

Government Enforcement Landscape: Risks Under Trump's Second Administration

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Derek Hahn

Agustin Orozco

Ahnna Chu



Overview

- Government Enforcement Stakeholders
- Enforcement Policy Changes
- New FCPA Enforcement Guidelines
- Expanding False Claims Act Priorities
- Risk Mitigation Measures



Government Enforcement Stakeholders



- Executive Branch
 - Department of Justice
 - Securities & Exchange Commission
 - Inspectors General
 - Contracting and Regulatory Agencies
- Congress
- State Attorneys General
- International / Local Authorities
- Qui Tam Plaintiffs



Enforcement Policy Changes: Shifting Priorities and Persistent Risks



Current Enforcement Priorities

- New Administration Focus:
 - DEI
 - Transnational Criminal Organizations (TCOs) and Cartels
 - Customs / Tariff Evasion
 - Immigration
 - Cybersecurity
 - Government Procurement Fraud
 - FCPA, with emphasis on U.S. Competitiveness and National Security
- Implemented through various mechanisms
 - Executive Orders, DOJ memos, etc.
 - Shifting executive branch personnel assignments



Focus on Cartels & Transnational Crime

- AG Bondi emphasizes “total elimination” of cartels and TCOs
- Designations of cartels and TCOs as Foreign Terrorist Organizations (FTOs)
 - Triggers criminal and civil penalties under the Anti-Terrorism Act (ATA) for providing “material support”
- New FCPA focus on corruption connected to cartels and TCOs



DOJ Updated Policy re Voluntary Self-Disclosure (VSD)

- Key Components

- VSD
- Full cooperation
- Timely and appropriate remediation
- No aggravating factors



- Scenarios

1. Meet all 4 requirements = guaranteed declination
 - Previously, presumption
2. “Near-miss” VSD or aggravating factors warranting resolution
 - 75% reduction
 - NPA < 3 years
 - No monitor

3. Other cases

- Discretion on form, term, monitor, etc.
- Reduction up to 50%

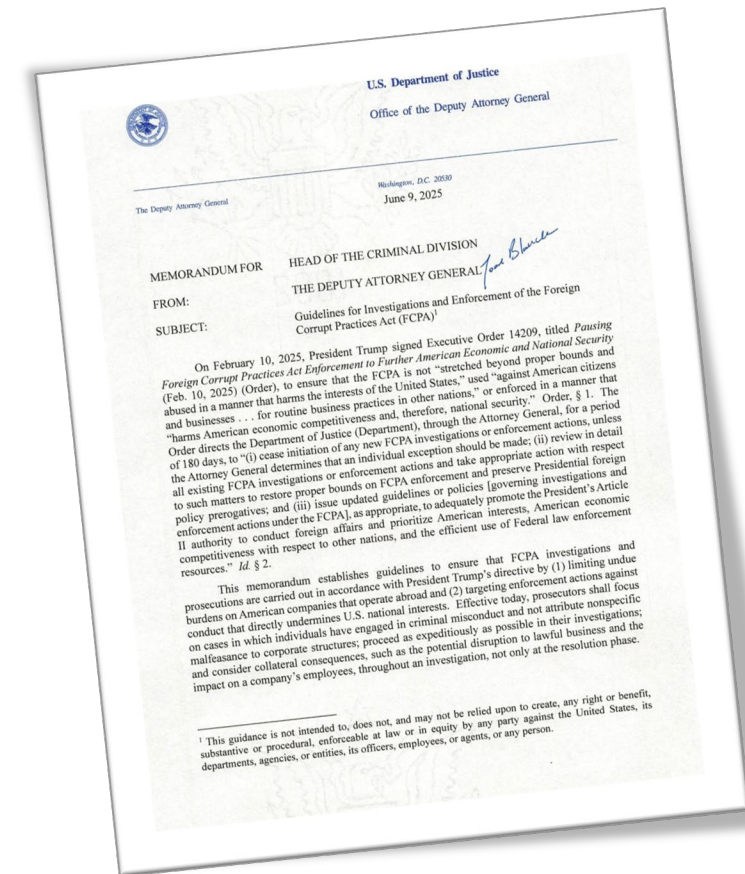
Expansion of DOJ Corporate Whistleblower Awards Program

- Old areas:
 - Violations by financial institutions, e.g., money laundering
 - FCPA and FEPA violations
 - Bribery of public officials
 - Certain health care fraud schemes
- New areas:
 - Trade, tariff, and customs fraud
 - Violations of federal immigration law
 - Sanctions offenses
 - Violations related to cartels / TCOs / terrorism
 - Additional types of health care fraud schemes
 - Government contracting and program fraud



New FCPA Enforcement Guidelines

- Enforcement resumes with new focus areas
 - Focus on bribery tied to cartels/TCOs, harm to U.S. businesses, and U.S. national security (e.g., defense)
- High-level approval required
 - All new FCPA investigations and enforcement actions must have sign-off from criminal division AAG
- Emphasis on serious misconduct
 - Reminder to prosecutors re facilitation payment exception and affirmative defenses
 - Deprioritizes enforcement against “routine business practices” and “low-dollar, generally accepted business courtesies”



FCPA Takeaways

- Enforcement pause is officially over
- Focus areas can assist with assessing short term risk
- Longer term risks remain
 - Statutes of limitations for current misconduct will outlast this administration
 - Various other risks for corrupt practices: auditors, covenants, reputation, State AGs, foreign regulators, etc.





