No. 15-1456

In the Supreme Court of the United States

SAMIM ANGHAIE AND SOUSAN ANGHAIE, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the government is entitled to summary judgment and an award of treble damages on claims against petitioners under the False Claims Act, 31 U.S.C. 3729 *et seq.*, in light of petitioners' prior criminal convictions for conspiracy and wire fraud and the evidence contained in the trial record of the criminal proceeding.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A15) is not published in the *Federal Reporter* but is reprinted at 633 Fed. Appx. 514. The opinion of the district court (Pet. App. B1-B37) is not published in the *Federal Supplement* but is available at 2015 WL 163046.

JURISDICTION

The judgment of the court of appeals was entered on November 30, 2015. A petition for rehearing was denied on February 1, 2016 (Pet. App. C1-C2). The petition for a writ of certiorari was filed on April 22, 2016. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioners are Samim Anghaie, a former University of Florida professor, and his wife, Sousan

Anghaie. Pet. App. B8. In 1989, petitioners formed a for-profit company called NETECH. *Ibid.* From 1999 to 2009, NETECH was awarded contracts administered by NASA and the United States Air Force for "the development of an innovative nuclear fuel for aerospace applications." *Ibid.*; see Gov't C.A. Br. 8. The contracts were awarded under the United States Small Business Administration's Small Business Innovation Research Program (SBIR) and Small Business Technology Transfer Program (STTR). Pet. App. A10. Those programs are designed to advance the "policy of the Congress that assistance be given to small-business concerns to enable them to undertake and to obtain the benefits of research and development in order to maintain and strengthen the competitive free enterprise system and the national economy." *Id.* at A10-A11 (quoting 15 U.S.C. 638(a)).

Petitioners' "contract proposals," however, misrepresented their eligibility for the SBIR and STTR programs. Pet. App. B10; see *id.* at B11-B12. In particular, their proposals "contain[ed] fraudulent information regarding the identities of NETECH personnel and work performed by such personnel" and "falsely described the number of employees at NETECH." *Id.* at B10-B11. In the course of performing the contracts, petitioners submitted additional false information including fraudulent invoices and requests for payment, and technical reports or final reports falsely describing the research performed under the contracts. See Gov't C.A. Br. 8-9. *Inter alia*, petitioners "submitted 'stolen' research information that had been produced by [University of Florida] graduate students and other professors, and work at a Russian laboratory." Pet. App. B11. They also

"submitted invoices claiming labor hours for alleged employees that NETECH claimed to have paid, but who had not been paid and who had not performed work under the contract." *Ibid.* Their numerous misstatements enabled petitioners to obtain payments under contracts that should have gone to "legitimate small businesses." *Id.* at B12 (citation omitted).

2. A federal jury in the Northern District of Florida found petitioners guilty of one count of criminal conspiracy and more than 25 counts of wire fraud. See 1:09-cr-37 Docket entry No. 123 (Feb. 25, 2011) (Jury Verdict); see also Gov't C.A. Br. 9-10. The jury found petitioners not guilty on certain indicted counts and did not reach a verdict on other counts. See Gov't C.A. Br. 9-10. In addition, petitioners were acquitted of 15 wire-fraud and money-laundering counts because those counts were barred by the statute of limitations. See *id.* at 10.

The district court sentenced Samim to concurrent terms of six months of imprisonment on each count, to be followed by three years of supervised release. Pet. App. B12. The court sentenced Sousan to five years of probation, including six months of home confinement. *Ibid.* The court also entered a criminal-forfeiture judgment against petitioners in the amount of $390,252.91. 1:09-cr-37 Docket entry No. 238, at 9, 35 (Nov. 29, 2011) (Sent. Tr.). That award reflected the "aggregate dollar amount determined by a preponderance of the evidence to constitute or be derived from proceeds traceable to the offenses of conviction." 1:09-cr-37 Docket entry No. 163, at 5 (July 7, 2011) (Order Denying Motion for Reconsideration).

