

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA;
MARY JANE BRENCE; DAVID
MYUNG; LUCKY NGUYEN,

Plaintiffs - Appellees,

v.

JEREMY BURTON,

Defendant - Appellant,

PARSONS GOVERNMENT
SERVICES, INC.,

Defendant - Appellee,

JOHN AUDIA, JUDY GONCE,

Defendants.

No. 25-87

D.C. No.
2:21-cv-05177-
KK-E

OPINION

Appeal from the United States District Court
for the Central District of California
Kenly Kiya Kato, District Judge, Presiding

Argued and Submitted July 6, 2026
Pasadena, California

Filed September 28, 2026

Before: Johnnie B. Rawlinson, Gabriel P. Sanchez, and
Eric C. Tung, Circuit Judges.

Opinion by Judge Tung

SUMMARY*

False Claims Act / Appellate Jurisdiction

The panel dismissed for lack of jurisdiction a defendant's appeal from the district court's interlocutory order denying at the pleading stage a defense in a *qui tam* action under the False Claims Act.

Defendant Jeremy Burton invoked 31 U.S.C. § 3730(e)(1), which provides that an action may not be brought by a member of the armed forces "against a member of the armed forces arising out of such person's service in the armed forces." The district court denied the defense, concluding that Burton was not a member of the armed forces, and permitted the case to proceed.

The panel held that it lacked appellate jurisdiction under collateral order doctrine. While the district court's order might be viewed as conclusively resolving a disputed question that was completely separate from the merits of the case, the order was not effectively unreviewable on appeal

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

from a final judgment. Section 3730(e)(1) does not confer an immunity but rather is a jurisdictional bar. The panel held that it lacked jurisdiction over an appeal from a non-final order declining to apply that bar.

COUNSEL

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Johnny Kim (argued) and Derrick F. Coleman (argued), Coleman Frost LLP, El Segundo, California; Alexander Cote and David Scheper, Winston Taylor LLP, Los Angeles, California; for Defendants-Appellants.

OPINION

TUNG, Circuit Judge:

Congress passed the False Claims Act to ferret out fraud against the federal government. Under the Act, a person can stand in the shoes of the government to sue a purported fraudster and, if successful, obtain a monetary award. But there are exceptions, and one particular action is not allowed: “No court shall have jurisdiction over an action brought by a former or present member of the armed forces . . . against a member of the armed forces arising out of such person’s service in the armed forces.” 31 U.S.C. § 3730(e)(1). Defendant here invoked this provision at the pleading stage as a defense to a suit against him for cheating the federal government. The district court denied the defense, concluding that Defendant was not “a member of the armed forces” entitled to such a defense, and permitted the case to proceed. Before the case could reach finality, however, Defendant sought an appeal. We hold that we lack jurisdiction to entertain such an interlocutory appeal. The Supreme Court has instructed us to be parsimonious in our exercise of appellate jurisdiction over non-final orders, and this appeal does not fall within the small class of cases justifying interlocutory treatment. We thus dismiss the appeal.

I.

Plaintiffs are employees of the Space and Missile Systems Center (“SMC”) of the United States Air Force¹

¹ SMC originally operated under the U.S. Air Force. In April 2021, its status changed and SMC was redesignated as the Space Systems Command under the aegis of the U.S. Space Force. *See* U.S. Gov’t

who are suing Defendant Jeremy Burton, the SMC's former Deputy Chief Information Officer, under the *qui tam* provisions of the False Claims Act ("FCA") for submitting fraudulent payments claims to the United States government. They specifically allege that Defendant—along with other defendants not before us on this appeal—coordinated with a defense contractor and took steps to ensure that SMC contracts went to that contractor with the intent to share profits in violation of the Federal Acquisition Regulations.

On May 2, 2024, Defendant filed a motion to dismiss, arguing among other things that Plaintiffs' claims were barred by 31 U.S.C. § 3730(e)(1). Under this provision, "[n]o court shall have jurisdiction over an action brought by a former or present member of the armed forces under subsection (b) of this section [which generally permits actions by private persons under the False Claims Act] against a member of the armed forces arising out of such person's service in the armed forces." 31 U.S.C. § 3730(e)(1). The district court initially agreed with Defendant that the provision barred Plaintiffs' suit, because (in its view) Defendant's employment with SMC constituted membership in the armed forces. It issued an order dismissing Plaintiffs' claims against Defendant.

