

# Whistleblowing in Focus: Recent Developments, Emerging Issues, and Considerations for Companies

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## Introduction<sup>1</sup>

Many jurisdictions have passed laws promoting and protecting whistleblower reporting, particularly with respect to potential violations of law by companies and their executives, while certain law enforcement authorities have introduced monetary awards programs to provide incentives to report potential violations of law.<sup>2</sup> These previous efforts to encourage whistleblower reporting generally continued in the past year. In this three-part series, we first discuss the outlook for whistleblower programs in the United States under the new administration. Second, we review initiatives relating to whistleblower reports in other jurisdictions over the past year. Third, we address emerging issues and considerations for companies in relation to whistleblower reports.

<sup>1</sup> With thanks to Long Dang, Christian Grasinger, Keara Schmeiser, and Adam Siegel for their support in research and drafting Part 1 of the series.

<sup>2</sup> See, e.g., 18 U.S.C. § 1514A(a) (U.S. law protecting employees of publicly traded companies from retaliation for assisting in investigations or proceedings regarding fraud or violations of SEC rules or regulations); 15 U.S.C. § 78u-6(h) (U.S. law protecting from retaliation employees who provide information relating to securities law violations to the SEC); 31 U.S.C. § 3730(h) (U.S. law protecting employees, contractors, and agents from retaliation for efforts to stop False Claims Act violations); N.Y. Lab. L. § 740(2)(a) (New York law protecting employees from retaliation for disclosing or threatening to disclose violations of law or conduct posing a substantial and specific danger to the public health or safety); Public Interest Disclosure Act 1998, § 2(1) (UK) (UK law protecting a worker from “detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure”); Directive (EU) 2019/1937, art. 19 (EU directive for member states to “take the necessary measures to prohibit any form of retaliation against” whistleblower reporters); ADGM Whistleblower Protection Regulations § 5(1)(c) (Abu Dhabi law protecting whistleblowers from retaliation).

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## Part 1: The United States

While there have been shifts in enforcement priorities following the change in administrations in the United States, whistleblower programs continue to play a key role in providing enforcement agencies with information related to corporate misconduct. The new administration not only recognizes the utility of whistleblower programs, but has expanded such programs to encompass its key priorities. With significant headcount reductions in the federal government, enforcement agencies may rely more on information provided by whistleblowers as the agencies have fewer resources to generate and follow up on investigative leads.

### A. Department of Justice

#### 1. Criminal Division's Corporate Whistleblower Awards Pilot Program

In the past year, the U.S. Department of Justice ("DOJ") has continued to use monetary awards programs to encourage whistleblower reports relating to certain priority areas. In May 2025, the DOJ Criminal Division announced its expansion of the Corporate Whistleblower Awards Pilot Program ("Whistleblower Awards Program") that it rolled out in August 2024. Under this three-year pilot program, the DOJ offers monetary awards to individuals who report specified types of corporate misconduct. The original pilot program covered four subject areas related to

financial institution crimes; foreign bribery; domestic bribery and kickbacks; and health care offenses.<sup>3</sup>

To align with the enforcement priorities of the new administration, the Criminal Division expanded the scope of the program to include a number of additional eligible offenses such as procurement and federal program fraud; trade, tariff, and customs fraud; federal immigration violations; and offenses related to sanctions and material support of foreign terrorist organizations, cartels, and transnational criminal organizations.<sup>4</sup>

The Criminal Division, as it did under the previous administration, is trying to coordinate its policy initiatives aimed at incentivizing voluntary reporting. The May 2025 announcement regarding the expansion of the Whistleblower Awards Program coincided with the Criminal Division's announcement related to its White Collar Enforcement Plan and revisions to the Corporate Enforcement and Voluntary Self-Disclosure Policy ("CEP").<sup>5</sup> Under the revisions to the CEP, absent aggravating circumstances, where companies voluntarily self-disclose misconduct, fully cooperate, and timely and appropriately remediate, the Criminal Division *will* decline to prosecute.<sup>6</sup> Previously, the CEP only provided the *presumption* of a declination to companies that met the conditions.<sup>7</sup> The updated CEP incorporates a previous temporary amendment that the Criminal Division made to allow companies to qualify under the CEP even if a whistleblower reports to the DOJ before a company self-discloses.<sup>8</sup> Under the

<sup>3</sup> Memorandum from the U.S. Dep't of Just. Crim. Div., Corporate Whistleblower Awards Pilot Program at 5–6 (Aug. 1, 2024), *available at* <https://www.justice.gov/media/1362321/dl?inline>.

