

Navigating Parallel Investigations in the COVID-19 Era

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Introduction

Parallel investigations are investigations in which more than one criminal, civil, administrative, legislative, or regulatory investigative body conducts an investigation into the same conduct. Parallel inquiries can occur due to a variety of reasons. They often occur when scrutinized conduct is of a significant enough magnitude that investigative bodies with overlapping jurisdictions have a priority interest in investigating the matter and seeking whatever unique remedies each investigative body has at its disposal.

The ever-broadening landscape of local, state, federal, and international laws and regulations that govern business entities and individuals alike may impact the number of proceedings involved with an allegation. What may initially appear as a possible violation requiring a single proceeding may actually consist of multiple proceedings with various government authorities with particularized remedial authorities. These particularized remedial authorities (administrative sanctions, civil fines, imprisonment), in the investigator's eyes, justify the parallel, or duplicative, nature of the inquiry.

Even for entities that seek to act responsibly and/or have robust compliance programs in place, there are instances in which remedial steps can eventually end up embroiled in overlapping scrutiny by multiple investigative bodies that may have an interest in probing the conduct.

In the midst of the COVID-19 pandemic, the risk of parallel investigations is ever-present because local, state, federal, and international investigative bodies have already signaled probes encompassing a number of distinct, overlapping areas:

- Health care systems (pandemic-related fraud, privacy, tracking, tracing, and hacking);
- Consumer protection (price-gouging, data privacy and data protection, worker protection, small business fraud, elder abuse); and
- Geopolitical/cross-border issues (hacking, cyber theft, foreign interference, supply chain issues).

Consequently, while substantive areas of the law – such as privacy, data breach, and false claims – each have their own distinct legal frameworks, it is also essential that counsel have a sophisticated understanding of the interplay among the government entities that have overlapping investigatory powers to probe certain kinds of violations. This primer provides an overview of (i) the federal landscape with respect to how the federal government approaches

parallel investigations; (ii) growing risks associated with congressional investigations; (iii) emerging issues involving whistleblowers; (iv) risks of information-sharing among investigatory bodies; and (v) seeking “global resolutions.”

Federal Policy on Parallel Investigations

Following the financial crisis in 2008, Congress enacted the Dodd-Frank Act, which expanded the reach of the U.S. Securities and Exchange Commission (SEC), created the Consumer Financial Protection Bureau (CFPB), and generally marked a significant expansion of regulatory investigative authority. Dodd-Frank, for example, also expanded whistleblower awards to incentivize internal whistleblowers to report to investigators misconduct with respect to the securities laws.²

Along with this trend towards greater regulatory enforcement, the U.S. Department of Justice (DOJ), as the chief law enforcement body for the federal government in criminal and civil cases, has similarly increased coordination of criminal and civil “parallel” investigations over the past few decades. It first promulgated a policy of coordination between and among criminal, civil, and regulatory investigations in 1997, in a memorandum by then-Attorney General Janet Reno.³

The memorialization of this policy was a natural outflow of how courts recognized the propriety of the “government undertaking simultaneous criminal and civil investigations,” provided that the government use those proceedings and associated investigative tools for their proper purposes and in appropriate ways.⁴

The Justice Department’s Parallel Investigations Policy and Updates to the Justice Manual (formerly known as the U.S. Attorneys’ Manual)

On January 30, 2012, the Justice Department issued its current policy regarding the use of parallel investigations, pursuant to an Attorney General Memorandum. The first paragraph of the memo states the following:

The Department has placed a high priority on combating white collar crime. This includes the fight against fraud, waste, and abuse, whether it is in connection with health care, procurement, or other financial fraud, as well as consumer protection, the environment, antitrust, tax, commodities and securities fraud. The Department and the Financial Fraud Enforcement Task Force and its members are committed to using all of the remedies available – criminal, civil, regulatory, and administrative. To facilitate that goal, I am issuing this policy statement to update and further strengthen the Department’s longstanding policy that ensures that Department prosecutors and civil attorneys coordinate together and with agency attorneys in a manner that adequately takes into account the government’s criminal, civil, regulatory and administrative remedies.⁵

This memorandum updated “longstanding policy,” and it clearly set forth the Justice Department policy that government counsel should communicate “to the fullest extent appropriate to the case and permissible by law, whenever an alleged offense or violation of federal law gives rise

to the potential for criminal, civil, regulatory, and/or agency administrative parallel (simultaneous or successive) proceedings.”⁶

It further instructs⁷ U.S. Attorneys’ Offices and Justice Department litigating components to specifically address, at a minimum, policies governing the (i) intake of cases, (ii) investigation of cases, and (iii) resolution of cases.⁸ The memo and the Justice Manual further caution against issues such as:

- The improper release of grand jury material and arguments raised in *Stringer and United States v. Scrushy*, 366 F. Supp. 2d 1134 (N.D. Ala 2005).
- Abuse of civil process.
- Ethical obligations not to use criminal enforcement authority unfairly to extract, or attempt to extract, additional civil or administrative monetary payments.
- Duplicative fines, penalties, and/or forfeiture that exceeds an equitable result.⁹

