

CLEANING UP THE C-SUITE: ENSURING ACCOUNTABILITY FOR CORPORATE CRIMINALS

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CLEANING UP THE C-SUITE: ENSURING ACCOUNTABILITY FOR CORPORATE CRIMINALS

TUESDAY, DECEMBER 12, 2023

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:13 a.m., in Room 216, Hart Senate Office Building, Hon. Richard J. Durbin, Chair of the Committee, presiding.

Present: Senators Durbin [presiding], Whitehouse, Klobuchar, Hirono, Booker, Welch, Grassley, Cornyn, Hawley, Cotton, Tillis, and Blackburn.

OPENING STATEMENT OF HON. RICHARD J. DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Chair DURBIN. This meeting of the Senate Judiciary Committee will come to order. My apologies for being late to get started, but we had a meeting this morning with President Zelensky of Ukraine, and most of the Senate showed up for the meeting. So it was—he had to be someplace at 10, and we did too, and went over a little bit. So, please forgive me.

Today, the Committee's going to hear from Government officials and expert witnesses about the harm caused by unchecked corporate crime, and the steps that Congress and the Justice Department can take to better hold corporate criminals accountable.

Countless companies have settled multi-billion-dollar lawsuits outside of the court. Far too often, the executives responsible for the decisions that led to these lawsuits have escaped all prosecution and liability.

As a result, many people personally impacted by these corporate crimes have been denied true justice, like Ryan Hampton, whom we will hear from today. He is one of millions who became addicted to opioids because of corporate greed and misconduct by companies like Purdue Pharma. While billionaire members of the Sackler family, who own Purdue Pharma, have been shielded from personal liability.

I will now show a video about the impact of corporate crime on America, and the Department of Justice's efforts to bolster enforcement policy.

[Video is shown.]

Chair DURBIN. In recent decades, Federal prosecutors have regularly settled criminal investigations with corporations with agree-

ments to defer prosecution in exchange for increased compliance. This process has led to the limited judicial oversight and lack of real consequences for corporations when they commit crimes. The victims of corporate crimes deserve better.

As a first step, we need greater transparency about these lenient and frequently unjust resolutions. That's why last year I introduced with Senator Blumenthal a requirement for more comprehensive data collection regarding corporate crime.

This week, we will reintroduce our Corporate Crime Database Act, which would require the Department of Justice to collect and publish comprehensive data on Federal corporate criminal enforcement action.

Since our bill was first introduced last year, Justice has established a new searchable corporate crime database on its public website. While the database currently contains only 52 cases, DOJ has promised to eventually include all of them, what they consider significant and relevant corporate crime.

This is a step in the right direction. But transparency alone is not enough. The decision to settle these cases is frequently motivated by a lack of resources for Federal prosecution to battle deep-pocketed corporations in the courtroom. We need to provide DOJ with the resources necessary to prosecute corporations when they engage in complex criminal activity.

This is a bipartisan failing. Federal prosecutions of corporate crime have reached record lows under both the Trump and Biden administrations.

In 2020, DOJ prosecuted 94 corporate crimes. In 2021, 90 corporate crimes prosecuted. That's less than half the average annual number of corporate crimes in the previous 25 years. Less than half.

Corporate executives have little incentive to change their criminal conduct without fear of real consequences for their actions. Right now, they're not worried about much more than a measly fine, a rounding error compared to their enormous profits like the Sacklers.

It's an unacceptable process that gives no relief to the families of the victims and those who face real life damages. For those who might suggest the Committee should be focused on other issues, keep in mind that corporate criminals, like the Sacklers, played a key role in causing the opioid epidemic that has led to hundreds of thousands of deaths.

And the FBI estimates the cost of corporate crime is over \$300 billion annually. In comparison, the cost of street crime, \$16 billion annually.

I want to commend Attorney General Garland, Deputy Attorney General Monaco, for making corporate crime a priority and updating DOJ's enforcement policies. I'm sure they'd agree that more needs to be done. There can't be two systems of justice. Too many people have suffered at the hands of corporate criminals and they deserve real justice.

Senator Graham, when he arrives, will be given the option of an opening statement. I hope you understand, as we move forward.

Let me lay out the mechanics. After I swear in Acting Assistant Attorney General Argentieri and Assistant Attorney General Olsen,

they'll each have 5 minutes to provide opening statements. Rounds of questions will follow from Senators with 5 minutes each, and then to our second panel.

For our first panel, we welcome the administration's witnesses, whom I'll now introduce. Our first witness, Acting Assistant Attorney General for DOJ Criminal Division Nicole Argentieri. Ms. Argentieri first joined the Division in 2022 as Chief of Staff to Attorney General Polite, before serving as Criminal Division's Principal Deputy Assistant Attorney General. Previously served in the Justice Department for over a decade as an assistant U.S. attorney in the Eastern District of New York.

Second witness is Assistant Attorney General for National Security Matt Olsen. The Senate confirmed Mr. Olsen for this role in 2021. In this capacity, he leads DOJ's efforts to combat terrorism, espionage, cybercrimes, and other threats to national security. A long career as a Federal prosecutor and intelligence official, including service with the Director of the National Counterterrorism Center.

Would the witnesses please stand to be sworn in?

[Witnesses are sworn in.]

Chair DURBIN. Let the record reflect that both have answered in the affirmative, and Acting Assistant Attorney General Argentieri, you're first. You may proceed.

**STATEMENT OF NICOLE M. ARGENTIERI, ACTING
ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION,
U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC**

Ms. ARGENTIERI. Thank you, Chair Durbin—

Chair DURBIN. I think you need to turn on your microphone.

Ms. ARGENTIERI. How's that?

Chair DURBIN. That's best.

Ms. ARGENTIERI. Thank you, Chair Durbin, and Ranking Member Graham, and Members of the Judiciary Committee. It is an honor to be here before you today to discuss how the dedicated women and men of the Criminal Division work tirelessly to uphold the rule of law, to hold wrongdoers accountable, and to protect the American public.

I am very proud of the work the Criminal Division and the Department as a whole is undertaking related to white-collar and corporate enforcement. Our recent cases involving CEOs of two cryptocurrency companies are prime examples of our determination to hold companies and corporate executives accountable no matter how prominent or influential.

The guilty pleas from Binance, the world's largest cryptocurrency exchange, and its CEO last month were historic. This is the largest corporate guilty plea that also involved the plea of the company's CEO.

And that landmark case came on the heels of the Department's swift conviction of Sam Bankman-Fried, the founder and CEO of the cryptocurrency exchange, FTX, who perpetrated one of the largest financial frauds in American history.

The Criminal Division is committed to combating white-collar and corporate crime, including by investigating and prosecuting both individuals and companies who commit crimes.

We do so out of two primary Sections.

Our Fraud Section, which handles all cases under the Foreign Corrupt Practices Act, as well as cases involving fraud, healthcare, security, commodities, investment fraud.

Second, our Money Laundering and Asset Recovery Section prosecutes financial institutions and their insiders for Bank Secrecy Act and sanctions violations.

The Criminal Division is also proud to be at the forefront of other important Department initiatives from Task Force KleptoCapture, to our National Cryptocurrency Enforcement Team. Corporate crime undermines public trust in the fairness of our economic institutions. And corporate crime threatens our national security by destabilizing our institutions from Main Street to Wall Street.

Holding culpable individuals accountable is the Department's number one priority in this area. Corporations can only act through people, and we, of course, cannot put companies in jail.

This year so far, the Criminal Division's Fraud and MLAR Sections have secured over 280 convictions against individual defendants, and they charged or convicted more than 30 executives. Our corporate resolutions this year have secured over \$4.8 billion in criminal penalties from corporations with more to come, and the numbers demonstrate the scale and complexity of our white-collar cases.

This year, the average penalties imposed in our corporate resolutions was \$350 million, and the average alleged fraud loss in cases brought by our Fraud Section was over \$25 million per individual defendant. These are the highest numbers in years.

The Department is also implementing robust policies to encourage companies to voluntarily self-disclose misconduct and cooperate with our investigations.

Companies that self-report their misconduct, set the right tone for their employees and lead by example, showing with their actions that criminal conduct will not be tolerated and will be reported to authorities. Companies that self-disclose may alert us to criminal conduct we would otherwise be unaware of and enables us to hold culpable individuals accountable.

Let me just give you just one example. In 2022, Jardine Lloyd Thompson, a reinsurance broker, made a voluntary self-disclosure about bribery of foreign officials under our policy, started cooperating. That led to the prosecution of five individuals, and the development of similar bribery cases against two other UK reinsurers, H.W. Wood and Tysers.

Building on that evidence, we were able to prosecute three additional individuals, and just last month, held H.W. Wood and Tysers to account for their conduct.

A single self-disclosure in 2022 not only led to meaningful individual and corporate penalties against eight individuals and three companies, it also allowed the Department to achieve a significant impact across the reinsurance industry.

Deterrence and creating a culture of compliance is another pillar of our corporate enforcement policy. Our clear communications to the business community about our policies and our expectations regarding corporate compliance programs is key to deterring crime. Where misconduct does occur at a company, we seek to hold the

company accountable, but also to remediate to avoid future misconduct.

We will continue to work every day not only to bring impactful cases and hold white-collar criminal actors accountable, but also to apply our corporate enforcement policies with transparency, consistency, and predictability so that we can affect real change in corporate behavior. Thank you.

[The prepared joint statement of Ms. Argentieri and Hon. Matthew G. Olsen appears as a submission for the record.]

Chair DURBIN. Thank you very much. Mr. Olsen.

**STATEMENT OF HON. MATTHEW G. OLSEN, ASSISTANT
ATTORNEY GENERAL FOR NATIONAL SECURITY,
U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC**

Mr. OLSEN. Thank you, Chair Durbin, and good morning. It is a—I appreciate the opportunity to testify before the Committee this morning.

In 2006, Congress established the National Security Division to carry out the Justice Department's mission of combating terrorism, and espionage, and other threats to our national security. Fighting terrorism remains a top priority for us, but the threat landscape has changed significantly in recent years.

Today, the United States faces dynamic threats from a number of capable nation-state actors—China, Russia, Iran, North Korea—and these countries engage in aggressive and sophisticated efforts, both inside our Borders and abroad. They work to undermine our security, our economic interests, and our democratic institutions.

The National Security Division's work has evolved to respond to the challenges that we face from nation-state adversaries. We are focused especially on our enforcement of sanctions and export controls on countering malicious cyber activity, foreign malign influence, and foreign investment risks.

And increasingly, our efforts interact with corporations and the business community. Corporations are on the front lines when it comes to enforcing national security tools like sanctions and export controls. The bottom line is that companies make business decisions every day that have serious consequences for our national security. When corporations and their executives break laws that protect national security, we use the full range of our authorities to hold them accountable.

Last fall, for example, the National Security Division secured the first ever guilty plea by a corporation for supporting terrorism, and a \$778 million penalty in that case.

Last spring, we obtained a guilty plea from the subsidiary of a British tobacco company for violating sanctions laws against North Korea. The company paid a \$629 million penalty in that case—the largest ever criminal penalty for violating North Korea sanctions.

And then just last month, along with the Criminal Division, we secured a guilty plea by Binance, the world's largest cryptocurrency exchange for violating, in part, Iranian sanctions, and that case involved a \$4.3 billion penalty, one of the largest criminal penalties in DOJ history, along with the guilty plea by the corporation's CEO.

Finding and prosecuting corporate and individual wrongdoers is a core responsibility for us, but we also need companies to prevent people from evading sanctions and violating our export control laws in the very first place. We rely on financial institutions and technology companies to be gatekeepers, building strong compliance programs to prevent, detect, and report violations. Our private sector engagements, our voluntary disclosure policies, they all encourage compliance and drive corporate responsibility.

At the end of the day, every dimension of our work and our relationships with companies and corporations, advances our national security mission. So, given the critical role that businesses play in protecting our national security, we are investing in corporate enforcement.

We've added 25 new prosecutors, more than doubling the number of attorneys assigned to investigate and prosecute these crimes. We've also hired two veteran prosecutors to serve as the Division's first-ever Chief and Deputy Chief of Corporate Enforcement.

So, here's why this work matters so much.

Our enforcement tools cut off Iran's access to the financial markets and technologies that it needs to support its weapon systems and its brazen aggression.

Our work prevents China from stealing cutting-edge technologies that enables their military advances and their human rights abuses.

They block North Korea from funding its nuclear ambitions.

And our efforts impose costs on Russia for its invasion of Ukraine.

I was in Kyiv last month where Ukrainian officials showed me Russian drones recovered from the battlefield made with U.S.-manufactured parts. I saw firsthand the devastation that these weapons can inflict in the hands of our adversaries.

The stakes are high, and the consequences of violating these laws are real. So that is why we are so determined to make sure that companies act responsibly, and uphold their national security obligations. I look forward to your questions.

[The prepared joint statement of Mr. Olsen and Ms. Nicole M. Argentieri appears as a submission for the record.]

Chair DURBIN. Thanks, Mr. Olsen. Your team worked with U.S. Attorney's Office for the Eastern District of New York to successfully prosecute Lafarge, a company that paid millions to terrorist groups like ISIS for permission to operate a cement plant in Syria. This prosecution was the first time ever that the Department secured a corporate guilty plea for material support of terrorism. Lafarge was sentenced to pay fines of more than \$750 million.

I celebrate this victory. But I'm concerned that this case reflects the increasing trend of resolving these matters against corporations without any individual liability or accountability. Although French authorities arrested some of the executives involved, no Lafarge executives were ever charged in the United States. Why it is that the case?

Mr. OLSEN. Thank you, Chair Durbin. That, in fact, case was a groundbreaking case. First, as you mentioned, the first ever time that we prosecuted a company—a corporation, for violating our material support to terrorism laws, in that case providing material

support to ISIS by doing business in Syria, in violation of the material support laws and our sanctions laws.

We worked closely with French authorities to ensure that that prosecution covered all of the wrongdoing. That the individual members of Lafarge are facing prosecution in France for their part.

And in fact, I mentioned that we've brought in our first Chief of Corporate Enforcement, one of the individuals who handled that case in Eastern New York, has joined the National Security Division to bring that expertise to us, to the National Security Division, to help us as we advance these efforts going forward.

Chair DURBIN. So, are you saying that because the French were acting on individuals, that the United States did not?

Mr. OLSEN. In every case, we look for in the opportunity to prosecute individuals. That's our priority. In this case, the way that case played out, it made more sense for us to work in tandem with the French and to divide up our work in that regard.

Chair DURBIN. Ms. Argentieri, let me talk a little bit about Purdue Pharma. I think everybody's aware of what happened.

This company made billions of dollars by selling an addictive product, which took thousands of lives in the United States.

A bankruptcy proceeding was filed, and somehow, the Sackler family which owned Purdue Pharma, was trying to engineer a possibility that they would not only escape civil liability, but even criminal liability in the process. Tell me about your reaction to that outcome.

Ms. ARGENTIERI. So—I'll get that right by the end of the year—so, the Department is committed to using all tools to combat the opioid crisis. It's something that we take very seriously. We, in the Criminal Division, actually have three Strike Forces to address the opioid pandemic—the opioid epidemic based on data. And we've charged over 100 individuals, including the majority of those individuals being healthcare providers or medical professionals that unlawfully or illegally prescribed opioids. So, it is something that we share your concern.

As to the *Purdue Pharma* settlement from 2020, that—in that case, Purdue pled guilty to 3 felony counts. It's a case the Criminal Division was not involved in, but I can speak to parts of it. They pled guilty to 3 felony counts that were very serious. And it was a substantial step toward Purdue taking responsibility for their part—their part in the opioid epidemic. As part of that, they had to agree to remediation and the financial penalties make it the largest resolution with a company—with a pharmaceutical company.

Chair DURBIN. Why was no criminal action brought against the Sacklers?

Ms. ARGENTIERI. So, pursuant to long-standing Government policy, I can't speak to whether—how we make charging decisions. What I can say, Senator, is that we follow the facts and the law, and we apply the principles of Federal prosecution.

Chair DURBIN. Well, I'm glad to hear that. But I will tell you this, when the Sackler family ends up with billions of dollars and walks away from the devastation they created, it's just unacceptable.

The message is, basically, if you've got enough money, you can game the system and walk away with the plenty of billions when it's left over. Don't you see that?

Ms. ARGENTIERI. We share your concern about the opioid epidemic. As I said, the Criminal Division was not involved in that agreement—that 2020 agreement, but it was a significant—I'm sorry?

Chair DURBIN. Why didn't they bring their own action against the Sacklers?

Ms. ARGENTIERI. So that was an investigation out of a different Office. But as I said, we follow the facts and the law where we can. We do prosecute individuals. But that as to why no one else was prosecuted, I can't say further.

Chair DURBIN. Well, that's at the heart of this hearing, is the understanding that some people have found how to game the system.

Now, some are naive or stupid enough to go ahead with their own personal defenses. We recently saw in the crypto case, a finance case.

But the problem we see here is that these people lawyered up and put themselves in a political position where the family basically escaped liability when it was over. And that strikes me as a sad condemnation on our justice system. Senator Grassley, I believe you're next.

Senator GRASSLEY. Ms. Argentieri, in response to my February letter this year about the Crime Victims Fund, the Justice Department said that the ABB Limited agreed to pay \$315 million criminal penalty as part of a deferred prosecution agreement. That agreement, quote, "resulted in a significant deposit in the fund," end of quote.

However, the terms of the agreement stated only \$72.5 million would be collected by the United States. The rest would be reduced by up to \$242 million to settle other claims, including \$179 million involving foreign governments. I'm looking for the financial details. How much of the \$315 million was actually collected and deposited in the Crime Victims Fund?

Ms. ARGENTIERI. Thank you for your question, Senator. I agree with you that the Crime Victims Fund is essential to providing compensation and assistance to victims who—in the wake of crime, both physical, emotional, and financial assistance.

And I want to thank many of the Members in this room for amending the Crime Victims Fund to make it possible to put fines from non-prosecution agreements, deferred prosecution agreements into the fund.

Senator GRASSLEY. How much of the \$315 million was actually collected and deposited in that Fund?

Ms. ARGENTIERI. So, Senator—

Senator GRASSLEY. I know all about the Fund. You don't have to tell me about that. I just want to know how much money is—went to it.

Ms. ARGENTIERI. So, I know that the Fund currently has over \$1 billion dollars in it for this year. As to how much precisely from that resolution went into the Crime Victims Fund, I would have to get back to you on that. And I commit to doing so.

Senator GRASSLEY. Now, I appreciate the fact you might not know now, and you said you're going to get back to us. Will you get back to us?

Ms. ARGENTIERI. I commit to doing so.

Senator GRASSLEY. Okay. Then tell me why the U.S. criminal penalty offset by payment to foreign authorities is the same done for the United States by other countries?

Ms. ARGENTIERI. So many of the cases that we bring, we seek to bring the most impactful cases so that we can affect change across industries and global change. Here, the resolution involved—it was historic, and it was our first resolution with South Africa.