<sup>4</sup> Memorandum from the U.S. Dep't of Just. Crim. Div., Corporate Whistleblower Awards Pilot Program at 5–6 (updated May 12, 2025), *available at* <https://www.justice.gov/criminal/media/1400041/dl?inline> ["Updated Corporate Whistleblower Awards Memo"]; Memorandum from the U.S. Dep't of Just. Crim. Div., Focus, Fairness, and Efficiency in the Fight Against White-Collar Crime at 4–5 (May 12, 2025), *available at* <https://www.justice.gov/criminal/media/1400046/dl?inline> ["DOJ White-Collar Crime Memo"].

<sup>5</sup> See DOJ White-Collar Crime Memo, *supra* note 4; U.S. Dep't of Just. Crim. Div., Corporate Enforcement and

Voluntary Self-Disclosure Policy (updated May 12, 2025) *available at* <https://www.justice.gov/criminal/media/1400031/dl?inline> ["DOJ CEP Policy"].

<sup>6</sup> See DOJ CEP Policy, *supra* note 5, at 1.

<sup>7</sup> Cleary Gottlieb, DOJ Criminal Division Announces White Collar Enforcement Plan and Revisions to Three Key Policies (May 15, 2025), *available at* <https://www.clearygottlieb.com/news-and-insights/publication-listing/doj-criminal-division-announces-white-collar-enforcement-plan-and-revisions-to-three-key-policies>.

<sup>8</sup> Cleary Gottlieb, Whistleblowing in Focus: Recent Developments, Emerging Issues, and Considerations for Companies. Part One: Developments in the U.S. (Jan. 6, 2025), *available at* <https://www.clearygottlieb.com/news->

updated CEP, if a company self-reports to the DOJ within 120 days of receiving a whistleblower's internal report and otherwise meets the conditions for a declination, it will still qualify for a declination even if the whistleblower submits a report to the DOJ before the company's self-disclosure.<sup>9</sup>

This revision to the CEP is consistent with other policies, which the new administration has left in place, that encourage companies to make use of internal reporting to detect misconduct. In determining the amount of an award under the Whistleblower Awards Program, the DOJ may increase the award based on the whistleblower's participation in a company's internal compliance or reporting systems.<sup>10</sup> Conversely, the DOJ may decrease the award based on the whistleblower's interference with internal compliance or reporting systems.<sup>11</sup> In addition, under the Criminal Division's Evaluation of Corporate Compliance Programs, which prosecutors use to assess compliance programs in determining how to resolve a criminal investigation, "the existence of an efficient and trusted" internal reporting structure and investigation process is considered a hallmark of a well-designed compliance program.<sup>12</sup>

Since the start of the pilot program in August 2024, the Criminal Division has reported that the whistleblower

program has produced significant results. In December 2024, the Criminal Division announced that it had received over 250 tips in the program's first few months.<sup>13</sup> In September 2025, the Criminal Division reported that since expanding the program four months earlier, it had received over 300 tips and found almost 40% of them merited further investigation, including a number of tips relating to its current priority areas.<sup>14</sup>

## 2. *Antitrust Division's Whistleblower Rewards Program*

In July 2025, the DOJ's Antitrust Division announced a whistleblower rewards program, for the first time offering rewards for individuals who report antitrust crimes and related offenses.<sup>15</sup> The Antitrust Division created the program in partnership with the United States Postal Service ("USPS") and the United States Postal Service Office of Inspector General ("USPS OIG").<sup>16</sup> The partnership allows the Division to rely on USPS's statutory authority to offer and pay whistleblower rewards.<sup>17</sup> Eligible reports must affect the Postal Service, its revenues, or property.<sup>18</sup>

Like other federal whistleblower programs, eligible reports must provide original information and be made voluntarily.<sup>19</sup> Similar to the Whistleblower Awards Program and other programs, reports will still qualify

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<sup>9</sup> See DOJ CEP Policy, *supra* note 5, at 4.

