
President Trump and Attorney General Bondi Announce Significant Shift in FCPA and Other Corporate Enforcement Priorities

February 11, 2025

Soon after being sworn in, President Trump issued Executive Orders identifying top administration priorities: combating illegal immigration, drug cartels, and unlawful DEI practices. Taking a similar tack, on her first day in office, February 5, 2025, Attorney General Pamela Bondi instructed the US Department of Justice (“DOJ” or “Department”) to redirect its enforcement efforts from certain corporate crimes so that it could devote greater attention to the priorities outlined by the President. Across fourteen memoranda that promised more guidance to follow, Attorney General Bondi detailed changes that could transform the corporate enforcement landscape. This included a direction to the Foreign Corrupt Practices Act (“FCPA”) Unit of the DOJ to “prioritize investigations related to foreign bribery that facilitates the criminal operations of Cartels and TCOs,” or transnational criminal organizations, and to “shift focus away from investigations and cases that do not involve such a connection.”¹

Just days later, on February 10, President Trump sought to accelerate that transformation through an Executive Order directing Attorney General Bondi to conduct a six-month review of the guidelines and policies governing FCPA investigations and enforcement actions.² Notably, during this six-month period, the Executive Order instructs the Attorney General to: (i) cease the initiation of all new FCPA investigations and enforcement actions unless otherwise authorized by the Attorney General; (ii) review all existing FCPA investigations and enforcement actions; and (iii) issue updated guidelines or policies governing FCPA investigations and enforcement actions to adequately promote the President’s authority to conduct foreign affairs and prioritize American

¹ See Memorandum from the Att’y Gen. to all Dep’t Emps., Total Elimination of Cartels and Transnational Criminal Organizations at 4 (Feb. 5, 2025), <https://www.justice.gov/ag/media/1388546/dl?inline>.

² Exec. Order, *Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security* (Feb. 10, 2025), <https://www.whitehouse.gov/presidential-actions/2025/02/pausing-foreign-corrupt-practices-act-enforcement-to-further-american-economic-and-national-security/>.

interests and the efficient use of law enforcement resources. The Executive Order stated that the Attorney General's review is designed not only to free up resources to pursue other priorities, but to overhaul the Department's guidelines to protect "American economic competitiveness" from "overexpansive and unpredictable FCPA enforcement against American citizens and businesses."

The changes in criminal enforcement were not limited to the Department's FCPA Unit. In her memos, Attorney General Bondi also directed prosecutors to narrow criminal enforcement of the Foreign Agents Registration Act ("FARA") and 18 U.S.C. § 951. She also disbanded the National Security Division's ("NSD") Corporate Enforcement Unit, established to prosecute sanctions evasion, export control violations, and similar economic crimes; the Foreign Influence Task Force ("FITF"), designed to combat "foreign malign influence" operations in the United States; and three kleptocracy-related initiatives, the efforts of which focused on Russian oligarchs and others sanctioned in connection with the invasion of Ukraine. While pulling back in these areas, Attorney General Bondi also directed the Department's Civil Rights Division to propose ideas for criminal investigations and prosecutions of unlawful DEI activities.

It is difficult to predict how these bold directives will play out in the coming months and years. From a compliance perspective, a potentially significant pullback on criminal corporate enforcement may encourage companies to engage in higher-risk activities that result in violations that can be pursued by other authorities or by the Department itself down the road when enforcement priorities inevitably shift. Non-US companies—which have been subject to many of the largest FCPA penalties historically—should keep a close eye on whether the Executive Order's emphasis on protecting American interests means that investigations and enforcement actions against them will be handled differently. And all companies subject to US jurisdiction should monitor the Department's implementation of this guidance in the coming months to understand how these sweeping pronouncements will shape day-to-day corporate enforcement.