And so, part of—the work that we do as part of the “Anti-Piling On” is making sure that when we do these resolutions where it's important to have cooperation from foreign countries, because that's how we get evidence internationally, we do credit foreign governments, as part of our Anti-Piling On policy, to make sure that the end resolu—the end of the resolution is just and fair.

Senator GRASSLEY. Yes. Also, do you—the 2022 Criminal Division Fraud Section year-end report stated that it imposed more than \$1.15 billion in U.S. criminal monetary penalties for corporate offenders. As you're aware, imposed is one thing, it doesn't necessarily mean collected. Of this \$1.1 billion, how much was collected? And of that amount, how much was deposited in the Crime Victims Fund?

Ms. ARGENTIERI. So, thank you for your question. I think that the Fraud Year in Review report is helpful to providing transparency about our work. And as to how much of that \$1.3 billion went into the fund, that's another thing that I commit to getting back to you on.

Senator GRASSLEY. Okay. Will you get back to me on that?

Ms. ARGENTIERI. Yes.

Senator GRASSLEY. Okay. Also, for you, last week, Director Wray said the FBI is unfairly blamed when agents aren't prosecuted for FISA abuses because the FBI makes prosecution referrals, but doesn't have the authority to prosecute. Is the FBI referring FISA abusers to the Justice Department for prosecution? And is the Justice Department declining to prosecute?

Ms. ARGENTIERI. So, the Department must hold itself to the highest standards, and that means conducting our work by the book. And it means that we hold anyone accountable who's engaged in wrongdoing.

I can't speak to any or confirm any potential investigations. But I can tell you that when we are looking at charges against individuals or companies, we follow the facts and the law, and we—we apply the principles of Federal prosecution.

Senator GRASSLEY. Do you believe that folks who knowingly help others submit material—false information to the Foreign Intelligence Surveillance Court should be criminally or civilly liable for that false submission?

Ms. ARGENTIERI. I think as Department employees, we must hold ourselves to the highest standard, and that where we fall short, we should be held accountable.

Senator GRASSLEY. Do you think that these people that give this false information should be criminally and civilly liable for that false information?

Ms. ARGENTIERI. So, I can't speak hypothetically to these individuals. I'm not sure of this—

Senator GRASSLEY. I'm not asking about an individual. I'm just asking you about the whole mass of people that might fall into this category.

Ms. ARGENTIERI. We take—the Department of Justice prosecutes violations of Federal law.

Senator GRASSLEY. And then last—to you, according to the Sentencing Commission in 2022, the Justice Department brought a case against an offending corporate officer or employee only 60 percent of the times it charged the corporation.

The Justice Department doesn't appear to target COs. Is that—why is that number so low?

Ms. ARGENTIERI. So—so, if I could just speak for a second about the types of cases the Criminal Division is doing. We do try to do the most impactful cases, which are, which can be complex, they can be time consuming, but we think that we have shown significant results.

As to your question on corporate executives, this year alone, we have charged over 30 corporate executives, including the CEO of the world's largest cryptocurrency exchange who pled guilty last month.

Last week, we charged a different CEO of a publicly traded healthcare company for securities fraud and healthcare fraud.

Holding individuals accountable is our highest priority in this area because companies can only act through individuals. And companies themselves cannot go to jail—

[Gavel is tapped.]

Ms. ARGENTIERI [continuing]. So, we are very focused on individual prosecutions.

Chair DURBIN. Thank you, Senator Grassley. Senator Hirono.

Senator HIRONO. Thank you, Mr. Chairman. So, Ms. Argentieri, you just talked about going after the corporate officers, directors. And what happens to them? Do they also get to enter into these deferred or these limiting agreements so that they do not face any jail time? What happens to the corporate officers that you just talked about going after?

Ms. ARGENTIERI. So, as I said, we've charged over 30 corporate executives this year by guilty plea or convicting them after trial. I would also like to point out that we, in the Criminal Division, are trying more white-collar cases than ever.

Last year, we hit a record high. We charged, we, we tried 52 cases of individuals involved in corporate crime and we convicted 57. So, individuals are being held accountable.

Senator HIRONO. That's good to know. So, what happens to them, those who you have tried?

Ms. ARGENTIERI. So, they—

Senator HIRONO. Do they go to prison?

Ms. ARGENTIERI. Yes, they do.

Senator HIRONO. Would you consider that to be one of the best deterrents for white-collar crime when their—the executives go to prison?

Ms. ARGENTIERI. So, there are many deterrents to white-collar crime. One is holding individuals accountable so that others in the public can see what happens. But by holding companies accountable, we also engage in specific deterrence. By hav—I'm sorry?

Senator HIRONO. The thing is though, companies don't go to prison. And so, I do have some concerns about the holding and also boards and shareholders. So, these are not just the executives of the companies, but the shareholders.

So, can you speak a little bit about, you know, how and when the Department could hold corporate boards and shareholders accountable—

Ms. ARGENTIERI. So—

Senator HIRONO [continuing]. Not just the executives of the company?

Ms. ARGENTIERI. So, with our criminal resolutions, again, we've entered into 90 since 2017. With companies, we are holding the shareholders and the company itself accountable.

And the way that we're doing that is when we resolve with a company, whether it's through a guilty plea, a deferred prosecution agreement, or a non-prosecution agreement, those are highly negotiated forward-looking agreements.

Senator HIRONO. Mm-hmm.

Ms. ARGENTIERI. And under those agreements, companies have real obligations. They have to cooperate in an ongoing fashion with the Government. They have to remediate their compliance programs.

And what that means is we have our experts look at their compliance programs, meet with their compliance officers, understand what their risk is, how are their compliance programs, and then they have to remediate. And that's something that we judge them on.

And if they fail to live up to the obligations under those agreements, there are serious consequences.

So, for example, in 2019, we entered into a deferred prosecution agreement with Ericsson. Ericsson did not live up to the terms of its agreement. It violated the agreement by not disclosing to us relevant information we asked for that prevented us from prosecuting individuals.

They also failed to disclose a problematic bribery scheme in Iraq.

What did we do? We, we basically tore up their agreement. They had to plead guilty to the two felonies that had been on the table before. They lost all of the cooperation credit they had received, had to pay an additional \$200 million, and we extended the term of their monitoring.

So, all of these agreements have an impact on companies, and what we're trying to do is to incentivize good corporate conduct to detect and to deter future misconduct.

Senator HIRONO. So, I note that the Fraud Section employs around 150 prosecutors to root out, well, white-collar crime. And it's only a slight increase over the number of prosecutors employed by the Fraud Section 10 or even 20 years ago. Do you have the re-

sources that you need and the number of prosecutors that you need to prosecute these kinds of crimes?

Ms. ARGENTIERI. So, we have been able to put the resources that we have to prioritize white-collar prosecution, including individual prosecutions. But with more, we could always do more.

Senator HIRONO. I think you can—you should, you should have more resources. I do have a question about the use of forfeiture. So, this is both for you and for Mr. Olsen.

Mr. Olsen, several months ago, the Department announced a guilty plea involving the attempted sale of Iranian oil. And the plea involved a fine of \$2.5 million and a period of corporate probation.

But most significantly, the company transporting the oil was required to bring the oil to the United States where it is the subject of a forfeiture action, and the oil is worth perhaps some \$75 million. Do you think that they—that you are using the forfeiture provisions that you have to the extent that you can? For example, how about seizing the ship that is being used to transport the oil?

Mr. OLSEN. Senator, of course we look for every opportunity to impose costs on those individuals or companies that violate our sanctions laws. That is a very effective tool in preventing that money that would go from the illicit sale, for example, in that case of oil—

Senator HIRONO. Mm-hmm.

Mr. OLSEN [continuing]. To the Iranian regime where it will support their malign efforts in the region and against us here.

So yes, I mean, we look for every opportunity to extract the maximum penalty to impose those costs. However, of course, we are subject to the rules of the court and to follow the rule of law in general to, you know, to—as we go after that money, whether it's to seize it or forfeit it.

Senator HIRONO. Then maybe we need to provide you with more authority to seize more of the assets of these bad actors.

[Gavel is tapped.]

Senator HIRONO. Thank you.

Chair DURBIN. Thank you, Senator Hirono. Senator Cornyn.

Senator CORNYN. Thank you, Mr. Chairman. There's a lot we could talk about, but Mr. Olsen, I want to talk about Section 702 of the Foreign Intelligence Surveillance Act.

There are stories that are on social media, and I actually hear Members of Congress suggesting that under Section 702, that the U.S. Government can spy on innocent Americans by listening to their phone calls and reading their emails. Is that true or false?

Mr. OLSEN. So that's—that's fundamentally false. That is not what 702 does.

Senator CORNYN. Yes, 702 is a Foreign Intelligence Surveillance Act. That's why the F is in "Foreign"—means that it's target is foreigners overseas, not in the United States, for who are suspected or believed to be a threat to the United States national security. Correct?

Mr. OLSEN. Correct.

Senator CORNYN. So, here's where people, I think, get a little confused if they are actually communicating with an American or a U.S. person, it's called, right, it could be a legal permanent resi-

dent, then there is—that information is collected as part of 702—the contact between the foreign target and the U.S. person. Right?

Mr. OLSEN. Correct. That's right.

Senator CORNYN. And that goes into a database that then can be queried by the FBI or the Intelligence Community in the future.

Mr. OLSEN. Correct. Under rules.

Senator CORNYN. So the—so the, it's a little weird because I think some people say, well, you shouldn't be able to get incidental collection on the U.S. person. But I was thinking that, you know, if you go to a court and get a warrant for a wiretap, you don't know who the person you've wiretapped under the authority of the court is actually going to be talking to. Do you?

Mr. OLSEN. It's exactly the same in the criminal as in the foreign intelligence context. Exactly, right.

Senator CORNYN. And so, if you want to find out more about that U.S. person, don't you have to go to court and get a warrant from the Foreign Intelligence Surveillance Court?

Mr. OLSEN. Exactly. If the Government is going to target the U.S. person, or somebody in the United States, then the Government must go to the FISA Court, establish probable cause, and get an order from the Court in order to conduct the surveillance of the person in the United States.

Senator CORNYN. And there is this database of lawfully collected 702 information that can then be queried or tasked for further information. And there's been some suggestion that this lawfully collected 702 information that you would need an additional search warrant in order to look at what you've already lawfully collected. Does that make sense to you?

Mr. OLSEN. It does not. It then, I suppose more importantly, it doesn't make sense to the entire leadership of the Intelligence Community, which has come out unanimously opposed to any sort of a warrant requirement, to simply query the data that's been lawfully collected.

Both because it's not required by the Constitution, but, more importantly, because it would be devastating to the value of this indispensable collection.

Senator CORNYN. It seems kind of odd to say information that's been lawfully collected, if you want to actually use that information, you have to go back and ask permission for something that's already been lawfully collected.

So, like I said, there's just a lot of myths, and conspiracy theories, and incorrect narratives, which is the reason why I'm, like—I appreciate the opportunity to be able to get you to clarify some of this for us.

I think, basically, the misconception is, while the Constitution clearly applies to American citizens, that's why you have to go to court and show probable cause, that it does not—the Constitution does not protect foreign targets' information. Does it?

Mr. OLSEN. It does not. The Fourth Amendment does not apply to protect non-U.S. persons who are overseas.

Senator CORNYN. What would happen if we—if Section 702 expired at the end of this year without reauthorization?

Mr. OLSEN. I think it would, again, as the Intelligence Community, the Attorney General, the Director of National Intelligence

have all made clear, it would be devastating to our national security. So, I do welcome the opportunity, here this morning, to speak to you more about this.

Senator CORNYN. Well, I've called it the most important law that most Americans have never heard of before. And as I said, there just seems to be a lot of confusion, and so I appreciate the opportunity to ask you a few questions and hopefully provide some clarity. Thank you very much.

Chair DURBIN. Thanks, Senator Cornyn. Senator Blackburn.

Senator BLACKBURN. Thank you, Mr. Chairman. Ms. Argentieri, let me—Argentieri. Am I saying that right?

Ms. ARGENTIERI. You are.

Senator BLACKBURN. Thank you very much. I want to talk a little bit about sexual abuse in the workplace. And recently, Senator Gillibrand and I led on a piece of legislation that President Biden signed, the Speak Out Act. And this legislation would prohibit the use of predispute NDAs in the case of workplace sexual harassment.

But I think that that's a good step. It's a good first step. I think there is more that needs to be done in order to make certain that workplaces are safe for women, and that they are functioning without the trauma and the drama that comes with that type of harassment. So, I'd like to hear what DOJ is doing to ensure that workplaces are transparent and safer.

Ms. ARGENTIERI. Thank you for your question. So, the Department shares your concern. Shares your concerns about making sure that people, individuals feel safe in the workplace, and that there are mechanisms for individuals to speak out, to be protected. And we are committed to having a safe workplace environment. As to what we're specifically doing, I can get back to you about that in writing.

Senator BLACKBURN. I would like to know that. And I think we've seen other Federal agencies that have a history of not producing that safe workplace.

I want to talk with you about crime, and you and I spoke a little bit about this before the hearing. And we have seen a lot of crime here in DC.

We've talked a little bit about Memphis and the crime that is there. And I know that you all have a unit that is going to be working with the City of Memphis in order to address the crime situation.

And as I was looking at this, I saw—and going through DOJ's funding priorities, and we learned a lot about what's important to you by looking at these funding streams. And you all sought \$300 million for the Accelerating Justice System Reform initiative. Now, this is something that is, "re-imagining public safety," and that is a quote that is on DOJ's website.

What people want is safe communities and safe cities. They want their children to be safe. They want to see you all get behind violent crime. So why would you put \$300 million into re-imagining public safety when what you're hearing from communities is you've got to get in behind this and do something about it today?

Ms. ARGENTIERI. So, there is no higher priority for the Department than keeping the American people safe. And we are com-

mitted to reducing violent crime, to making sure that people are safe in their neighborhoods, in their homes, when they're walking their children to school.

I'm very proud of the work the Criminal Division is doing in this space. We have two different violent crime initiatives right now. One in Houston, one in Memphis, which were cities that were initially selected because of a rise in violence. And so—but the initiative—

Senator BLACKBURN. Okay.

Ms. ARGENTIERI [continuing]. Is holistic and different—

Senator BLACKBURN. All right. Let me jump in on that with you. But at the same time, we've got 72 million Americans, the City of Memphis being one, where you have DAs that are soft on crime, that have been backed by Soros and some of his initiatives, and we see the same thing happening.

You've talked about two of these cities. So, what are you doing with these DAs, with these prosecutors that go below sentencing guidelines? Or, they are not holding kids that are under 18, teens that are out here committing these carjackings and these smash-and-grabs?

So, these are policies—you all have to have an opinion on these policies. And I think it's confusing to us that you say you're going to do this, but then you don't step forward and really go for what is necessary to make these communities safe.

Ms. ARGENTIERI. So—so, I'm so glad that you asked this question because we really are stepping forward, and it's not just with prosecutions. So, for an example, the violent crime initiative I described, we're using data to identify the worst of the worst offenders that are driving violence in these communities.

But we're also going into the communities to build trust and relationships, to teach them—

[Gavel is tapped.]

Ms. ARGENTIERI [continuing]. About the grants that are available to help people who are reentering the community, reenter safely, to have the supports that they need to be successful. It is like a whole-of-community approach—that rehabilitation, reentry. So, it's not just prosecuting—

Senator BLACKBURN. Okay. My time is expired. Let's visit separately about that. And thank you for being here today.

Ms. ARGENTIERI. Thank you.

Chair DURBIN. Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much, Mr. Chair. I'll start with you, Ms. Argentieri.

First of all, thanks for your work. I think you know how important it is for me to make sure the Antitrust Division is funded, both for civil and criminal cases.

Senator Grassley and I led the Merger Filing Fee Modernization Act, which passed the Senate and is starting to be implemented. And I hope it's implemented correctly. I'll leave that for another day.

But could you talk about how important it is to make sure we have funding in Antitrust, one.

And then second, a more, kind of, in the weeds question. When the Antitrust Division recently announced deferred prosecution

agreements with two pharmaceutical companies, the Department determined that a fine was not sufficient penalty and instead required the drug companies to divest from a widely used cholesterol medicine that was a core part of the price fixing scheme between the companies.

This was the first time that the Department required divestiture as part of a corporate criminal settlement. I'm not complaining about it—I know there's a lot of people complain about things here.

I just wondered if you could talk about innovative remedies such as divestiture to promote accountability and deter further corporate crimes, because I see it as a way of helping us on the price issue.

Ms. ARGENTIERI. So, thank you. Thank you for your question. So, the Department of Justice, including the Antitrust Division, are committed to enforcing all Federal laws, especially to maintain the competitive environment that is so important to our economy.

And so, I think when you're talking about innovative remedies and divestiture, I would defer to the Antitrust Division on that specific remedy to discuss it.

We, in the Criminal Division, have also tried to use innovative solutions in our corporate resolutions to make sure that we are changing a company—changing a company's corporate culture.

One example that I could point to is in historic Binance resolution, which we announced last month. Part of the resolution with the company required the CEO to step down, and for them not to have any additional CEOs that had been convicted—convicted of crimes. It's a way to change—to change, change the company from the top—from the tone at the top.

But we are always looking for new ways to incentivize good corporate conduct across the Department.

Senator KLOBUCHAR. Okay, thank you.

Mr. Olsen, in October, Deputy Attorney General Monaco said that the biggest shift in corporate criminal enforcement is the rapid expansion of national security-related corporate crimes.

The National Security Division has added more than 25 new prosecutors to meet threats from corporate crimes, from terrorist financing, to sanctions evasion schemes that fund North Korea's illicit WMD programs. Can you talk about that?

And also, that one of the most effective ways of shutting down a criminal organization is by targeting their income. As you know, the U.S. and its Allies have developed a robust sanction scheme against the regime—against the Russian government, and the oligarchs who support Putin. Talk about how that's going. So really, two questions. One is the importance of this expansion to focus worldwide on terrorist schemes, and then the work on Russia.

Mr. OLSEN. Yes, of course. Thank you, Senator. As the threat landscape has changed, as we're seeing increasing threats from nation-states like Russia, China, Iran, North Korea, our enforcement priorities have changed. So, we are increasingly focused on, as you mentioned, sanctions evasion, violations of export control, nation-state cyberattacks, foreign-line influence.

And these—these enforcement priorities mean that we are increasingly interacting with the private sector, and because they are often on the front lines of these violations, in some cases actually as the violators. And we've brought cases against companies like

British American Tobacco that evaded our sanctions against North Korea.

And so, what we've done is invested in those priorities by, as you mentioned, adding prosecutors to our Counterespionage and Export Control Section. We've added two experienced prosecutors to help lead this effort.

But we are responding to the threats we face. And what that means is increasing efforts around these crimes that occur at the intersection of national security and the decisions that companies are making.