<sup>10</sup> See Updated Corporate Whistleblower Awards Memo, *supra* note 4, at 10–11.

<sup>11</sup> *Id.* at 12.

<sup>12</sup> See U.S. Dep't of Just. Crim Div., Evaluation of Corporate Compliance Programs at 7–8 (updated Sept. 2024), *available at*

<https://www.justice.gov/criminal/criminal-fraud/page/file/937501/dl?inline=>.

<sup>13</sup> See Marshall Miller, Principal Associate Deputy Attorney General, Keynote Address at the Practising Law Institute's White Collar Crime 2024 Program (Dec. 6, 2024), *available at* <https://www.justice.gov/archives/opa/speech/principal-associate-deputy-attorney-general-marshall-miller-delivers-keynote-address>.

<sup>14</sup> Matthew R. Galeotti, Acting Assistant Attorney General, Remarks at Association of Certified Anti-Money Laundering Specialists (ACAMS) Conference (Sept. 16, 2025), *available at*

<https://www.justice.gov/opa/speech/acting-assistant-attorney-general-matthew-r-galeotti-delivers-remarks-association>.

<sup>15</sup> Press Release, Dep't of Just., Justice Department's Antitrust Division Announces Whistleblower Rewards Program (July 8, 2025), *available at*

<https://www.justice.gov/opa/pr/justice-departments-antitrust-division-announces-whistleblower-rewards-program>.

<sup>16</sup> Memorandum of Understanding Regarding the Whistleblower Rewards Program and Procedures between the Antitrust Division U.S. Dep't of Just., USPS, and OIG USPS ("Antitrust MoU") at 2 (May 7, 2025), *available at* <https://www.justice.gov/atr/media/1407261/dl?inline>.

<sup>17</sup> See *id.* (citing 39 U.S.C. §§ 2601 and 404(a)(7)).

<sup>18</sup> *Id.* at 4.

<sup>19</sup> *Id.* at 4–7; see Updated Corporate Whistleblower Awards Memo, *supra* note 4, at 3–5, 6–7; 17 C.F.R. § 240.21F-3(a); 17 C.F.R. § 165.1.

under the program if an individual first reported original information through an entity's internal reporting system and she can show that she reported to the Antitrust Division within 120 days of the internal report or her effective termination related to the internal disclosure, whichever is later.<sup>20</sup> Eligible reports must lead to a criminal conviction and fine of \$1 million or more, and individuals who coerced others to participate in the illegal activity or "were clearly the leader or originator of that activity" are not eligible.<sup>21</sup>

## **B. Securities and Exchange Commission and Commodity Futures Trading Commission**

### **1. Enforcement Actions**

While the Securities and Exchange Commission ("SEC") will continue to take enforcement actions against companies or individuals that interfere with whistleblower reporting or whose agreements clearly restrict whistleblower reporting, it is likely to pull back from aggressive enforcement of its rule barring actions to impede whistleblowers from reporting to it. SEC and Commodity Futures Trading Commission ("CFTC") rules prohibit "any action to impede an individual from communicating directly with" agency staff about a possible violation of applicable law, including "enforcing, or threatening to enforce, a

confidentiality agreement . . . with respect to such communications."<sup>22</sup>

