, Fourth, and D.C. Circuits, by contrast, applied the theory—but disagreed among themselves about a critical secondary question: Could a claim be legally false if the violated provision was not expressly designated a condition of the government's payment? The Second and Sixth Circuits said no, requiring an express designation.[4] The First, Fourth, and D.C. Circuits said yes, reasoning that a rigid express-designation requirement would allow the government to unwittingly immunize fraud simply by failing to use magic words in their contracts.[5]

On December 4, 2015, the Supreme Court granted certiorari to resolve these questions. Legal commentators framed the case in precisely those terms at the time, portraying *Escobar* as a referendum on the future of implied false certification.[6]

In a unanimous opinion, the Court held that an implied false certification can support FCA liability "at least" where two conditions are satisfied: (1) the claim makes "specific representations" about goods or services provided, and (2) the defendant's failure to disclose violations of material legal requirements makes those representations "misleading half-truths."[7]

Escobar thus confirmed the validity of the implied false certification theory, but the opinion's carefully hedged language—especially its repeated use of the qualifier "at least"—has generated subsequent litigation over what counts as an implied false certification in the varied contexts to which the FCA applies.

In *Escobar*, the relators (the Escobars) were the parents of a teenage patient who received treatment at a Massachusetts mental health clinic operated by the defendant (Universal Health Services) that provided counseling services reimbursed by Medicaid.[8] The patient died after suffering adverse reactions to medication prescribed during her treatment at the clinic.[9] An investigation showed that the clinic had failed to comply with state regulations governing the supervision and qualifications of its staff, and state regulators imposed modest sanctions.[10] The Escobars filed a *qui tam* action under the FCA alleging that the clinic's reimbursement requests were false claims because they implicitly represented compliance with those regulations.[11]

In affirming the viability of the implied false certification theory, the Court held that payment codes corresponding to specific types of mental health services governed by Massachusetts regulations, such as individual therapy or group therapy, were "specific representations."[12] Those codes, the Court reasoned, were affirmative representations about the nature of the services provided. And when the provider used those codes while concealing that the personnel delivering the services lacked required licenses and supervision under MassHealth regulations, the codes became "misleading half-truths"—"representations that state the truth only so far as it goes, while omitting critical qualifying information."[13]

On the second certified question, the Court held that liability does not turn on whether the legal requirements violated by the defendant were "expressly designated as conditions of payment."[14]

This was a defeat for the defense bar, which had argued that only violations of express conditions of payment could give rise to FCA liability. The Court rejected that approach, finding no basis in the text of the FCA to support it.

Escobar was notable as much for what it reached as for what it did not. The Court twice used the qualifying phrase "at least" when describing the two conditions for implied false certification, leaving some doubt about whether those conditions were required in every case or were merely sufficient. Relatedly, the Court expressly reserved a question that continues to bedevil the lower courts: "whether all claims for payment implicitly represent that the billing party is legally entitled to payment."[15] By validating the theory while refusing to define its boundaries, the Court has left litigants to sketch the contours of the implied false certification standard one case at a time.

The first and most immediate question addressed by lower courts was whether *Escobar*'s two conditions are necessary elements of an implied false certification, or merely sufficient. The majority rule for the past ten years has been that they are requirements. The Ninth Circuit has read *Escobar* to hold that "[r]elators must satisfy *Escobar*'s two conditions" for an implied false certification.[16] Other circuits, including the Second, Sixth, and Seventh, have not expressly reached the same conclusion in precedential opinions, but in practice take the same approach as the Ninth Circuit.[17]

Other circuits have charted a different course. In *United States v. Triple Canopy, Inc.*, the Fourth Circuit rejected the argument that *Escobar*'s requirements established the exclusive means of establishing an implied false certification.[18] In that case, Triple Canopy had submitted monthly invoices listing the number of guards and hours worked at Al Asad Airbase in Iraq under a security contract—but the invoices said nothing about whether all of the guards had met the contract's marksmanship qualifications (they did not).[19] The company argued that, unlike the MassHealth billing codes in *Escobar*, its generic invoices contained no "specific representations" about the quality of services provided and therefore were not implied false certifications.[20]