But upon further consideration, the district court altered its conclusion. In light of subsequent briefing on Plaintiffs' claims against other defendants involved in the alleged

Accountability Off., *DOD Faces Challenges and Opportunities with Acquiring Space Systems in a Changing Environment*, GAO-21-520T at 3 (2021), <https://perma.cc/3RF9-DZEE>. The facts at issue here occurred prior to the redesignation. For ease of reference, we will therefore refer to the parties as belonging to the Air Force.

scheme, *see, e.g., United States v. Burton*, No. 2:21-cv-05177-KK-E, Dkt. 98, the district court *sua sponte* reconsidered and vacated its previous order. This time, it concluded that Defendant was a civilian employee, and thus not a “member of the armed forces” under section 3730(e)(1).

Defendant now appeals the district court’s order.² We possess jurisdiction to determine whether we have jurisdiction. *Thomas v. Nakatani*, 309 F.3d 1203, 1205 (9th Cir. 2002). As explained below, we do not.

II.

A.

Federal appellate courts exercise jurisdiction over “all final decisions of the district courts of the United States.” 28 U.S.C. § 1291. “A final decision ‘ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.’” *California, et al. v. Meta Platforms, Inc.*, 186 F.4th 663, 671 (9th Cir. 2026) (quoting *Hall v. Hall*, 584 U.S. 59, 64 (2018)). “An order denying a motion to dismiss—in whole or in part—does not meet this criterion” and is “typically not immediately appealable under § 1291.” *Id.* (quotation and citation omitted). Neither is an order vacating a prior order granting a motion to dismiss. The final-judgment rule disfavors piecemeal litigation.

But the rule has its caveats. A few decades ago, the Supreme Court in *Cohen v. Beneficial Indust. Loan Corp.*,

² Defendant has not moved for the district court to certify his interlocutory appeal under 28 U.S.C. § 1292(b). Another defendant not before the panel sought to certify based on the collateral order doctrine (*United States v. Burton*, No. 2:21-cv-05177-KK-E, Dkt. 143), but the district court denied the request. *Id.* at Dkt. 161.

337 U.S. 541 (1949), set forth what has come to be known as the “collateral order doctrine.” Under this doctrine, appellate courts may review interlocutory orders addressing certain claims that are “too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated.” *Id.* at 546.

The Court has distilled this doctrine into three prongs: to qualify for immediate review, the district court order must “(1) conclusively determine the disputed question, (2) resolve an important issue completely separate from the merits of the action, and (3) be effectively unreviewable on appeal from a final judgment.” *Will v. Hallock*, 546 U.S. 345, 349 (2006) (internal quotation marks omitted).

The Court has further instructed that only a “small class” of decisions meets this “high bar.” *Geo Grp., Inc. v. Menocal*, 607 U.S. 438, 444 (2026) (“[The] so-called collateral-order doctrine, we have since underscored, is ‘narrow,’ ‘stringent,’ and of ‘modest scope.’”). “This admonition has acquired special force” after Congress passed 28 U.S.C. § 1292(e), which empowers the Supreme Court to “prescribe rules . . . to provide for an appeal of an interlocutory decision to the courts of appeals that is not otherwise provided for under [§ 1292].” *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 113–14 (2009); *Garraway v. Ciuffo*, 113 F.4th 1210, 1221 (9th Cir. 2024). Judicial rulemaking, rather than “expansion by court decision,” was accordingly to be “the preferred means for determining whether and when prejudgment orders should be immediately appealable.” *Mohawk Indus.*, 558 U.S. at 113. Such congressional “designation of the rulemaking process as the way to define or refine when a district court ruling is

“final” is entitled to our “full respect.” *Swint v. Chambers Cnty. Comm’n*, 514 U.S. 35, 48 (1995).

B.

Defendant’s appeal does not fall within the narrow class of cases to which the collateral-order doctrine applies. While the district court’s order might be viewed as “conclusively” resolving a disputed question that is “completely separate” from the merits of the case (satisfying prongs one and two of the collateral-order doctrine), it is *not* “effectively unreviewable on appeal from a final judgment” and thus fails to satisfy the final prong of the doctrine. *Will*, 546 U.S. at 349. We “lack collateral order jurisdiction if even one [prong] is not met.” *McElmurry v. U.S. Bank Nat. Ass’n*, 495 F.3d 1136, 1140 (9th Cir. 2007).

Defendant is correct that the case against him would have to be dismissed if he is a member of the armed forces. But a denial of that alleged right, on the basis that he is not a member, does not entitle him to a fast-pass ticket to our court: “[n]ot every order denying a claim of right to prevail without trial satisfies [the collateral order doctrine’s] third condition.” *Est. of Esche v. Bunuel-Jordana*, 152 F.4th 1185, 1191 (9th Cir. 2025) (quotation omitted). If the law were otherwise, a defendant could immediately appeal any time he loses a dispositive motion before trial.