The SEC has brought enforcement actions against companies for using employment, non-disclosure, or separation agreements that prohibit or place conditions on the ability of current or former employees to communicate directly with the agency. The SEC previously reported that the eleven enforcement actions it brought during fiscal year 2024 against those "who took action to impede whistleblowers from communicating" with the agency exceeded those in any prior fiscal year.<sup>23</sup> In contrast, in fiscal year 2025 the SEC brought two such enforcement actions, both under the prior administration.<sup>24</sup> It should be noted, however, that the high numbers in 2024 were due largely to a "sweep" investigation. While SEC Commissioner Hester M. Peirce has supported enforcement actions for violations of the SEC's rule barring actions to impede whistleblower reporting, she has criticized the SEC for "strain[ing] to read a violation into" agreements that were "not intended to and in fact [did] not impede communications" with the SEC.<sup>25</sup> But where agreements contain language that clearly restricts employee whistleblower communications—such as by failing to carve them out of non-disclosure or non-disparagement agreements—

<sup>20</sup> Antitrust MoU, *supra* note 16, at 7; see Updated Corporate Whistleblower Awards Memo, *supra* note 4, at 4; 17 C.F.R. § 240.21F-4(c)(3).

<sup>21</sup> Antitrust MoU, *supra* note 16, at 3–4.

<sup>22</sup> 17 C.F.R. § 240.21F-17(a) (providing that "[n]o person may take any action to impede an individual from communicating directly with the Commission staff about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement . . . with respect to such communications"); 17 C.F.R. § 165.19(b) (providing that "[n]o person may take any action to impede an individual from communicating directly with the Commission's staff about a possible violation of the Commodity Exchange Act, including by enforcing, or threatening to enforce, a confidentiality agreement or predispute arbitration agreement with respect to such communications").

<sup>23</sup> SEC, Office of the Whistleblower, Annual Report to Congress for Fiscal Year 2024 at 1 (Nov. 15, 2024),

available at <https://www.sec.gov/files/fy24-annual-whistleblower-report.pdf>.

<sup>24</sup> See SEC, Enforcement Actions Based on Actions Taken to Impede Reporting, available at <https://www.sec.gov/enforcement-litigation/whistleblower-program/whistleblower-protections#enforcement-actions>.

<sup>25</sup> Hester M. Peirce, Comm'r, Securities and Exchange Commission, A Caution on the Limits of Authority: Statement Regarding *In re The Brink's Company* (June 2022), available at <https://www.sec.gov/newsroom/speeches-statements/peirce-statement-brinks-company-062222>; Hester M. Peirce, Comm'r, Securities and Exchange Commission, The SEC Levels Up: Statement on *In re Activision Blizzard* (Feb. 2023), available at <https://www.sec.gov/newsroom/speeches-statements/peirce-statement-activision-blizzard-020323>.



the SEC is likely to act, just as it will when employers take actions to retaliate against whistleblowers.

The CFTC, in fiscal year 2024, brought its first enforcement action against a company for using confidentiality agreements that did not carve out communications with the agency.<sup>26</sup> The CFTC's order in that case stated that "language facially prohibiting an individual from communicating" with the agency violates its rule, "even without any additional actions impeding communications."<sup>27</sup> The CFTC's Republican Commissioners disagreed with the agency's interpretation of the rule and suggested that the SEC's enforcement actions under a similar theory did not provide sufficient notice to CFTC market participants about the CFTC's position.<sup>28</sup>

The SEC and CFTC have not yet published reports on their whistleblower programs for fiscal year 2025. We expect increased scrutiny by the SEC of the size of whistleblower awards, as Republican Commissioners have called for more public disclosure of the justification for award amounts, as "a necessary and helpful check on the potential negative consequences" that come from the incentives of whistleblowers and enforcement staff for ever larger awards.<sup>29</sup>