The Justice Manual on parallel investigations was updated in 2018, following a memorandum then-Deputy Attorney General Rod J. Rosenstein issued on the subject of “Policy on Coordination of Corporate Resolution Penalties.”¹⁰ That memo dictated that the Justice Department should “consider the totality of fines, penalties, and/or forfeiture imposed by all Department components as well as other law enforcement agencies and regulators in an effort to achieve an equitable result.”¹¹

In a corresponding speech delivered to the New York City Bar White Collar Crime Institute, Deputy Attorney General Rosenstein explained that “[i]n highly regulated industries, a company may be accountable to multiple regulatory bodies. That creates a risk of repeated punishments that may exceed what is necessary to rectify the harm and deter future violations.” The business community received the announcement as providing some more certainty when assessing the risk of parallel investigations by federal agencies, and the announcement came to be known as the “no piling on” policy.¹²

The “no piling on” policy also came in the broader context of some notable developments prior to 2018. First, in September 2015, then-Deputy Attorney General Sally Yates issued a memorandum (the “Yates Memorandum”) that urged corporations to provide “actionable evidence” of misconduct and also encouraged DOJ’s litigating components, on both the criminal and civil side, to communicate “as early as permissible” to press ahead in a civil prosecution even if a criminal prosecution was not permissible.¹³ This memo, which was issued following resolution of a number of DOJ cases stemming from the financial crisis in 2008 (mostly civil resolutions, under the False Claims Act and the Financial Institutions Reform, Recovery, and Enforcement Act)¹⁴ against large financial institutions, sought to better facilitate resolutions and urge early reporting of misconduct in corporate fraud cases.

Additionally, the “no piling on” policy came in the context of a significant uptick in anti-corruption enforcement under the Foreign Corrupt Practices Act (FCPA) by DOJ and the SEC in parallel investigations – resulting in sizable resolutions.¹⁵ The 2018 memorandum was meant to

“discourage disproportionate enforcement of laws by multiple authorities.”¹⁶ And, in July 2020, the Justice Department and the SEC published the second edition of “A Resource Guide to the U.S. Foreign Corrupt Practices Act.”¹⁷ The Guide specifically stated that it was updated from the 2012 edition to “provide increased transparency, including the DOJ’s FCPA Corporate Enforcement Policy, Selection of Monitors in Criminal Division Matters, Coordination of Corporate Resolution Penalties (or Anti-Piling On Policy), and the Criminal Division’s Evaluation of Corporate Compliance Programs.”¹⁸ It reiterated that DOJ and the SEC, in resolving cases against companies, “strive to avoid imposing duplicative penalties, forfeiture, and disgorgement for the same conduct,” and it specifically cites to the *Braskem* case¹⁹ and several cases also involving foreign authorities.²⁰

COVID-19 and Parallel Investigations

Notwithstanding these DOJ policy backdrops, it is important going forward to recognize that DOJ, since its initial inception of its parallel proceeding policy, has increasingly utilized “task forces” to more efficiently conduct parallel investigations and foster greater coordination across local, state, and federal partners.

In 2002, following the Enron scandal, the Bush Administration created a “Corporate Fraud Task Force” across DOJ and other federal agencies.²¹ In 2009, this task force became the Financial Fraud Enforcement Task Force, which spanned across federal agencies, state attorneys general, and local district attorneys.²² Within this task force, a smaller working group called the Residential Mortgage Backed Securities working group was created across the federal and state officials and resulted in an estimated \$95 billion in fines and penalties against entities involved in the collapse of the housing market.²³

The same playbook is likely being used here. The pandemic has strapped resources all across the country, and DOJ has recognized that fraud enforcement is a priority. On March 16, 2020, U.S. Attorney General Bill Barr issued a memorandum directing every U.S. Attorney’s Office “to prioritize the detection, investigation, and prosecution of all criminal conduct related to the current pandemic.”²⁴ Each of the 94 U.S. Attorneys’ Offices thereafter identified and appointed one prosecutor to serve as the office’s Coronavirus Coordinator to ensure that those cases were given the highest priority.

Additionally, the Department assigned Associate Deputy Attorney General William Hughes to coordinate the Department’s response relating to the COVID-19 pandemic (and the risk areas noted below). The Department also formed the Hoarding and Price Gouging Task Force, led by U.S. Attorney for the District of New Jersey Craig Carpenito.²⁵ State and local governments similarly created task forces to address COVID-19-related fraud.²⁶

DOJ’s Hoarding and Price Gouging Task Force

President Trump recently issued an Executive Order pursuant to Section 102 of the Defense Production Act that, in part, prohibits hoarding of designated items.²⁷ The DOJ’s Hoarding and Price Gouging Task Force was stood up along with DOJ’s Antitrust Division, and it includes a designated experienced attorney from each of the U.S. Attorney’s offices to target hoarding or price gouging of personal protective equipment (PPE), respirators, ventilators, sterilization

services, disinfecting devices, medical gowns or apparel, and drug products. The task force is also targeting market manipulation.