As particularly relevant here, the government had sought an award of restitution under the Mandatory

Victims Restitution Act of 1996 (MVRA), 18 U.S.C. 3663A. That statute provides that, "[n]otwithstanding any other provision of law, when sentencing a defendant [for, *inter alia*, a fraud offense under Title 18] * * * the court shall order, in addition to * * * any other penalty authorized by law, that the defendant make restitution to the victim of the offense." 18 U.S.C. 3663A(a)(1) and (c)(1)(A)(ii). The government had requested a restitution award of $2,639,940.80, which represented the total amount that the government had paid NETECH under contracts from 1999 to 2009. See 12-10086 Gov't C.A. Br. 48, 64 (11th Cir.).

The district court declined to award restitution. The court stated that "the focus of a restitution award [under the MVRA] is the loss to the victim," and "[i]n this case, the loss suffered by the Air Force and NASA is the lost opportunity to enter into SBIR and STTR contracts with qualified small businesses." Sent. Tr. 7. The court held that "[t]his is not a pecuniary loss for which the victims can be made whole," because "the funds could not be used by the Air Force or NASA to enter into replacement contracts with qualified small businesses." *Id.* at 7-8. "Restitution," the court held, "cannot be awarded to cover disappointed expectations," *id.* at 8 (citing *United States* v. *Boccagna*, 450 F.3d 107 (2d Cir. 2006)), or to redress a loss "in the nature of a regulatory interest," *ibid.* (citing *Cleveland* v. *United States*, 531 U.S. 12 (2000)). The court added that, "[c]omplicating matters further, the defendants are entitled to an offset of the value of services rendered," *ibid.* (citing *United States* v. *Leahy*, 464 F.3d 773 (7th Cir. 2006), cert. denied, 552 U.S. 811 (2007)), and that although "the value in this case is difficult to quantify, * * * it does appear that

[petitioners] delivered cutting-edge innovative ideas," *id.* at 9. The court ultimately concluded that "no actual loss to the victims has been established in this case" and therefore determined that "no restitution will be ordered." *Ibid.*

Petitioners appealed their convictions, and the government cross-appealed, challenging the amount of the forfeiture award and the district court's refusal to order restitution. In a summary opinion, the Eleventh Circuit held that the evidence was sufficient to convict petitioners. *United States* v. *Anghaie*, 521 Fed. Appx. 866, 867 (2013). The Eleventh Circuit also rejected the government's argument that the forfeiture award was insufficient and that the district court should have ordered restitution. *Ibid.* The Eleventh Circuit remanded for an evidentiary hearing on petitioners' allegation of juror taint. *Ibid.* On remand, the district court held an evidentiary hearing and concluded that petitioners were not entitled to a new trial, and the Eleventh Circuit affirmed that determination. *United States* v. *Anghaie*, 530 Fed. Appx. 932, 932-933 (2013).

3. a. After petitioners were criminally convicted, the government filed this action against them under the False Claims Act (FCA), 31 U.S.C. 3729 *et seq.* The version of the FCA in effect at the time of petitioners' fraudulent conduct imposed liability on any person who, *inter alia*, "knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government." 31 U.S.C. 3729(a)(2) (2006). The government's complaint alleged that petitioners had made false statements (and had conspired to do so) on 21 separate occasions when submitting contract proposals, technical reports, and requests for payment

and invoices under four contracts that had been at issue in the criminal proceeding, resulting in payments of $915,543.79. 1:12-cv-102 Docket entry No. 1, at ¶¶ 59-61 (N.D. Fla. May 11, 2012) (Compl.); see Gov't C.A. Br. 12-13; see also 31 U.S.C. 3729(a)(3) (2006) (conspiracy liability). For three of the contracts, petitioners had been convicted of making false statements in the contract proposals. Pet. App. A5; see *id.* at B18. For the fourth contract, petitioners had been acquitted of fraud in submitting the contract proposal, but had been convicted of making false statements in the final report submitted under the contract. *Id.* at A5; see *id.* at B21-B22. The government sought treble damages and civil penalties, as authorized by the FCA, 31 U.S.C. 3729(a) (2006). Compl. ¶¶ 55-57.

