



Anchors Away: Charting the Course for In-House Counsel

September 5

Introduction



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Agenda

1. Diversity, Equity, & Inclusion
2. Debanking
3. Recent DOJ Guidance & Priorities
4. Crim. Div. Whistleblower Pilot Program
5. Tariff Evasion & Trade Crime
6. Artificial Intelligence & Workforce Training
7. Qui Tams Related to Billing

Diversity, Equity, & Inclusion

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Issues in DEI

Companies' DEI programs are likely to face scrutiny

- Executive Orders and DOJ guidance have targeted DEI and affirmative action programs, signaling the area as a top priority.
- DOJ may use FCA and other enforcement mechanisms to carry out the administration's priorities.
- State governments and private parties may also pursue actions against companies' DEI programs.

Issues in DEI

EO 14173 (Jan. 21, 2025)

Revoked EO 11246 (establishing federal affirmative action) and EO 13672 (2014 ban on employment discrimination b/c of gender identity, sexual orientation).

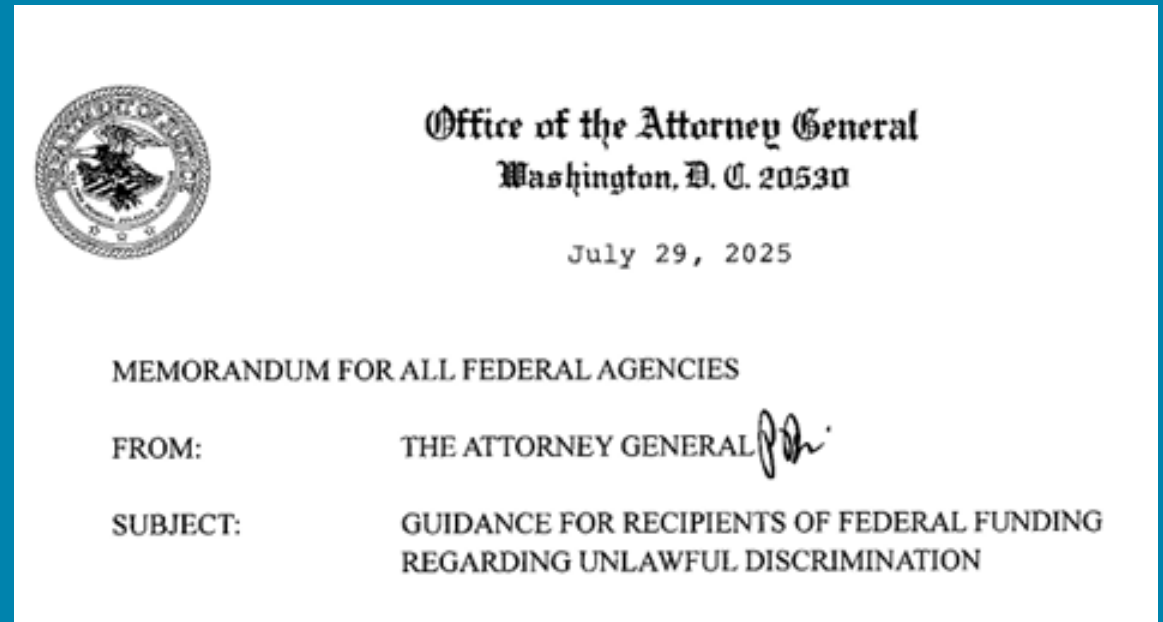
It also prohibits contractors from maintaining DEI programs.



Executive Order 14173

EO 14173 signals increased federal investigations into DEI programs, calling on agencies to identity “nine potential civil compliance investigation of publicly traded corporations.”

While provisions of the EO continue to be litigated, DOJ released guidance on July 29, 2025, “for recipients of federal funding regarding unlawful discrimination.”



DEI as a DOJ Priority

On **February 5, 2025**, AG Bondi released “Ending Illegal DEI and DEIA Discrimination and Preferences,” citing *Students for Fair Admissions* and EO 14173.

It states DOJ will investigate DEI practices “in the private sector and in educational institutions that receive federal funds.”

February 5, 2025

MEMORANDUM FOR ALL DEPARTMENT EMPLOYEES

FROM:

THE ATTORNEY GENERAL 

SUBJECT:

ENDING ILLEGAL DEI AND DEIA DISCRIMINATION
AND PREFERENCES

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

DEI as a DOJ Civil Division Priority

A June 11, 2025 DOJ Civil AAG Shumate issued guidance naming discriminatory practices as the top priority.

