

UNITED STATES, Appellee,
v.
Guillermo Alemany RIVERA, Defendant, Appellant.
UNITED STATES, Appellee,
v.
Edgar M. Stella PEREZ, Defendant, Appellant.

[Nos. 94-1081, 94-1082.](#)

United States Court of Appeals, First Circuit.

Heard September 12, 1994.

Decided June 6, 1995.

The paradigmatic example of a false claim under the FCA is a false invoice or bill for goods or services. *See, e.g., [Bornstein](#), 423 U.S. at 309, 96 S.Ct. at 528.* The term, however, applies more generally to other demands for government funds. *See, e.g., [United States v. Neifert-White](#), 390 U.S. 228, 230, 88 S.Ct. 959, 960, 19 L.Ed.2d 1061 (1968)* (false application for government loan); *[Sell v. United States](#), 336 F.2d 467, 474 (10th Cir.1964)* (fraudulent claim for federal assistance). In *McNinch*, the Supreme Court indicated that a "claim" under the FCA is a "demand for money" that induces the government to disburse funds or to "otherwise suffer immediate financial detriment." *McNinch*, 356 U.S. at 599, 78 S.Ct. at 952. In *Neifert-White*, the Court further elaborated, defining a claim to be "a false statement made with the purpose and effect of inducing the Government immediately to part with money." [390 U.S. at 230, 88 S.Ct. at 960.](#)

Enacted during the Civil War, the FCA's specific aim was to clamp down on widespread fraud by government contractors who were submitting inflated invoices and shipping faulty goods to the government. See S.Rep. No. 99-345, 99th Cong., 2d Sess. 8, *reprinted in* 1986 U.S.C.C.A.N. 5266, 5273 (briefly summarizing the history of the FCA). In furthering this goal, the statute attaches liability, not to the underlying fraudulent activity or to the government's wrongful payment, but to the "claim for payment." Indeed, a contractor who submits a false claim for payment may still be liable under the FCA for statutory penalties, even if it did not actually induce the government to pay out funds or to suffer any loss. See, e.g., [*Rex Trailer Co. v. United States*, 350 U.S. 148, 153 & n. 5, 76 S.Ct. 219, 222, 100 L.Ed. 149 \(1956\)](#); [*United States ex rel. Hagood v. Sonoma County Water Agency*, 929 F.2d 1416, 1421 \(9th Cir.1991\)](#). This focus on the claim for payment appears to reflect a congressional judgment that fraud by government contractors is best prevented by attacking the activity that presents the risk of wrongful payment, and not by waiting until the public fisc is actually damaged. By attaching liability to the claim or demand for payment, the statute encourages contractors to "turn square corners when they deal with the government." [*Rock Island, Arkansas & Louisiana R.R. Co. v. United States*, 254 U.S. 141, 143, 41 S.Ct. 55, 56, 65 L.Ed. 188 \(1920\) \(Holmes, J.\)](#). Thus, in deciding whether a given false statement is a claim or demand *710 for payment, a court should look to see if, within the payment scheme, the statement has the practical purpose and effect, and poses the attendant risk, of inducing wrongful payment.