Expanding False Claims Act Priorities

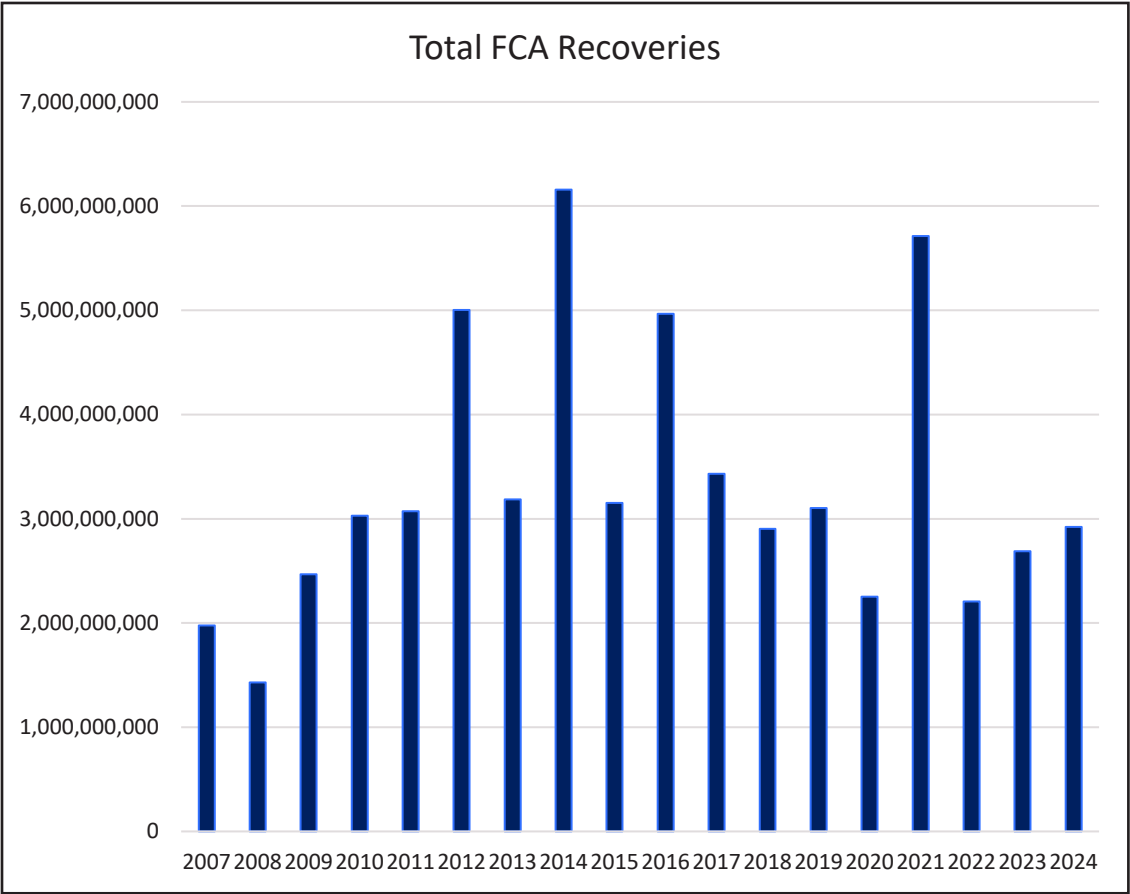
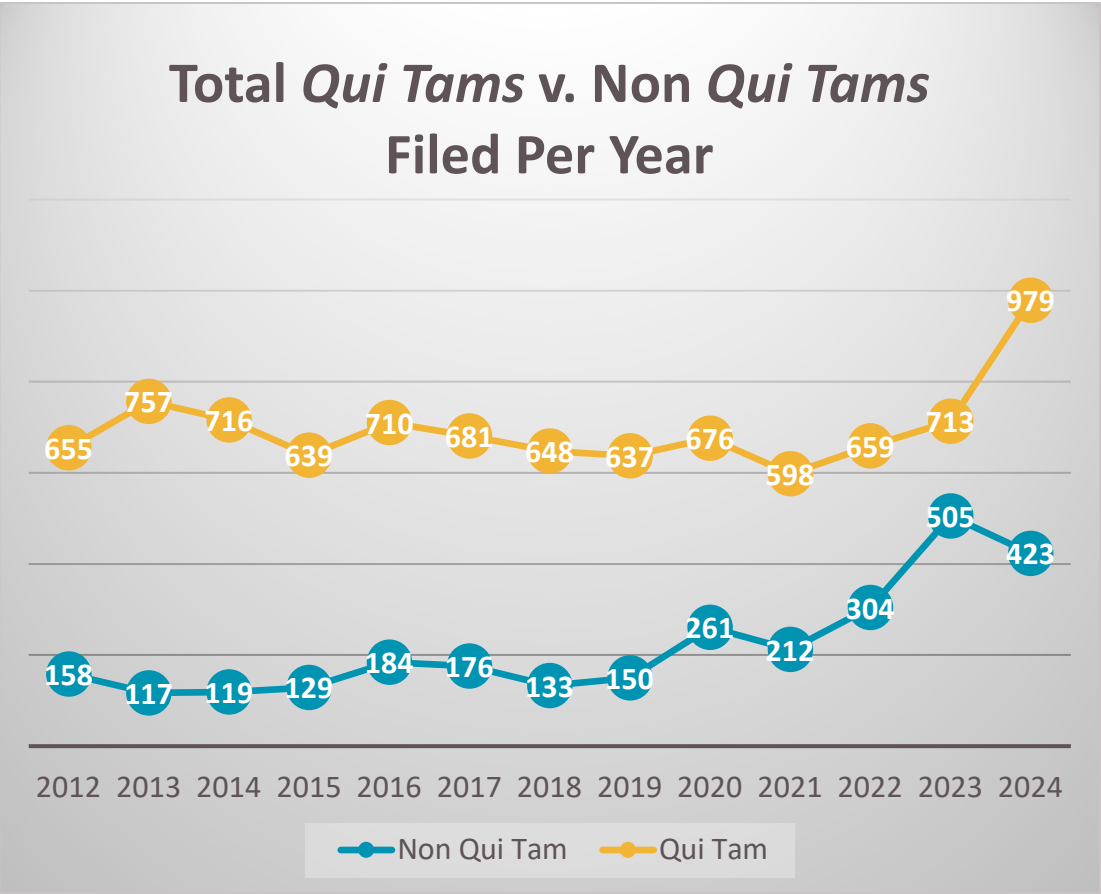