The Fourth Circuit disagreed, holding that *Escobar* is "not as crabbed as Triple Canopy posits."[21] Without identifying any specific representations on Triple Canopy's invoices, the court of appeals reasoned that "anyone reviewing Triple Canopy's invoices 'would probably—but wrongly—conclude that [Triple Canopy] had complied with core [contract] requirements.'"[22] The Fourth Circuit also concluded that the government had pleaded materiality because, among other reasons, it was "common sense" that the decision to pay for armed security in an active combat zone would be influenced by knowledge that guards could not "shoot straight."[23] The Supreme Court denied certiorari, leaving the Fourth Circuit's reading of *Escobar* intact.[24]

The First Circuit has identified a further wrinkle. *Escobar* notably had rejected the First Circuit's formulation of a viable implied false-certification theory, which was that a party that submits a claim for payment implicitly represents that it is legally entitled to payment.[25] In *Humana Inc. v. Biogen, Inc.*, the court of appeals harkened back to that much more expansive standard, observing that "*Escobar* did not address whether a mere request for payment could give rise to an implied certification."[26] The practical implications are significant. If a bare request for payment is insufficient to make an implied false certification, then defendants that use simple invoice-style claims—without either billing codes established by regulators or narrative descriptions of services provided—may have a structural defense against implied false-certification claims. If, however, every request for payment implies that the claimant is legally entitled to payment, then the universe of potentially actionable claims expands dramatically in a regulatory state as vast as ours.

Even accepting that specific representations are required in most cases, *Escobar* offered little other than its own facts to explain what constitutes a sufficiently "specific" representation. Nevertheless, recent cases suggest that a representation is more likely to be deemed "specific" if it conveys concrete, substantive information about the goods or services provided—particularly concerning the nature, type, quality, or quantity of those goods or services. Courts have repeatedly found that payment codes and other statements that reference governing regulations convey sufficiently specific information, as in *Escobar*.[27] On the other side of the ledger, courts have found that overbroad or generic certifications are not sufficient.[28]

Escobar validated a theory of liability that had been rejected by one circuit and applied inconsistently by others. But by hedging its holding and failing to articulate a concrete test for implied false certifications, the Court ensured that the falsity element would remain a source of uncertainty rather than a settled framework. The implied false certification theory is here to stay. Exactly what it requires, and how far it reaches, are for the next decade of litigation to resolve.

Materiality's Newfound Significance

Escobar's most consequential legacy may be its treatment of materiality. Before 2016, materiality was often an afterthought in FCA litigation—an element some courts recognized, others questioned, and few treated as the statute's principal restraint against open-ended liability. *Escobar* changed all that, and in the process elevated materiality into the statute's core limiting principle. The Court described materiality as a "demanding" and "rigorous" requirement but offered only general guidance on how to apply the standard. A decade of case law has confirmed materiality's enhanced role in FCA litigation but left its application highly context-dependent and, in many respects, unsettled.

These developments were not inevitable. Before *Escobar*, materiality had played only an uncertain and minor role in FCA cases. Some circuits had imposed a materiality requirement on FCA claims,[29] but not every circuit had even decided whether materiality was an element.[30] Courts also applied competing standards. The majority of circuits adopted a "natural tendency" test under which a misrepresentation was material if it had the *potential* to influence the government's payment decision,[31] while the Eighth Circuit applied a more demanding outcome-oriented test asking whether the government actually would have paid a claim had it known of the alleged noncompliance.[32]

Escobar addressed these issues, adding three key doctrinal points.

First, *Escobar* held that materiality is an element of every FCA claim even though the word "material" does not appear in § 3729(a)(1)(A).[33] Although the Court did not decide whether that requirement derives from the common law or the statute,[34] the Court nevertheless was clear that materiality is rooted in common-law principles,[35] explaining that it turns on the likely or actual effect of a misrepresentation on the government's payment decision.[36]

Second, the Court described its standard as "demanding" and "rigorous," rejecting the assertion that any violation of a known condition of payment is automatically material: "The False Claims

Act is not 'an all-purpose antifraud statute' or a vehicle for punishing garden-variety breaches of contract or regulatory violations."[37]

Finally, and perhaps most consequentially for the decade of litigation that followed, the Court rejected a bright-line rule, and instead articulated a test for materiality based on a set of nonexhaustive factors. *Escobar* directs courts to consider evidence related to the government's view of the legal requirement alleged to have been breached. Did the government expressly designate the requirement as a condition of payment? How does the government react to violations of the requirement? Is the noncompliance minor or insubstantial?[38] The Court predicted that it would not be too fact intensive to resolve such questions on a motion to dismiss or at summary judgment.[39]

Among *Escobar*'s nonexhaustive materiality factors, one has emerged as the analytical workhorse: whether the noncompliance goes to the "very essence of the bargain" between the defendant and the government. This language—drawn from *Escobar*'s citation to common-law contract principles and appearing only in a footnote in the opinion—has given courts an objective framework for distinguishing between regulatory violations that are central to the reasons why the government is paying the defendant, and those that are merely peripheral.