Fraud and Abuse

In addition to this task force, the Justice Department has also recently touted its ongoing investigations of “sales of fraudulent PPE and COVID-19 treatments, cures, and tests; the use of stolen identities to obtain health care, Economic Impact Payment, unemployment, or other government benefits; and loan fraud, bank fraud, money laundering, and aggravated identity theft relating to CARES Act funds.”²⁸ The DOJ’s Criminal Fraud Section assigned 25 prosecutors to prosecute COVID-19 cases across the country and retained forensic accounting and other experts who will assist in investigations and prosecutions.²⁹ These federal investigations run parallel with recent announcements by numerous state and local officials, who have pledged to investigate the same conduct.³⁰ And more regional task forces have been created as well, such as in Virginia, to ensure that federal, state, and local coordination is happening with respect to fraud-related investigations.³¹

In addition to fraud cases being run out of the Criminal Fraud and Civil Fraud Sections at DOJ, the Justice Department is ensuring that other components – such as the Criminal Division’s Computer Crime and Intellectual Property Section and the National Security Division – similarly work with other components and across investigative agencies as well as U.S. Attorneys’ Offices to combat COVID-related cybercrime and intellectual property violations, particularly those that affect the health care sector.³² This signals that a significant amount of federal resources will be devoted to COVID-19-related fraud investigations.

Consumer Protection

In addition to fraud investigations, the Justice Department also has several consumer protection authorities that overlap with State Attorneys General and federal agencies, such as the Federal Trade Commission (FTC) and Consumer Financial Protection Bureau (CFPB).

Recently, the Consumer Protection Branch of the Civil Division at DOJ has utilized its authority under 18 U.S.C. § 1345 to seek injunctive relief on behalf potential victims of fraudulent scams, particularly with respect to false claims about vaccinations.³³ The FBI has assisted in coordinating consumer complaint intake, and has actively referred COVID-19-related scams to the Consumer Protection Branch for review.

Like these consumer-protection investigations by DOJ, almost every state has devoted significant resources during the pandemic to combat COVID-19 scams under their own deceptive and unfair trade practices laws (UDAP) enforced by State Attorneys General.³⁴ Likewise, the FTC, under its enabling act, has broad investigative and enforcement authority to protect consumers against deceptive and unfair practices.³⁵ As such, the FTC has been increasingly active in investigating and addressing pandemic-related fraud.³⁶

Antitrust

The pandemic has also caused enforcement agencies such as the DOJ, the FTC, and State Attorneys General to continue to scrutinize anticompetitive conduct – such as price fixing and bid rigging. DOJ recently announced its intention to hold “accountable anyone who violates the antitrust laws of the U.S. in connection with the manufacturing, distribution, or sale of public health products such as face masks, respirators, and diagnostics.”³⁷ The DOJ has also been probing collusive practices in the sale of such products to federal, state, and local agencies under the recently created Procurement Collusion Strike Force, another interagency partnership leading a coordinated national response to combat antitrust crimes and related fraudulent schemes in government procurement. Similar anticompetitive investigations have been prioritized within the FTC³⁸ and by State Attorneys General.³⁹

Emerging Risk Areas with Parallel Investigations

Congressional Investigations

With today’s media environment, another emerging risk for entities are congressional investigations running parallel with federal, state, local, or international investigations. A notable legal distinction between a congressional investigation and an Executive branch investigation is that Congress’ investigative power – as most recently reaffirmed in the U.S. Supreme Court case *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019 (2020)⁴⁰ – is couched in Congress’ Article I “legislative” constitutional authority, which is separate and distinct from Executive branch enforcement authority.⁴¹

As a result, when negotiating with congressional investigators and raising the specter of deference to perhaps Executive branch investigators, congressional investigators often contend that Congress’ power should not defer to any Executive branch entity because Congress’ investigative power is co-equal and co-extensive with the Executive branch’s investigative power.

Furthermore, while fact-finding endeavors by Congress may not ultimately lead to law enforcement-type punishment from Congress in the form of imprisonment or imposition of fines, Congress’ power is intertwined with the soft power of using a bully pulpit to influence an entity’s reputation, and to enact policy preferences in the form of legislation to impact an industry.

Here, with respect to pandemic response, there are numerous areas of oversight for Congress to engage in that overlap with areas that law enforcement agencies are also probing. Lawmakers are already asking questions about the use of stimulus funds flowing to private entities that may be subject to conflicts of interest,⁴² and Congress is still debating adding trillions to federal stimulus funds,⁴³ for which there will be calls for accountability so that taxpayer dollars are not wasted or abused.

Congress has further stood up new investigatory bodies – with subpoena authority – to also conduct rigorous oversight, essentially foreshadowing that parallel investigations will certainly surface. These investigative bodies include, for example:

- **Pandemic Response Accountability Committee:** This committee is established within the Council of Inspectors General on Integrity and Efficiency (a council of existing

inspectors general that was created by law in 2008) and is composed of the inspectors general of nine federal agencies.⁴⁴ The committee has the authority to conduct audits and investigations, issue subpoenas for documents and testimony, and refer matters to other inspectors general for enforcement and to the Attorney General for criminal and civil prosecution.

