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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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SCHINDLER ELEVATOR CORP. *v.* UNITED STATES EX REL. KIRK

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 10–188. Argued March 1, 2011—Decided May 16, 2011

The public disclosure bar of the False Claims Act (FCA) generally forecloses private parties from bringing *qui tam* suits to recover falsely or fraudulently obtained federal payments where those suits are "based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or from the news media." 31 U. S. C. §3730(e)(4)(A). Respondent Kirk brought such a suit, alleging that his former employer, petitioner Schindler Elevator Corp., had submitted hundreds of false claims for payment under its federal contracts. To support his allegations, Kirk pointed to information his wife received from the Labor Department (DOL) in response to three requests for records she filed under the Freedom of Information Act (FOIA), 5 U. S. C. §552. Granting Schindler's motion to dismiss, the District Court concluded, *inter alia,* that the FCA's public disclosure bar deprived it of jurisdiction over Kirk's allegations that were based on information disclosed in a Government "report" or "investigation." The Second Circuit vacated and remanded, holding, in effect, that an agency's response to a FOIA request is neither a "report" nor an "investigation."

Held: A federal agency's written response to a FOIA request for records constitutes a "report" within the meaning of the FCA's public disclosure bar. Pp. 4–14.

(a) "[R]eport" in this context carries its ordinary meaning. Pp. 4–8.

(1) Because the FCA does not define "report," the Court looks first to the word's ordinary meaning. See, *e.g., Gross* v. *FBL Financial Services, Inc.*, 557 U. S. ___, ___. Dictionaries define "report" as, for example, something that gives information. This ordinary mean-

ing is consistent with the public disclosure bar's generally broad scope, see, *e.g., Graham County Soil and Water Conservation Dist.* v. *United States ex rel. Wilson*, 559 U. S. ___, ___, as is evidenced by the other sources of public disclosure in §3730(e)(4)(A), especially "news media." Pp. 4–6.

(2) Nor is there any textual basis for adopting a narrower definition of "report." The Second Circuit committed the very error this Court reversed in *Graham County*. In applying the *noscitur a sociis* canon to conclude that a narrower meaning for "report" was mandated, the court failed to consider all of the sources of public disclosure listed in the statute—in particular, the reference to "news media." See 559 U. S., at ___. Applying the ordinary meaning of "report" also does not render superfluous the other sources of public disclosure in §3730(e)(4)(A). Pp. 6–8.

(b) The DOL's three written FOIA responses in this case, along with the accompanying records produced to Mrs. Kirk, are "reports" within the public disclosure bar's ordinary meaning. FOIA requires each agency receiving a request to "notify the person making such request of [its] determination and the reasons therefor." 5 U. S. C. §552(a)(6)(A)(i). Like other federal agencies, the DOL has adopted FOIA regulations mandating a written response. Such agency responses plainly fall within the broad, ordinary meaning of "report" as, *e.g.,* something that gives information. Moreover, any records produced along with such responses are part of the responses, just as if they had been produced as an appendix to a printed report. Pp. 8–9.

(c) This Court is not persuaded by assertions that it would be anomalous to read the public disclosure bar to encompass written FOIA responses. Pp. 9–14.

(1) The Court's holding is not inconsistent with the public disclosure bar's drafting history. If anything, the drafting history supports this Court's holding. Kirk's case seems a classic example of the "opportunistic" litigation that the public disclosure bar is designed to discourage. *Id.,* at ___. Anyone could identify a few regulatory filing and certification requirements, submit FOIA requests until he discovers a federal contractor who is out of compliance, and potentially reap a windfall in a *qui tam* action under the FCA. Pp. 9–11.

(2) Nor will extending the public disclosure bar to written FOIA responses necessarily lead to unusual consequences. Kirk argues that the Court's ruling would allow a suit by a *qui tam* relator possessing records whose release was required by FOIA even absent a request, but bar an action by a relator who got the same documents by way of a FOIA request. Even assuming, as Kirk does, that unrequested records are not covered by the public disclosure bar, the

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Court is not troubled by the different treatment. By its plain terms, the bar applies to some methods of public disclosure and not to others. See *Graham County,* 559 U. S., at ___. It would not be anomalous if some methods of FOIA disclosure fell within the bar's scope and some did not. Moreover, Kirk's assertion that potential defendants will now insulate themselves from liability by making a FOIA request for incriminating documents is pure speculation. Cf. *id.,* at ___. There is no suggestion that this has occurred in those Circuits that have long held that FOIA responses are "reports" within the public disclosure bar's meaning. Pp. 11–13.

(3) Even if the foregoing extratextual arguments were accepted, Kirk and his *amici* have provided no principled way to define "report" to exclude FOIA responses without excluding other documents—*e.g.*, the Justice Department's annual report of FOIA statistics—that are indisputably reports. Pp. 13–14.

(d) Whether Kirk's suit is "based upon . . . allegations or transactions" disclosed in the reports at issue is a question to be resolved on remand. P. 14.

601 F. 3d 94, reversed and remanded.

THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, and ALITO, JJ., joined. GINSBURG, J., filed a dissenting opinion, in which BREYER and SOTOMAYOR, JJ., joined. KAGAN, J., took no part in the consideration or decision of the case.