For the latter type of case, defendants have a powerful tool for seeking dismissal. In *United States ex rel. Taylor v. Boyko*, for example, the relator alleged that a medical practice had billed Medicare while its corporate certificate of authorization was lapsed—which the relator argued was material because it meant the practice was not legally authorized to operate.[40] The Fourth Circuit disagreed, drawing a contrast between the absence of a personal medical license, which would likely be "central" to the provision of medical services, and the bureaucratic failure to renew a corporate filing.[41] The D.C. Circuit's decision in *United States ex rel. McBridge v. Halliburton Co.* provides another useful example.[42] There, the relator alleged that the company had maintained falsely inflated head-count data on a military logistics contract.[43] However, the court of appeals found that the head-count data had "no bearing on costs billed to the Government" and "no indication the data affected award fee decisions."[44] Without a connection between the alleged falsehood and the government's payment calculus, the misrepresentation was not material, even if it was intentional.[45]

These cases suggest that the essence of the bargain inquiry is doing analytical work. Courts are asking a functional question and focusing on whether the violated requirement is connected to the reason why the government is paying for services. If the answer is yes, because the requirement concerns the quality, quantity, or character of the goods or services the government has paid for, materiality may be readily established.[46] But if the answer is no, because the requirement is administrative, tangential, or unconnected to the payment rationale, then courts may be reluctant to find materiality, even at the pleading stage.[47] The substantial middle ground between these two scenarios, where the requirement's connection to payment is neither obvious nor remote, is more challenging. The facts matter.

Although materiality has become an increasingly significant issue in FCA litigation over the past ten years, the lower courts have not settled on a uniform test for applying the *Escobar* standard. Many courts have treated the "essence of the bargain" consideration as the central materiality inquiry.[48] (Indeed, Justice Clarence Thomas has since referred to the FCA's materiality standard as interchangeable with an "essence of the bargain" inquiry, albeit in a case under the federal wire fraud statute.[49]) Meanwhile, despite reminders that *Escobar*'s factors are not a rigid test,[50] some courts appear to have treated them as such.[51] The factors, after all, are not independent variables—they are different lenses through which to examine the same underlying question: Would the government have cared?

Even where courts treat materiality as the holistic inquiry that *Escobar* seemed to envision, that inquiry has benefits and drawbacks. On one hand, it gives courts the flexibility needed to evaluate materiality within the context of a diverse array of government programs, regulatory frameworks, and contractual arrangements. A materiality test that works for Medicare hospice benefits must also work for defense procurement contracts, Veterans home loans, and federally funded transit projects. A rigid, multi-factor test might be expected to produce arbitrary results when applied across such varied contexts. On the other hand, the flexibility of the materiality analysis makes outcomes difficult to predict—a precarious reality for companies facing treble damages and exorbitant civil penalties.

Regardless, *Escobar* shifted how courts think about materiality by placing a greater emphasis on objective factors, including the essence of the bargain.[52] The objective nature of the inquiry may have been on the Court's mind when it explained that materiality is not too fact intensive to resolve under Rule 12 or Rule 56. Ten years later, however, the cases only partly bear this out: lower courts still appear hesitant to resolve FCA cases at the motion to dismiss and summary judgment stages. Because none of *Escobar*'s factors is individually dispositive, a relator cannot be required to plead all of them. And because the government's response to noncompliance is only one consideration among several, the absence of allegations about past government enforcement does not doom an FCA case on the pleadings. For a defendant to prevail at the pleading stage, the complaint itself typically must reveal facts undermining materiality. In *Petratos v. Genentech*, for example, the relator had alleged that the defendant concealed safety data about a cancer drug but had essentially conceded that the FDA would not have acted any differently and that Centers for Medicare & Medicaid Services would have continued to reimburse claims even with full knowledge of the alleged noncompliance.[53] Under those circumstances, the Third Circuit had no trouble affirming dismissal, concluding that the FCA is not a "blunt instrument" to enforce compliance with all regulations.[54] But one would expect *Petratos* to be the rare case indeed.

