

Uninvited Guests:
What to do When the
Government Comes
Knocking

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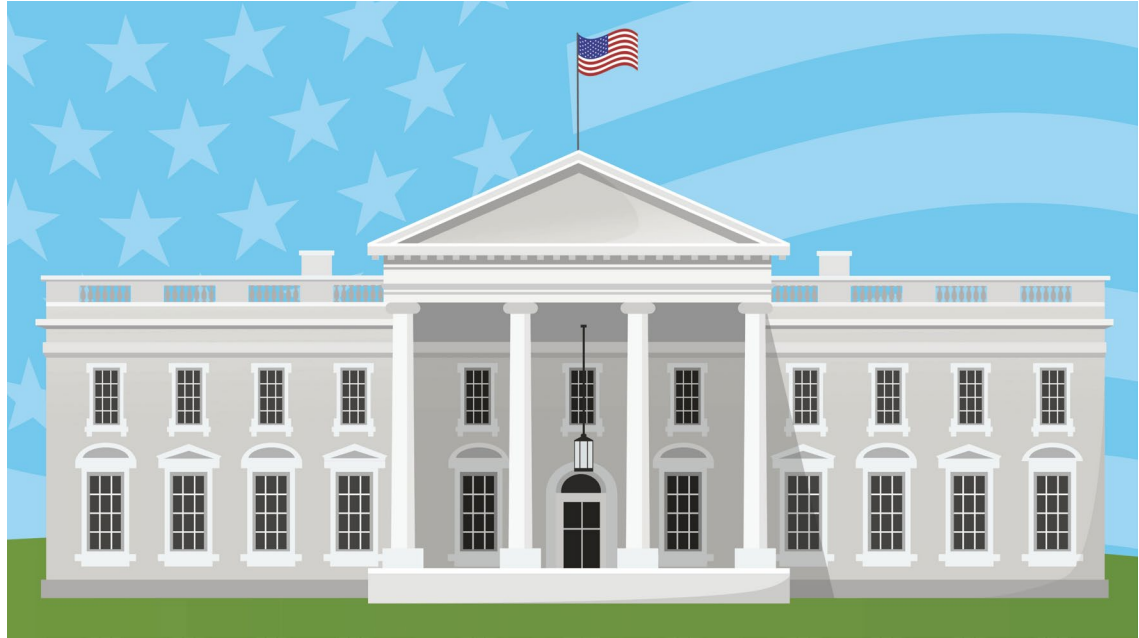
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Presenters

AGENDA

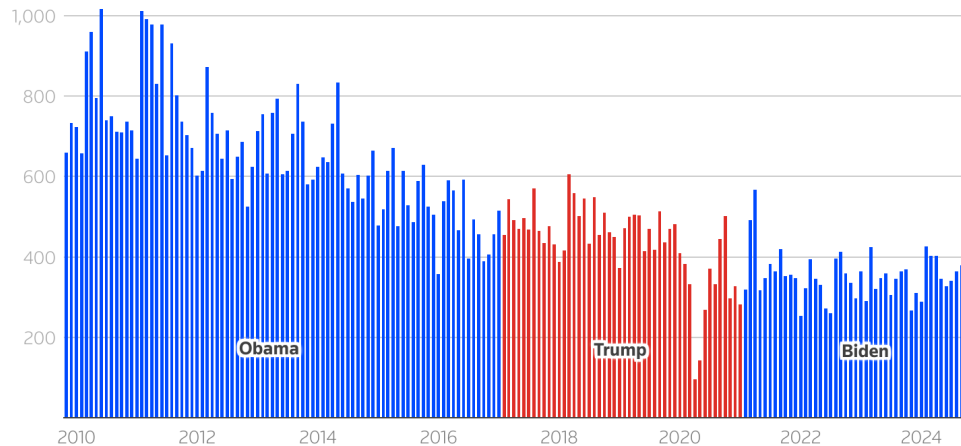
1. Current Landscape
2. When the Government Calls You
 - Document requests / subpoenas
 - Interview requests / GJ subpoenas
 - Search warrants
3. When You Might Call the Government
 - Cooperation to avoid corporate liability
 - Corporate victim: weighing benefits and risks of government involvement

**The Current
Landscape:
The Trump
Administration's
Shift in Priorities**



Will the Trend of Declining White-Collar Prosecutions Continue?