b. The government moved for summary judgment on the ground that the verdict, trial record, and evidence from the criminal proceedings conclusively established petitioners' liability under the FCA. See Pet. App. B5, B7. A magistrate judge recommended that the district court grant that motion. *Id.* at B4-B37.

i. As relevant here, the magistrate judge first explained that "some counts in the civil Complaint do not precisely correspond to the counts of conviction in the underlying criminal case, or correspond to counts for which [petitioners] were acquitted." Pet. App. B15. The judge addressed those two sets of counts separately. With respect to the 12 counts corresponding to the criminal counts on which petitioners had been convicted, the magistrate judge determined that the FCA's estoppel provision, 31 U.S.C. 3731(d) (2006), conclusively established petitioners' liability. Pet.

App. B19-B20. That provision states that "a final judgment rendered in favor of the United States in any criminal proceeding charging fraud or false statements * * * shall estop the defendant from denying the essential elements of the offense in any [FCA] action which involves the same transaction." 31 U.S.C. 3731(d) (2006).[1]

The magistrate judge then concluded that the summary-judgment record left no genuine issue of material fact with respect to the remaining nine FCA counts. Pet. App. B20-B25. Four of those counts related to payments under the contract for which petitioners had been acquitted of submitting a false proposal. See *id.* at B21-B22. The magistrate judge explained, however, that petitioners "were convicted of three counts of wire fraud in connection with the submission of technical reports under th[e] contract." *Id.* at B21. It found that the summary-judgment evidence conclusively established that the four payments cited in the government's FCA complaint would not have been made under that contract "had the true facts been known." *Id.* at B22; see *id.* at B23 (discussing testimony in criminal trial). The magistrate judge reached the same conclusion with respect to the final five FCA counts, which related to certain payments under another contract that did not correspond to any counts of conviction in the criminal case. See *id.* at B23-B24 (discussing trial testimony); see also *id.* at B16.

ii. The magistrate judge then addressed damages. Pet. App. B25-B34. The judge explained that peti-

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[1] The Fraud Enforcement and Recovery Act of 2009, Pub. L. No. 111-21, § 4(b)(1), 123 Stat. 1623, resdesignated former Subsection (d) of Section 3731 as Subsection (e).

tioners did "not dispute the accuracy of the amount of each of the payments identified in the Complaint." *Id.* at B25-B26. Petitioners had argued, however, that the amount should be reduced by the value of the work that they had produced under the contract, pointing to the district court's statement at their sentencing hearing that "NETECH provided 'valuable innovative research' to the Government under the contracts and that 'no actual loss to the victims has been established in this case.'" *Id.* at B26.

The magistrate judge rejected that argument. The judge explained that, under Eleventh Circuit precedent, "[t]he sentencing court's pronouncements regarding restitution are not determinative of the damages award in this case" because "'[a]n order of restitution is not a judicial determination of damages.'" Pet. App. B26. (second set of brackets in original) (quoting *United States* v. *Barnette*, 10 F.3d 1553, 1556 (11th Cir.), cert. denied, 513 U.S. 816 (1994)). "Damages," the judge explained, "measure the amount of compensable loss a victim has suffered," whereas "[r]estitution * * * is an equitable remedy, subject to the general equitable principle that [it] is granted to the extent and only to the extent that justice between the parties requires." *Ibid.* (brackets in original; internal quotation marks omitted) (quoting *Barnette*, 10 F.3d at 1556).