Escobar's treatment of materiality was in many ways its most ambitious contribution to the FCA's development. It transformed materiality from a secondary element into one of the FCA's principal battlegrounds. That shift has given courts a more disciplined way to separate fraud from immaterial noncompliance, but it has not yielded a uniform doctrine with clear rules. Materiality is now more important and less predictable than it was ten years ago.

Scienter: A Limiting Principle of Limited Utility

At oral argument, Universal Health Services' counsel decried any view that the FCA applies to cases, such as *Escobar*, where "the court of appeals had to invoke a regulation that cross referenced another regulation that nobody had cited and said the failure to announce a violation of that [regulation] when submitting a claim is fraud."[55] To address concerns about contractors being subject to treble damages and civil penalties for unwitting violations of obscure regulations buried deep in the federal code, the Supreme Court turned not only to materiality—but also to scienter. As the Escobars' counsel told the Supreme Court, scienter would solve "virtually" all of the concerns raised by Universal Health.[56] And the Solicitor General agreed that scienter is "really crucial here."[57]

Ten years later, the reality is more complicated. *Escobar* said remarkably little about scienter. But the opinion generated related questions that the lower courts and, eventually, the Supreme Court, have been forced to confront: What must a defendant know to have acted with scienter under the FCA? Must a defendant's knowledge extend not just to the underlying violation but to whether the government cares about the violation? And does the FCA's scienter standard—which comprises not only actual knowledge but also deliberate ignorance and reckless disregard—really function as the promised limit on overbroad enforcement?

The FCA defines "knowingly" to mean that "a person, with respect to information," has actual knowledge of the information or acts in deliberate ignorance or reckless disregard of the truth or falsity of the information.[58] With respect to what information exactly? The statute imposes liability on any person who "knowingly presents" a "false or fraudulent claim," but *Escobar* does not say anything further on that issue.[59] In the absence of further guidance, lower courts developed a dual knowledge requirement, generally requiring that the defendant (1) knowingly violate a statutory, regulatory, or contractual requirement, while (2) knowing—or at least acting in reckless disregard or deliberate ignorance of the fact—that compliance with that requirement was material to the government's payment decision.[60]

Seven years after *Escobar*, the Supreme Court returned to the FCA's scienter element in *United States ex rel. Schutte v. SuperValu Inc.*[61] In that case, retail pharmacy chains had offered discount prescription programs to their customers but reported their higher retail prices—rather than their discounted prices—as their "usual and customary" charges for purposes of Medicaid and Medicare reimbursement.[62] The relators presented evidence that the companies believed their discounted prices were their true usual and customary prices and had actively tried to prevent regulators from discovering the discount programs.[63]

The Seventh Circuit had affirmed summary judgment for the defendants on scienter, holding that because the regulatory definition of "usual and customary" was ambiguous, and the defendants' interpretation was "objectively reasonable," they could not have acted "knowingly" as a matter of law—regardless of what they actually believed.[64] But the Supreme Court reversed, unanimously. The Court held that scienter "refers to a defendant's knowledge and subjective beliefs—not to what an objectively reasonable person may have known or believed."[65] The Court explained that the statute's three definitions of knowingly each "focus on what [a defendant] thought and believed" when making a claim—a subjective inquiry.[66] Thus, a defendant which submitted a claim for payment despite knowing it had violated a regulation could not escape liability simply because a reasonable person might have read the regulation differently.

Before *SuperValu*, defendants in circuits following the Seventh Circuit's objective standard had a powerful defense: so long as they could identify an objectively reasonable interpretation of an ambiguous regulation, they could defeat scienter at summary judgment regardless of their actual beliefs. *SuperValu* eliminated that defense. It also left important questions unanswered—and may have created new ones. The decision addressed scienter only in the context of falsity but said nothing about whether the defendant must also know that the false statement was material to the government's payment decision.