The memo cites EO 14173 and states: “The Civil Division will work with the Civil Rights Division, relators, other whistleblowers, and federal agencies”

Office of the Assistant Attorney General	Washington, DC 20044
June 11, 2025	
<u>MEMORANDUM</u>	
TO:	All Civil Division Employees
FROM:	Brett A. Shumate Assistant Attorney General
	BRETT SHUMATE <small>Digitally signed by BRETT SHUMATE Date: 2025.06.11 12:27:50 -04'00'</small>
SUBJECT:	<u>Civil Division Enforcement Priorities</u>
President Trump and Attorney General Bondi have directed the Civil Division to use its enforcement authorities to advance the Administration’s policy objectives. This memorandum describes those policy objectives and directs Civil Division attorneys to prioritize investigations and enforcement actions advancing these priorities.	
1. Combatting Discriminatory Practices and Policies	

DOJ Civil Rights Division (“CRD”)



President Trump selected prominent GOP litigator **Harmeet Dhillon** to head the CRD.

Dhillon has made DEI a priority for the Department, sometimes publicly challenging potential violators on X.

DOJ Civil Rights Division


The CRD maintains a webpage for individuals to report “**illegal discrimination resulting from diversity, equity, and inclusion programs.**”



Get help for illegal discrimination resulting from diversity, equity, and inclusion programs.

Report to Civil Rights Division

Illegal discrimination is the denial of equal opportunity to access employment, housing, lending, schooling, public accommodations, or federally funded programs or activities because of protected traits like race, sex, national origin, or religion.

If you believe you may have experienced such discrimination as the result of diversity, equity, and inclusion preferences, mandates, policies, programs, or activities, you can report it to the Civil Rights Division using [this reporting portal](#) .

Or you can report it to one of the agencies listed below:

FCA Enforcement & DEI

EO 14173 allows DOJ and qui tam relators to assert FCA claims related to unlawful DEI practices against federal contractors and grant recipients.

The June 11 Civil Division guidance referenced working w/ “relators” and “whistleblowers” to advance the efforts.



Debanking



Increased Scrutiny of Financial Institutions

On August 7, 2025, President Trump signed an EO targeting “debanking.”

The act of “debanking” involves financial institutions limiting access based on perceived political or religious reasons.

Prominent industry examples involve crypto and firearms.



Guaranteeing Fair Banking for All Americans



⌕ PRESIDENTIAL ACTIONS

GUARANTEEING FAIR BANKING FOR ALL AMERICANS

Executive Orders | August 7, 2025

The EO accuses institutions of participating in “Government-directed surveillance programs targeting persons participating in activities and causes commonly associated with conservatism and the political right.”

It orders: “Banking decisions must instead be made on the basis of individualized, objective, and risk-based analyses.”

Recent DOJ Activity

In April 2025, ED VA and the CRD joined to form the Eastern District of Virginia Equal Access to Banking Task Force.

The Task Force focused on debanking in VA and encouraged reports of the practice.

PRESS RELEASE

U.S. Attorney announces launch of a task force to combat illegal debanking in the Eastern District of Virginia