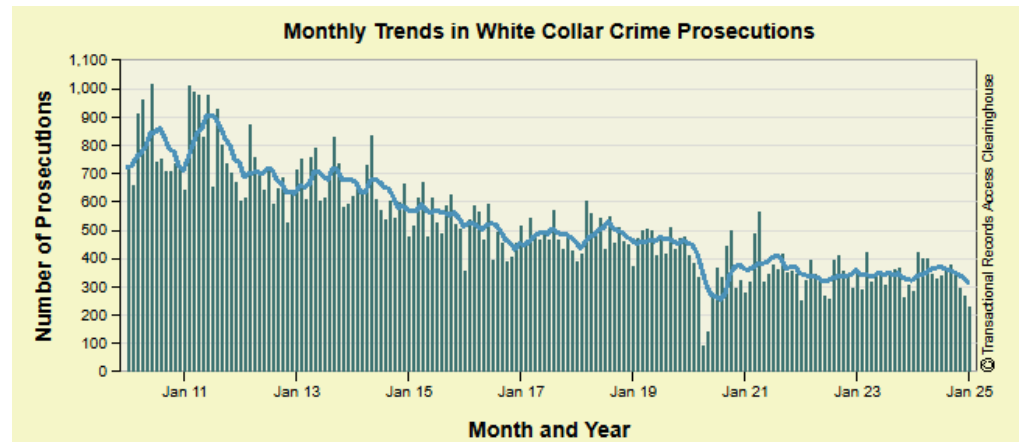
White-collar crime cases fell 56% since 2010



Note: Number of cases filed monthly.

Source: Transactional Records Access Clearinghouse | J. Goldfarb | March 18, 2025

Reuters Breakingviews



Overview of February 5, 2025 Memos

- On February 5, 2025, AG Bondi issued **fourteen** memoranda to DOJ employees reflecting a seismic shift in enforcement priorities.
- Shift in focus toward:
 - Immigration enforcement
 - Prosecution of human trafficking
 - Prosecution of transnational organized crime
 - Protecting national security
 - Dismantling cybercrime committed by foreign actors
 - Eliminating unlawful DEI practices
- Shift away from prior corporate enforcement priorities such as the Foreign Corrupt Practices Act (“FCPA”) and Foreign Agents Registration Act (“FARA”)

The Administration's Shifting Focus on and Overhaul of Cryptocurrency Regulations

- On January 23, 2025, President Trump issued an Executive Order entitled “*Strengthening American Leadership in Digital Financial Technology*”
 - The EO aims “to support the responsible growth and use of digital assets, blockchain technology, and related technologies across all sectors of the economy.”
 - The Trump administration will “halt[] aggressive enforcement actions and regulatory overreach that have stifled crypto innovation under previous administrations.”
- On February 4, 2025, the newly-established SEC’s Crypto Task Force issued a statement about its priorities, including:
 - Defining the status of digital assets
 - Remediating obstacles to registration

SEC's Continued Focus on Cyber and AI

- Likely to continue to be areas of aggressive enforcement
- SEC's "Cyber and Emerging Technologies Unit" will focus on "combatting cyber-related misconduct & to protect retail investors from bad actors in the emerging technologies space"
- Key focus areas include:
 - Artificial intelligence and machine learning
 - Scams perpetrated through social media
 - Dark web or deceptive websites
 - Hacking activities aimed at acquiring material nonpublic information
- The CETU will "complement" the work of the SEC's Crypto Task Force

Focus on the False Claims Act

Trump administration has signaled continued interest in the FCA

February 20, 2025 Deputy AG Michael Granston: “The department wants to make clear — consistent with the new administration's stated focus on achieving governmental efficiency and rooting out waste, fraud and abuse — that the department plans to continue to aggressively enforce the False Claims Act.”