## 2. *Reintroduction of SEC Whistleblower Reform Act*

In March 2025, Senators Charles Grassley and Elizabeth Warren introduced the SEC Whistleblower Reform Act. The bill, which was previously

introduced in 2023, seeks to amend the Securities Exchange Act of 1934 (the "Exchange Act") to extend the anti-retaliation provisions that currently apply to whistleblowers who submit reports to the SEC to whistleblowers who report potential securities law violations internally to their employers.<sup>30</sup> This proposal responds to the Supreme Court's 2018 decision in *Digital Realty Trust, Inc. v. Somers*, 583 U.S. 149 (2018), ruling that the Dodd-Frank Act's anti-retaliation protections do not apply to whistleblowers who do not make reports to the SEC. The bill also proposes that defendants have a right to a jury trial in lawsuits under Dodd-Frank's whistleblower protection provision.<sup>31</sup> In addition, the bill proposes to set deadlines for the SEC to process claims for whistleblower awards.<sup>32</sup> Finally, the bill proposes to make unenforceable any agreement, policy, or employment condition that would waive the rights and remedies provided for whistleblowers under the Exchange Act.<sup>33</sup> The bill has been referred to a Senate committee.

## C. *Constitutional Challenges to False Claims Act Qui Tam Provision*

Constitutional challenges to the *qui tam* provision of the False Claims Act ("FCA") are making their way through the federal courts of appeals. The FCA's *qui tam* provision allows a private party to bring a lawsuit on behalf of the government for false claims for

<sup>26</sup> CFTC, Whistleblower Program, Customer Education Initiatives 2024 Annual Report at 15 (Oct. 2024), available at <https://www.whistleblower.gov/sites/whistleblower/files/2024-11/FY24%20Customer%20Protection%20Fund%20Annual%20Report%20to%20Congress.pdf>.

<sup>27</sup> *In re Trafigura Trading LLC*, CFTC Docket No. 24-08 at 9 (June 17, 2024).

<sup>28</sup> Summer K. Mersinger, Comm'r, Commodity Futures Trading Commission, Concurring Statement Regarding Settlement with Trafigura Trading LLC (June 17, 2024), available at <https://www.cftc.gov/PressRoom/SpeechesTestimony/mersingerstatement061724>; Caroline D. Pham, Comm'r, Commodity Futures Trading Commission, Statement

Regarding Settlement Order with Trafigura Trading LLC (June 17, 2024), available at <https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement061724>.

<sup>29</sup> Hester M. Peirce & Mark T. Uyeda, Comm'rs, Securities and Exchange Commission, Nothing to See; Nothing to Say: Statement on Recent Whistleblower Awards (Sept. 2024), available at <https://www.sec.gov/newsroom/speeches-statements/peirce-uyeda-statement-whistleblower-091924>.

<sup>30</sup> SEC Whistleblower Reform Act of 2025, S.1149, 119th Cong. § 2 (2025), available at <https://www.congress.gov/bill/119th-congress/senate-bill/1149/text>.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* § 3.

<sup>33</sup> *Id.* § 4.

payment submitted to the government.<sup>34</sup> These whistleblowers, called “relators,” are entitled to receive an award upon a successful outcome.<sup>35</sup> According to the latest statistics published by the DOJ Civil Division, in fiscal year 2024, \$2.4 billion out of the \$2.9 billion recovered by the government in settlements and judgments under the FCA was obtained in cases involving a relator.<sup>36</sup> *Qui tam* cases represented almost 70% of FCA cases filed in fiscal year 2024.<sup>37</sup> The administration has signaled a potential increase in FCA enforcement in line with its priorities, including trade; deterring diversity, equity, and inclusion programs; and healthcare fraud, which could also encourage more *qui tam* suits in these areas.<sup>38</sup>

In December 2025, the Eleventh Circuit heard oral argument in the appeal of the Middle District of Florida’s decision in *United States ex rel. Zafirov v. Florida Medical Associates, LLC*, holding that the FCA’s *qui tam* provision violates the Constitution’s Appointments Clause.<sup>39</sup> The district court held in *Zafirov* that a relator qualifies as an officer of the United States who is subject to the Appointments Clause; therefore a relator’s self-appointment under