I should add that in addition to our straight enforcement and our prosecution efforts, we also are trying to drive compliance. I think it's really important to identify the fact that companies are on the front lines and they're sometimes the first to see these violations. So——

Senator KLOBUCHAR. Yes.

Mr. OLSEN [continuing]. They need to develop these compliance programs. Let me turn to Russia, to your second part of your question. Of course, Russia and its invasion of Ukraine is a priority for us.

I was in Ukraine last month. I met with officials there. They are very determined to support our efforts to hold—to hold Russia accountable, whether that's going after oligarchs who support the Kremlin, or stopping the flow of technologies that go into Russian military systems. So that's been an effective effort. We have more work to do, but we're very focused on that.

Senator KLOBUCHAR. Thank you.

Chair DURBIN. Thanks, Senator Klobuchar. Senator Tillis.

Senator TILLIS. Thank you, Mr. Chairman, and thank you, both, for being here.

Ms. Argentieri, I got a quick question. I think you mentioned or you said that there had been 52 cases and 57 convictions. Are those numbers right, recently, or over the last year?

Ms. ARGENTIERI. I said that in 2022, we had a record year of white-collar trials in the Criminal Division, and that the Fraud Section tried 52 cases and convicted 57 defendants.

Senator TILLIS. Can you give me an example of what you would consider to be one of the most profound convictions?

Ms. ARGENTIERI. So last year after a trial, we convicted Mark Schena, who is an executive at a company that engaged in widespread COVID and securities fraud. He was sentenced to 8 years in prison this year. The scheme involved statements that he made about COVID testing and other types of genetic testing that was not——

Senator TILLIS. So that's a happy ending. The question I have is, what more should we do? When you have cases come before you, how many instances do you say, "But for this enabling statute, I would love to pursue this."

In other words, what obstacles do you have today to pursue criminal convictions of corporate bad actors? What are you missing? What do we need to do to better enable you, outside of the resource question, where you can always do more if you have more?

Ms. ARGENTIERI. So, I believe today we are sending up additional legislation to address some of our issues in international matters—

Senator TILLIS. Can you in 30 seconds give me the highlights of some of your priorities, things that would be helpful?

Ms. ARGENTIERI. Yes. So, for example, with the rise in digital assets many of the cases that we're doing involve cryptocurrency exchanges. Some of the things that we're looking for, for example, are in anti-tip-off legislation to keep financial institutions from telling the subjects and targets of our investigations about the investigations before they go forward. Increased penalties for violations of the BSA, related to money services businesses. So, for example, that statute has much lower penalties than other types of money laundering offenses.

Senator TILLIS. That would be very—my office would be very interested in that. I got a very compelling presentation from the DEA. We're talking about how cryptocurrency has become the laundromat of the future for currency, and we've got to get our hands around it.

What we need to do is strike the balance because we also know that regulators could—others could use this for purposes just to shut down the banking industry or shut down payments industry. We need to work on that. But that's something I'm particularly interested in.

I did have a—I read an article this morning. Do you know what G-T-A-I-R-L stands for?

Ms. ARGENTIERI. No.

Senator TILLIS. "Grand Theft Auto In Real Life."

We have these minors here in Washington, DC, thinking that they're playing a video game when they're holding people at gunpoint and stealing 10 cars. We have these organized crime rings.

And I think what I'm—these 15-year-olds need to be held accountable, and hopefully we can save them from a life in prison. Probably the odds are against them if they think this is a video game and they can threaten people's lives.

But I've always, or I've heard from many law enforcement people who know their communities well, that about 80 percent of all the crimes are perpetrated or at least organized by about 20 percent of the criminals in the community.

Is there—is that concept—I'm not talking about 80/20 or whatever. But is there evidence to suggest that if we did a better concerted—in the same way I want to go after corporate bad actors, if we could go after what I would consider to be corporate criminals—people organizing, whether it's organized retail theft, which is a real problem, it's going to create shopping deserts in some of the more challenged communities because they're just going to leave.

They're actually destroying communities. Is there anything that we should be doing to provide you with more prosecutorial tools to go after these corporate—what I consider to be corporate criminals?

Ms. ARGENTIERI. Look, I think—I think you made the point earlier that with more resources we could do more. And that's for sure—

Senator TILLIS. With the existing tools? Or do we need more tools based on the nature of what we're talking about here, like a social media message perpetrated by someone who's encouraging groups of people to go in and destroy a store and walk away with it? Or do you have already all the tools that you would need to take those fact patterns and get that person to be guilty of organized crime, for example?

Ms. ARGENTIERI. So, racketeering—racketeering-related offenses are some of my personal favorite tools. I think you'll see in the legislation that we're sending over, some of the increased authority we're looking for is to increase—is to include more categories of crimes as racketeering predicates.

Senator TILLIS. Of the 57 convictions, and I'll close with this, of the 57 corporate cases, how many of those were violent crimes?

Ms. ARGENTIERI. So, of the—of the 57—

Senator TILLIS. Back to the corporate cases—

Ms. ARGENTIERI [continuing]. Those were just—those were just white—those, not just. But those were—

Senator TILLIS. I know the answer, I saw—

Ms. ARGENTIERI [continuing]. White-collar—

Senator TILLIS. I've usually asked questions I don't know the answer to. But I wanted to point out, we need—do need to go after corporate bad actors.

But when there's a palpable sense of fear for walking from the Capitol Building to Eastern Market at 10 o'clock at night, we've also got to work on your basic crime. And the streets in Washington, DC, I think, is the case example.

So, I'm particularly interested in additional tools that we can use to get things under—under control. Thank you, Mr. Chair.

Chair DURBIN. Thank you very much, Senator Tillis. Senator Welch.

Senator WELCH. Thank you very much. I want to thank you, both, for being here. Big admirers of both of your careers and of the folks' who you work with.

I understand, Ms. Argentieri, that mobsters don't particularly like you. Good for you. And let's hope that you strike the same fear in corporate bad actors.

So, the question I have, all of us want this incredible cost that—there's two costs, I think, in corporate crime.

One is, according to the FBI, it's about \$300 billion—whereas street crime is about \$16 billion. So, there's real economic loss.

But there's also a real erosion of confidence in a lot of our institutions, and to the extent citizens have a sense that big corporations can just get away with it in its, quote, "consent decree," which may result in some reasonable outcomes, but no real accountability. It creates an immense amount of frustration, I think, for everyday folks.

And what are some of the obstacles that make it tough for there to be more—standing in the way of more prosecutions for more corporate crime? Could you just elaborate on that?

Ms. ARGENTIERI. Yes. So, as I said, I think we in the Criminal Division are focused on bringing the most impactful cases because we think by doing that, we can really drive change in industries.

And so, the obstacle we—and I think we are doing a very good job. The numbers bear out that we’re doing a very good job at that. Like, since 2017, over 90 corporate resolutions and declinations, \$30 billion in fines.

With more resources, we could do more. But I also think that deferred prosecution agreements, non-prosecution agreements, those are really serious agreements that are highly negotiated, and they require forward-looking change by a company. So, they’re not a pass.

Senator WELCH. No, you know, I might ask about that because I know that’s true. I’m a lawyer, so I get it, and you negotiate some reasonable standards for going forward. But aren’t there some folks who just ought to be in jail for what they did?

Ms. ARGENTIERI. So, we follow the facts and the law we provide, and then in line with the principles of Federal prosecution. That’s how we make charging decisions. And for companies, that’s why individual accountability is such a priority for us, because you cannot put a company in jail, and that’s why you’ve seen so many policies. And——

Senator WELCH. Let me ask this. Should there be more authorities?

I mean, what—companies can’t go to jail. But companies are people. They’re—they’re run by individuals, and the incentive for a lot of the CEOs is to boost the profits by whatever—by any means possible, and then boost their salary.

And are there some things that we could do that would address the accountability issue where they skate and the company does something in terms of your agreement that’s beneficial to the public. But the public sees the executives who are account—who’s responsible not being held accountable.

So, there are other things that we could do here that would enable you to put the folks who should be in jail, in jail.

Ms. ARGENTIERI. So, thank you for your interest in that. We’re happy to work with you on specific legislative proposals. I think we do have some, but I think I—what I was going to say about our policies is what they’re really driving is for companies to self-disclose misconduct we might not otherwise know about.

Senator WELCH. Right.

Ms. ARGENTIERI. And what that enables us to do is to prosecute the individuals responsible as a result of our independent investigation where we go out and get evidence.

Senator WELCH. Okay. Well, let me just—I’m toward the end. But thank you, and thank you for your work, and thank you for all the folks in your Department’s work.

And Mr. Olsen, the companies—you do great work in protecting our national security. I appreciate that. But what about some of these bad companies abroad? There must be incredible obstacles to prosecution. Can you tell us what those are, and, in a very short time, are there things we could do to be of help to you to do your job?

Mr. OLSEN. Yes. I mean, the—we do face challenges when we talk about enforcing sanctions and export controls, actors overseas, whether they’re companies or individuals who carry out cyberattacks against our companies and our critical infrastructure.

So, there are just obstacles to being able to investigate and prosecute entities overseas. We are really aggressive though in going after them, and if they touch on the U.S. financial system, they interact with individuals or companies in the United States, then we bring charges. When I was in Ukraine last month talking about stopping the flow of U.S. goods that were finding their way into Russian weapons, the Eastern District of New York, the U.S. Attorney's Office there, along with my Division brought two cases against companies and individuals in New York who were part of that supply chain.

So, we need to find those connections between those overseas entities and those in the United States that we have jurisdiction over in order to enforce those laws. But to your other question, by enforcing those laws, we do send a strong deterrent message, and we raise up those cases as the video that was shown at the beginning of the hearing where the Attorney General gave the press conference about Binance. We're trying to raise those cases up in order to bring that broader deterrent message to home.

Senator WELCH. Thank you very much. My time is up. I yield back. Thank you.

Chair DURBIN. I want to thank both the witnesses for joining us today. We appreciate your testimony and insight. Thank you, again. And we ask the second panel to please come to the witness table. I'm going to introduce them as they arrive and are seated.

First, we're joined by Professor Brandon Garrett. Professor Garrett has served as the L. Neil Williamson Professor of Law at Duke Law since 2018. Written extensively about corporate criminal enforcement records. Created the Corporate Prosecution Registry.

Second, we welcome Ryan Hampton. Mr. Hampton is an addiction recovery advocate and a survivor of Purdue Pharma's opioid scandal. Mr. Hampton became addicted to OxyContin after receiving a prescription to treat a knee injury in 2003 that led to overdoses and even periods of homelessness. He's been in recovery for 7 years.

We also have, as the Republican witness, Mr. Andrew Lelling, 20 years as a Federal prosecutor. Prosecuted cyber, white-collar, and complex corporate fraud cases.

Between 2017 and 2021, he was the 55th U.S. Attorney for the District of Massachusetts. In that capacity, led the groundbreaking nationwide prosecution of fraud and college admissions, commonly known as Varsity Blues, achieved a \$5 billion settlement with Royal Bank of Scotland from the financial crisis of 2008 and 2009, secured convictions of top pharmaceutical executives for their roles in exacerbating the opioid epidemic.

Presently, he's a partner at the international law firm, Jones Day, where he specializes in white-collar criminal defense. We start with an oath. If you don't mind standing, please.

[Witnesses are sworn in.]

Chair DURBIN. Let the record reflect all three answered in the affirmative, thankfully, and we'll start from Mr. Hampton. Five minutes.

**STATEMENT OF RYAN HAMPTON, PERSON IN RECOVERY AND
ADDICTION RECOVERY ADVOCATE, LAS VEGAS, NEVADA**

Mr. HAMPTON. Thank you, Mr. Chairman, and Members of the Committee. My name is Ryan Hampton. I'm an advocate and person proudly in recovery from opioid use disorder.

The story of my opioid addiction is not unique. Millions upon millions of Americans have experienced the very same pain and misery I have at the hands of corporate criminals. I just happened to be one of the lucky few who survived.

Today, I am using my voice as a survivor and advocate committed to the recovery community. I am here to call for true accountability and justice for corporate crime, and to highlight the urgent need for action at the Department of Justice toward corporate criminals.

The latest available data shows a staggering decline of white-collar prosecutions at the DOJ. Just 90 corporate crime cases were brought forward in 2021. That's less than half of the average annual number of corporate crime prosecutions in the previous 25 years.

This was the lowest number of corporate prosecutions since tracking began during the Reagan administration. The notion that certain executives at select companies are simply too big to jail, has caused tremendous harm to American citizens, and has eroded the public's trust in our institutions.

My painful, near-death experience at the hands of pharmaceutical companies illustrates how dire this problem is. From the 1990s to the 2010s, a tidal wave of pharmaceutical opioids crashed down on this country, drowning thousands of communities in an unprecedented volume of pills that cause dependence, addiction, and death.

Like so many, I had to learn this the hard way. I was prescribed an absurd dose for an absurd amount of time by licensed doctors who made scant mentions of serious side effects.

After I became addicted, doctors continued refilling my prescriptions until one day they didn't. At my most sick and desperate, I was cut off and left to fend for myself without any referral for treatment.

Instead of being seen as a patient who needed help, I was now treated as a liability and faced with prejudice and shame.

What truly stuns me is that while all this was going on, Federal prosecutors at the Department of Justice had already opened multiple investigations into several pharmaceutical companies, from Purdue Pharma, which manufactured the medications, to McKesson, which distributed the medications, and pharmacies like Walmart, which dispensed the medications—medications that were approved by the FDA under false and deceptive pretenses.

The truth of this fraud and deception was out there, but I had no way of knowing. I often think about why so many of us learned about the true nature of these pain relievers after it was far too late, after we were addicted, after we were sick and shivering in withdrawal, after we had lost everything, after people were incarcerated for their addictions, after our friends and our loved ones had died.

I'm not here today to only demand justice and retribution for corporate crimes, but I believe these waves of pain and despair can be prevented not only by full prosecution under the law, but through transparency and public awareness.

The Corporate Crime Database Act would require the DOJ to collect, analyze, and publish comprehensive data on Federal corporate criminal enforcement actions. That is an important start.

By making these enforcement actions publicly available, the public would be better informed about the products they purchase and use. A balance of deterrence and transparency can prevent future disasters, and spare others from what I experienced.

I'd like to talk a little bit about deterrence today, and highlight the fact that white-collar corporate criminals are rarely held accountable in this country.

Though numerous pharmaceutical companies have pled guilty to major Federal crimes and settled multi-billion-dollar lawsuits, justice has still not materialized for victims.

The simple fact is this, the more opioids flooded communities, the richer they became. Without enforcement and deterrence, these executives had zero incentive to change their business model. People at corporations made the decision to break the law, and many remain unapologetic and openly defiant.

The Sackler family, for example, could not give a clear answer on whether they feel responsibility or even whether they're sorry for their actions.

It seems the wealthy get off scot-free or with a slap on the wrist, offered sweetheart deals and offered non-prosecution agreements. The most they expect is a measly fine in what amounts to rounding errors, and their enormous profits chalked up as the cost of doing business.

These powerful companies knowingly defrauded the Government and misinformed the public. Senators, these are felonies. Where I'm from, if you commit a felony, you get punished for it.

But if you run a big pharma corporation, it appears that wealth and power grant your entry into a parallel system of justice. This parallel system for the wealthy and powerful generates cynicism and erodes faith in our institutions.

A society that does not own up and face up to its crimes is doomed to repeat them. That is why families like the Sacklers must be fully investigated, indicted, and prosecuted with transparency by the DOJ to the full extent of the law for the lives they cut short, the communities they tore apart, and the families they destroyed.

America deserves better than this. My community deserves better than this. And we are better than this. Thank you.

[The prepared statement of Mr. Hampton appears as a submission for the record.]

Chair DURBIN. Thank you, Mr. Hampton. Mr. Lelling.

**STATEMENT OF HON. ANDREW LELLING,
FORMER U.S. ATTORNEY FOR THE DISTRICT
OF MASSACHUSETTS, BOSTON, MASSACHUSETTS**

Mr. LELLING. Thank you, Chairman Durbin—

Chair DURBIN. You want to push the button. There you go.

Mr. LELLING. Chairman Durbin, Ranking Member Graham, thank you for inviting me to address this important topic. I've been a student of this subject for over 20 years.

I joined the Department of Justice in August, 2001, one month before 9/11, but also four months before the ultimate collapse of the Enron Corporation. That financial disaster ushered in a new phase of corporate enforcement at DOJ.

And ever since, DOJ has wrestled with striking this balance between too little and too much enforcement in this space, meaning against corporations and against individual executives.

I was there for most of that. I was a Federal prosecutor from 2001 until 2021, focusing mostly on white-collar crime. I was also the United States Attorney in the District of Massachusetts from 2017 to 2021.

I now defend companies and executives that are being investigated by DOJ. So, I've seen this from the inside and from the outside, and I can provide a few thoughts.

First, the last 20 years is generally a story of positive evolution in our Government's approach to this problem. The Sarbanes-Oxley Act in 2002 was a major reform in corporate accounting and securities regulation, passed obviously partly in response to Enron.

Dodd-Frank in 2010, in response to the financial crisis, greatly reformed our governance of the banking industry. DOJ itself has steadily calibrated its enforcement approach across administrations from the Holder Memo in 1999 through today. The result is an enforcement system that no one in the private sector takes for granted, especially executives at major companies. I know, I talk to these people every day.

DOJ enforcement today genuinely influences behavior at companies. It genuinely deters corporate wrongdoing. Not completely, but nothing ever does. Nothing ever will. One need look no further than the millions and millions of dollars companies spend to maintain internal compliance and training programs that will pass muster with regulators, and pass muster with DOJ.

Moreover, as a matter of policy, and as others have mentioned, DOJ consistently prioritizes prosecuting individual executives as opposed to corporate entities. This has been true for years and across administrations—all of these senior officials correctly concluding that real deterrence requires targeting human beings, not legal constructs, like corporations.

A quick review of Federal dockets shows that DOJ routinely prosecutes corporate executives, and that these people do, in fact, go to prison, even today, under the more lenient guideline regime.

Over the years, Congress itself has greatly improved accountability for corporate executives. For example, the provisions in Sarbanes-Oxley that required CEOs and CFOs to personally sign certifications that their financial statements were fair and accurate.

Second, keep in mind that this is a resource-intensive area of enforcement, as some Members of this body have noted. It's not like prosecuting guns and drugs, which tends to be stat driven.

Corporate enforcement can involve terabytes of data, require Government investigators to understand complex business practices before they can even understand the underlying fraud. That

can take months or years. Negotiations with lawyers can add months or years.

My point here is that stats, the number of cases charged in a year, may not be the right metric to focus on here, or frankly, one that is fair to DOJ, whether on the Democrat or Republican side. It hides the true level of enforcement in this space and the true level of deterrence that is imposed on private actors by DOJ's activities.