- **The House Select Subcommittee on the Coronavirus Crisis:** This subcommittee, chaired by Rep. James Clyburn (D-SC),⁴⁵ was recently created within the House Oversight and Reform Committee to “examine all aspects of the federal response to the coronavirus to ensure that taxpayer dollars are being wisely and efficiently spent to save lives, deliver relief and benefit our economy” and to ensure there is “no waste, fraud, abuse, price-gouging or profiteering.”⁴⁶
- **Congressional Oversight Commission:** The Congressional Oversight Commission is charged with oversight implementation of federal stimulus dollars spent by the U.S. Department of the Treasury and the Federal Reserve System. The Commission has yet to fill the chairperson role.⁴⁷ Nevertheless, once the chairperson is named, this Commission will officially begin its work as a fully operating oversight body.
- **Special Inspector General for Pandemic Recovery (SIGPR).** SIGPR was created within the Treasury Department to “conduct, supervise, and coordinate audits and investigations” of Treasury programs included in the CARES Act and any other Treasury programs established under the Act. SIGPR will have to submit quarterly reports to Congress, and therefore will be pressed repeatedly by Congress about the work that it is conducting. Its legal authority parallels that of two other special inspectors general: the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) and the Special Inspector General for Afghanistan Reconstruction (SIGAR), both of which still exist today and continue to investigate matters and refer cases to U.S. Attorney’s offices throughout the country. The Senate-confirmed SIGPR is a person well known in the Inspector General community, former General Services Administration Inspector General Brian D. Miller.⁴⁸

If history is any lesson from the 2008 financial crisis – after which oversight activity from Inspectors General and congressional panels led to over 1,600 criminal convictions and more than \$11 billion in recoveries and over 3,000 audits – we can expect to see similar scrutiny with parallel investigations in 2020 and beyond with respect to pandemic-relief efforts.

Whistleblower Actions

Another increasing area of risk with respect to parallel investigations is the uptick of whistleblower complaints likely to be filed with multiple investigative agencies. Employees who disclose alleged improper conduct to authorities are afforded certain protections under state and federal statutes such as the False Claims Act,⁴⁹ Sarbanes-Oxley Act,⁵⁰ and Dodd-Frank Act.⁵¹ These statutes, to the extent they provide whistleblower rewards, have seen an increase in government recoveries in recent years.⁵² And, in lockstep with this growth in recoveries has been the expansion of the whistleblower bar,⁵³ as well as the public service campaigns that state regulators and federal regulators have engaged in throughout the pandemic announcing hotlines and tip lines to report fraud or misconduct.⁵⁴

Under the relevant statutes, whistleblower reports can constitute a proper and independent basis for an agency's investigation – satisfying the requirement that every civil or administrative investigation have a good faith, independent purpose, not formed solely to advance a criminal investigation.⁵⁵

Because of the prospects of whistleblowers going to entities such as State Attorneys General, the DOJ, Inspector General offices, or even Congress, corporate entities must be all the more vigilant to ensure that (a) robust compliance programs are in place, and (b) whistleblower protections and protocols dealing with potential violations are addressed adequately and appropriately. Entities should therefore fortify their internal whistleblower programs – including adopting consistent training for personnel, implementing measures for appropriate reporting of misconduct, and thoroughly investigating whistleblower reports when received.

Information Sharing Between and Among Agencies

One of the core reasons that DOJ has facilitated and adopted task forces to address similar industry-type probes – such as after the financial crisis, and now with the COVID-19 pandemic – is the need for more efficient use of limited resources. Task forces work hand-in-hand under each investigative body's unique statutory and administrative authority to determine how to best (a) share information, and (b) use the information to pursue whichever investigatory technique, or investigatory resolution, is deemed the most efficient and appropriate to pursue.

With this backdrop, there is a risk that information provided by an entity to one agency, whether through compelled process or a non-grand jury subpoena, can generally be made available to other investigative agencies, including state agencies, when requested.⁵⁶ This risk is heightened because there is no real telling whether one investigative body will adopt – much less agree to – a blanket prohibition on sharing that information with another agency. It is therefore incumbent on counsel to become aware of policies and procedures adopted by specific agencies with respect to how they handle investigatory documents, including in the Freedom of Information Act context.⁵⁷

Indeed, agencies will generally adopt standards on how information sharing should occur in a parallel proceeding. While some agencies' guidance allows for information sharing, few of them specify exactly how such information should be handled. The SEC, however, does allow for the sharing of information it has gathered during a civil proceeding with DOJ criminal prosecutors.⁵⁸

While there generally may not be clear statutory or policy boundaries to prohibit information sharing in parallel investigations, decisional law mandates that civil and criminal agencies should exercise care especially when sharing information acquired through criminal investigation. Civil agencies can be alleged by an entity to consist of a "prosecution team" and therefore subjected to allegations of misconduct. Moreover, DOJ has taken the policy position that in parallel investigations where civil, regulatory, or administrative remedies may be pursued, prosecutors should consider using "investigative means other than grand jury subpoenas for documents or witness testimony" so as not to run afoul of Rule 6(e) grand jury secrecy requirements.⁵⁹ If civil investigators obtain information through administrative subpoenas or civil investigative demands, DOJ recognizes that such information can be readily shared with

criminal prosecutors. And even if information is obtained via grand jury subpoenas, civil investigators can be added to a 6(e) order to appropriately have access to such materials.⁶⁰ Either way, because of the increased coordination between and among divisions and components within the DOJ, risks of information sharing are still paramount.