the FCA is unconstitutional because they are not appointed by the President, a department head, or a court.<sup>40</sup> The district court cited questions that three Supreme Court Justices raised in separate opinions about the constitutionality of the *qui tam* provision in *United States ex rel. Polansky v. Executive Health Resources Inc.*, 599 U.S. 419 (2023).<sup>41</sup> In a dissenting opinion in that case, Justice Thomas had raised the concern that a private relator representing the interests of the United States in litigation exercises a power that may only be discharged by officers of the United States, although a relator is not appointed.<sup>42</sup> Justice Kavanaugh’s concurrence, joined by Justice Barrett, agreed with Justice Thomas and suggested that the Court should consider the issue in an appropriate case.<sup>43</sup> More recently, in a concurring opinion in 2025 that Justice Thomas joined, Justice Kavanaugh reiterated that the *qui tam* provision raises “substantial constitutional questions under Article II,” which the Court should consider in an appropriate case.<sup>44</sup>

In July 2025, the Southern District of Ohio certified for interlocutory appeal its orders rejecting constitutional challenges to the FCA’s *qui tam*

<sup>34</sup> 31 U.S.C. § 3730(b)(1).

<sup>35</sup> 31 U.S.C. § 3730(d).

<sup>36</sup> See U.S. Dep’t of Just., Fraud Statistics Overview, Oct. 1, 1986 – Sept. 30, 2024, at 2, available at <https://www.justice.gov/archives/opa/media/1384546/dl>; Department of Justice, False Claims Act Settlements and Judgments Exceed \$2.9B in Fiscal Year 2024 (Jan. 15, 2025), available at

<https://www.justice.gov/archives/opa/pr/false-claims-act-settlements-and-judgments-exceed-29b-fiscal-year-2024>.

<sup>37</sup> See U.S. Dep’t of Just., Fraud Statistics Overview, *supra* note 36.

<sup>38</sup> See Press Release, Dep’t of Just., Departments of Justice and Homeland Security Partnering on Cross-Agency Trade Fraud Task Force (Aug. 29, 2025), available at <https://www.justice.gov/opa/pr/departments-justice-and-homeland-security-partnering-cross-agency-trade-fraud-task-force>; Press Release, Dep’t of Just., Justice Department Establishes Civil Rights Fraud Initiative (May 19, 2025), available at <https://www.justice.gov/opa/pr/justice-department-establishes-civil-rights-fraud-initiative>; Press Release, Dep’t of Just., DOJ-HHS False Claims Act Working Group (July 2, 2025), available at

<https://www.justice.gov/opa/pr/doj-hhs-false-claims-act-working-group>.

<sup>39</sup> Oral Argument, *Zafirov v. Fla. Med. Assocs., LLC*, No. 24-13581 (11th Cir. Dec. 12, 2025) (Dkt. No. 164), [https://www.ca11.uscourts.gov/system/files\\_force/oral\\_argument\\_recordings/24-13581\\_12122025.mp3](https://www.ca11.uscourts.gov/system/files_force/oral_argument_recordings/24-13581_12122025.mp3); *Zafirov v. Fla. Med. Assocs., LLC*, 751 F. Supp. 3d 1293 (M.D. Fla. 2024). The Eleventh Circuit has stayed the appeal of another decision issued by the same district judge as in *Zafirov* that followed the holding in *Zafirov*. See *United States ex rel. Gose v. Native Am. Servs. Corp.*, No. 8:16-CV-03411-KKM-AEP, 2025 WL 1531137, at \*1 (M.D. Fla. May 29, 2025); Order at 2, *United States ex rel. Gose v. Native Am. Servs. Corp.*, No. 25-12009 (11th Cir. July 3, 2025), Dkt. No. 21.

<sup>40</sup> *Zafirov*, 751 F. Supp. 3d at 1322.

<sup>41</sup> *Id.* at 1312, 1324.

<sup>42</sup> *Polansky*, 599 U.S. at 449–50 (2023) (Thomas, J. dissenting).

<sup>43</sup> *Id.* at 442 (Kavanaugh, J., concurring, joined by Barrett, J.).