Third, the tools DOJ uses to efficiently dispose of corporate cases don't mean the companies and executives are getting off easy. Here, I'm talking about the use of deferred prosecution agreements, and about DOJ's new self-disclosure policies for corporate wrongdoing. As the DPAs, they generally are not used for individual defendants, which I think is a very important distinction to make.

DOJ uses them to impose billions of dollars in penalties on corporate entities, and to force those companies to make forward-looking changes in how they do business, publicly admit wrongdoing to a statement of facts that DOJ drafts, and sometimes accept an independent monitor to independently govern—monitor their affairs for years, and cooperate against their own executives. All of that is in the public interest.

That tool can occasionally be misused. I would submit that that is rare, and that the risk of too-lenient treatment is one that exists in all areas of prosecution. As the DOJ's self-disclosure policies, that has worked well in the past. It really improves the Government's ability to police what is happening at a given area of the private sector, it incentivizes companies to disclose problems, and will increase the number of individual executives who are prosecuted as those companies are forced to cooperate with the Government.

Last, I'd like to note that in my time as a Federal prosecutor and U.S. attorney, what I have learned is that you will never have "enough resources," quote, unquote, to combat a particular kind of crime, including crime by corporate executives. The trick is knowing how much of your resources to devote.

There's no question that corporate crime is a serious problem. But 111,355 Americans died of overdoses in the year ending April, 2023, most of it from fentanyl pouring over our Southwest Border.

This is not the opioid crisis of 10 years ago that was driven by prescription opioids, as awful as that was. This is fentanyl and we know where it comes from. It's a Federal enforcement crisis driven by a porous Border, and an inability to get at the cartels where they live. It is also a public health catastrophe.

I would submit, respectfully, to this body that that is where we could use additional resources on the law enforcement side.

Thank you, again, for the opportunity to share some thoughts on this subject. I look forward to your questions.

[The prepared statement of Mr. Lelling appears as a submission for the record.]

Chair DURBIN. Thank you. Professor Garrett.

**STATEMENT OF BRANDON L. GARRETT, L. NEIL WILLIAMS
PROFESSOR OF LAW, DUKE UNIVERSITY
SCHOOL OF LAW, DURHAM, NORTH CAROLINA**

Professor GARRETT. Chair Durbin, Members of the Committee, thank you, and to staff, thank you for the opportunity to testify before you today about corporate prosecutions.

I'm the Professor of Law at Duke University School of Law in North Carolina. And I guess I've been there on the outside as a scholar during the same time period I've been researching and tracking Federal criminal prosecution since they took their modern form in the early 2000s.

My goal today, speaking as a researcher and scholar, not on behalf of Duke or any other institution, is to give an overview of the changing landscape of corporate criminal enforcement and describe my data collection work for this Committee.

As we've been discussing as legal persons, corporations can be criminals, too, and never before has corporate criminal enforcement been so important in the United States, and across the globe, which is, you know, many other nations are looking to enforcement strategies in this country. Billion-dollar corporate criminal fines are now annual events. And they would have been inconceivable, you know, three decades ago.

And yet, concerns do persist that the largest criminal offenders are corporations, and that they escaped the types of punishment routinely meted out in much lower-level cases. As the title of my 2011 book, "Too Big To Jail" conveyed, using criminal law to hold corporations accountable is inherently challenging. And the approach of Federal prosecutor certainly has been evolving based on lessons learned over the past couple of decades.

So, my background is as a law professor, not a data scientist. When I was first doing this work in the early 2000s, there were dozens of these deferred and non-prosecution agreements where a company settled a case without an indictment or a conviction. I could print them out and put them in one stack on my desk.

By the time I wrote my book in 2011, there were hundreds of these and I needed help. I approached a reference librarian, Jon Ashley, who's right here, at the University of Virginia—at the Darden School now, and we created what is now called the Corporate Prosecution Registry to collect as a—as a—as a library, as a digital collection these prosecution agreements.

Today, we have almost 5,000 cases in this public online repository. Updating it is labor intensive, and it's gratifying to the—to my students out there, former students, the law students we have to thank for hard work updating this registry.

It's the best collection of information about Federal organization prosecutions that's out there. But despite our best efforts, it is incomplete. Updating the registry not only requires doing searches across PACER and Federal dockets looking for press releases, it has also involved over the years filing Freedom of Information Act suits against the Department of Justice because some prosecution agreements with corporations had not been made public.

Every time that has happened, the DOJ has settled all such suits, and attempted to cooperate and locate the requested documents. The difficulty has been with documents not filed in court.

So deferred prosecution agreements are, at least, ideally filed in court if there is a motion in court to stay the otherwise applicable speedy trial deadlines.

But non-prosecution agreements, declinations, those aren't filed in court. And so, it's harder to know whether they exist, and the Department itself, and absolutely, you know, cooperating with us in these FOIA requests, has itself had a hard time locating these documents.

I think it's really salutatory and no doubt because of Chairman Durbin, you know, your efforts as in this Committee's efforts, the DOJ now has a practice of making agreements available online. I guess it's up to 52. It was 51 when I checked last week.

This nascent database is small, but hopefully will continue over the years. They are welcome to, you know, take all the cases, the 5,000 or so historical cases from our registry and include them on a Department registry.

The trends from these data continue to be highly informative. We can absolutely see the remarkable rise in the size, but not the numbers, as we've heard, of these Federal corporate prosecutions in recent years.

You know, the billion-dollar penalties were inconceivable in years past. We just heard, you know, in the last couple of weeks, about a new \$4 billion penalty against the Binance Holdings Ltd., which is not yet finalized.

Each year, the bulk of the penalties, like in the Binance case, you know, come from just a handful of cases. And so, when one looks at, you know, what was this, a \$2 billion a year, a \$10 billion a year, a \$1 billion a year in terms of total penalties against companies, that's often coming from three or four cases.

The largest cases are typically not resolved through guilty pleas, like in the Binance case, but often through these out-of-court deals, these deferred to non-prosecution agreements. Companies are getting credit for cooperation and compliance, and it is hard to tell from the outside whether that credit is deserved. And I think more could be done to make these agreements themselves more detailed and transparent so we understand what considerations were involved.

Deferred prosecution agreements never intended for corporations. They grew out of Speedy Trial Act provisions, from the 1974 Act, designed to divert first-time and juvenile nonviolent offenders for rehabilitative reasons.

There are no provisions in that Act that are specifically designed for the rehabilitation of corporate offenders.

As a result, we also have too little judicial oversight of these undertakings, as would occur if it was a civil consent decree or a corporate probation agreement under a plea. When judges have occasionally intervened to ask questions about the oversight or the initial approval of a deferred prosecution agreement, the appellate courts have tended to reverse such efforts.

So, you know, just to briefly note a few areas where this Committee and where, you know, Congress could get involved.

Legislation could certainly provide for more comprehensive data collections surrounding these agreements.

Legislation could amend the Speedy Trial Act to create corporate deferred prosecution-specific provisions with the relevant considerations that courts should consider.

They could provide for oversight over these agreements.

We could have resources for corporate probation for companies that do plead guilty, but there isn't really the bandwidth to have real court-overseen monitorships of pleas that could be expanded.

We've talked about enforcement resources today.

We could also, finally, emphasize the need for testing the effectiveness of compliance so that companies aren't spending money needlessly on compliance which isn't effective. But, like in other areas where we insist through regulation and through enforcement on quality controls, we could be testing the effectiveness of this compliance. Because as we all know, we've had companies that have been prosecuted repeatedly, sometimes for different offenses. But there is a concern that some on this Committee have raised with corporate recidivism.

[Gavel is tapped.]

Professor GARRETT. So, I just wanted to end by saying that, you know, my—my—my view as a researcher following this area is that there is more that both Congress and the judiciary could do. And that while the DOJ has evolved in its approach, this shouldn't be just be driven by prosecutorial discretion.

A greater role for lawmakers in the judiciary is much needed, and I deeply thank this Committee for its continued attention to both the challenges and the important opportunities in the field of corporate prosecutions.

[The prepared statement of Professor Garrett appears as a submission for the record.]

Chair DURBIN. Thank you, Professor. We're going to have 5-minute rounds of questions for the Senators who are present. I'll start.

Mr. Hampton, my Chief of Staff in Chicago's husband had a serious surgery over 10 years ago. And thank God he's recovered well. He's a great success story.

He was given an open prescription for OxyContin for a year, meaning he could go and fill the prescription at will. I assume that was at the period of time when Purdue Pharma was pedaling the story that it was non-addictive. There's some question as to whether they knew that to be true or false at the time.

I think that he escaped it by not filling the prescription. It's an indication of what happened to you in a much different circumstance. But a sad outcome for your own personal safety and life.

And it also, I think your testimony as much as any, brings to a real question, what is justice in America when the Sackler family can make billions—that's with a B—billions of dollars, and somehow use our system of justice to escape all personal liability, which I believe is the case as of now.

Even if the billions are divided by two, at the end of the day, it is an outrage that the hundreds of thousands of victims, like yourself, cannot feel personally—cannot but feel personally as you reflect on the situation. Thank you for your testimony. Is there anything you'd like to add?

Mr. HAMPTON. Yes, Mr. Chairman. I'd just like to say the number, in terms of the Sackler family, made over \$10 billion from Purdue Pharma. Hundreds of thousands of victims, as you mentioned, that have been impacted. Many friends of mine who died at the hands of Purdue's products and OxyContin.

I believe that there is more evidence in the public domain than we probably have ever had in terms of the liability—in any case that's in the public domain in terms of the liability—criminal liability of the Sackler family.

Real justice for folks who have been impacted—family members who have lost loved ones—is that the Sacklers will face their day in court similar to everyday Americans who are justice-involved every single day.

I know plenty of people in my community, and there are millions around this country who face the justice system, who are way less guilty of crimes than the Sacklers, who have committed crimes that pale in comparison—small drug possession charges—serving months, years in jail. And yet the Department of Justice has yet to indict or file a single charge against any member of the Sackler family.

It is unconscionable. And the victim community, the advocacy community, people who have been directly involved in this case and who have been directly impacted by this cause, are, simply put, disgusted.

Chair DURBIN. I am, too.

Mr. Lelling, interesting phenomena when it came to the decision on filing a class action against Purdue Pharma for the actions—for the results of their wrongdoing. And somehow or another, the Sacklers came along for the ride. And I wondered if you could kind of explain what's going on here. When we look at the "Texas Two-Step," are you familiar with that?

Mr. LELLING. I am not, Senator.

Chair DURBIN. Well, it is an effort to use the Bankruptcy Court to end up with a subsidiary corporation assuming all liability—civil liability, then it is underfunded and thrown into bankruptcy so that it can erase any outstanding plaintiffs' claims against the corporation.

When you hear that story and you read the Sackler story, there are some fundamentals on our system of justice which don't seem to work very well at all, and in some cases going to involve civil litigation.

I know your specialty is criminal litigation. There seems to be an incentive for some plaintiff's lawyers and class action lawyers to rush to a settlement as opposed to demanding that certain things happen when it comes to personal liability of individuals. Do you have any observations on that?

Mr. LELLING. I can't speak specifically to the *Purdue Pharma* case. I don't know the facts well enough. But I do agree with you that when it comes to vindicating the public's interest in seeing wrongdoing remedied, if there has been criminal wrongdoing, there should be criminal prosecution.

We did this in Boston. We were the first to prosecute senior executives of a pharma company for their role in the opioid crisis. That was the *Insys* incorporated case. Those executives went to jail.

We felt good about that case. We thought it was an important statement to make.

So, when you have a situation where corporate executives at a pharma company have engaged in criminal wrongdoing, a civil resolution often will not seem satisfactory to the public. And it will not appear that justice has been served. And so, we should avoid those kinds of scenarios.

Chair DURBIN. Thank you. Senator Hirono.

Senator HIRONO. Thank you, Mr. Chairman.

I think the *Purdue Pharma* case does raise questions relating to the role of the courts, whether it be the Bankruptcy Court or any other court.

So, I have a question for Professor Garrett. You have studied the practice of granting deferred prosecution agreements to corporate criminal defendants. And although rare, at times individual judges have tried to step in and reject such agreements, arguing that the Government had given the defense a sweetheart deal.

Unfortunately, in a 2016 case, the D.C. Circuit rejected almost any role for judges in evaluating deferred prosecution agreements presented to them.

Can you tell us a little more about that disagreement over the proper role of the judiciary in evaluating the deferred prosecution agreements? And, whether you think Congress should act to overturn the D.C. Circuit's decision?

Professor GARRETT. Yes. You know, I mean, I certainly thought that the Speedy Trial Act was clear enough when it said that a judge may permit the parties to agree on a deferred prosecution agreement and told the Speedy Trial Act deadlines. You'd think "may" means may, and judges have discretion, and ordinarily judges can inform that discretion by relevant factors.

The relevant factors in a corporate case are quite distinct because what it means for a first-time juvenile or first-time offender to rehabilitate is very different than what it means for a corporation to rehabilitate.

But, you know, the D.C. Circuit, and in a similar case in a slightly different scenario, where a judge had ordered a monitor report to be disclosed to the public because of the interest in the *HSBC* case, the Second Circuit similarly said, the judge didn't have discretion to step into the supervision of a deferred prosecution agreement in that way.

Senator HIRONO. So, at this point, when we have two different circuits already saying that limiting a judicial role, do you think that Congress should consider basically overturning or disagreeing with the—

Professor GARRETT. Well, it can—

Senator HIRONO [continuing]. Second and D.C. Circuits?

Professor GARRETT. Absolutely, Senator Hirono.

Senator HIRONO. Okay.

Professor GARRETT. And I think that the Speedy Trial Act could be amended. And it would be a good thing anyway to have it set out in the statute what the review authority is of a judge when it's an organizational deferred prosecution agreement. I think that there would be lots of other good uses of that.

I think actually, you know, we could have a separate provision for approval of a guilty plea with a corporation as well, and that might be useful.

Senator HIRONO. Also, if we want to have these deferred prosecution agreements, as well as the non-prosecution agreements, we know that you've been tracking them and by the thousands. Shouldn't both of these kinds of agreements be made public in some kind of registry—which is what you are doing. But shouldn't we require disclosure by law?

Professor GARRETT. Yes, and I think, again, one of the biggest challenges is with these agreements that are filed out of court. But even deferred prosecution agreements, sometimes the judge approves the motion, but doesn't ask that the agreement itself be filed.

The Department is doing a much better job of collecting these, but the practices are not uniform across the different U.S. Attorney's Offices. I absolutely, wholeheartedly, I would love to be put out of the business of updating the corporate prosecution registry because—because the relevant government actors began to do such a thing themselves.

Senator HIRONO. So, I recognize that it is not the easiest thing to prosecute white-collar crimes. And, you know, there are all kinds of—these corporations have all these lawyers and everything else.

But it is one of the reasons that you think that there are not as many trials going forward, is that the DOJ just does not have the kind of experienced prosecutors who have gone to trial in these kinds of cases?

Professor GARRETT. Well, I mean, we've heard about trials—

Senator HIRONO. Uh-huh.

Professor GARRETT [continuing]. And individual cases, and the increase in trials. So, I suspect that corporations don't want to risk a trial. And that trials may be more appropriate for individuals than for corporations, really. But, you know, we have a problem of declining trials and negotiated resolutions across the criminal system in this country.

Senator HIRONO. So, I think that may also go to the kind of resources that the Department of Justice has in the Criminal Fraud Division as I had asked earlier. They probably could use more help.

So, another question for you. As you were putting together this directory and you say you have law students helping you, what was one of the things that really came to your—you know, what surprised you the most when you began to collect the data for this registry?

Professor GARRETT. Well, you know, I remember, you know, there was a—there was a—I remember colleagues observing that this might be a flash in the pan. These out of court settlements with all these complex terms, this may just be a temporary phenomenon.

The agreements have become lengthier and more complicated. I guess that what has surprised me is, that over the years, we've heard more and more about lawyers and prosecutors using the registry as they're negotiating these agreements. But, in part, because, you know, you don't want these to become a cookie-cutter operation. Right?

There should be, like, evidence-based thinking about what the right approach is and how much detail to include in these agreements. And so, you know, we don't want these to become self-replicating.

The other surprise over the years is to see companies coming back. That we see companies——

Senator HIRONO. Uh-huh.

Professor GARRETT [continuing]. That have settled multiple cases, maybe with a different overseas division, a different subsidiary, but you see companies that appear frequently on this registry.

Senator HIRONO. Just one more clarifying question. Are you saying that if this kind of information was put—was made public, that it could actually create some kind of a template for corporations to enter into these kinds of agreements? Not exactly the result we're looking for, necessarily.

Professor GARRETT. Perhaps not. I mean, hopefully the, you know, you have prosecutors saying, like, my colleagues negotiated a very tough, and stringent, and careful agreement. We'd like to do that, as well.

I mean, the information is all out there and people can use it as, as they will. We have noticed, you know, like certainly the compliance provisions have become much more detailed. And I think there have been some really positive changes, which—which—in the direction that we would want.

Chair DURBIN. Thank you, Senator Hirono.

Senator HIRONO. Thank you, Mr. Chairman.

Chair DURBIN. Senator Whitehouse.

Senator WHITEHOUSE. Thank you, Chairman. Let me ask Mr. Lelling and Professor Garrett, if you have noticed as corporate criminal prosecutions have reached an all-time low, whether there's any—been any kind of an offsetting increase in the use of the civil RICO statute as another way to get at corporate misconduct? I, for one, am not seeing it, but you've looked more closely at it.

Professor GARRETT. I actually, I—I don't study RICO cases, and so I couldn't say——

Senator WHITEHOUSE. You might want to think about putting that in your database.

Professor GARRETT. We, we could expand. The—I mean, there are cases like Mr. Lelling, I think, would say that where, where individuals are prosecuted and not the company. And so, it is hard to make too much of just nose counting the number of cases with organizations, but——

Senator WHITEHOUSE. I go back to the era at the Department of Justice when the Department brought a very significant civil RICO case against the tobacco industry to put an end to the fraudulent conduct of the tobacco industry in misstating the dangers of its product.

And that was a very successful case. The industry was put under an order. In a nutshell, thou shalt lie no more. As a result, industry behavior had to rapidly shift and policy shifted rapidly behind it, with very significant public benefit.

So, I think one of the things that can be useful—and by the way, when you're taking on the tobacco industry, that's an enormous,

enormous array of defendants. So, there's some efficiency in handling it under the civil RICO statute.

I'd note that when I asked questions about whether that might make sense against the fossil fuel industry, the actual official response that I got back from the Department of Justice—the actual official response was that civil RICO really presented a very daunting standard of proof beyond a reasonable doubt. You guys are lawyers, you know perf—you get the joke there.

So, it seems that it's been rather disfavored when you get an official response back from the Department of Justice that gets the standard of proof wrong, that's not a sign that they have a very lively approach to taking advantage of that piece.

Let me ask one other question having to do with some of the differentiation between the way a human defendant and the way a corporate defendant is treated for purposes of criminal prosecution.