The magistrate judge further concluded that the contracts had provided no value to the government, and that the government therefore was entitled to recover the full amount of its payments under the contracts ($915,543.79). Pet. App. B28-B34. The judge explained that the "contracts at issue in this case were not standard procurement contracts," but

rather were part of "programs [that] were intended to foster innovation by eligible small businesses." *Id.* at B34. The judge determined that "the Government has met its burden of establishing, for purposes of FCA damages, that there was no tangible benefit to the Government under the contracts and any intangible benefit is impossible to calculate." *Ibid.* (citing *United States ex rel. Longhi* v. *Lithium Power Techs., Inc.*, 575 F.3d 458 (5th Cir. 2009) (*Longhi*), cert. denied, 559 U.S. 1067 (2010)). The judge accordingly concluded that "the measure of damages is the amount the Government actually paid under the contracts." *Ibid.* (citation omitted). The judge therefore recommended a treble-damages award of $2,746,631.37, in addition to FCA penalties of $231,000 ($11,000 for each of the 21 violations). *Id.* at B34-B37.

c. The district court adopted the magistrate judge's report and recommendation and entered judgment against petitioners for $2,746,631.37 in damages and $231,000 in penalties. Pet. App. B1-B3.

d. The court of appeals affirmed. Pet. App. A1-A15. The court held that petitioners' criminal convictions "estopped [them] from denying either that they conspired to defraud the government or that they knowingly made false claims." *Id.* at A6. The court further held that the record in the criminal case left no genuine dispute that the false statements were material to the government's decisions to pay petitioners' claims. *Ibid.* The court noted that "all the fraud charges required the jury to find beyond a reasonable doubt that 'the false pretenses, representations, or promises were about a material fact,'" and that "the jury heard much evidence tying [petitioners'] false statements to decisions to award money."

Ibid. "Even though for one contract [petitioners] were convicted of lying only in the final report," the court explained, "the record still shows that [petitioners'] false claims were material to them getting paid on this contract." *Id.* at A6-A7.[2]

The court of appeals also rejected petitioners' argument that the district court had erred in assessing damages for the full amount of the research contracts. Pet. App. A8-A14. As particularly relevant here, the court of appeals held that the damages award did not "conflict[] with findings about restitution made in connection with [petitioners'] criminal sentences." *Id.* at A9. Like the magistrate judge, the court of appeals observed that restitution and FCA damages "serve different purposes and are calculated in different ways." *Id.* at A9 (citing *Barnette*, 10 F.3d at 1556). The court explained that restitution is "an equitable remedy granted only to the extent that justice between the parties requires," while "[d]amages measure the amount of compensable loss a victim has suffered." *Ibid.* (citation and internal quotation marks omitted).

The court of appeals finally held that the district court had not erred in calculating damages based on the full value of the contracts awarded to petitioners. Pet. App. A12-A13. The court of appeals stated that petitioners would be entitled to an offset if they had conferred a benefit on the government. *Id.* at A13. The court concluded, however, that "the district court did not err in finding that the government received no benefit," since the only purpose of the contracts was to assist eligible small businesses. *Ibid.* The court

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[2] Consistent with the government's concession, the court of appeals held that two of the counts were time-barred. Pet. App. A3.

further observed that petitioners did "not claim they provided any tangible or calculable benefit" to the government. *Ibid.*

ARGUMENT

Petitioners contend (Pet. 18-36) that the court of appeals erred in affirming the district court's grant of summary judgment and treble damages to the government on its FCA claims. They assert that the district court in their criminal case concluded that the government had not suffered a loss caused by petitioners' fraudulent submissions, and that the court's conclusion estopped the government from obtaining civil damages in this case. That argument lacks merit. The court of appeals correctly held that the district court's application of the standards governing an award of restitution in the criminal case did not decide any issue governing the determination of liability or damages in this FCA action. That decision does not conflict with any decision of this Court or of any other court of appeals. Further review is not warranted.