I. Changes in Approach to FCPA Enforcement

On February 10, 2025, President Trump signed an Executive Order directing the Attorney General to conduct a six-month review of the guidelines and policies governing FCPA investigations and enforcement actions on the grounds that the law has been "abused" in ways that hinder US foreign policy objectives and place American companies at a disadvantage compared to foreign competitors.³ The Executive Order mandates a comprehensive review of current FCPA enforcement guidelines with the stated aim of revising them to enhance American economic competitiveness and to safeguard national security interests. During the 180-day review period—which can be extended for another 180 days at the Attorney General's discretion—the initiation of new FCPA investigations and enforcement actions is suspended, unless explicitly authorized by the

³ Exec. Order, *Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security* (Feb. 10, 2025), <https://www.whitehouse.gov/presidential-actions/2025/02/pausing-foreign-corrupt-practices-act-enforcement-to-further-american-economic-and-national-security/>.

Attorney General, and all existing FCPA investigations and enforcement actions will be reviewed. After revised guidelines are issued, the Attorney General is directed to assess whether “remedial measures” regarding past FCPA actions are warranted. Notably, with respect to “remedial measures,” the Executive Order contemplates the possibility of “Presidential action,” potentially suggesting that President Trump could be contemplating the exercise of pardon authority.

The Executive Order emphasizes concerns about “overenforcement” against American companies, suggesting that such practices disadvantage them in the global market. This emphasis runs counter to the fact that a significant portion of FCPA actions have targeted foreign entities for conduct that had limited connection to the United States. For instance, nine out of the ten largest FCPA resolutions have involved foreign companies. In 2024, 45% of corporate FCPA enforcement actions were against foreign companies, accounting for approximately 60% of the total settlement amounts that year. This trend is consistent with previous years; in 2023, 50% of such actions targeted foreign firms, representing over 40% of settlement amounts. Similarly, in 2022, 60% of corporate enforcement actions were directed at foreign companies, comprising 80% of the total settlements.

As a practical matter, for the next six months, the Executive Order prevents the initiation of any new FCPA investigation or the filing of any new FCPA charges unless “an individual exception” is made by the Attorney General. This authority could allow the Attorney General to accelerate the shift to FCPA investigations involving cartels and TCOs that she had previously directed. On February 5, in a memorandum directing the Department to pursue the “Total Elimination of Cartels and Transnational Criminal Organizations” (the “Cartel Elimination Memo”), Attorney General Bondi directed the Department’s FCPA Unit to “prioritize investigations related to foreign bribery that facilitates the criminal operations of Cartels and TCOs[.]”⁴ To prioritize anti-cartel cases, the Attorney General expressly instructed the FCPA Unit to “shift focus away from investigations and cases that do not involve such a connection.” As “[e]xamples of priority investigations,” she cited “bribery of foreign officials to facilitate human smuggling and the trafficking of narcotics and firearms.” While it is difficult to predict how broadly Attorney General Bondi will grant exceptions to the general prohibition on new FCPA actions, it seems reasonable to assume that she is more likely to do so when presented with a case involving a connection to cartels or TCOs.

Equally interesting is how Attorney General Bondi will deal with existing FCPA investigations. The Executive Order does not mandate that all ongoing FCPA investigations be halted. Instead, it calls for a “detailed review” of current cases and enforcement actions to ensure they conform to “proper bounds” and align with presidential foreign policy objectives. Many of these investigations have been underway for years, reflecting a significant investment of Departmental resources. Some

⁴ Although the Cartel Elimination Memo does not explicitly define “cartels” and “TCOs,” Attorney General Bondi refers to Executive Order 14157, which lists Tren de Aragua and La Mara Salvatrucha (MS-13) as examples of cartels and TCOs. *Designating Cartels and Other Organizations as Foreign Terrorist Organizations and Specially Designated Global Terrorists*, Exec. Order No. 14157, 90 Fed. Reg. 8439, 8439 (Jan. 20, 2025), <https://www.govinfo.gov/content/pkg/FR-2025-01-29/pdf/2025-02004.pdf>.

cases against individuals have already been indicted and some are already scheduled for trial.⁵ The language in the Executive Order appears to leave room for certain cases to proceed—possibly including those involving foreign companies or those where the administration sees a national security or economic benefit in continued enforcement. It also creates the possibility that the Department will reveal its interpretation of the FCPA's "proper bounds" through its narrowing or dismissal of cases premised on aggressive legal theories. The degree to which Attorney General Bondi intends to overhaul the Department's approach to FCPA matters could be demonstrated by the degree to which she changes course in investigations and prosecutions already in progress.