Monday, April 28, 2025

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For Immediate Release

U.S. Attorney's Office, Eastern District of Virginia

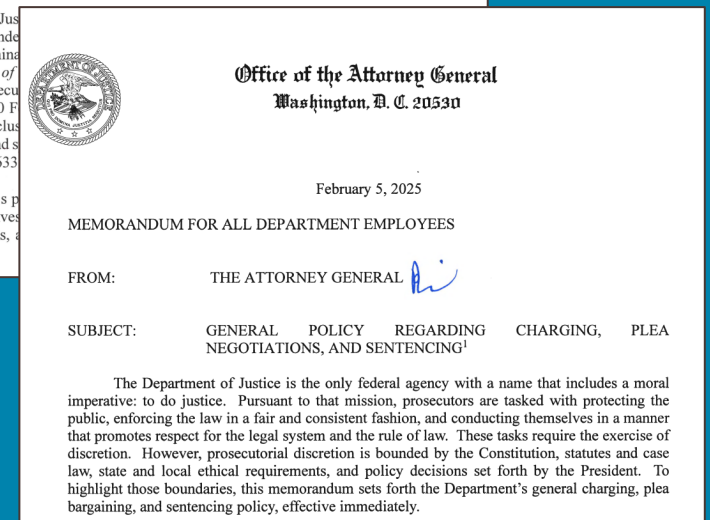
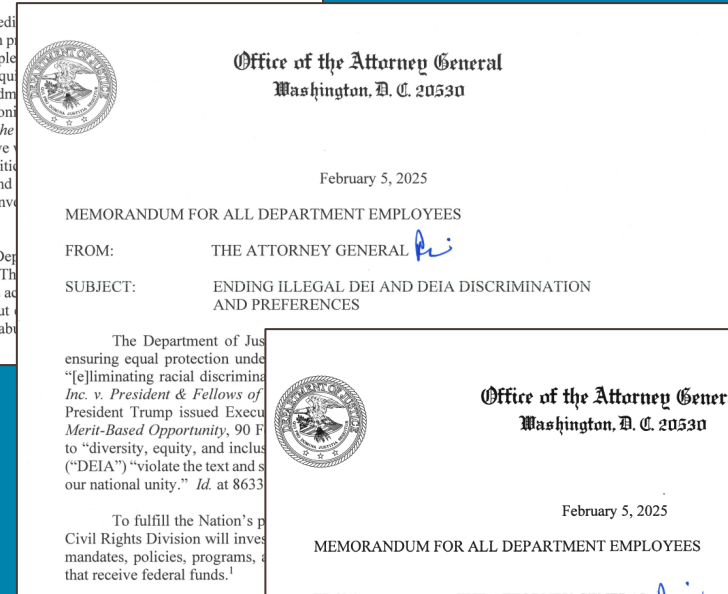
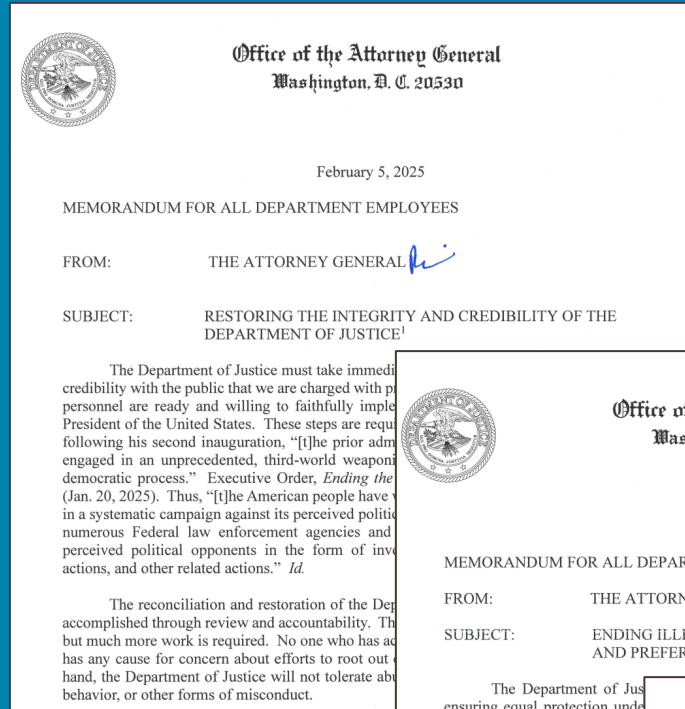
Recent DOJ Guidance & Priorities

Recent DOJ Guidance

- Memos released from AG Bondi, AAG Galeotti (CRM), and AAG Shumate (CIV) reflect a shift in DOJ enforcement priorities.
- Consistent with the Administration's public statements, DOJ is moving resources to **immigration enforcement, drug cartels, transnational criminal organizations, national security, and unlawful discrimination**, among others.
- Recent guidance has also cautioned against “weaponization” of the Justice Department.

AG Bondi Memoranda

Building on President Trump's executive orders, on February 5, 2025, Attorney General Bondi issued 14 memoranda to DOJ employees regarding new policies and priorities.



AG Bondi General Policy Memo

DOJ's enumerated priorities are:

- Immigration Enforcement
- Human Trafficking and Smuggling
- Transnational Organized Crime, Cartels, and Gangs
- Protecting Law Enforcement Personnel

February 5, 2025

MEMORANDUM FOR ALL DEPARTMENT EMPLOYEES

FROM:

THE ATTORNEY GENERAL



SUBJECT:

GENERAL POLICY REGARDING
NEGOTIATIONS, AND SENTENCING¹

CHARGING, PLEA



DOJ CRM White-Collar Priorities

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 Crime¹

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

The memo supports DOJ's priorities of enforcement against cartels, human smuggling, fentanyl, and child predators, among others.