The Fifth Circuit confronted this separate question in *United States ex rel. Montcrief v. Peripheral Vascular Associates, P.A.*, where the defendant argued that the relator must prove that it knew its misrepresentations were material.[67] The Fifth Circuit disagreed, at least for the express falsehoods at issue in that case.[68] Because the case did not involve implied false certifications, the court held that *Escobar*—and the dual knowledge requirement—did not control.[69]

This uncertainty has significant practical consequences. Healthcare companies and federal procurement contractors, who work in industries governed by complicated and voluminous regulatory schemes and contracts, are frequently subject to hundreds or thousands of legal requirements. A contractor who knowingly violates a regulation or provision it regards as a minor administrative requirement—but which a court later deems material—arguably faces a different moral situation than a contractor who knows it is violating a provision the government considers essential to payment. But whether the law treats those two situations in the same way is a question the courts have not yet definitively resolved.

In circuits that do not require knowledge of materiality, the knowledge element reduces to a single question akin to the pre-*Escobar* inquiry: Did the defendant know, or at least recklessly disregard, that it was violating the regulation when it submitted claims? Those circuits do not inquire whether the defendant was aware that the government cared about the violation at all. Without a scienter-of-materiality requirement, that key question goes unanswered—and the full weight of the FCA's treble-damages and civil-penalties regime could fall on defendants who have violated a rule they may have genuinely believed was immaterial.

The upshot is that a company's defenses may vary across jurisdictions. In circuits that follow the dual knowledge framework, defendants can argue not only that they did not know they were violating the regulation at all, but also that they did not know that such a violation would be material to the government's payment decision—a defense that may be supported by evidence of the government's prior acquiescence to similar noncompliance, or the absence of regulatory guidance highlighting the requirement's importance to the government. However, in circuits that have not adopted that framework, or that adhere to *Montcrief*'s limitations, defendants may contest scienter only on narrower grounds: actual knowledge, deliberate ignorance, or reckless disregard of the falsity of the claim itself.

Many aspired for scienter to serve as the FCA's limiting principle, separating genuine fraud from the vast universe of regulatory noncompliance that is inevitable—but not what most would deem fraudulent—in systems as complex as healthcare or federal procurement. But a decade of practice has revealed that scienter can frequently be just another contested factual question—one that is expensive to litigate, difficult to resolve short of trial, and ultimately dependent on the same granular, case- and jurisdiction-specific inquiries into what the defendant knew, when it knew it, and what it chose to do about it.

A testament to the questions it left unresolved, *Escobar* has been cited in nearly 1,400 cases since it was published. For the foreseeable future, *Escobar* supplies the terrain on which litigants will contest FCA liability in legal falsity cases. To limit liability and comply with the law, companies operating in regulated industries must be attentive to how courts define falsity, how rigorously they apply materiality, and what level of knowledge scienter requires. That is no easy task, as the questions *Escobar* left unresolved remain highly consequential, and often subject to luck of jurisdiction.

Notes

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1. See United States v. McNinch, 356 U.S. 595, 599 (1958) ("Testimony before the Congress painted a sordid picture of how the United States had been billed for nonexistent or worthless goods, charged exorbitant prices for goods delivered, and generally robbed in purchasing the necessities of war.").

2. 31 U.S.C. § 3729; see, e.g., United States v. Centra Health, Inc., 724 F. Supp. 3d 549 (W.D. Va. 2024) (healthcare); U.S. ex rel. Longhi v. United States, 575 F.3d 458 (5th Cir. 2009) (federally funded research program for small businesses); U.S. ex rel. Hendow v. Univ. of Phoenix, 461 F.3d 1166 (9th Cir. 2006) (university's eligibility for Title IV funds); Harrison v. Westinghouse Savannah River Co., 176 F.3d 776 (4th Cir. 1999) (Department of Energy contract); Hendrix ex rel. United States v. J-M Mfg. Co., Inc., 76 F.4th 1164 (9th Cir. 2023) (public works project).

3. United States v. Sanford-Brown, Ltd., 788 F.3d 696, 711-12 (7th Cir. 2015).

4. Mikes v. Straus, 274 F.3d 687, 700 (2d Cir. 2001); United States ex rel. Hobbs v. MedQuest Associates, Inc., 711 F.3d 707, 714 (6th Cir. 2013).