The Executive Order's instruction to reassess Department guidance and policies most squarely targets for revision—or potentially rescission—the FCPA Resource Guide, first issued in 2012 and then reissued in 2020 during the first Trump administration. Based on the language and stated rationale of the Executive Order, new enforcement guidance could include:

- Reduced focus on gifts, travel, and entertainment. Given the Executive Order's statement that overenforcement for "routine business practices in other nations. . . harms American economic competitiveness," it is possible that revised guidance will curtail enforcement focused on gifts, travel, and entertainment, historically significant areas of enforcement that may be perceived as punishing routine conduct. A diminished focus on gifts, travel, and entertainment could leave room for greater attention to clear-cut cases of outright bribery that cannot be deemed a "routine business practice."
- Greater focus on non-US companies. As the Executive Order is premised on "economic competitiveness of American companies," revised enforcement guidance could more expressly direct a focus on non-US companies or on specific countries (as with the 2018 Attorney General memo directing the Department to identify FCPA cases involving Chinese companies that compete with US businesses). Importantly, the Executive Order does not direct cessation of all pending FCPA cases; rather, it directs review of such cases to restore proper bounds of FCPA enforcement and it is possible that the cases that could continue are those against non-US companies. Actions against non-US companies, which have yielded billions of dollars in penalties for the US Treasury, could be deemed to be a better use of scarce prosecutorial resources.
- Changed industry focus. Industries in which there has historically been greater enforcement activity—defense and aerospace; oil & gas; commodities; and infrastructure—could see a drop off under revised guidance due to the Executive Order's focus on national security and the stated need for US companies to gain "strategic business advantages" in "critical minerals, deep-water ports [and] other key infrastructure." Non-US companies that operate in strategic industries and that compete with US

⁵ This Memo does note, elsewhere, that "because the Department is working toward elimination of these threats from the homeland, it will rarely be consistent with this policy to pursue foreign arrests and extraditions of targets who may be eligible for safety-valve relief or minor role adjustments." Cartel Elimination Mem. at 2. Presumably this may also indicate that few resources would be devoted to the foreign pursuit of individuals involved in typical corporate bribery cases.

companies could conversely see increased enforcement attention if there is a basis for US jurisdiction over their activities.

- **Cartels and TCOs.** While the Executive Order's pause on all new FCPA investigations and enforcement actions will prevent prosecutors across the country from launching the cartel-focused FCPA investigations prioritized by the Cartel Elimination Memo without express authorization from the Attorney General, that investigative focus may reemerge when the Department issues new guidelines. FCPA cases historically have not involved cartels or TCOs, and very few companies subject to the FCPA are involved in bribery related to human smuggling or trafficking in narcotics or firearms.⁶ Nevertheless, the Department might ramp up activity involving officials in countries (e.g., Mexico) where the Department views the foreign government's enforcement against cartels and TCOs to be inadequate.⁷