1. The court of appeals correctly affirmed the district court's grant of summary judgment and treble damages to the government.

a. Under the FCA, the United States is entitled to recover three times the amount of damages incurred "because of" a defendant's violation. 31 U.S.C. 3729(a) (2006); see *Cook Cnty., Ill.* v. *United States ex rel. Chandler*, 538 U.S. 119, 130-132 (2003). In using the term "because of," the FCA permits recovery of those damages that were caused by the false claims and false statements. See *United States* v. *Miller*, 645 F.2d 473, 475-476 (5th Cir. 1981) (holding that the United States "must demonstrate the element of causation between the false statements and the loss").

The measure of damages is the amount of money the government paid out by reason of the false claims, over and above what it would have paid out if the claims had not been false or fraudulent. See *United States ex rel. Marcus* v. *Hess*, 317 U.S. 537, 543-545 (1943).

b. The court of appeals correctly held that petitioners' criminal convictions and the record of the criminal proceedings left no dispute of material fact on their liability for the 22 counts in the government's FCA complaint. Under the FCA's estoppel bar, petitioners were estopped from disputing that they had made (and conspired to make) the false statements alleged in the government's complaint. Pet. App. A5-A6; see 31 U.S.C. 3731(e); 31 U.S.C. 3731(d) (2006). In the criminal case, petitioners were convicted of making materially false statements in the proposals for three of those contracts and in the final report for the fourth contract, as well as of conspiring to defraud the United States. Pet. App. A5. Petitioners therefore were estopped from contesting those facts in the FCA case.

The court of appeals also correctly held that "[t]he record from the criminal case * * * shows that [petitioners'] false statements were material to the government deciding to pay false claims." Pet. App. A6. The jury instructions in the criminal case "required the jury to find beyond a reasonable doubt that 'the false pretenses, representations, or promises were about a material fact.'" *Ibid.* And trial testimony established the link between the false statements and the government's decision to pay the claims. *Ibid.* That included the contract for which petitioners were found to have submitted only a false final report, be-

cause a government official testified that he would not have approved payments had he known about the falsehood. *Id.* at B6-B7. Petitioners have identified no basis to overturn the court of appeals' factbound evaluation of the summary-judgment evidence on the question of materiality, nor any broader issue of general applicability related to that question.

c. The court of appeals correctly affirmed the district court's treble-damages award. Pet. App. A8-A14. As the court explained, the contracts at issue were part of a government program designed to benefit eligible small businesses. *Id.* at A10-A11. The evidence showed that petitioners had misrepresented their eligibility for those contracts, and that "the government would not have paid [petitioners] at all but for their fraud." *Id.* at A12. Although the court of appeals agreed with petitioners that a damages award "must be offset by any benefit conferred to the government," it found that "the district court did not err in finding that the government received no benefit," particularly in light of petitioners' failure to argue that they had provided any "calculable benefit" to the government. *Id.* at A13. The court of appeals' conclusion that petitioners were liable for the full amount paid to them under the contracts was consistent with the conclusion of the only other circuit that has considered similar false claims under the SBIR program. See *United States ex rel. Longhi* v. *Lithium Power Techs., Inc.*, 575 F.3d 458, 461-462, 472-473 (5th Cir. 2009), cert. denied, 559 U.S. 1067 (2010).

Petitioners do not dispute the court of appeals' legal determination that, in a government-contract program designed to benefit eligible small businesses, a contractor that misrepresents its eligibility can be

liable for the full amount of payments made under the contracts. Instead, petitioners contend (Pet. 18-36) that the government was estopped from obtaining FCA damages in light of the district court's conclusion in the criminal case that restitution was not warranted.

That argument lacks merit. It is true that, under the doctrine of collateral estoppel, a finding in a criminal case can be treated as conclusive if the same question arises between the same parties in a subsequent civil action. See *Emich Motors Corp.* v. *General Motors Corp.*, 340 U.S. 558, 568-569 (1951). But the district court's restitution determination in petitioners' sentencing hearing did not establish that the government is barred from obtaining FCA damages because the two cases presented different remedial questions.