5. See, e.g., United States ex rel. Escobar v. Universal Health Services, Inc., 780 F.3d 504, 512-13 (1st Cir. 2015); United States ex rel. Badr v. Triple Canopy, Inc.., 775 F.3d 628, 636-37 & n.5 (4th Cir. 2015); United States v. Science Applications Int'l Corp., 626 F.3d 1257, 1268 (D.C. Cir. 2010).

6. See, e.g., Ronald Mann, "Argument preview: Justices to consider whether False Claims Act Permits Qui Tam Suits for 'Implied' Falsehood," SCOTUSblog (Apr. 12, 2016), https://www.scotusblog.com/2016/04/argument-preview-justices-to-consider-whether-false-claims-act-permits-qui-tam-suits-for-implied-falsehood/.

7. Universal Health Services, Inc. v. United States ex rel. Escobar, 579 U.S. 176, 190 (2016).

8. Id. at 183.

9. Id.

10. Id. at 184.

11. Id. at 185.

12. Id. at 189.

13. Id. at 187.

14. Id. at 190.

15. Id. at 188.

16. United States ex rel. Rose v. Stephens Inst., 909 F.3d 1012, 1018 (9th Cir. 2018).

17. Fed. Deposit Ins. Corp. v. Fifth Third Bank, N.A., 2023 WL 7130553, at *2 (2d Cir. Oct. 30, 2023); United States ex rel. Laughlin v. Radiation Therapy

Servs., P.S.C., 148 F.4th 791, 799 (6th Cir. 2025); United States v. Sanford-Brown, Ltd., 840 F.3d 445, 447 (7th Cir. 2016).

18. Triple Canopy straddled Escobar. Before the Supreme Court issued its decision, the Fourth Circuit had already concluded in United States ex rel. Badr v. Triple Canopy, 775 F.3d 628 (4th Cir. 2015), that an implied false certification was a valid theory when a contractor knowingly makes a request for payment under a contract but withholds information about its noncompliance with material requirements; but after issuing Escobar, the Supreme Court granted certiorari in Triple Canopy, vacated that opinion, and remanded for further consideration. See 857 F.3d 175-77 (4th Cir. 2017).

19. 857 F.3d at 175-76.

20. Id. at 178.

21. Id.

22. Id.

23. Id. at 179.

24. 583 U.S. 941 (2017).

25. 579 U.S. at 185-86.

26. 126 F.4th 94, 106 (1st Cir. 2025).

27. 579 U.S. at 189; see, e.g., Ruckh v. Salus Rehabilitation, LLC, 963 F.3d 1089, 1104-05 (11th Cir. 2020) (CMS payment codes); Rose 909 F.3d at 1018 (certification that student was "eligible borrower"); United States v. Molina Healthcare of Illinois, Inc., 17 F.4th 732, 743 (7th Cir. 2021) (upcoding).

28. United States ex rel. Lee v. N. Metro. Found. for Healthcare, 2021 WL 3774185, at *16-17 (E.D.N.Y. Aug. 25, 2021).

29. See, e.g., U.S. ex rel. Loughren v. Unum Grp., 613 F.3d 300, 307 (1st Cir. 2010) ("We have long held that the FCA is subject to a judicially-imposed requirement that the allegedly false claim or statement be material."); Harrison, 176 F.3d at 785; see also U.S. ex rel. Oliver v. The Parsons Corp., 498 F. Supp. 2d 1260, 1288 n.29 (C.D. Cal. 2006) (collecting courts of appeals cases).

30. See e.g., United States ex rel. Spay v. CVS Caremark Corp., 875 F.3d 746, 762 (3d Cir. 2017) ("Although prior to Universal Health, we had never decided whether the FCA contained a materiality requirement, the Supreme Court's analysis in Universal Health resolves any hesitation we may have otherwise had."); U.S. ex rel. Feldman v. Van Gorp, 697 F.3d 78, 87 n.5 (2d Cir. 2012).

31. Longhi, 575 F.3d at 470.

32. See Costner v. URS Consultants, Inc., 153 F.3d 667, 677 (8th Cir. 1998) ("[O]nly those actions by the claimant which have the purpose and effect of causing the United States to pay out money it is not obligated to pay, or those actions which intentionally deprive the United States of money it is lawfully due, are properly considered 'claims' within the meaning of the FCA.").

33. 579 U.S. at 194.

34. See id. at 192-93 ("We need not decide whether § 3729(a)(1)(A)'s materiality requirement is governed by § 3729(b)(4) or derived directly from the common law.").