⁶ Though historic FCPA enforcement actions have not related to human smuggling or narcotics trafficking, the US government has previously recognized the link between and among these three issues, as have other governments and non-governmental organizations. *See, e.g.*, US Dep't of State, Office to Monitor & Combat Trafficking in Persons, Linking Efforts to Combat Corruption and Trafficking in Persons (2022), <https://www.state.gov/wp-content/uploads/2022/07/Linking-Efforts-to-Combat-Corruption-and-Trafficking-in-Persons.pdf>; US Dep't of Just. & US Sec. & Exch. Comm'n, FCPA: A Resource Guide to the U.S. Foreign Corrupt Practices Act at 1-2 (2d ed. 2020), <https://www.justice.gov/criminal/criminal-fraud/file/1292051/dl?inline>; Organisation for Econ. Co-operation & Dev. Public Governance Reviews, Trafficking in Persons and Corruption: Breaking the Chain (Dec. 9, 2016), https://www.oecd.org/en/publications/trafficking-in-persons-and-corruption_9789264253728-en.html.

Additionally, certain FCPA cases involving Venezuelan government officials have been announced at the same time as narco-trafficking-related cases involving other Venezuelan government officials, but there is no robust history of FCPA cases that also charge narco-trafficking and weapons-related crimes. *See* Press Release, US Dep't of Just., Nicolás Maduro Moros and 14 Current and Former Venezuelan Officials Charged with Narco-Terrorism, Corruption, Drug Trafficking and Other Criminal Charges (Mar. 26, 2020), <https://www.justice.gov/archives/opa/pr/nicol-s-maduro-moros-and-14-current-and-former-venezuelan-officials-charged-narco-terrorism>.

Also of note, there have been limited FCPA cases directly related to the arms industry. In 2014, the SEC charged Smith & Wesson Holding Corporation with violating the FCPA in a case involving contracts to supply firearm products to military and law enforcement overseas. Smith & Wesson Holding Corp., Exchange Act Release No. 72678 (July 28, 2014), <https://www.sec.gov/files/litigation/admin/2014/34-72678.pdf>. Additionally, in 2009, the DOJ charged under seal 22 defendants related to an undercover operation carried out by the Federal Bureau of Investigation regarding foreign bribery in the military and law enforcement products industry. However, the defendants were ultimately acquitted, had their guilty pleas vacated, or had the charges against them dismissed. *See* Press Release, US Dep't of Just., Twenty-Two Executives and Employees of Military and Law Enforcement Products Companies Charged in Foreign Bribery Scheme (Jan. 19, 2010), <https://www.justice.gov/archives/opa/pr/twenty-two-executives-and-employees-military-and-law-enforcement-products-companies-charged>. A twenty-third individual, the government cooperator in this investigation, plead guilty to a single count related to conspiring to violate the FCPA and export laws. *See* Plea Agreement, *United States v. Bistrong*, No. 10-21 (D.D.C. Sept. 16, 2010), <https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2013/05/07/09-16-10-plea-agreement-bistrong.pdf>.

⁷ Given the DOJ's focus on cases involving cartels and TCOs, we note that financial institutions may also face additional scrutiny related to money laundering of cartel- or TCO-related proceeds.

Beyond uncertainties about the DOJ's ultimate approach, even with the prospect of reduced DOJ enforcement during the Trump administration, there are good reasons for companies to be cautious in reducing their anti-bribery compliance efforts.

- *First*, at least for public “issuer” companies, the SEC also enforces the FCPA. The Executive Order does not expressly mention the SEC and the SEC has made no announcement about a change in its FCPA approach so far. While it remains to be seen how the Executive Order will impact the SEC, it seems likely that the SEC and, when confirmed, the new SEC Chair, will take seriously the Executive Order’s messages, including its statements about the harms of overenforcement of the FCPA. It is quite possible that the new chairman nominated by President Trump, when confirmed, will instruct a new Director of Enforcement to reassess the SEC’s approach to FCPA enforcement in light of the President’s concerns.
- *Second*, as has been the case for the last several years, authorities outside the United States have increased their own enforcement efforts, and thus companies should not assume that a change in priorities by the DOJ will mean a decrease in attention by foreign authorities. Indeed, a vacuum left by US authorities might well increase attention by other countries.
- *Third*, even in the event of a significant downturn in FCPA investigations and prosecutions under the Trump administration, the FCPA remains in the US Code, and, with a statute of limitations of five years, FCPA violations committed today or in the next few years may be reviewed, and potentially prosecuted, under a different administration. Furthermore, FCPA violations charged as a conspiracy could provide a subsequent administration with an even longer runway. Companies will want to avoid the whiplash that may occur if a future DOJ seeks to reinvigorate FCPA prosecutions.