Seeking Global Resolutions

At the outset of any investigation, it is important for counsel to recognize that from the government's perspective, due to the prohibition⁶¹ to use a criminal enforcement action to extract additional penalties for another civil action, global resolutions should generally be initiated by the subject/target of the investigation.

But even if such a resolution is requested by an entity, this is not always facilitated in an orderly or structured fashion. While government entities have recently moved toward greater collaboration and coordination, there are certainly instances when government entities assert their own independent investigatory bases to commence actions independently and without consideration of another investigative agency conducting a parallel inquiry. In civil fraud cases, the Commercial Litigation Branch of DOJ has plainly indicated that it will proceed with civil proceedings unless there is "strong likelihood" that such action would "materially prejudice" a criminal prosecution.⁶²

Ultimately, it will be incumbent on counsel to get an early indication during a parallel investigation regarding how closely the investigative agencies are working together. Reviewing the underlying policies and the working relationship between investigative agencies will likely provide some indication as to how feasibly a global resolution can be obtained with more coordination and efficiency than others.

Conclusion

The risks for parallel investigations today could not be greater in this COVID-19 era. Government enforcement agencies are seeking to hold entities accountable for fraud, waste, and abuse – and simultaneously local, state, and federal government enforcement agencies, each strapped for resources, are in a crisis to work efficiently and productively. Private entities must therefore become clear-eyed about the specter of parallel investigations, and should, in order to best prepare themselves, have robust compliance measures in place to prevent issues from cascading into much bigger issues. Ultimately, however, parallel investigations are of such a variety that there is no true way to manage the investigations in a one-size-fits-all approach.

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² Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376, § 1057 (2010).

³ Memorandum from the Attorney Gen. Janet Reno, Dep't of Justice, on Coordination of Parallel Criminal, Civil, and Administrative Proceedings to all U.S. Attorneys, et. al, (July 28, 1997), <https://www.justice.gov/archives/ag/ag-memo-coordinate-parallel-criminal-civil-administraative>.

⁴ United States v. Stringer, 535 F.3d 929, 933 (9th Cir. 2008), vacating in part, and reversing in part, United States v. Stringer, 408 F. Supp. 2d 1083 (D. Or. 2006); see also United States v. Kordel, 397 U.S. 1, 11–13 (1970); SEC v. Dresser Industries, Inc., 628 F.2d 1368, 1374 (D.C. Cir. 1980) (en banc).

⁵ Memorandum from Attorney Gen. Eric M. Holder, Dep't of Justice, on Coordination of Parallel Criminal, Civil, Regulatory, and Administrative Proceedings to all U.S. Attorneys et al., in U.S. Attorneys' Organization & Functions Manual § 27 (Jan. 30, 2012), <https://www.justice.gov/jm/organization-and-functions-manual-27-parallel-proceedings>.

⁶ Memorandum from Attorney Gen. Eric M. Holder, Dep't of Justice, on Coordination of Parallel Criminal, Civil, Regulatory, and Administrative Proceedings to all U.S. Attorneys et al., in U.S. Attorneys' Organization & Functions Manual § 27 (Jan. 30, 2012), <https://www.justice.gov/jm/organization-and-functions-manual-27-parallel-proceedings>.

⁷ *Id.*

⁸ *Id.* See also U.S. Attorneys' Manual § 1-12.000 (2018).

⁹ See Memorandum from Deputy Attorney Gen. Rod J. Rosenstein, Dep't of Justice, on Policy on Coordination of Corporate Resolution Penalties to Heads of Dep't Components and U.S. Attorneys (May 9, 2018), <https://www.justice.gov/opa/speech/file/1061186/download>. See also U.S. Attorneys' Manual § 1-12.000 (2018).

¹⁰ See Memorandum from Deputy Attorney Gen. Rod J. Rosenstein, Dep't of Justice, on Policy on Coordination of Corporate Resolution Penalties to Heads of Dep't Components and U.S. Attorneys (May 9, 2018), <https://www.justice.gov/opa/speech/file/1061186/download>.

¹¹ Rod Rosenstein, Deputy Attorney Gen., Dep't of Justice, Remarks to the New York City Bar White Collar Crime Inst. (May 9, 2018), <https://www.justice.gov/opa/speech/deputy-attorney-general-rod-rosenstein-delivers-remarks-new-york-city-bar-white-collar>.

