



# Protecting Your Executives – Enforcement Against Individuals in the Trump Administration

December 9, 2025

GIBSON DUNN



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# TODAY'S PRESENTERS



**Nick Hanna (Moderator)**  
Partner | Los Angeles  
[nhanna@gibsondunn.com](mailto:nhanna@gibsondunn.com)  
T: +1 213.229.7269



**Jordan Estes**  
Partner | New York  
[jestes@gibsondunn.com](mailto:jestes@gibsondunn.com)  
T: +1 212.351.3906



**Douglas M. Fuchs**  
Partner | Los Angeles  
[dfuchs@gibsondunn.com](mailto:dfuchs@gibsondunn.com)  
T: +1 213.229.7605



**Dani R. James**  
Partner | New York  
[djames@gibsondunn.com](mailto:djames@gibsondunn.com)  
T: +1 212.351.3880



**Michael Martinez**  
Partner | New York  
[mmartinez2@gibsondunn.com](mailto:mmartinez2@gibsondunn.com)  
T: +1 212.351.4076

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# Trump Era

## Investigative Trends and Priorities

01

# White Collar Crime as an Enforcement Priority


Deputy AG Todd Blanche has made public statements that “[w]hite-collar cases are a significant priority for President Trump, for the attorney general and for the department.”

POLITICO

## Blanche warns lawyers who criticize Justice Department

DOJ's No. 2 official said prosecutors see "inconsistency" in attorneys' private pleas and public commentary.

# Changed Enforcement Priorities

 U.S. Department of Justice  
Criminal Division

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Office of the Assistant Attorney General Washington, D.C. 20530

May 12, 2025

MEMORANDUM

TO: All Criminal Division Personnel

FROM: Matthew R. Galeotti  
Head of the Criminal Division


SUBJECT: Focus, Fairness, and Efficiency in the Fight Against White-Collar Crime<sup>1</sup>

## STRENGTHENING AMERICAN LEADERSHIP IN DIGITAL FINANCIAL TECHNOLOGY

The White House January 23, 2025

## Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security

The White House February 10, 2025

 The Deputy Attorney General Washington, D.C. 20530  
June 9, 2025

MEMORANDUM FOR HEAD OF THE CRIMINAL DIVISION

FROM: THE DEPUTY ATTORNEY GENERAL *Jose B. Blum*

SUBJECT: Guidelines for Investigations and Enforcement of the Foreign Corrupt Practices Act (FCPA)<sup>1</sup>

## FIGHTING OVERCRIMINALIZATION IN FEDERAL REGULATIONS

Executive Orders May 9, 2025

## White Collar-Related Enforcement Priorities

Various presidential executive orders and DOJ memoranda have announced changing enforcement priorities, including:

- Health care fraud
- Trade and customs fraud (incl. tariff evasion)
- Fraud that victimizes U.S. investors
- Narrowing Foreign Corrupt Practices Act enforcement to crimes that impact U.S. national interests, national security, or that involve serious misconduct
- Expanding False Claims Act actions
- Crimes that victimized digital asset investors or that used digital assets

# Investigative Trends – Private Credit Market Fraud

U.S. Attorney for the Southern District of New York Jay Clayton announced that financial regulators and the DOJ are looking at “some areas of concern” in private credit markets, including:

- Different firms’ valuations for similar private assets
- Subjectivity in valuing illiquid or non-traded assets
- Transfers of private assets from one portfolio to another portfolio that may be “ripe for abuse”
- “Cherry-pick[ing]” of prices to inflate valuations

Recent charges/investigations:

- Tricolor Holdings

*In re Tricolor Holdings, LLC*, No. 25 Bankr. 33487 (Bankr. N.D. Tex. 2025)

- First Brands Group

*In re First Brands Group, LLC*, No. 25 Bankr. 90399 (Bankr. S.D. Tex. 2025)

- Joshua Wander and 777 Partners LLC

*United States v. Wander*, No. 25 Crim. 473 (S.D.N.Y.); parallel SEC action: *SEC v. Wander*, No. 25 Civ. 8565 (S.D.N.Y.)



# Investigative Trends – Health Care Fraud

In July 2025, the DOJ and HHS established the **DOJ-HHS False Claims Act Working Group** to combat health care fraud and announce priority enforcement areas.