The Executive Order and Cartel Elimination Memo will no doubt raise questions from boards, executives, and employees about the value of corporate anti-bribery programs, and the jobs of many compliance officers will become more challenging. And it is entirely appropriate for corporate and compliance leaders to assess their ongoing compliance efforts and deployment of resources as the current enforcement environment evolves. With this evolution, considerations about issues such as the allocation of internal investigation resources may change. Responsible corporate leaders and compliance officers should continue to evaluate the best uses of their compliance resources (and resist suggestions that compliance efforts should simply be abandoned). Most global companies will not want to squander hard-earned efforts to create and maintain ethical corporate cultures that value and require behavior in compliance with all relevant laws.

II. Redirecting Prosecutions of National Security Crimes

The Biden administration established a series of initiatives that increased or emphasized criminal enforcement as a means to advance national security and foreign policy goals, many related to the

Russian invasion of Ukraine. Attorney General Bondi rolled back some of those efforts through both the Cartel Elimination Memo and the “General Policy Charging, Plea Negotiations, and Sentencing” memorandum (the “Charging Memo”).

As with the FCPA Unit, the Cartel Elimination Memo also directs the DOJ’s Money Laundering and Asset Recovery Section to turn its attention to cases involving cartels and TCOs. To prioritize those cases, the Memo disbanded three initiatives aimed at Russian oligarchs and others sanctioned in connection with the invasion of Ukraine: Task Force KleptoCapture, DOJ’s Kleptocracy Team, and the Kleptocracy Asset Recovery Initiative. With this Memo, these initiatives’ resources have now been reallocated to cases related to cartels and TCOs, and attorneys working for these programs have been instructed to return to their prior positions.

The Charging Memo disbands the NSD’s Corporate Enforcement Unit, a high-priority initiative under the Biden administration to prosecute corporate crime in the national security space, including sanctions evasion and export control violations. Notably, despite earlier reports to the contrary, Attorney General Bondi has not eliminated the position of Chief Counsel for Corporate Enforcement in the NSD, a position that Ian C. Richardson has held since the position was created in September 2023.⁸ Additionally, while dissolving the group of prosecutors dedicated to those efforts, neither the Cartel Elimination Memo nor the Charging Memo directly instructs DOJ attorneys to move away from enforcing sanctions and other economic crimes, or from looking at the intersection of corporate activity and national security issues.

Citing concerns about the “further weaponization and abuse of prosecutorial discretion,” the Charging Memo also disbands the FITF and limits FARA and agent-of-a-foreign-power criminal charges to “traditional espionage by foreign government actors.” This is a shift from the Biden administration, which used the FARA as a national security enforcement tool in criminal cases involving corporate executives and lobbyists who worked on behalf of foreign governments.

Attorney General Bondi’s focus on prosecutions related to cartels and TCOs could portend a heightened risk of corporate criminal prosecution under 18 U.S.C. § 2339B given President Trump’s directive to the Department of State to consider whether any cartels or TCOs should be designated as Foreign Terrorist Organizations (“FTOs”).⁹ In particular, should any cartels or TCOs

⁸ See Press Release, US Dep’t of Just., Justice Department’s National Security Division Announces Key Corporate Enforcement Appointments (Sept. 11, 2023), <https://www.justice.gov/archives/opa/pr/justice-departments-national-security-division-announces-key-corporate-enforcement>. Of note, the DOJ created Chief Counsel Richardson’s position in part to address the uptick in corporate criminal resolutions involving national security issues, a trend that saw approximately two-thirds of such resolutions implicating national security between October 2022 and May 2023, according to the Department. See Marshall Miller, Assoc. Deputy Att’y Gen., Principal Associate Deputy Attorney General Marshall Miller Delivers Remarks at the Ethics and Compliance Initiative IMPACT Conference (May 3, 2023), <https://www.justice.gov/archives/opa/speech/principal-associate-deputy-attorney-general-marshall-miller-delivers-remarks-ethics-and>.