The memo cautions: “[O]verbroad and unchecked corporate and white-collar enforcement burdens U.S. businesses and harms U.S. interests”

Civil Division Enforcement

The CIV memo identified five policy areas of focus consistent with the Administration:

- Combatting discrimination
- Ending antisemitism
- Protecting women & children
- Ending sanctuary jurisdictions
- Prioritizing denaturalization

June 11, 2025

MEMORANDUM

TO: All Civil Division Employees

FROM: Brett A. Shumate
Assistant Attorney General

**BRETT
SHUMATE**

Digitally signed by BRETT SHUMATE
Date: 2025.06.11 12:27:50 -0400

SUBJECT: Civil Division Enforcement Priorities



Priority Shift in Practice

United States v. Wiederhorn

“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.” (Citing AG Bondi & AAG Galeotti memos.)

UNITED STATES DISTRICT COURT	
FOR THE CENTRAL DISTRICT OF CALIFORNIA	
UNITED STATES OF AMERICA,	No. CR 24-00295-RGK
Plaintiff,	<u>[PROPOSED] ORDER DISMISSING</u>
v.	<u>INDICTMENT WITHOUT PREJUDICE</u>
ANDREW A. WIEDERHORN,	<u>AGAINST ALL DEFENDANTS</u>
WILLIAM J. AMON,	[132]
REBECCA D. HERSHINGER, and	
FAT BRANDS INC.,	
Defendants.	

CRM Whistleblower Pilot Program

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The Pilot Program

On August 1, 2024, CRM launched the three-year pilot program to incentivize whistleblowers and prosecute corporate crime.

The program also rewarded voluntary self-reporting for companies.



Pilot Program Overview

U.S. Department of Justice

Corporate Whistleblower Awards Pilot Program



Criminal Division
U.S. Department of Justice

The program prioritized whistleblowers in four areas:

1. Foreign corruption / bribery
2. Financial institutions
3. Domestic corporate corruption
4. Health care fraud

Updated Guidance

Department of Justice Corporate Whistleblower Awards Pilot Program¹

Issued: August 1, 2024

Revised: May 12, 2025

Revised guidance reflects enforcement priorities of the Administration.

The update broadens health care fraud eligibility and adds areas concerning immigration, tariffs, and drug cartels, among others.

Voluntary Self-Disclosure Policy

9-47.120 - Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy

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

The Galeotti Memorandum was accompanied by updated guidance to the Criminal Division's "Corporate Enforcement and Voluntary Self-Disclosure Policy."

The policy promises declination in more instances and increases discretion in declining to prosecute.

Tariff Evasion & Trade Crime

Trade as a DOJ CRM Priority

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 Crime¹

B. Prioritization and Associated Policy Changes

To combat these harms, the Criminal Division will prioritize investigating and prosecuting white-collar crimes in the following high-impact areas:

2. Trade and customs fraud, including tariff evasion;

AAG Galeotti's May 12 memorandum highlighted trade and tariff crimes as the second-highest CRM white-collar priority.

The memo stated that customs crimes “undermine the Administration’s efforts to create jobs and increase investment in the United States.”

Recent FCA Activity in Customs Activity

DOJ has announced several FCA settlements based on alleged customs evasion, including:

- \$6.8 million with two subsidiaries of MGI Int'l for misidentification of country of origin.
- \$4.9 million with Grosfillex Inc. for alleged mischaracterization.



Market, Government, & Consumer Fraud Unit



The MGCF is expected to sit within the DOJ CRM and prosecute crimes related to trade and tariffs.



The division is expected to shift experienced Market Integrity and Major Frauds Unit attorneys, among others, to customs and tariff evasion.

Artificial Intelligence & Workforce Training

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Administration AI Priorities

On January 23, 2025, the President issued an EO concerning AI, revoking the Biden Administration's EO 14110 (Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence).



Removing Barriers to American Leadership in Artificial Intelligence

President Trump's EO demanded that AI must be "free from ideological bias or engineered social agendas."

It promoted American "global AI dominance" and directed the Executive Branch to develop an AI action plan.

The revoked Biden EO increased government oversight of AI and demanded policies to prevent bias and discrimination in AI.

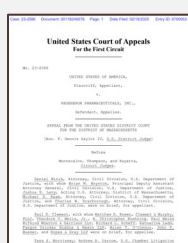
Qui Tams Related to Billing

FCA & AKS Case Law Developments



Zafirov (M.D. Fla.)