The DOJ manual says that a corporation's conviction should lean toward leniency if the conviction would result in disproportionate harm to shareholders, pension holders, employees, and others not proven personally culpable.

Is there an analog to that for human beings where they take the fact that a marriage might blow up, the major earner in a family, the spouse, might lose access to the earnings, the children will no longer have a father, or a mother while they serve in a penitentiary. Is there an analog for those consequences of conviction if the defendant is a human being?

Mr. LELLING. In my experience, Senator, only in an unofficial way——

Senator WHITEHOUSE. Only in terms of sentencing judgments by a court. Correct?

Mr. LELLING. Respectfully, no, Senator. You do see it unofficially in the discretion exercised by prosecutors. I have seen this happen. But it's a, you know, sort of an unofficial, in-the-hallway——

Senator WHITEHOUSE. Yes.

Mr. LELLING [continuing]. Decision that the prosecutor is making at a given——

Senator WHITEHOUSE. And a——

Mr. LELLING [continuing]. Case.

Senator WHITEHOUSE [continuing]. Judge in a similar way, completely unofficially, as long as they're staying within the guidelines, they could express sympathy for a defendant's family by sentencing to a lower sentence.

Mr. LELLING. And I've seen other adjustments. So, for example, I've seen cases where a husband and a wife were both prosecuted for a criminal scheme, and you can strike deals where you arrange leniency for one and not the other, or you stagger sentences. I'm thinking of situations where there are children involved——

Senator WHITEHOUSE. But it's only——

Mr. LELLING. But that's——

Senator WHITEHOUSE [continuing]. It's only for corporate defendants where this policy has been formally adopted into the Department of Justice Manual, the U.S. Attorney's Manual.

Mr. LELLING. I think I'd, respectfully, disagree that the principles of corporate prosecution direct the Department to be lenient, necessarily, on companies.

I think—I think what has happened to the Department is, think back to the early 2000s, and I know you were paying attention in those days when the Department destroyed Arthur Andersen. And Arthur Andersen was then vindicated on appeal to the Supreme Court. And all the convictions were reversed, but the company had gone under and thousands were unemployed.

I— don't think it's wrong, personally, for the Department to keep that in mind when you are doing corporate enforcement. You could be implicating thousands of jobs, and I think that's as far as that goes.

Senator WHITEHOUSE. Yes. No, I agree with that. It just is notable that that's not the case, and certainly not officially the case once the defendant is a human being. My time is up. Thank you, Chairman.

Chair DURBIN. Thank you, Senator Whitehouse. Senator Welch.

Senator WELCH. Thank you very much. You know, thank you. Incredible challenge to have an addiction and overcome it, no matter what.

You know, the pharma folks, the Sackler family, they're like "El Chapo." I mean, they ought to be in jail.

So, I'm appalled, that's number one.

Number two, it's bizarre to me that you can have this settlement with the Texas Two-Step, as Senator Durbin was mentioning, where the guilty folks—who in a premeditated way with the use of significant funds in profits they made by addicting folks like you—can hire top-tier consulting firms, and how to sell more bad stuff to make poor people addicted. And then hire lawyers to basically offload the responsibility and keep billions of dollars from their illicit activity. So, thank you for being a voice on that. And I'm just absolutely appalled by it.

Mr. Lelling, I want to talk to you about the prosecution. Again, this is the stuff that drives folks I represent crazy.

In the financial crisis, a lot of people lost their homes, and a lot of folks made billions. And one of the most stunning cases—and I want to get your opinion on this—was Goldman Sachs was approached by a very smart investor who saw the housing market going south, and he saw that these funds were selling A-rated—Triple A-rated securities because they were ironclad. And this investor knew that there was a lot of junk in them.

So, he approached Goldman and said, Goldman, put together a lot of these packages that are presented as Triple-A, but have a lot of junk. And then I'm going to turn around.

And then, Goldman did that. And then Goldman sold those portfolios that they created to serve the needs of this investor. And that was: they were designed to fail.

And they turned them around and sold them to firefighter pension funds—Goldman did, as Triple A-rated, totally secure. "Your retirement is rock solid." They did that. They did that.

Is there any reason in the world they should not be prosecuted for that kind of double-dealing, and the heartache, and the financial insecurity they inflicted on our police officers, and our firefighters around the country? Is there any justification for them not being prosecuted?

Mr. LELLING. Senator, I'm not familiar with the Goldman Sachs example, specifically, but I can say——

Senator WELCH. Everybody knows about that. You're—don't tell me that. You're a smart guy. You're in prosecution. Everybody knows Goldman did that.

Mr. LELLING. Well, I know that happened in the industry. I'm just saying that——

Senator WELCH. You don't know that—are you serious? You don't know Goldman did that?

Mr. LELLING. I was not thinking specifically of Goldman, but there's a—absolutely——

Senator WELCH. Goldman's the elite bank.

No. I mean, this is what drives it—I'll speak for myself. It drives me crazy.

They literally have an investor, and the question is, would you put together a package of securities that's going to fail, as I see it? And then, they sell those failed securities to people who are being told that they're rock solid. I mean, you know about that.

But anyway, let's pretend you don't know about it. Do you think that the company that did that should get away with it?

Mr. LELLING. I do know about it on an industrywide basis.

Senator WELCH. Yes. And Goldman wasn't alone.

Mr. LELLING. I have direct experience with this. I helped achieve the largest single bank settlement——

Senator WELCH. Thank you.

Mr. LELLING [continuing]. To come out of the financial crisis.

Senator WELCH. By the way, thank you for your good work.

Mr. LELLING. I guess——

Senator WELCH. I'm not mad at you. I'm mad at what happened in the financial crisis. I apologize.

Mr. LELLING. I note it because we had exactly this problem. Which is that, you know, on a macro level, that this has happened in the industry, that they have repackaged these residentially, mortgage-backed securities, which are basically garbage. Made them look Triple A.

The companies that rate them made their own mistakes—total systemic failure. They sell this, the whole thing comes crashing down. Getting it down to the micro level, banker X is responsible in a way that we can't prove. Not so easy to do.

Senator WELCH. I understand that.

Mr. LELLING. That was the frustration that we ran into. So, I appreciate your frustration, and you are correct. I think that it is an open question whether the Department in that era should have done more to get individuals——

Senator WELCH. All right——

Mr. LELLING [continuing]. On the hook instead of——

Senator WELCH. Yes——

Mr. LELLING [continuing]. The companies. And I——

Senator WELCH. I mean, that's part of why people are so fed up with what's happened. But thank you, and thank you for your good work as a prosecutor.

And Professor Garrett, I don't have time for questions, but I do have time to say thank you for your solid suggestions, and I yield back.

Chair DURBIN. Thank you, Senator Welch. Some of the critics of this hearing say—you heard them and I wasn't surprised. Said, why don't you concentrate on important things like carjacking and violent crime. Those are important things. And my State of Illinois, and across the United States, we all feel those personally. We all want our families safe.

But as Mr. Hampton can tell you, those who are addicted and are fighting that addiction, many times turn to crime to try to feed the addiction, and the cost to society is pretty obvious.

So, I think there's also a basic question which has come to this Committee over and over again during this hearing: What does this say about the system of justice in America if the big guys are exempt, and the little guys go to jail for possession of a handful of crack cocaine for long periods of time?

So, striking a balance and meeting the needs of justice is part of our responsibility. This hearing will be added to that arsenal of information of what we can do to make this a safer country and a better country.

The hearing record's going to be open for a week, and you may get a question or two coming your way. If you respond as quickly as possible, we would appreciate that.

And with that, the Senate Judiciary Committee stands adjourned.

[Whereupon, at 12:03 p.m., the hearing was adjourned.]

[Additional material submitted for the record follows.]



Department of Justice

STATEMENT OF
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BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

AT A HEARING ENTITLED
"CLEANING UP THE C-SUITE: ENSURING ACCOUNTABILITY FOR CORPORATE
CRIMINALS"

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INTRODUCTION

The Department has long prioritized white collar and corporate criminal enforcement to ensure that both corporate and individual white-collar offenders are held accountable. As Attorney General Merrick Garland said, “there is not one set of laws for the powerful and another for the powerless; one for the rich and one for the poor.” By demanding accountability in our white collar and corporate prosecutions, we are reaffirming our commitment to the rule of the law and to protecting the American people.

Today’s dynamic threat landscape demands that the Department of Justice expand, innovate, and modernize our white collar and corporate enforcement efforts to meet the moment. As Deputy Attorney General Lisa Monaco said, “Corporate enforcement is in an era of expansion and innovation.”

To meet the moment, the Department is modernizing, adapting, and devoting substantial resources to our fight against white collar and corporate crime and has made significant innovations in our enforcement efforts. Since 2021, the Department has announced policy updates intended to protect the public, promote the integrity of our markets, discourage unlawful business practices, fight transnational corruption, ensure confidence in our economic system, and uphold the rule of law.

Concurrent with the policy announcements in an October 28, 2021, Memorandum (“2021 Memorandum”) issued by the Deputy Attorney General, the Department established the Corporate Crime Advisory Group (CCAG) to review the Department’s corporate enforcement policies. The resulting updated policies ensure individual accountability, discourage corporate recidivism, promote strong corporate culture, encourage cooperation and compliance, enable detection of wrongdoing with voluntary self-disclosure, and reinforce public confidence in the evenhanded administration of justice and the fairness of our system. Underlying all of these policies—and our corporate enforcement generally—is the Department’s commitment to appropriate transparency and to building public confidence in our work.

Through the same 2021 Memorandum, the Department announced several policies designed to incentivize increased corporate compliance and to ensure effective deterrence. The Department directed prosecutors to take a holistic approach to assessing a corporation’s past misconduct—considering all misconduct that was the subject of any prior domestic or foreign criminal, civil, or regulatory enforcement actions against the corporation—in determining whether the company lacks appropriate internal controls or corporate culture that disincentivizes criminal activity. The Department also revised guidance regarding corporate monitors, directing Department attorneys to carefully assess, in each case, whether there is a demonstrated need for, and clear benefit to be derived from, a monitorship, such as where internal controls are untested, ineffective, inadequately resourced, or not fully implemented.

In addition, the 2021 Memorandum reinstated prior guidance that to qualify for any cooperation credit, corporations must provide to the Department all relevant facts relating to the individuals responsible for the misconduct, regardless of their position, status, or seniority, and provide to the Department all nonprivileged information relating to that misconduct. Following

the CCAG's review, in 2022, the Department took further significant steps to prioritize individual accountability. At the direction of the Deputy Attorney General, every Department component that did not already have a voluntary self-disclosure policy has now adopted one. For the first time, all 94 U.S. Attorney's Offices have now adopted a single voluntary self-disclosure policy. The goal of these policies is to identify misconduct at the earliest possible opportunity. That way, we can put a stop to the conduct and take swift and effective action against individual wrongdoers—enhancing the individual accountability that is our top priority in fighting white collar crime. Corporations seeking cooperation credit not only must disclose all relevant, nonprivileged facts about individual misconduct, but also disclose *without delay*—such that prosecutors have the opportunity to effectively investigate and seek criminal charges against culpable individuals. The criteria and predictable results of voluntary self-disclosure are laid out in black and white in component policies that are publicly available on the Department's website. Improved corporate compliance safeguards the public, increases the fairness and reliability of markets, and protects our collective security.

The Department has also directed prosecutors to prioritize individual accountability by striving to complete investigations into individuals—and seek any appropriate and factually and legally supported individual criminal charges—prior to or simultaneously with the entry of a resolution against the corporation. This approach is resource-intensive: prosecuting the most sophisticated and far-reaching cases requires breaking down complex criminal schemes, understanding cutting-edge markets, and analyzing terabytes or even petabytes of data, with high-powered defendants mounting aggressive defenses and hiring sophisticated counsel.

In addition to our focus on deterrence and accountability for traditional forms of corporate crime, the Department's corporate enforcement efforts are evolving to address the rapidly increasing intersection between corporate crime and the risks that threaten U.S. national security. From terrorist financing, sanctions evasion, and export control circumvention to cyber- and crypto-enabled crime, sophisticated white collar criminals are threatening U.S. national security. As the threats have changed, so too has the Department's approach. In addition to remaining committed to existing efforts, such as the fight against foreign bribery, we are investing resources into new fields, including cybercrime and cryptocurrency, and surging resources to sanctions evasion and export controls.

Our whole-of-Department approach to combating corporate crime is reflected by the focused work of multiple Department components on these priorities. The recent announcement of the resolution in the Binance matter epitomizes this holistic approach at the intersection of corporate criminal and national security challenges. Just three weeks ago, the Department announced its largest corporate resolution that also involved the guilty plea of a chief executive officer (CEO). Binance pleaded guilty to violating the Bank Secrecy Act, failing to register as a money transmitting business, and violating U.S. sanctions, and Binance's CEO, Changpeng Zhao, pleaded guilty to causing Binance to violate the Bank Secrecy Act. Binance agreed to pay \$4.3 billion in penalties, to the imposition of an independent monitor, and to enhance its compliance program. These historic guilty pleas were the result of collaboration between the Criminal Division and the National Security Division (NSD), coupled with critical partnership from the U.S. Attorney's Office for the Western District of Washington. This case is just the latest example of the Department's commitment to investigate and prosecute the most complex,

impactful corporate criminal schemes across a wide range of industries.

But this work to investigate and prosecute the most complex corporate crime, including crime that threatens national security, also presents challenges. Major investigations require major investments in time, money, and personnel. Our ability to collect a growing array of electronic evidence is limited by our capacity to process, store, and review that evidence. And well-resourced white collar and corporate defendants are using every tool available in an attempt to escape accountability, especially as we insist on guilty pleas for corporations and pursue stiff jail sentences for individuals where appropriate.

Underlying all of these policies—and our corporate enforcement generally—is the Department’s commitment to appropriate transparency and to building public confidence in our work. Clear expectations for corporations are an integral part of ensuring appropriate compliance.

CRIMINAL DIVISION

I. Mission and Scope of Work

The Criminal Division’s mission is to serve the public interest through the enforcement of criminal statutes vigorously, fairly, and effectively. White collar and corporate crime enforcement is a top Criminal Division priority. Many of the Criminal Division’s sections are involved in this important work, including the Fraud Section, which prosecutes all violations of the Foreign Corrupt Practices Act (FCPA) as well as securities and commodities fraud, consumer fraud, procurement fraud, and health care fraud; the Money Laundering and Asset Recovery Section (MLARS), which prosecutes financial institutions and their employees for violations of the Bank Secrecy Act, sanctions, money laundering and related offenses, and third party money launderers and kleptocrats; and the Computer Crime and Intellectual Property Section (CCIPS), which prosecutes cybercrime in its many forms, trade secret theft and other intellectual property offenses, and the growing number of crimes involving cryptocurrency. The Criminal Division’s sections often work together—as well as with U.S. Attorney’s Offices around the country and in coordination with international partners—to bring the worst corporate offenders to justice.

Corporate crime results from individual wrongdoers who engage in misconduct and faulty institutional structures that those individuals often exploit. That is why effective enforcement in this area includes prosecution of both individuals and organizations. Our number one priority in this area is individual accountability, but this does not come at the expense of corporate responsibility. Corporate malfeasance—including bribery, market manipulation, anti-money laundering violations, and sanctions evasion—harms individuals, organizations, and governments, including our democratic institutions by undermining public trust in the rule of law. The Criminal Division aggressively prosecutes such crimes and brings perpetrators to justice. The fight against corporate crime requires substantial resources, innovative thinking, and increasingly international cooperation in our enforcement efforts, as the Criminal Division goes after offenders who perpetrate and try to conceal their crimes in increasingly sophisticated ways.

II. The Criminal Division's Enforcement Priorities

Despite the COVID-19 pandemic and the resulting case backlog, we broke records over the past two years by securing the highest number of individual fraud convictions and obtaining groundbreaking convictions against senior executives. Individual accountability is critical to effective enforcement in this space. It deters misconduct by putting potential wrongdoers on notice that they cannot hide behind the corporate form, and it incentivizes positive changes in corporate behavior. Holding individuals accountable for their illegal wrongdoing—including in the corporate context—also reinforces public confidence in the evenhanded administration of justice and the fairness of our system.

Ensuring justice for victims of crimes is also central to maintaining public confidence in our work—and therefore is at the forefront of that work. The Department renewed this commitment through the Attorney General's Guidelines for Victim and Witness Assistance (Guidelines), which the Department revised last year. The revised Guidelines prioritize a victim-centered, trauma-informed, and culturally sensitive approach to prosecutions and emphasize that treating victims with dignity and respect is essential to the Department's mission. The Guidelines encourage Department personnel to go beyond our legal obligations to provide assistance to other persons and entities who are significantly harmed by criminal conduct, but who may not fall within the statutory definition of a crime victim. To help implement these Guidelines, the Criminal Division and all U.S. Attorney's Offices have designated prosecutors to serve as victim-witness coordinators, and the Criminal Division has also designated a Victim Policy Coordinator who sits in the Office of the Assistant Attorney General. Having dedicated prosecutors with relevant expertise and experience serve as a resource for other Department personnel helps ensure that victims' rights remain a priority at all levels. We are committed to empowering and vindicating victims and ensuring they are afforded their rights through the criminal justice process.

A. The Fraud Section

The Fraud Section investigates and prosecutes complex white collar crime throughout the country. The Fraud Section brings impactful, complex corporate and individual cases against those who perpetrate sophisticated criminal fraud schemes. The Fraud Section's FCPA Unit has unique responsibility for prosecuting violations of the FCPA by individuals and companies, and in doing so, is expanding and deepening its international partnerships around the world, including, among others, with the United Kingdom, Brazil, Malaysia, Switzerland, Ecuador, France, South Africa, Colombia, the Netherlands, and Singapore. For example, in a series of cases against companies that trade oil and other commodities, we have secured one corporate guilty plea as well as one deferred prosecution agreement for widespread bribery and other offenses. These cases have resulted in over \$800 million in total criminal penalties and disgorgement. As part of our investigations into trading companies, we have charged 13 individuals. Through these cases, we have worked in coordination with multiple international partners, which has made evidence easier to obtain, led to criminals having fewer places to hide, and helped us recover criminal proceeds wherever they may be found.

The Fraud Section has set records in our prosecution of culpable individuals. In 2022, the

Fraud Section had a record number of trials—51. And in 2021 and 2022, we secured more individual fraud convictions than we had in any of the preceding six years. This year, we have set a record high in the average alleged loss amount per defendant charged by the Fraud Section—over \$25 million. As these statistics demonstrate, we are focused on the worst of the worst offenders and achieve groundbreaking convictions against several senior executives in high-profile and complex matters. For instance, in 2020, in the Eastern District of New York, Goldman Sachs agreed to pay a total of over \$2.9 billion for its participation in a scheme to pay over \$1 billion in bribes to Malaysian and Abu Dhabi officials to obtain lucrative business, including by underwriting approximately \$6.5 billion in three bond deals for 1Malaysia Development Bhd (1MDB). In addition to the FCPA corporate resolution, the Fraud Section and MLARS, together with our partners in the U.S. Attorney's Office for the Eastern District of New York, successfully prosecuted two high-ranking Goldman Sachs executives, including Roger Ng, a former Managing Director, who was convicted after trial in 2022 and sentenced to 10 years' imprisonment.