⁹ The risk of corporate criminal liability under 18 U.S.C. § 2339B is not only theoretical. Indeed, in 2022, Lafarge S.A., a global building materials company, and its Syrian subsidiary, Lafarge Cement Syria (LCS) S.A., pleaded guilty to one count of conspiring to provide material support and resources to two FTOs (the

be designated as FTOs, companies that operate in jurisdictions where any newly-designated FTOs are active could face heightened risk under Section 2339B—providing material support or resources to a designated FTO. Moreover, in the Cartel Elimination Memo, Attorney General Bondi lifted the requirements that DOJ attorneys outside of the NSD seek approval and concurrence from the NSD for cases involving violations under 18 U.S.C. § 2339B, among other statutes.¹⁰

There is little doubt that the current administration has rejected the Biden administration's national security focus on issues such as Russia and kleptocracy. This frees resources to pursue the Trump administration's clear focus on cartels and TCOs as national security issues. Directives from the acting Deputy Attorney General complement this shift in resources by, for instance, requiring the FBI's Joint Terrorism Task Forces to assist with immigration-related initiatives.¹¹ To be sure, it remains to be seen the extent that lifting NSD requirements and shifting resources will impact the number of cases involving companies that do business in parts of the world where cartels and TCOs are active. But this pivot nonetheless signals a need for companies to reassess their potential enforcement risks, particularly as companies increasingly find themselves on the frontline of such geopolitical issues.

III. Potential Criminal Enforcement Against Diversity, Equity, Inclusion, and Accessibility Efforts

The “Ending Illegal DEI and DEIA Discrimination and Preferences” memorandum (the “DEI and DEIA Memo”) directs the DOJ's Civil Rights Division to “investigate, eliminate, and penalize illegal DEI [Diversity, Equity, and Inclusion] and DEIA [Diversity, Equity, Inclusion, and Accessibility] preferences, mandates, policies, programs, and activities” in the private sector and in educational institutions that receive federal funds.¹² The DEI and DEIA Memo sets a March 1, 2025, deadline

Islamic State of Iraq and al-Sham (“ISIS”) and the al-Nusrah Front (“ANF”). According to the DOJ, the defendants “schemed to pay ISIS and ANF in exchange for permission to operate a cement plant in Syria from 2013 to 2014, which enabled [the Syrian subsidiary] to obtain approximately \$70.3 million in revenue.” In total, the defendants were sentenced to a probationary period and to pay financial penalties totaling almost \$778 million. *See* Press Release, US Dep't of Just., Lafarge Pleads Guilty to Conspiring to Provide Material Support to Foreign Terrorist Organizations (Oct. 18, 2022), <https://www.justice.gov/archives/opa/pr/lafarge-pleads-guilty-conspiring-provide-material-support-foreign-terrorist-organizations>.

¹⁰ This Memo also exempts from the approval and concurrence requirements administered by the NSD cases involving other statutes related to terrorism (18 U.S.C. §§ 2332a, 2332b, 2339, 2339A, 2339C and 2339D, and 21 U.S.C. § 960a) and penalties under the International Emergency Economic Powers Act (50 U.S.C. § 1705). *See* Cartel Elimination Mem. at p. 3, n.3. However, it does not exempt from these requirements cases involving certain statutes related to biological weapons (18 U.S.C. §§ 175 and 175b), FARA (18 U.S.C. §§ 219 and 951), espionage (18 U.S.C. §§ 793 and 794), nuclear materials (18 U.S.C. § 831) and computer espionage (18 U.S.C. § 1030(a)(1)). *See id.* Furthermore, the Memo explicitly notes that it does not modify “policies relating to investigations and cases involving classified information,” including requirements related to prudential search requests or use authorizations. *Id.* at 3.