FCA Enforcement Trends

- Remains government's primary recovery tool for alleged civil fraud
- Bipartisan support for traditional enforcement areas
 - Procurement fraud
 - Small business fraud
 - Civil Cyber-Fraud Initiative (launched during the Biden Administration)
 - Pandemic fraud
- New and expanding areas of FCA enforcement
 - DEI
 - Customs fraud



FCA Enforcement Statistics



Source: *Fraud Statistics*, Civil Division U.S. Department of Justice (Sept. 30, 2024), <https://www.justice.gov/archives/opa/media/1384546/dl>



FCA: Extending to Diversity, Equity, and Inclusion Practices

May 19, 2025

MEMORANDUM FOR OFFICE OF THE ASSOCIATE ATTORNEY GENERAL
CIVIL DIVISION
CIVIL RIGHTS DIVISION
CRIMINAL DIVISION
EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS
ALL UNITED STATES ATTORNEYS

FROM: THE DEPUTY ATTORNEY GENERAL *Paul Brink*

SUBJECT: Civil Rights Fraud Initiative

President Trump reinforced that principle in Executive Order 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, 90 Fed. Reg. 8633 (Jan. 21, 2025), explaining that racist policies “violate the text and spirit of our long-standing Federal civil-rights laws.” Nevertheless, many corporations and schools continue to adhere to racist policies and preferences—albeit camouflaged with cosmetic changes that disguise their discriminatory nature.

The federal government should not subsidize unlawful discrimination. To that end, I am standing up the Civil Rights Fraud Initiative. This Initiative will utilize the False Claims Act to investigate and, as appropriate, pursue claims against any recipient of federal funds that knowingly violates federal civil rights laws. This Initiative will be co-led by the Civil Division’s Fraud Section, which enforces the False Claims Act, and the Civil Rights Division, which enforces civil rights laws. Each division will identify a team of attorneys to aggressively pursue this work together. Each of the 93 United States Attorney’s Offices will identify an Assistant United States Attorney to advance these efforts.

To ensure a comprehensive approach, the Civil Fraud Section and the Civil Rights Division will engage in regular coordination meetings and share relevant information about potential violations. The Civil Fraud Section and the Civil Rights Division will also engage with the Criminal Division, as well as with other federal agencies that enforce civil rights requirements for federal funding recipients, including the Department of Education, the Department of Health and Human Services, the Department of Housing and Urban Development, and the Department of Labor. The Civil Fraud Section and the Civil Rights Division will also establish partnerships with state attorneys general and local law enforcement to share information and coordinate enforcement actions.