January 21, 2025 Executive Order on “Ending Illegal Discrimination”*: “The head of each agency shall include in every contract or grant award ... a term requiring the contractual counterparty or grant recipient to agree that its compliance in all respects with all applicable Federal anti-discrimination laws is material to the government's payment decisions.”

* On March 14, 2025, the Fourth Circuit granted the government's request to stay a Maryland district court's order enjoining enforcement of this provision

Document Requests & Subpoenas



"I've already put the evidence in a tidy little bag for you."

Documents

Assess the Threat

Who is making the request?

--Local, state, federal?

--Prosecutor v. agency (e.g., SEC)?

Who is the government investigating?

--Your company and/or its executives?

--Third-party (customer, supplier, client, etc.)?

What is the government seeking?

How is government making its request?

--Informal request?

--Administrative subpoena?

--GJ subpoena?

When is a response due?

Documents

Privilege, confidentiality, trade secret & competitive concerns

Sanctions by administrative agencies

--*SEC v. Lucent Technologies* (\$25M fine)

--*SEC v. Morgan Stanley* (\$15M settlement)

Criminal penalties

--18 U.S.C. § 1512(b) & (c) (withholding documents)

--18 U.S.C. § 1516 (obstructing federal audit)

--18 U.S.C. § 1519 (concealing records)

Hurt your standing with government

Know the
Risks in
Responding

Documents

Understand Your Rights

- No authority to enter or interview
- No obligation to produce “forthwith”
- Subpoena does not trump privileges
- Subpoena does not trump Fifth Amendment
- FOIA protection

Documents

Prepare the Best Response

Accept service

Engage outside counsel

Issue litigation hold

Contact issuing agency or prosecutor

Negotiate scope of request

Identify custodians and collect documents

Notify employees they may be approached

Interview Requests & Subpoenas for Testimony



"They rubbed my tummy, chief—I told them everything."

Testimony

Assess the Threat

Who is making the request?

Who is the government investigating?

How is the government making its request?

- Informal request

- Administrative or civil subpoena

- Grand jury subpoena

- FBI knocking on your door ... or your employees' doors

Testimony

Privilege, confidentiality, trade secret &
competitive concerns

Unprepared Responses

False or Misleading Statements

- 18 U.S.C. § 1001 (materially false statements)

- China Initiative cases

Omissions / Failure to Disclose

- United States v. Craig*

- United States v. Bonds*

**Know the
Risks in
Responding**

Testimony

Understand Your Rights

Employees can **decline, defer, or terminate** government interviews

Employees can **request counsel** – personal or company

Attorney-client, work-product, and 5th Amendment **privileges** are available

Employees can request **immunity** or “**queen for a day**”

Testimony

Educate employees on their rights

Clarify status: **subject v. witness v. target**

Decide who should represent the witnesses.

Discuss testimony with agency or prosecutor

- Topics of interview / testimony

- Relevant documents

Recommend an **attorney proffer**: “If my client says X, Y, and Z ...”

Practice, practice, practice

**Prepare the
Best
Response**

Search Warrants



"It's your father, dear—he doesn't need a warrant."



Search Warrant

Obstruction: deleting, moving or hiding documents

Business **disruption**; **reputational** and **public relations** harm

Employee reaction: **panic**; statements to agents

Exposure of **privileged or confidential** documents, **trade secrets**

Know the Risks

Search Warrant

Understand Your Rights

Search **limited to place** set forth in warrant

Search or detention of **employees** not authorized

Agents must prepare **inventory** and provide **receipt**. Rule 41(f)(1)(B) & (C)

Special rules apply to **seizure of ESI**

--United States v. Comprehensive Drug Testing, Inc.