¹¹ Memorandum from Acting Att'y Gen. to all Dep't Emps, Interim Policy Changes Regarding Charging, Sentencing, And Immigration Enforcement, at 3 (Jan. 21, 2025), <https://www.aila.org/aila-files/75FE2DCB-6CC2-483A-841E-A7A856A7852B/25012912.pdf?1738188120>.

¹² Memorandum from Att'y Gen. to all Dep't Emps, Ending Illegal DEI and DEIA Discrimination and Preferences at 1 (Feb. 5, 2025), <https://www.justice.gov/ag/media/1388501/dl?inline>.

for a joint report by the Civil Rights Division and the DOJ's Office of Legal Policy with recommendations for "measures to encourage the private sector to end illegal discrimination and preferences, including policies relating to DEI and DEIA."¹³

Of note, the requested measures include "proposals for criminal investigations and for up to nine potential civil compliance investigations."¹⁴ The inclusion of potential criminal investigations—an enforcement mechanism not mentioned in Executive Order 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*¹⁵—sends a clear signal of how seriously the DOJ intends to enforce against what it deems "illegal DEI and DEIA" efforts. Any potential criminal investigation related to corporate DEI programs would rely on a novel enforcement theory. Given the tasking of the Civil Rights Division to pursue criminal enforcement, the Department may turn to civil rights statutes that include criminal penalties to achieve this objective, though their use in this context would be unprecedented.

The Memo also announces that the DOJ will work with the US Department of Education to "issue directions, and the Civil Rights Division will pursue actions, regarding the measures and practices required to comply with" the Supreme Court's decision in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023), which held that the race-conscious admissions practices that were challenged in that case violated the Equal Protection Clause of the Fourteenth Amendment.¹⁶ The contemplated "directions" will supplant resources previously jointly issued by the DOJ's Civil Rights Division and the Department of Education's Office for Civil Rights, which included a Dear Colleague Letter and a Questions and Answers document regarding the ruling in *Students for Fair Admissions* and legally permissible ways to achieve student body diversity.

As for which practices the DOJ will focus on in the private sector, the "Eliminating Internal Discriminatory Practices" memorandum¹⁷ issued by the Attorney General on the same day—which focuses on practices within the DOJ—may indicate potential areas of focus. This memo directs DOJ components to terminate, to the maximum extent permitted by law, their own DEI and environmental justice programs, including "references to DEI or DEIA in (1) training and programs, including references to 'unconscious bias,' 'cultural sensitivity,' 'inclusive leadership,' and any emphasis on race- or sex-based criteria rather than merit; (2) policies and guidelines, including hiring, promotion, or performance evaluation policies; and (3) vendor contracts and budget materials."¹⁸ DOJ components are also instructed to "thoroughly evaluate consent decrees, settlement agreements, [and] litigation positions (including those set forth in amicus briefs)" to

¹³ DEI and DEIA Mem. at 1.

¹⁴ DEI and DEIA Mem. at 2.

¹⁵ Exec. Order No. 14173, 90 Fed. Reg. 8633 (Jan. 21, 2025), <https://www.govinfo.gov/content/pkg/FR-2025-01-31/pdf/2025-02097.pdf>

¹⁶ DEI and DEIA Mem. at 2.

¹⁷ Memorandum from Att'y Gen. to all Dep't of Just. Emps, Eliminating Internal Discriminatory Practices (Feb. 5, 2025), <https://www.justice.gov/ag/media/1388556/dl?inline>.

¹⁸ Eliminating Internal Discriminatory Practices Mem. at 2-3.