¹² *Id.*

¹³ Memorandum from the Deputy Attorney General Sally Quillian Yates, Dep't of Justice, on Individual Accountability for Corporate Wrongdoing to all U.S. Attorneys (Sept. 9, 2015), <https://www.justice.gov/archives/dag/file/769036/download>.

¹⁴ See, e.g., Press Release, Dep't of Justice, *Bank of America to Pay \$16.65 Billion in Historic Justice Department Settlement for Financial Fraud Leading up to and During the Financial Crisis* (Aug. 21, 2014), <https://www.justice.gov/opa/pr/bank-america-pay-1665-billion-historic-justice-department-settlement-financial-fraud-leading>.

¹⁵ See Mike Koehler, *FCPA Enforcement Actions Against Foreign Companies from OECD Convention Peer Countries*, FCPA Professor (Jan. 22, 2019), <http://fcpaprofessor.com/fcpa-enforcement-actions-foreign-companies-oecd-convention-peer-countries-3/>.

¹⁶ Rod Rosenstein, Deputy Attorney Gen., Dep't of Justice, Remarks to the New York City Bar White Collar Crime Inst. (May 9, 2018), <https://www.justice.gov/opa/speech/deputy-attorney-general-rod-rosenstein-delivers-remarks-new-york-city-bar-white-collar>.

¹⁷ Criminal Div. Dep't of Justice, *A Resource Guide to the U.S. Foreign Corrupt Practices Act* (2020), <https://www.justice.gov/criminal-fraud/file/1292051/download>.

¹⁸ *Id.*

¹⁹ *Id.* (citing Press Release, Dep't of Justice, *United States v. Braskem S.A.*, No. 16-cr-644 (E.D.N.Y. Dec. 21, 2016), <https://www.justice.gov/opa/pr/odebrecht-and-braskem-plead-guilty-and-agree-pay-least-35-billion-global-penalties-resolve>).

²⁰ *Id.* at n.381, n.382 (citing Press Release, Dep't of Justice, *United States v. Airbus* (DOJ coordinating with France and United Kingdom), <https://www.justice.gov/opa/pr/airbus-agrees-pay-over-39-billion-global-penalties-resolve-foreign-bribery-and-itar-case>; Press Release, Dep't of Justice, *United States v. TechnipFMC* (DOJ coordinating with Brazil), <https://www.justice.gov/opa/pr/technipfmc-plc-and-us-based->

[subsidiary-agree-pay-over-296-million-global-penalties-resolve](#); Press Release, Dep't of Justice, United States v. Société Générale (DOJ coordinating with France), <https://www.justice.gov/opa/pr/soci-t-g-n-rale-sa-agrees-pay-860-million-criminal-penalties-bribing-gaddafi-era-libyan>; Press Release, Dep't of Justice, United States v. Keppel Offshore & Marine Ltd., No 17-cr-697 (E.D.N.Y. Dec. 22, 2017) (DOJ coordinating with Brazil and Singapore), <https://www.justice.gov/opa/pr/keppel-offshore-marine-ltd-and-us-based-subsidiary-agree-pay-422-million-global-penalties>; Press Release, Dep't of Justice, United States v. SBM Offshore (S.D. Tex. Nov. 29, 2017) (DOJ coordinating with the Netherlands and Brazil), <https://www.justice.gov/opa/pr/sbm-offshore-nv-and-united-states-based-subsidiary-resolve-foreign-corrupt-practices-act-case>; Press Release, Dep't of Justice, United States v. Telia Company AB, No. 17-cr-581 (S.D.N.Y. Sept. 21, 2017) (DOJ and SEC coordinating with the Netherlands) <https://www.justice.gov/opa/pr/telia-company-ab-and-its-uzbek-subsidiary-enter-global-foreign-bribery-resolution-more-965>; Press Release, Dep't of Justice, United States v. Rolls-Royce plc, No. 16-cr-247 (S.D. Ohio Jan. 17, 2017) (DOJ coordinating with United Kingdom and Brazil), <https://www.justice.gov/opa/pr/rolls-royce-plc-agrees-pay-170-million-criminal-penalty-resolve-foreign-corrupt-practices-act>; Press Release, Dep't of Justice, United States v. Odebrecht S.A., No. 16-cr-643 (E.D.N.Y. Dec. 21, 2016) (DOJ coordinating with Brazil and Switzerland), <https://www.justice.gov/opa/pr/odebrecht-and-braskem-plead-guilty-and-agree-pay-least-35-billion-global-penalties-resolve>; Press Release, Dep't of Justice, United States v. Braskem S.A., No. 16-cr-644 (E.D.N.Y. Dec. 21, 2016) (DOJ and SEC coordinating with Brazil and Switzerland), <https://www.justice.gov/opa/pr/odebrecht-and-braskem-plead-guilty-and-agree-pay-least-35-billion-global-penalties-resolve>; Press Release, Dep't of Justice, United States v. VimpelCom Ltd., No. 16-cr-137 (S.D.N.Y. Feb. 18, 2016) (DOJ and SEC coordinating with the Netherlands), <https://www.justice.gov/opa/pr/vimpelcom-limited-and-unitel-llc-enter-global-foreign-bribery-resolution-more-795-million>; Press Release, Dep't of Justice, United States v. Siemens AG, supra note 233 (DOJ and SEC coordinating with Germany), <https://www.justice.gov/archive/opa/pr/2008/December/08-crm-1105.html>.