The Department recognizes that it alone cannot identify every instance of civil rights fraud. Congress likewise has recognized as much and, as a result, has authorized private parties to protect the public interest by filing lawsuits and litigating claims under the False Claims Act—and, if successful, sharing in any monetary recovery. See 31 U.S.C. § 3730. The Department strongly encourages these lawsuits. The Department also encourages anyone with knowledge of discrimination by federal-funding recipients to report that information to the appropriate federal authorities so that the Department may consider the information and take any appropriate action. Please visit <https://www.justice.gov/civil/report-fraud> for more information.

- May 19: DOJ launched Civil Rights Fraud Initiative
 - Co-led by DOJ Fraud Section and Civil Rights Division
 - Bolsters “Anti-DEI Executive Order” (EO 14173)
 - Certification of compliance with civil rights laws
 - Pursue FCA claims against recipients of federal funds
 - Actively encouraging qui tam whistleblowers

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FCA: Customs Enforcement

- DOJ to “aggressively” enforce FCA on “illegal foreign trade practices”
- Claims arise under reverse false claims provision
- Targets underpayment of customs duties of imports
 - Undervaluation
 - Misclassification
 - Inaccurate country of origin
- Additional enforcement risk
 - CBP penalties
 - Criminal statutes





Risk Mitigation Measures



What You Can Do

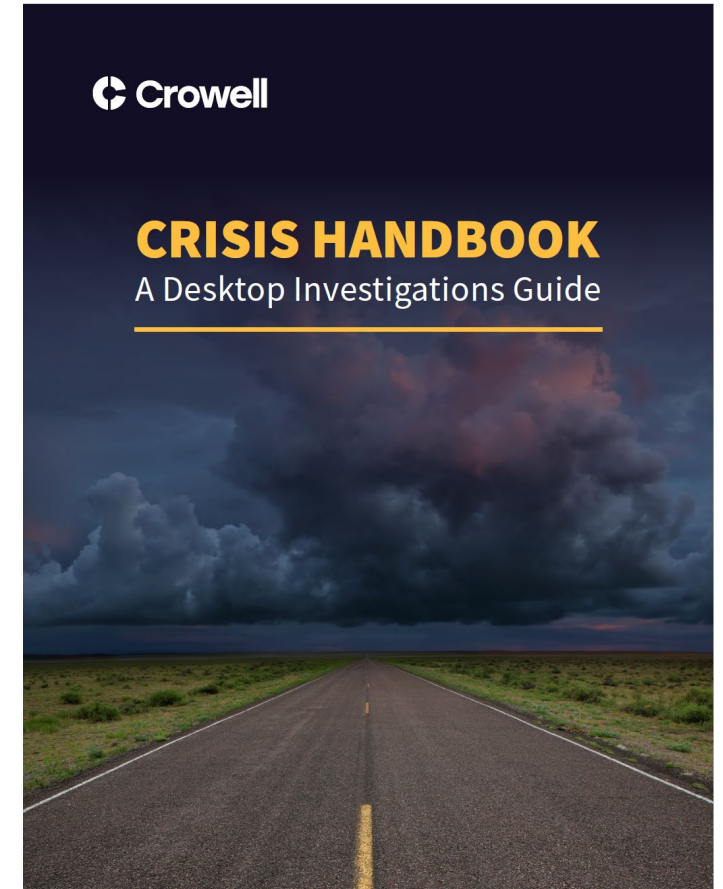
- Ensure compliance programs account for DOJ's enforcement priorities
 - Risk assessments
 - Diligence process updates
 - Compliance trainings
- Assess reporting systems to encourage internal whistleblowers
- Consider benefits of self-disclosing when violations identified
- Develop action plan for crisis scenarios



Resources – Crowell Crisis Handbook

- In-House CLE Offerings
 - Effective Internal Investigation Techniques
 - Engaging with Government Regulators
 - Attorney-Client Privilege
 - Fundamentals and Best Practices
 - Protections and Pitfalls Concerning Cross-Border Privilege Claims

For More Insights and Resource Materials, visit our Website, or [Scan the QR Code](#) to access the **Crowell & Moring Crisis Handbook**



Questions?



Contacts



Derek A. Hahn

Partner

Orange County | Los Angeles

+1.949.798.1362

dhahn@crowell.com



Agustin D. Orozco

Partner

Los Angeles

+1.213.443.5580

aorozco@crowell.com



Ahnna L. Chu

Associate

Los Angeles

+1.213.271.2791

achu@crowell.com

Thank you



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