<sup>44</sup> See *Wisconsin Bell, Inc. v. United States ex rel. Heath*, 604 U.S. 140, 167 (2025) (Kavanaugh, J., concurring, joined by Thomas, J.).

provision.<sup>45</sup> The district court followed Sixth Circuit precedent holding that the *qui tam* provision does not violate the Constitution’s Appointments Clause or Take Care Clause because a relator is not an “officer” who is subject to the Appointments Clause and the Executive Branch maintains sufficient control over the relator’s conduct to fulfill its duty to take care that the laws are faithfully executed.<sup>46</sup> In concluding that interlocutory appeal was appropriate, the court cited the questions raised by Justices Thomas, Kavanaugh, and Barrett about the constitutionality of the *qui tam* provision, as well as the district court’s decision in *Zafirov*.<sup>47</sup>

In April 2025, a defendant in a False Claims Act case filed an appeal to the Third Circuit raising a constitutional challenge to the FCA’s *qui tam* provision, among other issues, after a jury verdict for the relators in the District of New Jersey.<sup>48</sup> Relying on *Zafirov*, the defendant had argued before the district court that the *qui tam* provision impermissibly delegates executive power to a private party.<sup>49</sup> The district court disagreed, characterizing *Zafirov* as a “singular non-precedential” decision that “departed from the longstanding and nationwide consensus” that the *qui tam* provision “do[es] not violate the separation of powers.”<sup>50</sup> The issues raised in these cases only relate to the unique role played by *qui tam* relators, and would not affect whistleblower programs like those at the DOJ, SEC, or CFTC, where whistleblowers merely pass on information to government investigators and do not themselves pursue litigation to enforce the law.

Regardless of the outcome of challenges to the FCA’s *qui tam* provision, whistleblowers will continue to play an important role in revealing potential misconduct to enforcement agencies. The new administration recognizes the utility of whistleblower programs and is relying on them to pursue its enforcement priorities. As we discuss in Part 2, outside the United States, whistleblower reports to enforcement agencies continue to rise, while whistleblowers have obtained additional protections under the law.

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<sup>45</sup> *United States ex rel. Murphy v. TriHealth, Inc.*, No. 1:19-CV-168, 2025 WL 2104279, at \*17–18 (S.D. Ohio July 28, 2025); *United States ex rel. Shahbadian v. TriHealth, Inc.*, No. 1:20-CV-67, 2025 WL 2108197, at \*8 (S.D. Ohio July 28, 2025).

<sup>46</sup> *Murphy*, 2025 WL 2104279, at \*16 (citing *United States ex rel. Taxpayers Against Fraud v. Gen. Elec. Co.*, 41 F.3d 1032, 1041 (6th Cir. 1994)); *Shahbadian*, 2025 WL 2108197, at \*6 (same).

<sup>47</sup> *Murphy*, 2025 WL 2104279, at \*17 (citing *Wisconsin Bell*, 604 U.S. at 167 (Kavanaugh, J., concurring, joined by Thomas, J.); *Polansky*, 599 U.S. at 449 (Thomas, J., dissenting); *Polansky*, 599 U.S. at 442 (Kavanaugh, J.,

concurring, joined by Barrett, J.)); *Shahbadian*, 2025 WL 2108197, at \*8 (same).

<sup>48</sup> *United States ex rel. Penelow v. Janssen Products, LP*, No. 25-1818 (3d Cir. July 14, 2025).

<sup>49</sup> *United States ex rel. Penelow v. Janssen Products, LP*, No. CV 12-7758 (ZNQ) (JBD), 2025 WL 937504, at \*12 (D.N.J. Mar. 28, 2025).

<sup>50</sup> *Id.* (citing *United States ex rel. Stone v. Rockwell Int’l Corp.*, 282 F.3d 787 (10th Cir. 2002); *Riley v. St. Luke’s Episcopal Hosp.*, 252 F.3d 749 (5th Cir. 2001) (en banc); *United States ex rel. Taxpayers Against Fraud v. General Elec. Co.*, 41 F.3d 1032 (6th Cir. 1994); *United States ex rel. Kelly v. Boeing Co.*, 9 F.3d 743 (9th Cir. 1993)).