## 2025 National Health Care Fraud Takedown:

- 324 defendants were criminally charged for their alleged participation in various health care fraud schemes that involved over \$14.6 billion in intended loss
- 2024 Takedown reported only 193 defendants charged for schemes that involved over \$2.75 billion in intended loss
- DOJ, HHS-OIG, FBI, and other agencies will create a **Health Care Data Fraud Fusion Center** to leverage cloud computing, AI, and advanced analytics to identify emerging health care fraud schemes
- Nationwide investigation **Operation Gold Rush** resulted in 29 defendants being charged for their roles in transnational criminal organizations that allegedly submitted over \$12 billion in fraudulent health insurance claims

# Investigative Trends – Gambling / Insider Betting

On October 23, 2025, six individuals, including current and former **National Basketball Association** players, were indicted with conspiracy to commit wire fraud and money laundering for allegedly using inside NBA information to profit from illegal sports betting activity.

*United States v. Earnest*, No. 25 Crim. 323 (E.D.N.Y.)

Also on October 23, 2025, 31 defendants, including members of the **Bonanno, Gambino, and Genovese organized crime families**, **NBA Portland Trail Blazers head coach Chauncey Billups**, and former **NBA player Damon Jones**, were charged with criminal violations related to an alleged scheme to rig illegal poker games.

*United States v. Aiello*, No. 25 Crim. 314 (E.D.N.Y.)

On November 9, 2025, two **Cleveland Guardian** pitchers were indicted with conspiracy charges for allegedly scheming to rig bets on pitches thrown during **Major League Baseball** games.

*United States v. Clase de la Cruz*, No. 25 Crim. 346 (E.D.N.Y.)

# Investigative Trends – Trade Fraud

On May 13, 2025, the DOJ announced it would **prioritize corporate whistleblower tips** in areas such as tariff fraud and immigration.

On July 10, 2025, the DOJ announced that it was expanding and renaming a major frauds unit to focus on trade-related fraud schemes. The unit was renamed the **Market, Government, and Consumer Fraud Unit**.

On August 29, 2025, the DOJ and Department of Homeland Security launched a cross-agency **Trade Fraud Task Force** “to bring robust enforcement against importers and other parties who seek to defraud the United States.” This task force was developed in connection with President Trump’s America First Trade Policy.

# Investigative Trends – SEC

The Division of Enforcement must receive Commission approval to issue a formal order of investigation.

See Delegation of Authority to Director of the Division of Enforcement, 90 C.F.R. 12105 (Mar. 14, 2025)

Three-part focus on (1) protecting investors, (2) maintaining fair, orderly, and efficient markets, and (3) facilitating capital formation through:

- Enhanced Wells process: more time to respond to Wells Notices, additional disclosure by SEC via Reverse Proffers, openness to White Papers
- Permitting requests for waivers from collateral consequences of SEC actions (which now should be submitted to the Commission simultaneously with settlement offers)



# Strategies for Biden Era Charged Cases

02

# Weaponization and Careerism

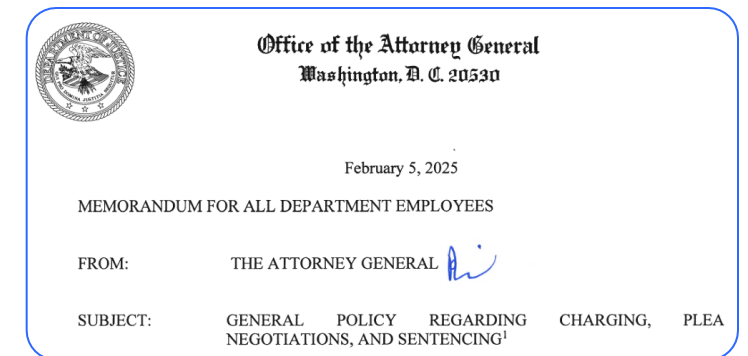


The “prior administration and allies throughout the country engaged in an unprecedented, third-world weaponization of prosecutorial power to upend the democratic process.”

The AG was directed to “take appropriate action to review the activities of all departments and agencies” and “identify any instances” where conduct was contrary to the purpose of the E.O.

DOJ AG announced “[t]here is no place in the decision-making process for animosity or careerism, *i.e.*, the ‘possible effect of the decision on the attorney’s own professional or personal circumstances.’”

DOJ AG stated such careerism had previously led to improper weaponization of the criminal justice system.