That is not the law. The Supreme Court has instructed that only those orders that deny “an immunity from suit” are subject to interlocutory appeal under the collateral-order doctrine. *Geo Grp.*, 607 U.S. at 444–447. The jurisdictional bar reflected in section 3730(e)(1) is not an immunity from suit. Typically, an immunity is an “affirmative defense” and “can be waived”; a jurisdictional bar usually cannot be waived. *In re Stock Exchanges Options Trading Antitrust*

Litig., 317 F.3d 134, 151 (2d Cir. 2003). And a jurisdictional defense (even of the rare waivable variety, such as a personal-jurisdiction defense) generally has not been treated by the Supreme Court or our court as an immunity from suit, the denial of which would permit an instant appeal. *See, e.g., Van Cauwenberghe v. Biard*, 486 U.S. 517, 526–27 (1988) (personal jurisdiction); *United States v. Layton*, 645 F.2d 681, 683 (9th Cir. 1981) (subject matter jurisdiction).

Section 3730(e)(1)’s phrasing suggests, too, that the bar does not grant an immunity. An immunity is an “entitlement not to stand trial.” *Geo Grp.*, 607 U.S. at 446 (citation omitted). But section 3730(e)(1) speaks in terms of a *court’s* power—not a *personal* entitlement: “No court shall have jurisdiction over an action brought by” Contrast this with classic immunities from the burdens of trial—*i.e.*, protections afforded by the Double Jeopardy Clause (“nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb”), *see Abney v. United States*, 431 U.S. 651, 660–61 (1977), and the Speech or Debate Clause (“and for any Speech or Debate in either House, they shall not be questioned in any other Place”), *see Helstoski v. Meanor*, 442 U.S. 500, 501 n.1 (1979). Nor is section 3730(e)(1) akin to other immunities for which immediate appeal is available, such as absolute immunity or qualified immunity (if it turns on law not fact). *See Nixon v. Fitzgerald*, 457 U.S. 731, 742–43 (1982); *Mitchell v. Forsyth*, 472 U.S. 511, 530 (1985). These immunities are attached to the person—the very nature of which is to give him protection from trial. The same cannot be said of section 3730(e)(1), which goes to a court’s power and instructs a court what to do. It does not confer an immunity.

One might argue that section 3730(e)(1) does confer an immunity because it refers to specific types of individuals—

“member[s] of the armed forces.” But that argument would be incorrect. Section 3730(e)(1) does not protect a member of the armed forces from False Claim Act suits generally, as one might expect an *immunity* to do. Rather, the section only divests jurisdiction over actions brought by *members* of the armed forces against *other* members; it does not, for example, bar suits brought by non-members or by the government. This feature of the statute reinforces the conclusion that it does not provide an immunity from suit.

Nor would denying a defense under section 3730(e)(1) “undermine important constitutional or policy interests” that might justify finding an immunity here. *See Geo Grp.*, 607 U.S. at 445 n.1; *id.* at 459 (Alito, J., concurring in the judgment); *see also Lauro Lines s.r.l. v. Chasser*, 490 U.S. 495, 502 (1989) (Scalia, J., concurring) (“The importance of the right asserted has always been a significant part of our collateral order doctrine.”). What is sufficiently “important” to overcome the final-judgment rule is not a freewheeling inquiry; the inquiry must be anchored in, and cabined by, precedent. And precedent instructs us to deny an immediate appeal here.

Courts have denied an immediate appeal in the following instances: when a discovery order would vitiate a party’s attorney-client privilege (*Mohawk Indus.*, 558 U.S. at 108–113); when a defendant claims to be subject to vindictive or selective prosecution (*United States v. Hollywood Motor Car Co.*, 458 U.S. 263, 264–65 (1982) (per curiam)); when a defendant claims that an extradition treaty exempts him from civil service of process (*Van Cauwenberghe*, 486 U.S. at 524); when a court disregards a forum-selection clause (*Lauro Lines*, 490 U.S. at 501); when an order denies the effect to a settlement agreement (*Digital Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 884 (1994)); when a

defense of lack of subject-matter jurisdiction is denied (*Layton*, 645 F.2d at 683); and when a defense under the Federal Tort Claims Act's "judgment bar" is rejected (*Will*, 546 U.S. at 347).

The interests implicated in those instances were quite important. One cannot quarrel, for example, with the significance of the attorney-client privilege, deeply rooted as it is in the common law. Yet courts have not deemed that interest and others important enough to be vindicated in an interlocutory posture. If those interests were not enough, it is hard to see how the interest here would be.