As the court of appeals explained, "[a]n order of restitution is not a judicial determination of damages." Pet. App. A9 (brackets in original) (quoting *United States* v. *Barnette*, 10 F.3d 1553, 1556 (11th Cir.), cert. denied, 513 U.S. 816 (1994)). In general, "[r]estitution is 'an equitable remedy' granted 'only to the extent that justice between the parties requires,'" *ibid.* (quoting *Barnette*, 10 F.3d at 1556), whereas the FCA entitles the government to recover treble damages for losses caused by fraud. The MVRA significantly constrains federal sentencing courts' discretion by making restitution mandatory for defendants convicted of certain categories of crimes. See 18 U.S.C. 3663A(a)(1) and (c). Petitioners make no effort to demonstrate, however, that the substantive standards for awarding restitution under the MVRA are identical to the standards for awarding damages under the FCA.

No discrete factual finding by the district court in the criminal case precluded the government from obtaining FCA damages. The district court's restitution ruling rested on its conclusion that "the loss suffered by the Air Force and NASA is the lost opportunity to enter into SBIR and STTR contracts with qualified small businesses," but that this loss is not "compensable through restitution" under the MVRA. Sent. Tr. 7; see *id.* at 8 ("That opportunity is lost. An award of restitution cannot restore it."); *ibid.* (holding that no restitution was permissible because "the loss suffered by the victims is in the nature of a regulatory interest") (citation omitted). Whether or not the court was correct that the MVRA does not authorize restitution for the type of "regulatory" or "lost opportunity" losses that the government sustained here, that conclusion does not control the distinct legal determination whether the FCA entitles the government to the full amount of the payments made under a program designed to benefit eligible small businesses to a contractor that fraudulently misrepresented its eligibility.

The district court in the criminal case also stated that "[c]omplicating matters further, the defendants are entitled to an offset of the value of services rendered," and that "[t]he value in this case is difficult to quantify, but it does appear that defendants delivered cutting-edge innovative ideas." Sent. Tr. 8-9. For a number of reasons, that statement does not control the FCA damages determination in this case. First, the district court's speculation that it "appears" that the contracts conferred a benefit on the government was dicta, because the court's holding rested on its determination that the government had not suffered a

loss that is legally compensable through restitution. See *id.* at 7-9. Second, whatever offset principles govern restitution would not necessarily apply to an FCA damages award, which is governed by distinct legal standards derived from the text and purpose of the FCA. Finally, the court of appeals in the FCA proceeding agreed that petitioners would be entitled to an offset for any value rendered but explained that petitioners did "not claim they provided any tangible or calculable benefit." Pet. App. A13. Since the district court in the criminal case did not identify any provable value for the benefits that petitioners purportedly had provided to the government, the court of appeals' determination that petitioners had established no "calculable benefit" was fully consistent with the district court's statements in the criminal case.

2. Petitioners do not contend that the court of appeals' decision conflicts with any decision of this Court or another court of appeals. As discussed, the court of appeals' determination that the government is entitled to the full amount paid under the contracts is consistent with the holding of the only other court of appeals to consider a similar question. See *Longhi*, 575 F.3d at 472-472; see also *United States* v. *Science Applications Int'l Corp.*, 626 F.3d 1257, 1279 (D.C. Cir. 2010) (explaining that in cases "where the defendant fraudulently sought payments for participating in programs designed to benefit third-parties rather than the government itself, the government can easily establish that it received nothing of value from the defendant and that all payments made are therefore recoverable as damages"). Petitioners also have identified no appellate decision holding that the denial of restitution in a criminal case forecloses the gov-

ernment from obtaining FCA treble damages based on the same underlying fraud. And petitioners' contentions about the summary-judgment record evidence on the materiality issue and the collateral-estoppel effect of the district court's specific findings in denying restitution raise no legal question of general applicability. Further review is therefore not warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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SEPTEMBER 2016