# Policy Changes Supporting Review of Biden Era Cases

## STATEMENT FROM DEPUTY ATTORNEY GENERAL TODD BLANCHE

JUNE 10, 2025

At the direction of President Trump and pursuant to Executive Order 14209, the Department of Justice is issuing new guidelines governing the enforcement of the Foreign Corrupt Practices Act (FCPA). As the President rightly noted, FCPA enforcement in recent years was extended beyond its original intent, burdening American companies and harming our national interest.

In response, I led a comprehensive review of ongoing and prior FCPA matters, guided by the principles outlined in my memorandum. These principles, refined through rigorous internal evaluation, ensure that our enforcement efforts are consistent with the rule of law and advance American interests.

As a result of this review, the Department has already closed approximately half of the open investigations initiated under the previous Administration. We are shifting prosecutorial resources toward cases that clearly implicate U.S. national security and economic competitiveness, rather than penalizing legitimate business operations abroad.

Under this Administration, the FCPA will be enforced firmly but fairly, targeting misconduct that undermines American companies and our global standing, while eliminating unnecessary burdens. These new guidelines are effective immediately and apply to all new and existing matters.

This Department of Justice remains committed to transparency, accountability, and a level playing field that protects American interests around the world.

E.O. 14209 required the AG to inspect all existing FCPA investigations and enforcement actions.

On June 10, 2025, Deputy AG Todd Blanche released a statement that, under these new policies, *the DOJ had closed approximately half of the FCPA investigations* initiated under the Biden administration.

# Policy Changes Supporting Review of Biden Era Cases



The E.O. states that the “United States is drastically overregulated” and called out in particular strict liability regulatory crimes. As a result, the E.O. aims to “ease the regulatory burden on everyday Americans and ensure no American is transformed into a criminal for violating a regulation they have no reason to know exists.”

The E.O. set out directives regarding criminal enforcement, noting that strict liability offenses and criminal enforcement of regulatory offenses are both disfavored.

The E.O. also stated that prosecution of criminal regulatory offenses would be most appropriate for parties “who know or can be presumed to know what is prohibited or required by the regulation and willingly choose not to comply.”



# Example Declinations of Biden Era Charged Cases - FCPA

## **United States v. Coburn, No. 19 Crim. 120 (D.N.J. 2019)**

On February 14, 2019, the DOJ filed an indictment against **Gordon J. Coburn** and **Steven Schwartz** under the FCPA, alleging the two executives of **Cognizant Technology Solutions Corporation** authorized a \$2 million bribe to expedite a construction project in India.

Trial was scheduled for March 2025. On February 18, 2025, Acting U.S. Attorney for the District of New Jersey Vikas Khanna stated he was aware of the E.O. ordering the review of all FCPA enforcement actions and that the case was undergoing review, but the DOJ was still prepared to proceed to trial.

On April 2, 2025, interim U.S. Attorney for the District of New Jersey Alina Habba dismissed with prejudice the indictment.

The court granted the dismissal with prejudice the next day.

# Example Declinations of Biden Era Charged Cases – SEC Cases

## Dropped SEC Civil Enforcement Actions

In September 2025, the SEC dropped three high-profile civil enforcement cases against individuals who had previously been granted clemency by President Trump.

- **Devon Archer** was convicted in 2022 of defrauding a Native American tribal entity and other investors. He was fully pardoned on March 25, 2025, and the SEC civil enforcement action was voluntarily dismissed on September 19, 2025.

Criminal case: *U.S. v. Archer*, No. 16 Crim. 371 (S.D.N.Y.); Civil case: *SEC v. Archer*, No. 16 Civ. 3505 (S.D.N.Y.)

- **Trevor Milton** was convicted in 2022 of fraudulently inducing investors to purchase shares of his company Nikola Corporation. He was fully pardoned on March 27, 2025, and the SEC civil enforcement action was voluntarily dismissed on September 15, 2025.

Criminal case: *U.S. v. Milton*, No. 21 Crim. 478 (S.D.N.Y.); Civil case: *SEC v. Milton*, No. 21 Civ. 6445 (S.D.N.Y.)

- **Carlos Watson** was convicted in 2024 of defrauding investors in and lenders to Ozy Media Inc. His sentence was commuted on March 28, 2025, and the SEC civil enforcement action was voluntarily dismissed on September 18, 2025.

Criminal case: *U.S. v. Watson*, No. 23 Crim. 82 (E.D.N.Y.); Civil case: *SEC v. Ozy Media, Inc.*, No. 23 Civ. 1424 (S.D.N.Y.)

