

When Fraud Involvement Disqualifies FCA Whistleblowers

By **Megan Mocho, Emily Robey-Phillips and Marcus Christian** (March 11, 2026)

On Feb. 13, a Massachusetts federal judge dismissed a relator from proceedings in a False Claims Act action, denying him a share in the settlement proceeds because he had been convicted of crimes sufficiently related to the underlying, alleged fraud.

This case marks the first decision interpreting the relevant FCA provision since 2015, and only the second since Congress enacted the relevant language. The decision goes a step further than the only prior interpretation of the provision, barring a relator whose conviction was a step removed from the underlying fraud.

The litigation, *U.S. ex rel. Perry v. First Psychiatric Planners Inc., d/b/a Bournemouth Health Systems*, brought FCA and Massachusetts FCA claims against Bournemouth Hospital in the [U.S. District Court for the District of Massachusetts](#).

The relator, David Perry, sought a share of the settlement proceeds even though he had criminal convictions related to the scheme underlying the litigation — he was not convicted of anything related to healthcare fraud, but rather to victimizing patients whose claims were at issue in the Bournemouth allegations.

At issue in U.S. District Judge William Young's decision was a single sentence in the FCA's qui tam provisions: "if the [relator] is convicted of criminal conduct arising from his or her role in the violation of [the FCA], [the relator] shall be dismissed from the civil action and shall not receive any share of the proceeds."^[1]

The FCA's qui tam provisions play a significant role in enforcement. In 2025, for example, over \$5.3 billion of a total of over \$6.8 billion in settlements and judgments came from lawsuits filed under qui tam provisions of the FCA.^[2] Relators received over \$330 million in government payouts during this same period,^[3] while 2024 saw relators receive nearly \$480 million.^[4]

And, as the act's original sponsor recognized, those with criminal convictions can play an



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important part in enforcement:

"[S]etting a rogue to catch a rogue is the safest and most expeditious way I have ever discovered of bringing rogues to justice," Sen. Jacob Howard observed in 1863.[5]

Until now, the only court to interpret the conviction bar was the [U.S. Court of Appeals for the Ninth Circuit](#) in *Schroeder ex rel. U.S. v. CH2M Hill* in 2015. The Ninth Circuit held that a relator was not entitled to share in the settlement because he had been convicted of conspiracy to commit the very fraud at issue therein.[6]

Although the court discussed the FCA's legislative history, it hewed to the statute's plain language: "While the legislative history provides some support for the notion that the sponsors did not intend for the provision to require the dismissal of minor fraud participants, it is not convincing enough to warrant departing from the plain meaning." [7]

A decade later, the District of Massachusetts faced a somewhat thornier set of facts in *Bournewood*. Perry's conviction was a degree further removed from the fraud alleged against *Bournewood*.

Bournewood is a mental health hospital that provides, inter alia, outpatient treatment for substance use. *Bournewood* provided free housing to certain patients by paying for them to reside in sober homes. Perry owned and operated one of the sober homes at issue. *Bournewood* paid Perry's home for housing patients and billed the government for the same patients' treatment.

In October 2019, Perry pleaded guilty to 34 counts arising from his operation of the sober home. Perry's convictions, however, were not for kickbacks or false claims. Instead, they were related to victimizing the sober home patients — he both conspired to distribute drugs with patients and offered free housing in exchange for sex.

In September 2024, *Bournewood* and the federal and Massachusetts governments reached a settlement agreement. The governments moved to exclude Perry from sharing in the settlement proceeds, asserting that "Perry's conviction for victimizing recovering substance users ... arose from his role in the kickback scheme." [8]

After an evidentiary hearing, Judge Young found that Perry was barred under either prong of Section 3730(d)(3): "[H]e is a 'person who planned and initiated the violation ... upon which the action was brought,' or, alternatively, ... was 'convicted of criminal conduct arising from

his role in the violation." Either finding was sufficient to bar Perry from a share.

Construing the plain language of Section 3730(d)(3), the court held that the term "'arising from' does not require that Perry be charged with the same fraud."

This is a pivotal point, because Perry was not, in fact, charged with any role in the fraud alleged against Bournemouth. Judge Young's decision thus went one step beyond the analysis in Schroeder.

According to the decision, "Perry's convictions arise from his role in the on-going participation in Bournemouth's fraud." Put otherwise, Perry "would not have been able to undertake that criminal activity ... without his participation in the fraud."

The court concluded by emphasizing that "the FCA, while designed to encourage ... minor players to step forward, ... is certainly not designed to reward opportunistic criminals who ... use their fraud as an avenue to commit complementary crimes — here, to groom recovering addicts ... or to engage in sex for a fee."

Judge Young's decision thus goes further than Schroeder by barring a relator whose conviction was another step removed from the underlying fraud. The decision is a reminder to relators who participate in the fraud that they cannot profit from their own misconduct.

Whether it in fact leads to a decrease in qui tam suits from such relators remains to be seen. However, it is also a reminder to relators' counsel, and may affect counsel's analysis of whether to take cases.

Finally, companies that are aware of misconduct and are considering engaging in voluntary self-disclosure should be aware of [U.S. Department of Justice](#)'s interest in individual wrongdoers.

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[1] 31 U.S.C. § 3730(d)(1), (3).

[2] <https://www.justice.gov/opa/pr/false-claims-act-settlements-and-judgments-exceed-68b-fiscal-year-2025>.

[3] <https://www.justice.gov/opa/media/1424121/dl>.

[4] *Id.*

[5] Cong. Globe, 37th Cong., 3d Sess. 955-56 (1863) (quoted in *Schroeder ex rel. U.S. v. CH2M Hill*, 793 F.3d 1080, 1084 n.2 (9th Cir. 2015)).

[6] See *id.* at 1081-82.

[7] *Id.* at 1086.

[8] Gov't Supp. Opp. to Dismiss Relator David Perry's Mot. to Determine Relator's Share of Settlement Proceeds at 3.