We have also convicted executives at trial for perpetrating fraud schemes. As one example, in April 2023, three former executives of Outcome Health, a Chicago-based health technology start-up company, were convicted after trial for their roles in a scheme that targeted the company's clients, lenders, and investors and involved approximately \$1 billion in fraudulently obtained funds. In October 2023, Mark Schena, the president of a Silicon Valley-based medical technology company, was sentenced to eight years in prison, after his conviction at trial, and ordered to pay \$24 million in restitution for participating in a scheme to defraud investors and a scheme to commit health care fraud and pay illegal kickbacks in connection with the submission of over \$77 million in claims for COVID-19 and allergy testing.

The Fraud Section is innovative in its use of data to detect, investigate, and prosecute crimes. The Section has long proactively used data to combat the most egregious frauds on the Medicare and Medicaid programs. In addition, by assessing trading data and publicly available information, the Fraud Section's Market Integrity and Major Frauds Unit has identified company insiders who greatly outperformed the market when trading pursuant to 10b5-1 plans, which allow corporate insiders who are not in possession of material, non-public information to set up pre-planned stock transactions. This proactive analysis and our subsequent investigation led to the arrest of Terren Peizer, the founder and former CEO of Ontrak, a behavioral-health-services company, for insider trading—the Department's first ever insider-trading charges based exclusively on activity conducted pursuant to a 10b5-1 plan.

B. The Money Laundering and Asset Recovery Section

MLARS investigates and prosecutes complex international and domestic white collar cases involving financial institutions, kleptocrats, money laundering, and asset forfeiture. MLARS leads the Department's asset forfeiture and anti-money laundering enforcement efforts. It also manages the Department's asset forfeiture program, including distributing forfeited funds to victims of crime. The Section also initiates, coordinates, and reviews legislative and policy proposals that affect the asset forfeiture program and the Department's money laundering enforcement authorities.

MLARS's Bank Integrity Unit (BIU) focuses on corporate criminal schemes, investigating and prosecuting financial institutions and their insiders when their actions threaten the institution itself or the broader financial system. With roughly a dozen prosecutors, since its founding in 2010, the BIU has imposed more than \$24 billion in financial penalties in criminal resolutions with global financial institutions that engaged in anti-money laundering, money laundering, sanctions, and other violations—including over \$16 billion in penalties in its longstanding effort to hold financial institutions accountable for sanctions violations. To strengthen these efforts, earlier this year, we announced a surge of resources to the BIU, which will add six prosecutors to target economic sanctions-related financial misconduct.

MLARS is also a key contributor to priority Department initiatives targeting white collar crime, including Task Force KleptoCapture and the National Cryptocurrency Enforcement Team (NCET). MLARS participates in Task Force KleptoCapture in partnership with the NSD, and is focused on bringing forfeiture and money laundering expertise to investigations and prosecutions of those who seek to evade U.S. sanctions related to Russian aggression in Ukraine. In support of these efforts, MLARS, working with NSD and U.S. Attorney's Offices, has seized assets and charged corporate executives. For example, MLARS recently brought civil forfeiture proceedings against a \$300 million luxury yacht owned by a sanctioned Russian oligarch, and obtained as seizure warrants for two jets associated with oligarchs and their entities. MLARS investigated and prosecuted the president of Florida steelmaking company Metalhouse and his co-conspirator, resulting in guilty pleas to money laundering conspiracy for transferring over \$150 million to a sanctioned oligarch. These defendants prioritized their profits over compliance with U.S. sanctions and paid the price—pleading guilty to federal criminal charges.

C. The Computer Crime and Intellectual Property Section

CCIPS is responsible for implementing the Department's national strategies in combating computer and intellectual property crimes worldwide. CCIPS is the largest office in the Department prosecuting cybercrime, with over 45 permanent attorneys, handling more than 200 prosecutions or other criminal matters each year. Within the Department, CCIPS maintains primary responsibility for developing the Department's overall computer and intellectual property offense enforcement strategies, and for coordinating computer crime and intellectual property investigations and cases that may significantly impact more than one district or other countries.

In January, we announced that Federal Bureau of Investigation agents, with the support of CCIPS prosecutors, had infiltrated the Hive ransomware network's computers, disrupting the Hive group's attempts to extort victims around the world. Beginning in 2021 and operating largely from overseas, the Hive ransomware group attacked over 1,500 victims in more than 80 countries, including hospitals and other critical infrastructure victims in the United States. The Department's Hive team obtained covert access to the Hive networked, obtained the decryption keys necessary to access the victim's inaccessible data, and distributed them to over a thousand victims, allowing those victims to decrypt and thus regain access to their data. For example, the FBI disrupted a Hive ransomware attack against a Texas school district's computer systems. The Bureau provided decryption keys to the school district, saving it from making a \$5 million ransom payment. That same month, the FBI disrupted a Hive ransomware attack on a

Louisiana hospital, saving the victim from a \$3 million ransom payment. Critically, the team was able to provide over 300 Hive victims with decryption keys before they paid any ransom, thus thwarting ransom demands of over \$130 million. As a final blow against Hive, the team and its international partners identified the main computers powering Hive ransomware and effectively dismantled Hive as a threat. The Hive dismantlement embodies the Department's strategy of using technical disruptions and all available tools to combat cybercrime, and the Department's prioritization of victims of cybercrime.

And earlier this year, the NCET became a part of CCIPS. The NCET will continue its leadership role in the Department's efforts to investigate, prosecute, and disrupt criminal activity involving cryptocurrency. In less than two years, the NCET has already been incredibly successful in its efforts to address the criminal misuse of cryptocurrencies and digital assets through large-scale enforcement actions.

D. Partnerships with U.S. Attorney's Offices

The Criminal Division partners with U.S. Attorney's Offices across the country to carry out the Department's mission. The Fraud Section, MLARS, and CCIPS investigate and prosecute complex white collar and corporate cases that often span multiple federal districts, and Criminal Division personnel work closely with Assistant U.S. Attorneys around the country in pursuit of the Department's corporate enforcement priorities. These partnerships can take the form of jointly prosecuting cases, as reflected in some of the examples highlighted above. In addition, Criminal Division sections regularly share their subject matter expertise with U.S. Attorney's Office counterparts.

In addition to joint cases with the Criminal Division, the U.S. Attorney's Offices also prosecuted cases focusing on individual accountability for corporate officers, such as the recent trial of former FTX CEO Sam Bankman-Fried and the prosecution of Allianz Global Investors U.S., its Chief Investment Officer, and two others—both cases in the Southern District of New York; and the trials of Theranos founder Elizabeth Holmes and former chief operating officer Ramesh "Sunny" Balwani in the Northern District of California.

III. The Criminal Division Approach to Corporate Criminal Enforcement

Voluntary self-disclosure of misconduct and cooperation by companies allow us to build stronger cases against culpable individuals more quickly. As searching as our investigations may be, there is some misconduct that we may never learn about absent a company's voluntary self-disclosure. To encourage cooperation and voluntary self-disclosure, the Department will not seek a guilty plea where a corporation has timely and voluntarily self-disclosed wrongdoing, fully cooperated in the investigation, and appropriately remediated the conduct. In 2023, the Department extended to the mergers and acquisition context the benefits of increased detection, deterrence, and compliance from voluntary self-disclosure by providing that a company can receive a presumption of a declination for misconduct it voluntarily self-discloses within six months from the date of closing, with a one-year timeline for remediation. This policy does not impact civil merger enforcement, nor does it apply to information that already was required to be disclosed. By having companies come forward, we will prevent crimes from going undetected,

and we will be better able to hold individual corporate wrongdoers accountable.

In addition to Department-wide policies, the Criminal Division has implemented additional policies specifically targeted to corporate crime. Our goal is to encourage companies to build strong compliance programs, work to detect and disclose wrongdoing, cooperate with the Department, and remediate any misconduct. This allows us to hold corporations to account and to prosecute culpable individuals, which remains our number one priority in this area.

In January 2023, the Criminal Division announced the first substantive changes in five years to the Corporate Enforcement and Voluntary Self-Disclosure Policy (CEP). Under the revised policy, there are greater incentives for companies that voluntarily self-disclose wrongdoing to the Criminal Division, including potential declinations with disgorgement and greater potential fine reductions where a criminal resolution is warranted. Companies that do not voluntarily self-disclose misconduct but fully cooperate and remediate the misconduct are eligible for reduced financial penalties. The revised CEP also makes clear that we will use varying starting points within the applicable Sentencing Guidelines range in order to fairly and meaningfully distinguish between companies. The new policy also expands and clearly spells out the circumstances in which companies can expect the Criminal Division to issue a CEP declination so long as the company disgorges any ill-gotten profits and pays any required restitution.

Further, in March of this year, the Criminal Division announced its three-year Compensation Incentives and Clawbacks Pilot Program. The Criminal Division believes that companies should include compliance-related criteria in their compensation and bonus systems, in order to create appropriate incentives for executives and other employees. Compensation systems that use affirmative metrics and benchmarks can reward compliance-promoting behavior. Compensation systems that clearly and effectively impose financial penalties for misconduct can also deter risky behavior and foster a culture of compliance. We also want to encourage companies to claw back or withhold compensation from culpable executives, which will shift the burden of financial penalties resulting from criminal conduct onto individual wrongdoers and away from often innocent shareholders. Under the Pilot Program, every corporate resolution now includes a requirement that the resolving company develop compliance-promoting criteria within its compensation and bonus system, subject to local labor laws. The Criminal Division then provides fine reductions to companies that seek to recoup compensation from corporate wrongdoers.

IV. Challenges

These accomplishments have been achieved notwithstanding the unique challenges that corporate criminal investigations and prosecutions present. Bigger, more complex cases require more resources—prosecutors, agents and analysts, data processing, and other IT capabilities. More defendants are taking their cases to trial, which requires the devotion of even more significant prosecutorial resources. Increasingly global investigations require investing time and resources into building partnerships with foreign law enforcement authorities—partnerships that can yield dividends both at home and abroad—and navigating the intricacies and challenges of obtaining evidence overseas, such as mutual legal assistance requests, data privacy rules, and

blocking statutes.

We need resources—including data analysts and data analytic tools—to exploit data to identify and disrupt criminal activity. The Fraud Section’s exciting data analytics programs are being run on a relatively modest annual budget of \$400,000. These complex cases involve voluminous, usually electronic, evidence and require substantial investment of personnel and time to review materials, but the systems we have in place to help with the organization and review of this evidence are not cutting edge. If we were to invest more, we could much more quickly build a technological framework to identify market manipulation and generate additional leads for FCPA cases. Such investments will pay dividends in our ability to go after even more corporate crime in the future.

In addition, while we are bringing important and complex prosecutions using the legislative tools available, with more tools we can do more. We have proposed a number of legislative fixes that would address some of the gaps in our enforcement authorities, including to address the sophisticated enforcement environment in an ever-increasingly digital world. In particular, we are focused on additional legislative tools that will expand our ability to prosecute criminal activity involving digital assets. These include adapting current laws to extend statutes of limitations for certain complex crimes including offenses involving digital assets and cybercrime, to increase the statutory maximum sentences for operating a cryptocurrency exchange or other money transmitting businesses without registering, and to expand the predicate crimes for money laundering offenses. The Department looks forward to working with Congress on these and other needed statutory changes.

NATIONAL SECURITY DIVISION

I. The Evolving National Security Landscape

The National Security Division (NSD) is charged with carrying out one of the Department of Justice’s highest priorities: to defend the national security of the United States by pursuing justice under the law, including by investigating and prosecuting terrorism, espionage, sanctions and export violations, foreign malign influence, and malicious cyber activity; overseeing and supporting the Intelligence Community’s lawful use of surveillance authorities to acquire intelligence; and reviewing the national security risks of proposed foreign investments in U.S. companies. NSD regularly contributes to the whole-of-government response to the most serious threats we face as a nation.

Today, the United States faces dynamic threats from a range of highly capable nation-state actors, including China, Russia, Iran, and North Korea. These nations engage in aggressive and sophisticated efforts, both inside our borders and abroad, to undermine the security, economic interests, and democratic institutions of the United States and our allies.

Nation-state adversaries seek to evade U.S. sanctions and export controls to develop capabilities that threaten international peace and stability. These countries seek to obtain critical emerging technologies, including military hardware, cutting-edge semiconductors, and advanced computing capabilities. These technologies pose significant dangers in the hands of our

adversaries, with the potential to undermine advantages in U.S. and allied military capabilities. But the harms are not limited to military applications. Repressive regimes can use dual-use technologies like artificial intelligence, facial recognition, and advanced biotechnologies to conduct surveillance of civilian populations, stifle dissent, and enable human rights abuses.

Hostile nations are also accelerating their use of cyber-enabled means to carry out a range of activity targeting the U.S. government and American businesses and households. This includes stealing sensitive technologies, trade secrets, intellectual property, and sensitive personal data, as well as seeking access to hold our critical infrastructure networks at risk for destructive or disruptive attacks. While an increasing number of adversary nations conduct malicious activity in cyberspace, the People's Republic of China continues to stand apart in the breadth of persistent threats it poses to U.S. government and private-sector networks, including U.S. critical infrastructure.

In responding to this threat landscape, in which national security and corporate responsibility intersect, the National Security Division increasingly is focused on the role of the private sector and corporate enforcement. When it comes to corporate responsibility, NSD seeks to incentivize corporations to invest in well-functioning compliance programs with a focus on their obligations to national security.

II. The National Security Division's Enforcement Priorities

The mission and the changing threat landscape drive the National Security Division's enforcement priorities. As NSD's enforcement priorities respond to confront evolving threats, our efforts increasingly interact with corporations and the business community.

The continued challenge posed by terrorism, and the rising challenge posed by nation-state adversaries to the United States has placed even greater emphasis on the enforcement of the laws we use to defend against such threats. Those enforcement areas—sanctions, export controls, cyber, economic espionage, countering foreign malign influence, and foreign investment review—have gained increased salience in the fight to secure America's future against nation-state threat actors.

Across these priorities, NSD's relationship with the private sector is multi-faceted. Where firms are witnesses to or victims of threats to our national security, the private sector plays a vital and cooperative role in helping to defend our nation. Responsible financial institutions stand as gatekeepers to the global financial system, shutting out sanctioned parties and monitoring for and reporting suspicious activity. And our critical infrastructure industries, and the firms whose innovations help maintain our nation's competitive advantage, are key partners in protecting our country against cyber threats. But when these companies place our nation's security at risk by violating our national security laws, NSD does not and will not hesitate to investigate and prosecute them. Where firms choose to make business decisions to undermine our nation's security by committing crimes for their own profit, we will seek to hold these firms accountable.

A. Terrorism

Combating terrorism, both international and domestic, remains core to the mission of the National Security Division. And we have seen recent instances in which our counterterrorism work intersects with our increasing focus on corporate responsibility. Most notably, last fall, NSD's Counterterrorism Section, working with the U.S. Attorney's Office for the Eastern District of New York, secured the Department's first-ever corporate guilty plea to a charge that a company conspired to provide material support and resources to a foreign terrorist organization. That case, against Lafarge SA, a multinational cement company based in France, held the company accountable for the actions of its executives, who paid the equivalent of millions of dollars to ISIS to increase profits and market share in Syria—all while ISIS engaged in a campaign of violence during the Syrian civil war. The company paid fines and forfeiture of approximately \$778 million, while the French government has prosecuted the individual French executives. The Lafarge prosecution sent a clear message that NSD will not hesitate to hold corporations responsible if they make payments to designated terrorist organizations in furtherance of market share and profits.

B. Sanctions

Economic sanctions are a critical national security tool that seek to impose consequences on our adversaries and change their behavior by denying them access to the U.S. market and the economic benefits that come from doing business with the United States. Most economic sanctions programs are imposed by the President under the International Emergency Economic Powers Act (IEEPA) and administered by the Department of the Treasury's Office of Foreign Assets Control, and can be either comprehensive or selective, using the blocking of assets and trade restrictions to target countries and groups of individuals, including longstanding sanctions programs targeting Iran, Russia, and North Korea. NSD prosecutes criminal violations of IEEPA and other crimes related to the violation or evasion of U.S. sanctions, such as money laundering.

Large multi-national corporations, financial institutions, and defense contractors (among others) bear responsibility for ensuring they have a well-functioning compliance program and are adhering to U.S. sanctions—and NSD's criminal actions underscore the costs of failing to meet this obligation. For example, NSD, together with the U.S. Attorney's Office in Washington D.C., announced earlier this year a record-breaking resolution with British American Tobacco (BAT), one of the world's largest manufacturers of tobacco products, and its subsidiary, BAT Marketing Singapore (BATMS). BAT, through a third-party company, did business in North Korea resulting in approximately \$418 million of banking transactions, generating revenue used to advance North Korea's weapons program. In April 2023, BATMS pleaded guilty to, and BAT entered into a deferred prosecution agreement to resolve, charges that they conspired to commit bank fraud and violate IEEPA, paying penalties totaling more than \$629 million to resolve these charges, making it the largest-ever criminal penalty imposed in connection with a violation of the sanctions program against North Korea.

Since Russia's unprovoked invasion of Ukraine, the Department has placed significant additional resources and emphasis on investigating violations of U.S. sanctions targeting Russian oligarchs, proxies, and other regime supporters. Much of this work has taken place under Task

Force KleptoCapture, in which NSD and the Criminal Division play central roles. The Department's key enforcement actions have included October 2022 charges of nearly a dozen individuals and several corporate entities with participating in unlawful sanctions evasion and money laundering schemes to export powerful, civil-military, dual-use technologies to Russia and ship them to Russian end users, including sanctioned companies that serviced Russia's military.

Some of the central features of these technologies—including the ability to conduct nearly anonymous and instantaneous cross-border transactions—can pose significant risks to the public and to national security by facilitating crimes of all sorts, including sanctions evasion, terrorist financing, ransomware targeting critical infrastructure, and money laundering.

C. Export Controls

Export controls are a critical tool to prevent our adversaries from eroding the technological advantage created by U.S. innovation and economic growth. The Commerce Department's Bureau of Industry and Security (BIS) and the State Department's Directorate of Defense Trade Controls (DDTC) are primarily responsible for regulating the export of items, services, and technologies to other countries and foreign nationals, under the Export Control Reform Act and the Arms Export Control Act. BIS and DDTC use these authorities to prevent the export of sensitive items and technologies to our adversaries. The National Security Division is responsible for the criminal prosecution of those who willfully violate these export controls.