Held **qui tam** provision of the FCA violates the Appointments Clause of Article II of the U.S. Constitution because whistleblowers are acting as officers of the U.S. without accountability to the President. The case is currently on appeal before the Eleventh Circuit



Regeneron (First Circuit)

First Circuit joins the Sixth and Eighth Circuits in adopting **but-for causation standard** for establishing FCA falsity “resulting from” AKS violations

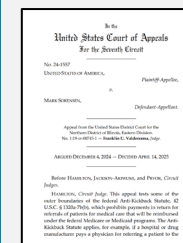
Key Takeaway: But-for causation makes it harder for the government to prove its case and is more favorable for defendants



Pharmaceutical Coalition for Patient Access (Fourth Circuit)

Another circuit concludes **corrupt intent is not required for AKS violation**

Key Takeaway: Even transfers of value that benefit patients can violate the AKS; a provider does not have to have acted with a bad purpose; makes it easier for the government to push AKS cases



Sorenson (Seventh Circuit)

Reversed an AKS conviction where evidence was insufficient to support verdict because **the payments in question were not made to physicians or other decisionmakers in positions to “leverage fluid, informal power and influence” over health care decisions**

Recent Notable Billing-Related FCA Settlements

Company (ies)	Settlement Terms	Issues	Key Allegations
Saad Healthcare (S.D. Ala.; Feb. 21, 2025)	\$3M	Medical Necessity	<u>FCA</u> : Hospice provider submitted claims for 21 hospice patients who were ineligible to receive the Medicare hospice benefit because they were not terminally ill.
Seoul Medical Group Inc. (C.D. Cal.; Mar. 26, 2025)	\$62M	False Diagnosis Codes	<u>FCA</u> : Medicare Advantage provider submitted false diagnosis codes for two spinal conditions, spinal enthesopathy and sacroiliitis, for patients who did not suffer from either of these conditions to increase payments from the Medicaid Advantage program. When questioned about the use of the codes by a Medicare Advantage plan, the provider enlisted an imaging provider to create radiology reports to support the diagnosis.
Walgreens (Apr. 21, 2025)	\$300M and up to \$50M more if the company is sold before 2032 5 Year CIA with HHS-OIG 7 Year MOA with DEA	Sought payments on illegally filled prescriptions	<u>FCA & CSA</u> : National chain pharmacy illegally filled millions of invalid prescriptions for opioids and other controlled substances in violation of the Controlled Substances Act (CSA) and then sought payment for many of those invalid prescriptions by Medicare and other federal health care programs in violation of the False Claims Act (FCA). These unlawful prescriptions included prescriptions for excessive quantities of opioids, opioid prescriptions filled significantly early, and prescriptions for the especially dangerous and abused combination of three drugs known as a “trinity.”

Recent Notable Billing-Related FCA Settlements

Company (ies)	Settlement Terms	Issues	Key Allegations
Assertio Therapeutics (D.D.C. May 9, 2025)	\$3.6M	Medical Necessity	<u>FCA</u> : Pharmaceutical company focused marketing for its fentanyl nasal spray (Lazanda) on pain specialists who were high prescribers by placing them on its speakers' bureaus and advisory boards and developing a program to ensure the drug prescriptions would be approved by insurance companies, including Medicare Part D plans. The alleged marketing efforts caused prescribers to write Lazanda prescriptions for beneficiaries who did not have breakthrough cancer pain.
Agendia, Inc., Knoxville Comprehensive Breast Center, PLLC, and Knoxville Dermatopathology Laboratory, LLC (E.D. Tenn. May 21, 2025)	\$3.75M	Kickbacks & Medical Necessity	<u>FCA & AKS</u> : Molecular diagnostics company and two laboratories participated in kickback scheme related to breast cancer lab tests. The diagnostics company caused providers to submit claims for its tests that were not reasonable or medically necessary through standing or automatic orders. The providers were compensated with extravagant dinners, excessive or improper honoraria, gift cards, and payments per referral or monthly flat rate payment arrangements to refer patients to the lab.
NUWAY Alliance (D. Minn. June 26, 2025)	\$18.5M	Kickbacks & Double-billing	<u>FCA & AKS</u> : NUWAY Alliance provided intensive outpatient (IOP) treatment for substance use disorder to thousands of clients. NUWAY compensated Medicaid patients for seeking IOP treatment—which is reimbursable by Medicaid—in violation of the AKS. NUWAY also submitted false claims to Medicaid for IOP services they had not provided as they involved double-billing the same period of time as distinct billable units.

Questions?



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