Right to obtain **affidavit** in some cases

Designate **point person**

Identify lead agent; request **ID**, copy of
warrant, name of prosecutor

Contact outside counsel and ask agent to
wait until counsel arrives

Send non-essential employees home

Advise employees that they may, but are
not required to, speak to agents

Search Warrant

Prepare the Best Response

**When agents
arrive...**

Search Warrant

Prepare the Best Response

During the search...

Do **NOT** obstruct / interfere with search

Monitor search and take photos, video

Ask for copies of **necessary documents**

Object (politely) to seizure of **privileged** records; request they be isolated

Do **NOT** consent to search beyond warrant;
do **NOT** volunteer records

Request **inventory and receipt**

Passwords and “BYOD” Policies

- * Fifth Amendment and corporate records
- * Fifth Amendment and personal devices
- * Fifth Amendment and hybrid devices

“Ephemeral Messaging”

- * Document preservation
- * Misuse

**Emerging
Issues to
Keep Your
Eye On**

Corporation as Cooperator or Victim: Deciding Whether to Call the Government



Calling in the Government

Assess the Situation

What is potential wrongdoing?

How is company involved?

- * Potential target, victim / witness?
- * Exposure for company v. employee

Where did conduct occur?

Who has jurisdiction?

- * Federal (DOJ/FBI) v. state
- * Criminal v. regulatory

What does company want to accomplish?

Calling in the Government

Consider the Benefits

Cooperation credit

- * single most important factor to avoid prosecution

Some measure of control

Greater deterrent effect for wrongdoers

Expanded investigative tools

- * search / seizure of computers, phones, etc
- * greater jurisdictional reach
- * government preservation requests to ISPs

Restitution

Calling in the Government

Know the Risks

- Lose control of timing and direction
- Open doors to investigators
- Potential for privilege waiver
- Impact on civil claims, including stay
- Impact on individual employees
- Increased press/publicity
- Significant time, expense, and distraction

Calling in the Government

Know the Risks

Unwanted government inquiries

- * subpoenas
- * interviews / testimony
- * search warrants

Business disruption

- * Loss of employee morale
- * harm to reputation / brand
- * financial damage

Calling in the Government

Prepare to
Achieve the
Best Outcome

- Preserve evidence
- Do an investigation
- Decide on outside counsel
- Communicate with government
- Align parallel independent investigations
- Document losses and costs

Calling in the Government

Assess the Situation

What is the suspected crime?

Who would you call?

- * Local DA, FBI, SEC, USAO
- * REACT Task Force
- * IPRC

Calling in the Government

Assess the Situation

Who is involved in the crime?

Does the company itself face potential liability or criminal exposure?

Calling in the Government

When should you involve the government?

Conduct full internal investigation first?

Hire external counsel?

**Assess
the Situation**

Calling in the Government

Assess the Situation

What does the company hope to accomplish?

How will government investigation impact any ongoing or potential civil action or financial resolution with the wrongdoer?

Calling in the Government

Understand Your Rights

INFORMATION AND
ASSISTANCE

FOR

FEDERAL CRIME
VICTIMS AND WITNESSES



Office of the
United States Attorney
Northern District of California
Victim-Witness Program

Victim-Witness Unit

415.436.6834 (San Francisco)
408.535.5176 (San Jose & Oakland)

www.justice.gov/usao

CRIME VICTIMS' RIGHTS ACT

The CVRA gives victims of offenses charged in Federal court the following rights:

- 1) The right to be reasonably protected from the accused.
- 2) The right to reasonable, accurate, and timely notice of any public court proceeding involving the crime or of any release or escape of the accused.
- 3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.
- 4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.
- 5) The reasonable right to confer with the attorney for the Government in the case.
- 6) The right to full and timely restitution as provided in the law.
- 7) The right to proceedings free from unreasonable delay.
- 8) The right to be treated with fairness and with respect for the victim's dignity and privacy.

Thank you!

Questions?