35. Id. at 193.

36. Id. (quoting 26 R. Lord, Williston on Contracts § 69:12, p. 549 (4th ed. 2003)); id. at 193 n.5.

37. Id. at 194.

38. Id. at 194-95.

39. Id. at 195 n.6.

40. 39 F.4th 177, 187 (4th Cir. 2022).

41. Id. at 194.

42. 848 F.3d 1027 (D.C. Cir. 2017).

43. Id. at 1032.

44. Id. at 1033.

45. Id. at 1033-34.

46. See, e.g., Ruckh, 963 F.3d at 1105; United States ex rel. Wheeler v. Acadia Healthcare Co., Inc., 127 F.4th 472, 490 (4th Cir. 2025).

47. See, e.g., Taylor, 39 F.4th at 187 (lapsed corporate filing).

48. See, e.g., Ruckh, 963 F.3d at 1105 ("Like upcoding, ramping is material, as it goes to the essence of the parties' economic relationship."); Wheeler, 127 F.4th at 489 ("In order to meet the materiality requirement, the fraud alleged under the False Claims Act must be 'so central to' the purpose of the government contract that the government 'would not have paid the[ ] claims had it known of the[ ] violations.'" (citation omitted)); United States ex rel. Foreman v. AECOM, 19 F.4th 85, 117 (2d Cir. 2021) (concluding that alleged contractual violations were insubstantial because they did not "go to the heart of the bargain").

49. See Kousisis v. United States, 605 U.S. 114, 146 (2025) (Thomas, J., concurring) (citing Escobar to explain that "the essence-of-the-bargain standard is rigorous and context specific").

50. See United States v. Care Alternatives, 81 F.4th 361, 367 & n.1 (3d Cir. 2023) ("As this Court and our sister circuits have repeatedly recognized, [materiality] is a 'holistic,' totality-of-the-circumstances inquiry." (collecting cases)).

51. See, e.g., United States ex rel. Holt v. Medicare Medicaid Advisors, Inc., 115 F.4th 908, 919-22 (8th Cir. 2024); United States ex rel. Prather v. Brookdale Senior Living Communities, Inc., 892 F.3d 822, 831-37 (6th Cir. 2018); United States ex rel. Bibby v. Mortg. Invs. Corp., 987 F.3d 1340, 1347-52 (11th Cir. 2021); Foreman, 19 F.4th at 109-18; United States ex rel. Janssen v. Lawrence Mem'l Hosp., 949 F.3d 533, 541-45 (10th Cir. 2020).

52. See, e.g., Janssen, 949 F.3d at 541 ("[R]ather than directing courts to focus exclusively on a reasonable person—as they would under a purely objective analysis—or exclusively on the mindset of the misrepresenter—as they would under a purely subjective analysis—Escobar focuses the materiality inquiry on the likely reaction of the recipient."); Lee v. N. Metro. Found. for Healthcare, Inc., 2022 WL 17366627, at *2 (2d Cir. Dec. 2, 2022) ("To be sure, an assessment of materiality can entail an objective consideration of facts." (citing Escobar, 579 U.S. at 193)); United States v. Melgen, 967 F.3d 1250, 1259

(11th Cir. 2020) ("To begin, we are not at all sure that Escobar didn't approve of the objective standard that our current materiality standard is based on.").

53. 855 F.3d 481, 485 (3d Cir. 2017).

54. Id. at 490.

55. Oral Arg. Tr. 9:13-22, Universal Health Services, Inc. v. United States ex rel. Escobar, No. 15-7 (U.S. Apr. 19, 2016), https://www.supremecourt.gov/oral_arguments/argument_transcripts/2015/15-7_6537.pdf.

56. Id. at 25:16-22.

57. Id. at 43:7-10.

58. 31 U.S.C. § 3729(b)(1).

59. 31 U.S.C. § 3729(a)(1)(A).

60. See, e.g., Molina Healthcare, 17 F.4th at 744.

61. 598 U.S. 739 (2023).

62. Id. at 744-47.

63. Id. at 746-47.

64. See United States v. SuperValu Inc., 9 F.4th 455, 472 (7th Cir. 2021).

65. 598 U.S. at 749.

66. Id. at 751.

67. 133 F.4th 395, 407 (5th Cir. 2025).

68. Id. at 408.

69. Id.