Our adversaries are determined to unlawfully acquire advanced and sensitive technology from the United States and from our allies. For example, Russia is trying to circumvent heightened controls imposed on component parts being used in weapons systems against Ukraine. Because Russia needs this equipment to support its war effort and cannot manufacture enough of it domestically, it has turned to using third-party intermediaries and transshipment points to disguise the transfer of prohibited items and to hide the fact that the items are destined for Russian end users.

In February 2023, the National Security Division joined with the Commerce Department's BIS to set up the Disruptive Technology Strike Force, an interagency enforcement effort to prevent the dangerous and illicit transfer of the emerging technologies that will define our future. The Strike Force—which includes both a headquarters element as well as 14 cells throughout the United States in which prosecutors and agents from BIS, FBI, and Homeland Security Investigations work together—represents an effort to take a more concerted approach to investigating those who seek to exploit technology to undermine our national security.

Several recent prosecutions highlight this work. In May 2023, we arrested a Greek national for allegedly acquiring export-controlled technologies, including advanced electronics and equipment used in quantum cryptography and nuclear weapons testing, for Russia and serving as a procurement agent for its intelligence services. More recently, we brought charges against Russian nationals based in the United States and Canada who used corporate entities registered in New York City to unlawfully source and purchase millions of dollars' worth of dual-use electronics on behalf of companies affiliated with the Russian military. The targeted

technology included electronic components and integrated circuits with the same identifiers that have been found in Russian weapons and equipment seized in Ukraine.

D. Cyber, Economic Espionage, and Trade Secrets

Countries like China, Russia, Iran, and North Korea have accelerated their use of cyber capabilities to carry out activities that threaten our national security, such as by stealing sensitive technology, intellectual property, and personally identifiable information; using online means to exert malign influences upon our democracy; generating revenue to evade sanctions regimes; and holding our critical infrastructure at risk of destructive or disruptive attacks.

We have been proactive in counteracting nation-state efforts to use cyber-enabled means to undermine our security. In particular, we have worked in close partnership with the private sector to disrupt infrastructure deployed by nation-state actors through technical operations, such as the court-authorized takedowns of the Cyclops Blink botnet and the Snake malware network, each of which were used to malicious ends by the Russian intelligence services.

We also work to disrupt other cyber-enabled means to undermine our security. For example, in October 2023, we announced a series of disruptive actions against a network of North Korean IT workers who, posing as Western computer programmers, used online platforms to earn illegal revenue for North Korea's weapons programs from unsuspecting U.S. and other foreign companies. Through the seizure of fraudulent websites, asset freezes, threat intel sharing, and the related strengthening of anti-fraud measures, the U.S. government and private-sector partners disrupted this illicit revenue generation scheme.

Economic espionage and the theft of trade secrets are also critical priority for NSD, where our efforts are focused on combating our foreign state adversaries' efforts to steal cutting-edge and sensitive technologies by protecting companies where they are victims as well as prosecuting them when they facilitate such theft. As an example of the former, in May 2023, we charged two former software engineers with stealing software and hardware source code from U.S. companies in order to market it to Chinese competitors. The stolen code is alleged to be trade secrets used by the U.S. companies to develop self-driving cars and advanced automated manufacturing equipment. And as an example of the latter, in October 2020, a Taiwan-based semiconductor foundry company pleaded guilty to stealing a U.S. company's trade secrets relating to the design of circuits for memory chips used in computers and transferring them to a state-owned entity in China. The Taiwanese company was fined \$60 million. The prosecution of the state-owned company is ongoing.

E. Foreign Investment Review

Nation-state adversaries increasingly seek to leverage strategic investment to access sensitive U.S. data and key technologies to the detriment of our national security. Within the Department, the National Security Division is responsible for assessing, mitigating, and preventing these national security and law enforcement risks.

NSD's Foreign Investment and Review Section proactively accomplishes this through its

participation in various interagency bodies and processes. As the Department's representative to the Committee on Foreign Investment in the United States (CFIUS), NSD helps to prevent foreign threat actors from exploiting investments to acquire U.S. assets and technology. NSD also reviews foreign participation in the telecommunications sector as chair of Team Telecom and works to secure the global supply chain for information and communications technology, software, and services in the United States through a variety of authorities.

When NSD cannot establish the fundamental trust required of compliance partners, we recommend through CFIUS that the President prohibit transactions or require divestment. More often, these review efforts involve working with companies to design and negotiate effective, verifiable, and monitorable national security mitigation measures. While collaboration and cooperation are critical to proactively addressing risks before they materialize, paper promises alone cannot resolve national security risks. NSD conducts ongoing monitoring to ensure companies uphold their commitments in the national security agreements and orders to which the Department is a party. NSD has many tools and approaches at its disposal to ensure compliance, such as CFIUS penalties, divestment, and referral of Team Telecom matters to the Federal Communications Commission's Enforcement Bureau or for criminal investigation.

F. Countering Foreign Malign Influence

Another key priority for NSD is countering efforts by nation states and other foreign actors to exert covert influence in the United States. Foreign state actors exploit modern technology and the increased inter-connectedness of our world to reach unprecedented numbers of Americans covertly and without ever setting foot on U.S. soil.

Critical to NSD's work to bolster transparency of foreign activities in the United States is our enforcement of the Foreign Agents Registration Act (FARA). FARA is a national security law designed to address covert efforts to influence policy and public opinion or to subvert our democracy by sowing division or otherwise distort the marketplace of ideas. FARA requires those acting as agents of foreign principals to disclose information about those relationships and appropriately label materials disseminated to the public. These requirements ensure that the American people and our lawmakers know and make informed decisions regarding the foreign source of information and activities intended to sway U.S. policymakers or the public.

FARA's transparency goals are key in countering nation-state threats at a time when foreign governments and foreign interests are increasing efforts to shape U.S. public policy. It is essential that corporate entities like sovereign wealth funds, law firms, or think tanks that work on behalf of foreign principals uphold FARA registration requirements. NSD enforces FARA administratively through voluntary compliance, civilly through cases filed in federal court for an injunctive order mandating compliance, and criminally for willful violations of the statute. But FARA currently lacks a mechanism to use civil investigative demand authority and impose civil monetary penalties for serious or repeat violations by corporate actors that do not rise to the level of a criminal violation. The Department supports legislative proposals to improve FARA compliance, including by creating additional intermediate civil enforcement tools which would better reflect the multi-dimensional relationship with corporate actors and would enable the Department to better incentivize corporate compliance with FARA. The Department is also in

the process of updating its FARA regulations to reflect changes in technology and the threat landscape.

III. The National Security Division's Approach to Corporate Enforcement and Compliance

As described above, the Department has changed its corporate enforcement policies to incentivize corporate responsibility and promote individual accountability—by clarifying and standardizing policies on voluntary self-disclosure and corporate cooperation and encouraging companies to potentially retool their compensation systems to promote compliance. The goal of the National Security Division's corporate enforcement program is to create the conditions for companies to invest in compliance programs that will prevent violations of our export control and sanctions laws, help them to detect violations that do occur, and report them to us.

We recognize that even the most well-designed and resourced compliance programs cannot prevent every violation of law, so when companies become aware that their employees may be committing crimes, we want the company to step up, report those facts to us, and help us to investigate and prosecute the individual offenders. To do that, NSD, like every Department component, has issued a policy that sets out how a company can obtain significantly more favorable treatment in a criminal investigation when it voluntarily self-discloses potentially criminal violations of our export control and sanctions laws.

As NSD's work demonstrates, our relationship with the business community is necessarily multi-faceted. Responsible corporate actors are critical to protecting our national assets and are on the front lines of sanctions and export control compliance efforts. Their decisions about which entities to do business with—and which entities to avoid—can often be just as impactful as our law enforcement disruptions or actions, and their cooperation and earlier reporting can be critical to our ability to identify and punish violations.

The bottom line is that we need responsible corporate actors to join us in the fight to defend U.S. national security. Certainly, when investigations of corporate crime reveal violations of our national security laws, and where companies violate the law, we will continue to hold them accountable. But we do not measure the effectiveness of our corporate enforcement efforts simply by the number of cases we bring. Rather, we judge our progress in this area by the impact of our efforts to protect the national security of the United States—both through our own efforts and interagency partnership with Treasury, Commerce, and State Departments.

IV. Challenges

Corporate investigations are complex, time-consuming matters that require the investment of significant resources to conduct effectively. Indeed, many of the National Security Division's recent corporate enforcement cases have involved the collection and review of millions of documents and the need to navigate the complex legal and logistical challenges inherent to conducting cross-border investigations.

To meet this challenge, NSD is committing significant new resources to bolster our

approach to corporate enforcement. Over the past year, we have added more than 25 new prosecutors to work on sanctions evasion, export control violations, and other similar cases. And in September, NSD announced the appointments of two veteran prosecutors to be the first Chief Counsel and Deputy Chief Counsel for Corporate Enforcement, to lead and oversee NSD's investigation and prosecution of national security-related corporate crime.

As NSD expands its capacity to investigate and prosecute corporate violations of national security laws, it will continue to work closely with U.S. Attorney's Offices and the Criminal Division to apply enforcement strategies that have proven their worth in other areas of the Department. In this effort, we can draw upon lessons learned from the success of the Criminal Division's enforcement efforts.

* * *

As we respond to a dynamic and evolving threat landscape, we will remain committed to using all the legal authorities in our arsenal to defend the nation against threats from state and non-state adversaries. When companies commit crimes that undermine our national security, we will be relentless in pursuing them. The Department is committed to ensuring individual accountability, discouraging corporate recidivism, promoting strong corporate culture, encouraging voluntary self-disclosure, and promoting transparency and public confidence.

Questions for the Record from Senator Chuck Grassley
Nicole Argentieri
Senate Judiciary Committee Hearing
“Cleaning Up the C-Suite: Ensuring Accountability for Corporate Criminals”
December 12, 2023

Ms. Argentieri: In your written testimony you stated, “the Department announced its largest corporate resolution that also involved the guilty plea of a chief executive officer (CEO). Binance pleaded guilty to violating the Bank Secrecy Act, failing to register as a money transmitting business, and violating U.S. sanctions, and Binance’s CEO, Changpeng Zhao, pleaded guilty to causing Binance to violate the Bank Secrecy Act. Binance agreed to pay \$4.3 billion in penalties...”

According to the terms of the plea agreement, Binance agreed to pay a criminal fine of approximately \$1.8 billion.¹ They also agreed to pay a “money judgment” of roughly \$2.5 billion representing the value of assets required to be forfeited to the U.S. government, which is not currently statutorily required to be deposited into the CVF.² However, the Department will offset the \$1.8 billion criminal fine by \$950 million paid to the CFTC and \$850 million paid to FinCEN or OFAC in connection with their parallel investigations. Meaning, of the multi-billion-dollar penalty, it appears that nothing could be deposited into the Crime Victims Fund if the criminal fine is completely offset.

- a. Were any criminal penalties from the Binance plea agreement collected and deposited into the CVF? If so, how much? If not, why not?
- b. Was the \$2.5 billion asset forfeiture “money judgment” offset by other fines or penalties Binance paid? If not, why not?

Response:

As outlined in our letter of earlier this year, Binance will pay the court-imposed fines and forfeiture on a schedule. Under its plea agreement with the Department, Binance was sentenced to pay a \$1.8 billion criminal fine for its failure to register as a money transmitting business, in violation of 18 U.S.C. § 1960. The Department of Justice (Department) agreed to offset \$300 million of this criminal fine against payments Binance makes to the Department of Treasury. In July, Binance paid the criminal fine it owed—that is, approximately \$1.5 billion—which was deposited in the Crime Victims Fund (CVF) pursuant to statute.³

Of the \$2.5 billion in forfeiture Binance is required to pay under its plea agreement, the Department has collected \$898 million in forfeiture related to Binance’s conviction for violating the International Emergency Economic Powers Act (IEEPA). This forfeiture qualified for deposit

¹ U.S. v. Binance Holdings, Ltd., Plea Agreement (Nov. 21, 2023) 13-14 <https://www.justice.gov/media/1326901/dl?inline>.

² U.S. v. Binance Holdings, Ltd., Order of Forfeiture (Nov. 21, 2023).

³ These funds are currently subject to a freeze within the CVF due to pending litigation regarding the U.S. Victims of State Sponsored Terrorism Fund (the Fund). Specifically, individuals have sued the Department, claiming that the full amount of the Binance penalty should be deposited into the Fund. See *Campuzano v. United States of America, et al.*, 24-cv-1652 (D.D.C. 2024); *Coe v. United States Department of Justice et al.*, 24-cv-2714 (D.D.C. 2024).

in the U.S. Victims of State Sponsored Terrorism Fund (Fund) pursuant to statute and has been deposited in the Fund. The remaining approximately \$1.6 billion in forfeiture relates to Binance's conviction for failing to register as a money transmitting business. The Department agreed to offset approximately \$1.5 billion of this amount against payments Binance has or will make to the Department of Treasury and the Commodity Futures Trading Commission (CFTC). The Department expects to collect approximately \$100 million of this amount, which will be deposited in the Treasury Forfeiture Fund.

The Department offset most of the forfeiture and part of Binance's criminal fine related to Binance's conviction for failure to register as a money transmitting business pursuant to the Department's "anti-piling on" policy, which was first announced by Deputy Attorney General Rod Rosenstein in 2018. The policy, which is codified in the Justice Manual, requires Department attorneys to "endeavor, as appropriate, to coordinate with and consider the amount of fines, penalties, and/or forfeiture paid to other federal, state, local, or foreign enforcement authorities that are seeking to resolve a case with a company for the same conduct" and to avoid the unnecessary imposition of duplicative monetary penalties. Justice Manual 1-12.100. In the Binance case, the Department entered into coordinated resolutions with the CFTC, and the Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) and Office of Foreign Assets Control (OFAC) for overlapping misconduct—namely failure to register, failure to have an effective AML program, and sanctions violations. Because the monetary penalties imposed by the various agencies were, in substantial part, duplicative, the Department determined that crediting a portion of these penalties was appropriate. The Department offset these penalties primarily against the forfeiture related to Binance's conviction for failure to register because it anticipated that the forfeiture related to Binance's conviction for violating sanctions would qualify for deposit to the U.S. Victims of State Sponsored Terrorism Fund and Binance's criminal fine would be deposited in the CVF. The forfeiture, by contrast, would have been deposited into the Treasury Forfeiture Fund.

According to Zhao's plea agreement, the ex-CEO was ordered to pay a \$50 million fine pursuant to 31 U.S.C. § 5322(e)(1). However, the Department deemed this fine satisfied if Zhao paid \$50 million to the CFTC by the time of sentencing.

- a. **When the \$50 million criminal fine was collected, was it statutorily required to be deposited into the CVF regardless of who collected the fine?⁴ Please explain.**
- b. **How much of the \$50 million criminal fine imposed was collected and deposited into the CVF? If none, why not?**

Response:

Pursuant to Zhao's plea agreement, the ex-CEO was ordered to pay a \$50 million fine pursuant to 31 U.S.C. § 5322(e)(1).⁵ As with the monetary penalties imposed on Binance, pursuant to the Department's anti-piling on policy, the Department considered whether to offset the fine imposed on Zhao given the \$150 million civil monetary penalty imposed by the CFTC to avoid the imposition of duplicative monetary penalties for the same fundamental misconduct. The Department did not collect the criminal fine, and instead deemed this fine satisfied if Zhao

⁴ 31 U.S.C. § 5322(e)(1) requires a fine to be imposed and 34 U.S.C. § 20101(b) requires a CVF deposit once a fine is collected.

⁵ *United States v. Changpeng Zhao*, Plea Agreement (Nov. 21, 2023) <https://www.justice.gov/media/1326906/dl?inline>.

paid \$50 million to the CFTC by the time of sentencing, which Zhao has done. Because the Department did not collect this fine, it cannot be deposited into the CVF. Only fines collected by the Department (either directly or via the courts) are eligible for deposit to the CVF pursuant to statute.

In response to my February letter this year about the CVF, the Justice Department said that ABB Limited agreed to pay a \$315 million criminal penalty as part of a deferred prosecution agreement. However, the terms of the agreement stated only \$72.5 million would be collected by the U.S. The rest would be reduced by up to \$242.5 million to settle other claims, including \$179.5 million involving foreign governments.

During the hearing, in response to my question about the settlement, you stated “when we do these resolutions where it’s important to have cooperation from foreign countries because that’s how we get evidence internationally, we do credit foreign governments.”

- a. In corporate criminal cases prosecuted by foreign governments, have foreign authorities credited monetary penalties to U.S. authorities conducting parallel investigations? If so, when, who and how much?**
- b. What investigative assistance did the South African government provide to the Department that warranted such a credit?**

In response to my February letter this year about the CVF, the Justice Department stated “[w]e are not aware of any circumstances since enactment of the VOCA Fix in which the Department resolved a case with a monetary penalty by DPA or NPA without collecting a monetary penalty for the Fund.”

Yet in a 2022 NPA with Jardine Lloyd Thompson Group Holdings Ltd. (JLT), the company agreed to disgorge approximately \$29 million in ill-gotten gains to the U.S. Treasury. However, the agreement provided the Department would credit up to 100 percent of the disgorgement amount in what the company pays to foreign authorities. Additionally, a 2022 NPA between the Department and Safran S.A. states the company would disgorge about \$17 million in ill-gotten profits. But it doesn’t specify if the company was to pay this money to the U.S. Treasury, and thus to the CVF or elsewhere.

- a. Were criminal penalties from these non-prosecution agreements collected and deposited into the CVF? If so, how much?**

According to the 2022 year-end report of the Department’s Criminal Division fraud unit, it imposed more than \$1.15 billion in total U.S. criminal monetary penalties. And yet, collection of these penalties doesn’t appear to be reflected by the CVF. During the hearing, I asked you for the financials showing how much of the criminal penalties imposed have been collected and deposited into the CVF. You committed to get back to me with those exact answers. You also agreed to provide answers with respect to how much of the \$315 million from the ABB Ltd. deferred prosecution agreement was collected and deposited into the CVF. Accordingly, what are those answers?

Responses to Above Questions:

The Department is fully committed to ensuring the solvency of the CVF. Since 2007, the CVF has received over \$31 billion in deposits from fines, penalties, special assessments, and bond forfeitures from federal cases, not tax dollars. Through the CVF, the Department is able to support thousands of programs annually with millions of dollars awarded in services provided directly to crime victims who have been physically, emotionally, and financially harmed by criminal activity. In addition to the CVF, the Department supports crime victims by providing direct compensation through restitution, restoration, and remission. For example, since 2000, the Department has provided over \$12 billion in direct compensation to victims from forfeited funds through remission and restoration.

I. Criminal Division

The Criminal Division is a leader in white-collar and corporate enforcement and handles the most complex domestic and international white-collar matters. The Criminal Division also develops corporate enforcement policies that are a model for the Department as a whole and is a thought-leader in development of Department-wide corporate enforcement policies. These corporate enforcement policies are designed to deter misconduct, encourage companies to invest in effective corporate compliance programs, and to incentivize companies to voluntarily self-disclose misconduct. This allows the Department to investigate and prosecute corporate criminal cases, hold culpable individuals responsible, and ensure companies have taken steps to remedy underlying misconduct.