“eliminate race- or sex-based preferences, diversity hiring targets, or preferential treatment based on DEI- or DEIA-related criteria.”¹⁹

IV. Other Developments

A. “Reinstating the Prohibition on Improper Third-Party Settlements” Memorandum

Citing the risk of “improper use of settlements to funnel payments,” the memorandum entitled “Reinstating the Prohibition on Improper Third-Party Settlements” (rescinds two memos from the Biden era²⁰ that had restored DOJ’s ability to enter into settlements that include payments to non-governmental third parties. The memo reinstates guidance from the first Trump administration that had sharply curtailed the right to enter into such agreements.²¹ Of note, third-party settlements are mostly used in environmental violations. This administration has identified these types of cases as ones that could be particularly susceptible to improper redress through payments made in civil lawsuits related to environmental violations.

B. “Reinstating the Prohibition on Improper Guidance Documents” Memorandum

The memorandum entitled “Reinstating the Prohibition on Improper Guidance Documents” reinstates two memos from the first Trump administration that limited the use of guidance documents issued by the DOJ.²² The memo notes that “guidance documents violate the law when they are issued without undergoing the rulemaking process established by law yet purport to have a direct effect on the rights and obligations of private parties governed by the agency or otherwise act as a substitute for rulemaking.” It will be no surprise if this memo is used to walk back guidance issued under the previous administration, including guidance provided about the Criminal Division’s Corporate Enforcement Policy and related pilot programs.

C. Rescinding Prior Environmental Justice Memoranda

¹⁹ Eliminating Internal Discriminatory Practices Mem. at 1.

²⁰ Memorandum from Att’y Gen. to Heads of Dep’t Components US Att’ys, Guidelines and Limitations for Settlement Agreements Involving Payments to Non-Governmental Third Parties (May 5, 2022), <https://www.justice.gov/archives/ag/file/1217691-0/dl?inline>; Memorandum from Att’y Gen. to Env’t & Nat. Res. Div., Community Service Payments in Environmental Crimes Cases (July 28, 2023).

²¹ Memorandum from Att’y Gen. to all Components Heads & US Att’ys, Prohibition on Settlement Payments to Third Parties (June 5, 2017), <https://www.justice.gov/archives/opa/press-release/file/971826/dl?inline>; Prohibition on Settlement Payments to Non-Governmental Third Parties, 85 Fed. Reg. 81409 (Dec. 16, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-12-16/pdf/2020-27189.pdf>.

²² Memorandum from Att’y Gen. to all Components, Prohibition on Improper Guidance Documents (Nov. 16, 2017), <https://www.justice.gov/archives/opa/press-release/file/1012271/dl?inline>; Memorandum from Assoc. Att’y Gen. to Heads of Civil Litigating Components US Att’ys, Limiting Use of Agency Guidance Documents in Affirmative Civil Enforcement Cases (Jan. 25, 2018), <https://www.justice.gov/archives/opa/press-release/file/1028756/dl?inline>

Attorney General Bondi's memorandum titled "Rescinding Environmental Justice Memoranda" rescinds two memos from the Biden administration related to environmental justice.²³ These memos were part of the former Attorney General Merrick Garland's comprehensive environmental justice enforcement strategy which provided a roadmap as to how DOJ used its civil and criminal enforcement authorities to advance environmental justice in underserved communities. This was also issued alongside the above-referenced Eliminating Internal Discriminatory Practices memo, which directs each DOJ component to assess whether any of their programming or positions relate to environmental justice, among other aspects.

²³ Memorandum from Att'y Gen. to all Dep't Emps., Actions to Advance Environmental Justice (May 5, 2022), <https://www.justice.gov/archives/ag/file/1217681-0/dl?inline>; Memorandum from Att'y Gen. to Heads of Dep't Components US Att'ys, Comprehensive Environmental Justice Enforcement Strategy (May 5, 2022), https://www.justice.gov/d9/pages/attachments/2022/05/05/02._asg_strategy_memorandum.pdf.

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