²¹ *The President's Corporate Fraud Task Force*, Dep't of Justice, <https://www.justice.gov/archive/dag/cftf/> (last visited July 28, 2020).

²² *Financial Fraud Enforcement Task Force (FFETF)*, Fin. Fraud Enf't Network, <https://www.fincen.gov/financial-fraud-enforcement-task-force-ffetf> (last visited July 28, 2020).

²³ *Payback Time for Subprime* Economist (Oct. 24, 2013), <https://www.economist.com/finance-and-economics/2013/10/24/payback-time-for-subprime>.

²⁴ Memorandum from the Attorney Gen. William Barr, Dep't of Justice, on COVID-19 Dep't of Justice Priorities to all U.S. Attorneys, et. al, (Mar. 16, 2020), <https://www.justice.gov/ag/page/file/1258676/download>.

²⁵ <https://www.judiciary.senate.gov/imo/media/doc/Hughes-Carpenito%20Testimony.pdf>

²⁶ See e.g., U.S. Attorney's Office N. Dist. Ca., <https://www.justice.gov/usao-ndca/pr/us-attorney-urges-public-report-suspected-covid-19-fraud>; *The Virginia Coronavirus Fraud Task Force*, U.S. Attorney's Office W. Dist. Va., <https://www.justice.gov/usao-wdva/covid-19-fraud>; *COVID-19 Fraud Hotline*, U.S. Attorney's Office W. Dist. Pa., <https://www.justice.gov/usao-wdpa/covid-19-fraud-page> (updated May 15, 2020).

²⁷ Exec. Order No. 13,910, 85 Fed. Reg. 18,403 (Mar. 23, 2020).

²⁸ *COVID-19 Fraud: Law Enforcement's Response to those Exploiting the Pandemic Before the S. Comm. on the Judiciary*, 116th Cong. (2020) (statement of William Hughes, Assoc. Deputy Attorney Gen., and Craig Carpenito, U.S. Attorney for the Dist. Of N.J.) <https://www.judiciary.senate.gov/imo/media/doc/Hughes-Carpenito%20Testimony.pdf>.

²⁹ *Id.*

³⁰ See Brian K. Mahanna & Russell Spivak, *State Attorneys General in the Age of COVID-19: What Prior Crises Tell Us About Their Likely Responses*, N.Y. L. J. (May 28, 2020), <https://www.law.com/newyorklawjournal/2020/05/28/state-attorneys-general-in-the-age-of-covid-19-what-prior-crises-tell-us-about-their-likely-responses/?sreturn=20200628171649>.