# Example Declinations of Biden Era Charged Cases – SEC Cases

## **SEC v. SolarWinds Corp., No. 23 Civ. 9518 (S.D.N.Y.)**

In October 2023, the SEC filed charges for fraud and internal control failures against software company **SolarWinds Corporation** and its chief information security officer (CISO) **Timothy Brown**.

The complaint alleged SolarWinds and Brown overstated the company's cybersecurity practices and understated or failed to disclose known cybersecurity risks.

This action was the first formal SEC enforcement action against a CISO and the first civil fraud action related to a public company's cybersecurity disclosures.

In November 2025, the SEC filed a joint stipulation to dismiss with prejudice the enforcement action as an exercise of its discretion.

# Example Declinations of Biden Era Charged Cases – SEC Crypto Cases

## Dropped Cryptocurrency Cases

The SEC has dropped a number of high-profile enforcement actions related to the crypto industry. For example:

- In February 2025, the SEC dismissed its action against **Coinbase, Inc.** for allegedly operating as an unregistered national securities exchange, broker, and clearing agency, filed in June 2023. The SEC cited the formation of the Crypto Task Force in its dismissal motion.

*SEC v. Coinbase, Inc.*, No. 23 Civ. 4738 (S.D.N.Y.)

- In May 2025, the SEC dismissed with prejudice its suit against **Binance Holdings Ltd.** for 13 alleged violations of securities law.

*SEC v. Binance Holdings Ltd.*, No. 23 Civ. 1599 (D.D.C.)

The SEC has also ended its investigations into multiple crypto-related entities, such as:

- **OpenSea** (an NFT marketplace);
- **Robinhood Crypto** (a crypto trading platform); and
- **Uniswap Labs** (the creator of Ethereum decentralized exchange Uniswap).



# Example Declinations of Biden Era Charged Cases – DOJ

## ***United States v. Wiederhorn, No. 24 Crim. 295 (C.D. Cal. 2024)***

On May 9, 2024, the DOJ charged [Andrew A. Wiederhorn](#) and other executives at [Fat Brands Inc.](#) (a restaurant company that owns Fatburger, Johnny Rockets, and Great American Cookies) with criminal charges related to an alleged scheme to conceal \$47 million in distributions as shareholder loans.

Trial was scheduled for October 2025.

On July 29, 2025, the prosecutors moved to dismiss the indictment without prejudice as to all defendants. The DOJ stated that, “[d]uring 2025, the Department of Justice issued policy guidance on enforcement priorities. Because the conduct alleged in the indictment does not fall within the scope of these criminal prosecution priorities, the government moves to dismiss the indictment.”

On August 7, 2025, the court ordered the indictment be dismissed without prejudice as to all defendants.

# Trump Era

## Declination Process and Strategy

03

# Traditional Declination Process

- Initial presentation to line attorneys/immediate supervisors
- Appeal to the Front Office
- Last resort: appeal to DAG's Office

# Declination Process Today

The overall guidelines for the declination process have not changed, but there are new factors to consider, including:

- Target audience (DOJ, AG's office, White House General Counsel)
- Whether to hire a lobbying or consulting firm
- What leverage to utilize at which step of the declination process

# Declination Process Today

## Declination Strategy Considerations

- Nearly 5,500 employees have left the DOJ since January
- Resources have been diverted to focus on administration priorities such as immigration and transnational crime organizations
- DOJ statements have discouraged “seeking premature relief, mischaracterizing prosecutorial conduct, or otherwise failing to be an honest broker” and cautioned “conscientious[ness] about what, when, and how [to] appeal the decisions of Trial Attorneys and AUSAs.”

# Trump Era Trial Strategy

04



# To Consider During Trial: Challenges to the DOJ

## Challenges to Trump U.S. Attorney Appointments

The indictments brought by several U.S. Attorneys appointed outside of the traditional Senate confirmation process have been challenged on the basis that their appointments were unlawful.

- A court dismissed indictments against former FBI director **James Comey** and New York AG **Letitia James** on the basis that **Lindsey Halligan's** appointment as Interim U.S. Attorney for the Eastern District of Virginia was invalid.

*United States v. Comey*, No. 25 Crim. 272, ECF No. 213 (E.D. Va. Nov. 24, 2025); *United States v. James*, No. 25 Crim. 122, ECF No. 140 (E.D. Va. Nov. 24, 2025)

- Similar challenges have been made against **Alina Habba** in the District of New Jersey, **Bilal A. Essayli** in the Central District of California, and **Sigal Chattah** in the District of Nevada.