The Supreme Court's case in *Will* is perhaps the most instructive. In *Will*, the plaintiffs had brought a lawsuit against federal-government defendants under the Federal Tort Claims Act ("FTCA") for damaging the plaintiffs' property; that suit was dismissed. 546 U.S. at 348. One of the plaintiffs subsequently brought a *Bivens* action against those defendants alleging violations under the Due Process Clause for the same underlying harm. *Id.* The government defendants, in that *Bivens* action, invoked the FTCA's "judgment bar," which provides that "the judgment in an action under [the FTCA] shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee of the government whose act or omission gave rise to the claim." *Id.* (quoting 28 U.S.C. § 2676). That defense was denied, and the government sought an interlocutory appeal. *Id.* at 348–49. The Supreme Court held that the government defendants could not pursue such an appeal under the collateral-order doctrine. *Id.* at 355. "There is," the Court said, "no such public interest at stake" that would justify an immediate appeal "simply because the judgment bar is said to be applicable." *Id.* at 353. "[S]imply abbreviating litigation troublesome to

Government employees,” the Court declared, was not “important enough for *Cohen* treatment.” *Id.*

That reasoning applies here. Section 3730(e)(1) bars certain actions in the way that the FTCA’s “judgment bar” does. Compare 28 U.S.C. § 2676 (“judgment . . . shall constitute a complete bar to any action”) with 31 U.S.C. § 3730(e)(1) (“[n]o court shall have jurisdiction over an action”). Just as in *Will*, “abbreviating litigation” by dint of the bar here is not enough to permit an interlocutory appeal. 546 U.S. at 353. If anything, the “judgment bar” in *Will* appears to be a stronger candidate for interlocutory treatment than the jurisdictional bar here. *Id.* The “judgment bar” resembles *res judicata*, a principle that seeks precisely to “avoid[]” the sort of “duplicative litigation” that one might have thought an *immunity* (such as the one against double jeopardy) served to preclude. *See id.* at 354. By contrast, no such interest in avoiding duplicative litigation is necessarily reflected in section 3730(e)(1)’s jurisdictional bar. Yet the Court in *Will* concluded that the “judgment bar” was not “important enough” to justify an immediate appeal. *Id.* at 353. If the issue was not important enough there, then surely it is not important enough here.

Defendant nevertheless argues for section 3730(e)(1)’s importance by invoking the *Feres* doctrine. That doctrine holds that “the Government is not liable under the Federal Tort Claims Act for injuries to servicemen where the injuries arise out of or are in the course of activity incident to service.” *Feres v. United States*, 340 U.S. 135, 146 (1950). And it is true that this court has held that a district court’s “refusal to dismiss on *Feres* grounds” is immediately appealable “under the collateral order doctrine.” *Lutz v. Sec’y of Air Force*, 944 F.2d 1477, 1484 (9th Cir. 1991). But while immediate appeals on *Feres* grounds have been

justified in order to “safeguard[] military discipline” from “judicial intrusion,” *id.* at 1483–84, the same does not hold true here.

Suits under the False Claims Act do not seek redress of “injuries to servicemen where the injuries arise out of or are in the course of activity incident to service.” *Feres*, 340 U.S. at 146. They seek to smoke out fraud. Indeed, the Act’s genesis was to stop military contractors and servicemembers from making false claims for payments and bilking the U.S. government. *United States v. Bornstein*, 423 U.S. 303, 309 (1976); *Universal Health Servs., Inc. v. United States*, 579 U.S. 176, 181–82 (2016); Act of Mar. 2, 1863, ch. 67 § 1, 12 Stat. 696. Accordingly, to say that allowing false-claims actions to proceed against servicemembers would eviscerate an interest so important as to justify immediate appeal would be to disregard the Act’s history and purpose. Suits that seek to block government fraud, in short, are nothing like suits alleging service-related injuries that *Feres* bars.

Cries here of “judicial intrusion” into military affairs are also overblown when the *government* itself can direct dismissal of the *qui tam* action. “[T]he Government may seek dismissal of an FCA action over a relator’s objection so long as it intervened sometime in the litigation, whether at the outset or afterward.” *United States, ex rel. Polansky v. Exec. Health Res.*, 599 U.S. 419, 424 (2023). The point is this: if the denial of a section 3730(e)(1) defense is “important enough” to the government (because it deems such denial to be unduly disruptive of military discipline or for whatever reason), the government can itself seek dismissal of the False Claims Act suit, thus eliminating any need for an immediate appeal. Courts need not create an avenue for such an appeal.

* * *

To convince us to hear a case on interlocutory appeal is not impossible but it is very hard. Defendant here does not meet that high bar. Section 3730(e)(1) does not confer an immunity; it is a jurisdictional bar. We lack jurisdiction over an appeal from a non-final order declining to apply that bar. The appeal is dismissed.