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- ³¹ COVID-19 Fraud The Virginia Coronavirus Fraud Task Force, U.S. Attorney's Office W. Dist. Va., <https://www.justice.gov/usao-wdva/covid-19-fraud> (last updated June 10, 2020).
- ³² COVID-19 Fraud: Law Enforcement's Response to those Exploiting the Pandemic Before the S. Comm. on the Judiciary, 116th Cong. (2020) (statement of William Hughes, Assoc. Deputy Attorney Gen., and Craig Carpenito, U.S. Attorney for the Dist. Of N.J.), <https://www.judiciary.senate.gov/imo/media/doc/Hughes-Carpenito%20Testimony.pdf>.
- ³³ For instance, on March 21, 2020, the Department filed suit in the Western District of Texas seeking to enjoin the operations of a website fraudulently claiming to sell COVID-19 vaccine kits purported to be from the World Health Organization. See TRO and Order to Show Cause Why a Prelim. Inj. Should Not Issue, *United States v. John Doe*, 1:20-cv-00306 (W.D. Tex. Mar. 22, 2020).
- ³⁴ See *Consumer Protection in the States: A 50-State Evaluation of Unfair and Deceptive Practices Laws*, <https://www.nclc.org/issues/how-well-do-states-protect-consumers.html#es>
- ³⁵ *A Brief Overview of the Federal Trade Commission's Investigative, Law Enforcement, and Rulemaking Authority*, Fed. Trade Comm'n (Oct. 2019), <https://www.ftc.gov/about-ftc/what-we-do/enforcement-authority>.
- ³⁶ *Coronavirus (COVID-19) Pandemic: The FTC in Action*, Fed. Trade Comm'n, <https://www.ftc.gov/coronavirus>.
- ³⁷ See COVID-19 Fraud: Law Enforcement's Response to Those Exploiting the Pandemic Before the S. Comm. on the Judiciary, 116th Cong. (2020) (statement of Craig Carpenito, U.S. Att'y for the Dist. of N.J.).
- ³⁸ See *FTC Takes Action Against Marketer that Falsely Promised Consumers Next Day Shipping of Facemasks and Other Personal Protective Equipment*, Fed. Trade Comm'n (July 8, 2020), https://www.ftc.gov/news-events/press-releases/2020/07/ftc-takes-action-against-marketer-that-falsely-promised-next-day-shipping?utm_source=govdelivery.
- ³⁹ See, e.g., *Attorney General James: Price Gouging will not be Tolerated* (Mar. 10, 2020), <https://ag.ny.gov/press-release/2020/ag-james-price-gouging-will-not-be-tolerated>.
- ⁴⁰ See also *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927) (“[T]he power of [congressional] inquiry – with process to enforce it – is an essential and appropriate auxiliary to the legislative function.”). Since then, courts have repeatedly recognized the legal validity of congressional subpoenas and the presumption that subpoenas are issued pursuant to Congress’s legislative function. See, e.g., *Watkins v. United States*, 354 U.S. 178, 187 (1957).
- ⁴¹ *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2046–47 (2020).
- ⁴² Chris Marquette, *Ethics guidance on coronavirus relief package: Lawmakers may be able to apply for some loans*, Roll Call, (Apr. 21, 2020), <https://www.rollcall.com/2020/04/21/ethics-guidance-on-coronavirus-relief-package-lawmakers-may-be-able-to-apply-for-some-loans/>.
- ⁴³ See Erica Werner, Jeff Stein & Seung Min Kim, *Economic Relief Talks Ramp Up as GOP Releases Bill; Democrats, White House Officials Meet*, Wash. Post (July 27, 2020), <https://www.washingtonpost.com/us-policy/2020/07/27/senate-stimulus-coronavirus/>.
- ⁴⁴ See *Pandemic Response Accountability Committee*, <https://pandemic.oversight.gov/>
- ⁴⁵ Press Release, Nancy Pelosi, Speaker of the House, *Pelosi Names Select Members to Bipartisan House Select Committee on the Coronavirus Crisis* (Apr. 29, 2020).
- ⁴⁶ *Id.*
- ⁴⁷ See Victoria Guida, Kyle Cheney & John Bresnahan, *Pelosi and McConnell Eye Dunford to Lead Coronavirus Oversight Commission*, Politico (last updated June 25, 2020), <https://www.politico.com/news/2020/06/25/pelosi-and-mcconnell-eye-dunford-to-lead-coronavirus-oversight-commission-340406>, (noting the position has been vacant for several months).
- ⁴⁸ Peter S. Hyun, et al., *U.S. Attorney's Office For the Eastern District of Virginia (EDVA) Positions Itself as Key District For COVID-19 Fraud Enforcement*, Wiley (July 22, 2020), https://www.wiley.law/alert-US_Attorneys_Office_for_the_Eastern_District_of_Virginia_EDVA_Positions_Itself_as_Key_District_For_COVID-19_Fraud_Enforcement.
- ⁴⁹ 21 U.S.C. § 3730 (2018).

⁵⁰ 18 U.S.C. § 1514A (2018).

⁵¹ 15 U.S.C. § 21F (2018).

⁵² See Press Release, Dep't of Justice, Justice Department Recovers over \$3 Billion from False Claims Act Cases in Fiscal Year 2019 (Jan. 9, 2020); *2018 Annual Report to Congress: Whistleblower Program*, U.S. Sec. & Exch. Comm'n, (Nov. 15, 2018), <https://www.sec.gov/files/sec-2018-annual-report-whistleblower-program.pdf>.

⁵³ See, e.g., Taxpayers Against Fraud Education Fund Launches Task Force to Assist COVID-19 Anti-Fraud Law Enforcement, June 18, 2020, <https://www.businesswire.com/news/home/20200618005944/en/Taxpayers-Fraud-Education-Fund-Launches-Task-Force>.

⁵⁴ See, e.g., *Combatting Coronavirus Fraud*, Dep't of Just., <https://www.justice.gov/coronavirus>; *Guidance on Coronavirus Resources and Warnings about Consumer Scams*, N.Y. Attorney General, <https://ag.ny.gov/coronavirus>; *Coronavirus and Consumers*, California Attorney General, <https://oag.ca.gov/consumers/COVID-19>.

⁵⁵ See, e.g., U.S. Attorney's Manual, Tax Resource Manual § 22.II; ENRD Directive 08-02: Parallel Proceedings Policy, III.3.

⁵⁶ See Fraud Enforcement and Recovery Act of 2009, Pub. L. No. 111-21, § 386, 123 Stat. 1616, 127–28 (codified at 31 U.S.C. § 3729 (2018)).

⁵⁷ See, e.g., FTC Investigations and Multistate AG Investigations, June 19, 2019, <https://globalinvestigationsreview.com/benchmarking/the-guide-to-cyber-investigations-first-edition/1194206/ftc-investigations-and-multistate-ag-investigations> (“State AGs’ offices frequently publicly announce the initiation of an investigation, and protections from third-party disclosure vary greatly by state statute.”).

⁵⁸ SEC Enforcement Manual, Chapter 5.2.1.

⁵⁹ See *supra* note 3.

⁶⁰ *Id.*

⁶¹ *Id.*; see also Justice Manual § 1-12.000.

⁶² Justice Manual § 9-42.010(F).