*United States v. Giraud*, No. 24 Crim. 768, ECF No. 144 (D.N.J. Aug. 21, 2025); *United States v. Pina*, No. 25. Crim. 436 (D.N.J.); *United States v. Pina*, No. 25-2636, ECF No. 81 (3rd Cir.); *United States v. Ramirez*, No. 25 Crim. 264, ECF No. 56 (C.D. Cal. Oct. 28, 2025); *United States v. Garcia*, No. 25 Crim. 230, ECF No. 42 (D. Nev. Sept. 30, 2025)

# To Consider During Trial: Jury Selection

## Perceptions of the DOJ and FBI Can Also Impact Jury Selection

Trial consulting company DOAR issued a recent report on its February 2025 survey of over 1,000 jury-eligible Americans about their views of the DOJ and FBI, corporate executives, and white-collar crime issues, with the following key findings:

- Political affiliation is a strong predictor of juror attitudes, sometimes more so than demographics like age, gender, or education
- Biases tend to fall along “truststers” vs. “skeptics” rather than pro-government vs. pro-defense
- Potential jurors aged 55 and older tended to be more favorable to defendants
  - However, for crypto-related and FCPA cases, the most defense-sympathetic jurors were younger, male Trump voters without college degrees
- High levels of political polarization could increase the likelihood of a hung jury in white-collar crime trials

# Trump Era Clemency

05

# Traditional Clemency Petition Process

Types of clemency:

- **Full pardons** obviate the punishment for convicted or charged federal criminal offenses
- **Commutations** reduce the punishment associated with convictions of federal criminal offenses

Under the DOJ Manual:

- Clemency is sought through the **Office of the Pardon Attorney** within the DOJ, unless a specific waiver is granted
- For a pardon, at least five years must have elapsed
- For a commutation, there must be prior exhaustion of all other forms of judicial and administrative relief
- The **Pardon Attorney** investigates the merits of such petitions, seeking input from people involved in the conviction, such as prosecutors, sentencing judges, and crime victims
- The Pardon Attorney submits a recommendation to the **Attorney General**
- The AG makes a final recommendation to the **President**, which the President can decide on without restriction

# Clemency Process in the Trump Era

Since taking office for his second term, President Trump has issued **74 pardons and 15 commutations** in addition to his January 20, 2025 proclamation that commuted or pardoned **more than 1,500 individuals** convicted of offenses related to January 6 events at the U.S. Capitol.

The Trump Administration reportedly conducts many of its clemency decisions out of the White House without necessarily seeking input from the Pardon Attorney.

- For example, the January 6-related pardons were announced only hours after President Trump's inauguration, likely meaning no input was solicited from the personnel involved in those convictions.
- Many recent pardons and commutations were issued well before either the five-year or exhaustion of remedies requirements.
- The backlog of pardon applications has reportedly doubled since President Trump has taken office, meaning the traditional clemency process may no longer be effective.

Recent pardons include:

- Former Honduran President **Juan Orlando Hernández**
- Democratic Texas Congressman **Henry Cuellar** and his wife
- Former CEO of Oak View Group **Tim Leiweke**

# Questions?



# Upcoming December Programs

## 2025/2026 White Collar Webcast Series

Date and Time	Program	Registration Link
Thursday, December 11, 2025 9:00 AM – 10:00 AM PT 12:00 PM – 1:00 PM ET	<p><b>Navigating DOJ's M&amp;A Safe Harbor: Policy, Practice, and Strategic Implications</b></p> <p>Join Gibson Dunn's White Collar Defense and Investigations team for a timely webcast exploring the DOJ's M&amp;A Safe Harbor policy. This session will unpack the policy's scope, practical application, and implications for deal diligence, post-close integration, and voluntary disclosures. Our panel will share insights from recent matters, discuss best practices for navigating enforcement risks in M&amp;A transactions, and offer guidance on how to leverage the Safe Harbor to mitigate liability. Whether you're advising on deals or managing compliance, this webcast will provide actionable strategies to protect your clients and companies in today's enforcement landscape.</p> <p><b>Presenters:</b> Matthew Axelrod, Michael Farhang, Alexander Fine, Patrick Stokes</p>	<a href="#">Event Details</a>





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