

How White Collar Enforcement May Shift In Trump's 2nd Term

By **Brook Dooley, Cody Gray and Kayla Crowell** (December 20, 2024)

With President-elect Donald Trump set to return to the White House next month, change is in store at the U.S. Department of Justice, as new leaders will soon be installed to implement his vision and pursue his enforcement priorities.

Throughout the campaign, Trump vowed to overhaul the department. And the conservative blueprint for his second term — Project 2025 — calls for "more than minor peripheral adjustments."^[1]

Below, we explore some factors bearing on Trump's ability to affect the department's day-to-day operations, and preview for white collar practitioners in particular the areas in which enforcement activity is likely to increase and decrease in the second Trump administration.

Expected Impact on Day-to-Day Practice

Throughout the campaign, Trump signaled his intention to curtail the Justice Department's independence and use the department to pursue controversial actions. This includes the swift closure of cases in which he is a defendant; the pursuit of legal action against the department's own prosecutors and other perceived political enemies; and the targeting of undocumented immigrants — both through increased criminal prosecution of immigration-related offenses, like illegal reentry, and through mass deportations that could require immense resources from the DOJ.

These policies were touted by the Heritage Foundation in its Project 2025 and by the America First Policy Institute. Although Trump made comments distancing himself from Project 2025 during his campaign, his Agenda47 contains several of its policy priorities, and he has announced plans to appoint some of its architects to key roles in his administration.

Trump has likewise drawn from the ranks of the America First Policy Institute to fill his administration. Moreover, Trump's first pick for attorney general, former Rep. Matt Gaetz, R-Fla., stoked fear that Trump was poised to carry out the more extreme elements of his campaign promises.

The replacement of Gaetz, a politician with little experience as a lawyer and no experience as a federal prosecutor, with former Florida Attorney General Pam Bondi signaled a small step in the direction of business-as-usual for a conservative administration.

That said, Trump and Bondi, a Trump loyalist and one-time lawyer for Trump, are likely to install as many similarly loyal political appointees at the department as possible — a key recommendation of the Project 2025 blueprint for the department. And there is no reason to think that Bondi will not try to carry out the project of investigating Trump's perceived political opponents and center the department around a law-and-order agenda.



Brook Dooley



Cody Gray



Kayla Crowell

However, to the extent Trump and Bondi do seek to "refocus the DOJ" — as the president-elect said when announcing Bondi's nomination — several factors are likely to both complicate and moderate their efforts.

First and foremost, the individuals that are typically in the position to make the vast majority of enforcement decisions, including whether to initiate an investigation, bring charges and resolve cases, are the line attorneys spread out across subagencies and situated throughout the 94 federal judicial districts, not the attorney general herself or other political appointees at Main Justice.

Those beltway decision-makers may exercise influence on high-profile cases, but most of the department's work is carried out by career prosecutors and line attorneys who can be expected to heed the department's traditions and overall mission.

Second, as the withdrawal of the Gaetz nomination exemplifies, and as we saw in the first Trump administration, the second Trump administration is likely to be marked by frequent turnover among appointees and staff, including the installment of many officials in acting or temporary capacities.

The prior Trump administration, to be sure, saw record-breaking turnover, and if such churn occurs in the administration to come, this will likely impede the administration's potential efforts to shift the department's focus and activities.

Third, the DOJ is likely to be operating next year in an environment where the administration is seeking to shrink the size and role of government, including through the creation of a Department of Government Efficiency that plans to slash \$2 trillion in government spending and implement large-scale reductions in the force of federal employees.

This atmosphere is likely to make it more difficult for the department to shepherd the resources and personnel it may need to pursue the president-elect's aims.

Expected Downturns in White Collar Enforcement

While Trump will likely face roadblocks to some of his more extreme enforcement priorities and policies, there will be changes.

At a high level, white collar and corporate criminal enforcement will likely be a lower priority for this administration. Trump campaigned on a promise to ratchet up the prosecution of those suspected of violating the nation's immigration laws, and there is little reason to doubt that he will fulfill this campaign promise and make such prosecutions a priority in the next DOJ.

Likewise, the Heritage Foundation and the America First Policy Institute — where Bondi serves as the co-chair for the Center for Law and Justice — devote little attention to white collar or corporate crime. Instead, both organizations emphasize drug and violent crime, as well as more partisan issues such as the alleged failings of so-called progressive prosecutors and the purported political bias of the Justice Department and the FBI.

Moreover, the incoming administration's skepticism of the FBI and Trump's announced intention to appoint Kash Patel, an avowed critic of the bureau, as FBI director could make it difficult for the department to investigate and build complex white collar cases, which so often depend on the work of FBI agents.

In terms of specific areas likely to see reduced enforcement, two stand out. First, the new Trump administration will likely be less aggressive in enforcing securities and other laws in the cryptocurrency and digital asset space.

Trump positioned himself as a friend of the crypto industry during his campaign, and he recently launched his own cryptocurrency platform. At a recent cryptocurrency conference, one of Trump's sons, Eric Trump, emphasized his father's commitment to advancing the industry, describing him as "the most pro-crypto president" in history.

The president-elect also picked Paul Atkins, a member of the Digital Chamber's board of advisers, an advocacy group devoted to promoting digital assets and blockchain technology, to replace Gary Gensler as the head of the U.S. Securities and Exchange Commission.

The switch from Gensler, an outspoken skeptic of the crypto industry, to Atkins portends less aggressive enforcement actions and a far friendlier regulatory environment.

This crypto-friendly approach is likely to carry over to the DOJ, which will be less likely to pursue aggressive and novel prosecutions against actors in the crypto and digital asset space.

For example, one would not expect the new DOJ to pursue such novel theories as the insider trading-style prosecution of OpenSea product manager Nathaniel Chastain, who was convicted last year in the U.S. District Court for the Southern District of New York.

Relatedly, the Trump DOJ also seems less likely to pursue novel prosecutorial theories in other arenas, such as the "shadow insider trading" theory that was prosecuted by the DOJ and SEC during the Biden administration.

Second, prosecutions and enforcement actions related to environmental, social and governance issues are also likely to drop in the Trump administration.

During the Biden administration, the SEC pursued a number of high-profile enforcement actions related to ESG disclosures, but the SEC disbanded its ESG Task Force earlier this year and it is unlikely that the Trump administration will pursue such investigations.

The Trump administration is also unlikely to maintain the Biden DOJ's increased scrutiny of corporations' ESG claims and disclosures when investigating alleged fraud or assessing eligibility for leniency programs based on compliance.

Expected Upturns in White Collar Enforcement

Like the first Trump administration, the incoming administration is likely to maintain at the core of its white collar enforcement agenda bread-and-butter offenses like financial statement fraud, insider trading and market manipulation.

Trump's record of leniency toward large financial institutions during his previous term suggests a possible shift of attention away from investigations of such institutions, perhaps in favor of work that focuses on misconduct that harms small-time investors.

And the Trump DOJ is expected to advance efforts to promote voluntary compliance with the law by companies and individual employees, as it did during the first Trump administration.

Beyond these overarching prosecutorial mainstays, the incoming administration's white collar enforcement priorities will likely be influenced by its national security and foreign policy objectives. Trump has announced plans to restrict trade and international business dealings, and heightened enforcement will doubtless play a role in that new landscape.

One area to watch is trade violations enforcement. Trump is poised to enact a protectionist trade agenda involving high tariffs and other import restrictions. This impending wave of constraints signals that this area is an administration priority, forecasting a potential increase in enforcement against trade fraud.

The incoming administration will also likely bolster export controls designed to prevent critical technologies from reaching China and other adversaries.

In the same vein, sanctions enforcement is likely to rise during Trump's second term. Trump aggressively used sanctions in his first administration to exert economic pressure on countries like China, Iran, Venezuela and Cuba.

This precedent, as well as the choice of Sen. Marco Rubio, R-Fla. — a proponent of sanctions — to lead the U.S. Department of State, suggests that Trump will adopt a similar strategy in his second term.

Another probable action is the resumption of the Trump administration's "China Initiative," which the Trump DOJ launched in 2018 for the stated purpose of identifying Chinese national security threats in the form of trade theft cases. The Biden administration formally ended the program in 2022 amid criticism that it amounted to racial profiling and promoted anti-Asian American sentiment.

Project 2025 calls for reinstating the China Initiative, and for the launch of a similar program targeting Iran. Such policies could spark increased prosecutions of Chinese and Iranian nationals for economic espionage and making false statements.

Finally, the incoming administration will likely pursue its white collar agenda via prosecutions under the Foreign Corrupt Practices Act and anti-money laundering statutes.

Despite Trump's past comments disparaging the FCPA, enforcement remained robust during his first term and resulted in massive settlements with corporations like Walmart Inc. and Airbus.

In addition to bringing bribery charges against domestic entities, the Trump DOJ's FCPA Unit also prosecuted foreign officials under the federal anti-money laundering statutes. The FCPA Unit may very well play a similarly important role in the enforcement agenda during Trump's second term.

Conclusion

In sum, even with a growing slate of loyalist appointees, Trump's plans to overhaul the DOJ and prosecute his political enemies will face institutional roadblocks.

That said, changes are inevitable under the next administration. The potential emphasis on immigration enforcement, drug offenses and violent crime will likely reduce the focus on white collar crime overall.

Nonetheless, pockets of the white collar world will see increased activity, particularly at its intersections with national security and foreign policy.

Brook Dooley and Cody Gray are partners, and Kayla Crowell is an associate, at Keker Van Nest & Peters LLP.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] https://static.project2025.org/2025_MandateForLeadership_CHAPTER-17.pdf.