Our prosecutors are guided by the *Principles of Federal Prosecution* and the *Principles of Federal Prosecution of Business Organizations* when making charging and resolution decisions.⁶ These principles instruct prosecutors to recommend federal prosecution where the conduct at issues constitutes a federal offense and the admissible evidence will probably be sufficient to obtain and sustain a conviction, unless the prosecution would serve no substantial federal interest, the individual is subject to effective prosecution in another jurisdiction, or there is an adequate non-criminal alternative. Prosecutors generally apply the same factors to corporate prosecutions as they do to individuals, with additional factors, such as the collateral consequences to non-culpable shareholders, pension holders, employees, or others, set forth in the *Principles of Federal Prosecution of Business Organizations*. These principles ensure the reasoned exercise of prosecutorial authority and the fair and evenhanded administration of federal criminal law.

II. The Criminal Division's Role in the CVF

The proportion of deposits to the CVF⁷ from penalties received pursuant to the Criminal Division's corporate criminal resolutions, including guilty pleas, deferred prosecution agreements (DPAs), and non-prosecution agreements (NPAs), is significant. The Criminal Division estimates that since 2019, approximately \$3.7 billion has been deposited into the CVF

⁶ See generally Justice Manual §§ 9-27.000, 9-28.000.

⁷ While the CVF includes deposits from penalties and other payments collected in federal criminal cases brought by the Department of Justice, including U.S. Attorney's Offices, we have focused our response on cases brought by the Criminal Division.

as a result of its corporate enforcement efforts, with at least \$1.7 billion in additional deposits anticipated this year. Additionally, the Department quickly implemented the Victims of Crime Act Fix to Sustain the Crime Victims Fund Act of 2021 (VOCA Fix), passed by Congress in 2021. Since passage of the VOCA Fix, over \$1 billion has been deposited, or is anticipated to be deposited, into the CVF from the Criminal Division's corporate non-guilty plea resolutions, including NPAs and DPAs.⁸

III. Specific Matters

You have asked for additional information regarding several specific matters that resulted in deposits to the CVF.

A. *ABB Ltd.*

With respect to ABB Ltd., the Department entered into a DPA with the Swiss multinational company to resolve violations of the Foreign Corrupt Practices Act (FCPA). This was a complex international investigation, involving evidence located around the world. The Department resolved its criminal investigation simultaneously with three other countries, as well as with the U.S. Securities and Exchange Commission (SEC). In multijurisdictional resolutions such as this, the Department's anti-piling on policy requires our prosecutors to consider the total penalties the company has agreed to pay across all jurisdictions when fashioning its monetary penalties to ensure that the interests of justice are fully vindicated and to avoid the unnecessary imposition of duplicative fines, penalties, or forfeiture. Other countries often apply the same considerations and typically take into account the global amount the company has agreed to pay to all jurisdictions—including to the United States—when fashioning their monetary penalties to also avoid the imposition of duplicative fines and, when applicable, to manage litigation risk associated with issues of international double jeopardy.

This consideration is particularly important in international corruption cases, where cooperation with foreign partners is critical. Coordinating across borders in the fight against international corruption amplifies the impact of our enforcement efforts, protects U.S. businesses and consumers who seek to play by the rules, and creates a free and fair international marketplace.

Under the DPA, ABB Ltd. agreed to pay \$315 million.⁹ The Department agreed to credit payments that ABB Ltd. made to the SEC, the United Kingdom, Switzerland, and South Africa. South African authorities also considered the global amount the company had agreed to pay to all jurisdictions—including to the United States—when fashioning its monetary penalty. The

⁸ As discussed in more detail below, under certain circumstances, the Criminal Division declines to prosecute companies for their criminal conduct but still requires them to pay all disgorgement, forfeiture, and restitution resulting from the misconduct at issue. The Criminal Division is depositing in the CVF payments made by these companies that would otherwise be deposited in the general fund of the Treasury. We believe Congress should update the law to clarify that payments that would otherwise be deposited in the general fund of the Treasury pursuant to declinations or other non-trial resolutions should also be deposited in the CVF.

⁹ Press Release, U.S. Dep't of Just., ABB Agrees to Pay Over \$315 Million to Resolve Coordinated Global Foreign Bribery Case (Dec. 2, 2022), <https://www.justice.gov/opa/pr/abb-agrees-pay-over-315-million-resolve-coordinated-global-foreign-bribery-case>.

Department's decision to credit the resolution in South Africa in the ABB Ltd. resolution was based on the assistance South Africa provided, as well as the harm caused by the misconduct in South Africa, and reflects the Department's long-standing policy to ensure that resolutions are just and appropriate and avoid the unnecessary duplication of monetary penalties.¹⁰ In this case, the criminal conduct occurred wholly in South Africa and was undertaken to help ABB Ltd. corruptly obtain and retain business from the South African state-owned and controlled energy company.

In addition to bearing the brunt of the harm in this case, South Africa also provided significant assistance in the investigation, sharing crucial documentary and testimonial evidence located in South Africa that was necessary to advance the Department's investigation. Even when a company fully cooperates with our investigation—like ABB Ltd. did in this case— independent cooperation from foreign authorities can be critical to our ability to prosecute criminal conduct. Foreign authorities can produce certified documentary records that can be introduced at a U.S. trial or develop cooperators who may testify.

After these credits, the Department collected \$85 million, of which \$83 million was deposited into the CVF.

This was the first corporate criminal investigation the Department resolved in parallel with South Africa as part of the Department's ongoing relationship with authorities in that country. Coordinating the resolution of major cases is a key factor that increases future coordinated resolutions and independent enforcement abroad. This resolution was quickly followed by a second significant resolution coordinated with South Africa. There, SAP SE, a publicly traded global software company, which agreed to pay \$220 million to resolve FCPA investigations from the Department and the SEC in January 2024.¹¹ We hope to continue coordinating corporate criminal resolutions with South Africa in the future. This close coordination with foreign authorities makes it more difficult for corrupt actors, including corporations, to conduct and hide their crimes and allows the Department to appropriately punish wrongdoers while strengthening enforcement regimes across the world.

B. JLT and Safran

The Jardine Lloyd Thompson Group Holdings Ltd. (JLT) and Safran S.A. (Safran) investigations were not resolved via a DPA or NPA; instead, these matters were resolved by declinations under the Criminal Division's Corporate Enforcement and Voluntary Self-Disclosure Policy (CEP). Pursuant to the CEP, the Criminal Division declines to prosecute companies for their criminal conduct when they voluntarily self-disclose the misconduct, fully cooperate with the Criminal Division's investigation, timely and appropriately remediate, and agree to pay all disgorgement resulting from the misconduct at issue. Both JLT and Safran met these criteria. As a result, the Department declined to prosecute JLT and Safran but required both companies to disgorge any profit from the misconduct. Safran paid its disgorgement in December 2022 of \$17.2 million, and \$16.6 million was deposited in the CVF. The Department

¹⁰ See generally Justice Manual § 1-12.000.

¹¹ Press Release, U.S. Dep't of Just., SAP to Pay Over \$220M to Resolve Foreign Bribery Investigations (Jan. 10, 2024), <https://www.justice.gov/opa/pr/sap-pay-over-220m-resolve-foreign-bribery-investigations>.

agreed to credit up to 100 percent of the JLT disgorgement against any payment made as part of a resolution with the Serious Fraud Office in the United Kingdom within one year. However, JLT did not make any payments within the required period. In July 2022, the company paid the full disgorgement of \$29 million pursuant to the Department's CEP agreement. Of that disgorgement, \$28 million was deposited in the CVF.

C. CVF Deposits Over the Past 5 Years

Attached please find charts summarizing information from 2018 to 2023 with respect to corporate DPAs, NPAs, and CEP declinations entered into by the Criminal Division.

Also attached is a similar chart for corporate guilty pleas entered into by the Criminal Division. When defendants, including corporate defendants, enter into guilty pleas with the Criminal Division, they pay their fines to the courts, not the Department. The Department relies on the courts to report to us when they receive these payments. The courts then deposit these fines into the CVF and provide the Department with a summary of those deposits. Therefore, while the Department can confirm whether any given defendant has paid their fine, we cannot confirm whether and when courts deposited that fine into the CVF. However, we coordinate with the CVF to ensure the CVF is aware of deposits from resolved cases and thus can ensure deposits from guilty pleas are available timely.

With respect to non-corporate defendants, fines are paid—similar to corporate defendants—to the court, and the court provides a general summary of deposits into the CVF.

Criminal Division Corporate Investigations Resolved Through Deferred Prosecution Agreements
(2019-present)

Date	Case	U.S. Criminal Monetary Penalties	Recipient(s)	Amount to the Crime Victims Fund
2/22/2019	Mobile TeleSystems PJSC	• \$850,000,000 total monetary penalty ○ Reduced to \$709,500,000 after \$40,500,000 credit for subsidiary guilty plea payment and \$100,000,000 credit to SEC	• \$709,500,000 to US Treasury ○ \$688,215,000 to Treasury's Miscellaneous Receipts ○ \$21,285,000 to the Department of Justice Working Capital Fund • \$100,000,000 to SEC	\$0 *This resolution occurred before the VOCA Fix Act.
3/12/2019	Lumber Liquidators Holdings, Inc.	• \$19,095,648 total monetary penalty • \$13,904,352 total forfeiture ○ Reduced to \$7,807,053.58 after \$6,097,298.42 credit to SEC	• \$19,095,648 to US Treasury ○ \$18,522,778.56 to Treasury's Miscellaneous Receipts ○ \$572,869.44 to the Department of Justice Working Capital Fund • \$7,807,053.58 to Treasury Forfeiture Fund • \$6,097,298.42 to SEC	\$0 *This resolution occurred before the VOCA Fix Act.

Date	Case	U.S. Criminal Monetary Penalties	Recipient(s)	Amount to the Crime Victims Fund
4/9/2019	Standard Chartered Bank	• \$480,000,000 total monetary penalty ◦ Reduced to \$52,210,160 after County District Attorney's Office, \$163,687,500 credit to Board of Governors of the Federal Reserve System, \$180,000,000 credit to New York Department of Financial Services, and GBP102,163,200 credit to United Kingdom • \$240,000,000 total forfeiture	• \$52,210,160 to U.S. Treasury ◦ \$25,321,927.60 to the Treasury Miscellaneous Receipts ◦ \$26,105,080 to the U.S. Victims of State Sponsored Terrorism Fund ◦ \$783,152.40 to the Department of Justice Working Capital Fund • \$240,000,000 in forfeiture ◦ \$120,000,000 to the U.S. Victims of State Sponsored Terrorism Fund ◦ \$60,823,489.21 to the Assets Forfeiture Fund ◦ \$58,351,818.23 to the Treasury Forfeiture Fund • \$292,210,160 to New York County District Attorney's Office • \$163,687,500 to Board of Governors of the Federal Reserve System • \$180,000,000 to New York Department of Financial Services • GBP 102,163,200 to United Kingdom Financial Conduct Authority	\$0 *This resolution occurred before the VOCA Fix Act.

Date	Case	U.S. Criminal Monetary Penalties	Recipient(s)	Amount to the Crime Victims Fund
4/23/2019	Hydro Extrusion USA, LLC (FKA: Sapa Extrusions, Inc.) ¹	No monetary penalty imposed in light of subsidiary guilty plea payments of \$1,837,099 in forfeiture and \$34,108,001.11 in restitution	N/A	\$0
4/25/2019	Celadon Group Inc.	\$42,245,302 individual compensation	\$42,245,302 to individual compensation	\$0
6/25/2019	TechnipFMC plc ²	\$296,184,000 total monetary penalty - Reduced to \$81,352,966.83 after \$500,000 credit for subsidiary guilty plea payment and \$214,331,033.17 credit to Brazil	\$81,352,966.83 to US Treasury \$78,912,377.83 to Treasury's Miscellaneous Receipts \$2,440,589.00 to the Department of Justice Working Capital Fund \$214,331,033.17 to Brazil	\$0 *This resolution occurred before the VOCA Fix Act.
11/6/2019	Tower Research Capital LLC	\$24,400,000 total monetary penalty - Reduced to \$0 after \$24,400,000 credit to CFTC \$10,500,000 total disgorgement \$32,593,849 total victim compensation	\$10,500,000 to US Treasury \$10,185,000 to Treasury's Miscellaneous Receipts \$315,000 to the Department of Justice Working Capital Fund \$24,400,000 to CFTC \$32,593,849 to victims	\$0 *This resolution occurred before the VOCA Fix Act.

¹ One of the company's subsidiaries (Hydro Extrusion Portland, Inc.) also pled guilty as part of a single resolution. See Corporate Guilty Plea Chart.

² One of the company's subsidiaries (Technip USA, Inc.) also pled guilty as part of a single resolution. See Corporate Guilty Plea Chart.

Date	Case	U.S. Criminal Monetary Penalties	Recipient(s)	Amount to the Crime Victims Fund
11/22/2019	Samsung Heavy Industries Company Limited	• \$75,481,600 total monetary penalty ◦ Reduced to \$37,740,800 after \$37,740,800 credit to Brazil	• \$37,740,800 to US Treasury ◦ \$36,608,576 to Treasury's Miscellaneous Receipts ◦ \$1,132,224 to the Department of Justice Working Capital Fund • \$37,740,800 to Brazil	\$0 *This resolution occurred before the VOCA Fix Act.
12/6/2019	Telefonaktiebolaget LM Ericsson ³	• \$520,650,432 total monetary penalty ◦ Reduced to \$511,130,432 after \$9,520,000 credit for subsidiary guilty plea payment	• \$511,130,432 to US Treasury ◦ \$495,796,519.04 to Treasury's Miscellaneous Receipts ◦ \$15,333,912.96 to the Department of Justice Working Capital Fund	\$0 *This resolution occurred before the VOCA Fix Act.
1/21/2020	Propex Derivatives Pty Ltd	• \$462,271 total monetary penalty ◦ Reduced to \$0 after \$462,271 credit to the CFTC • \$73,429 total disgorgement • \$464,300 total victim compensation	• \$73,429.00 to US Treasury ◦ \$23,741.72 to the Treasury's Miscellaneous Receipts ◦ \$47,484.41 to the Crime Victims Fund • \$2,202.87 to the Department of Justice Working Capital Fund • \$464,300 to victims	\$47,484.41 ⁴ *This resolution occurred before the VOCA Fix Act.

³ One of the company's subsidiaries (Ericsson Egypt Ltd.) also pled guilty as part of a single resolution. See Corporate Guilty Plea Chart.

⁴ While these resolutions were entered into before the passage of the VOCA Fix, these funds were collected after its passage and deposited into the CVF.

Date	Case	U.S. Criminal Monetary Penalties	Recipient(s)	Amount to the Crime Victims Fund
1/31/2020	Airbus SE	• \$2,329,715,271 total monetary penalty ◦ Reduced to \$527,224,475 after \$1,797,490,796 credit to France, \$5,000,000 credit to U.S. Department of State's Directorate of Defense Trade Controls • €50,000,000 total forfeiture	• \$527,224,475 to US Treasury ◦ \$285,653,442.45 to the Treasury's Miscellaneous Receipts ◦ \$15,816,734.15 to the Department of Justice Working Capital Fund ◦ \$225,754,298.30 to the Crime Victims Fund • \$1,797,490,796 to France • \$5,000,000 to DDTC • €50,000,000 transferred for U.S. civil forfeiture, to Treasury Forfeiture Fund	\$225,754,298.30 *This resolution occurred before the VOCA Fix Act.
6/25/2020	Novartis Hellas S.A.C.I	• \$225,000,000 total monetary penalty	• \$225,000,000 to US Treasury ◦ \$218,250,000 to the Treasury's Miscellaneous Receipt ◦ \$6,750,000 to the Department of Justice Working Capital Fund	\$0 *This resolution occurred before the VOCA Fix Act.
6/25/2020	Alcon Pte Ltd	• \$8,925,000 total monetary penalty	• \$8,925,000 to US Treasury ◦ \$8,657,250.00 to the Treasury's Miscellaneous Receipts ◦ \$267,750.00 to the Department of Justice Working Capital Fund	\$0 *This resolution occurred before the VOCA Fix Act.

Date	Case	U.S. Criminal Monetary Penalties	Recipient(s)	Amount to the Crime Victims Fund
8/19/2020	The Bank of Nova Scotia	• \$42,000,000 total monetary penalty ◦ Reduced to \$21,000,000 after \$21,000,000 credit to CFTC • \$11,828,912 total disgorgement ◦ Reduced to \$0 after \$11,828,912 credit to USPIS CFF • \$6,622,190 total victim compensation	• \$21,000,000 to US Treasury ◦ \$20,370,000 to the Treasury's Miscellaneous Receipts ◦ \$630,000.00 to the Department of Justice Working Capital Fund • \$6,622,190 to victims • \$11,828,912 to USPIS CFF • \$21,000,000 to CFTC	\$0 *This resolution occurred before the VOCA Fix Act.
8/28/2020	Herbalife Nutrition Ltd.	• \$55,743,093 total monetary penalty	• \$55,743,093 to US Treasury ◦ \$54,070,800.21 to the Treasury's Miscellaneous Receipts Fund ◦ \$1,672,292.79 to the Department of Justice Working Capital Fund	\$0 *This resolution occurred before the VOCA Fix Act.
9/28/2020	JP Morgan Chase & Co.	• \$436,431,811 total monetary penalty ◦ Reduced to \$0 for credit to CFTC • \$172,034,790 total disgorgement ◦ Reduced to \$162,034,790 after credit to SEC • \$311,737,008 total victim compensation	• \$162,035, to US Treasury ◦ \$157,173,746 to the Treasury's Miscellaneous Receipts ◦ \$4,861,680 to the Department of Justice Working Capital Fund • \$311,737,009 008 to victims	\$0 *This resolution occurred before the VOCA Fix Act.

Date	Case	U.S. Criminal Monetary Penalties	Recipient(s)	Amount to the Crime Victims Fund
10/22/2020	Goldman Sachs Group, Inc. ⁵	• \$2,315,088,000 total monetary penalty ◦ Reduced to \$1,262,588,000 after \$500,000 credit for subsidiary guilty plea payment, \$704,012,000 credit to SEC, Fed, DFS, and \$247,988,000 to UK, Singapore, and \$100,000,000 credit to Hong Kong • \$606,000,000 total disgorgement ◦ Reduced to \$0 after \$606,000,000 credit to Malaysia	• \$1,262,588,000 to US Treasury ◦ \$1,224,710,360 to the Treasury's Miscellaneous Receipts ◦ \$37,877,640 to the Department of Justice Working Capital Fund • \$606,000,000 to Malaysia • \$400,000,000 to SEC • \$154,000,000 to FED • \$150,000,000 to DFS • \$126,000,000 to UK • \$122,000,000 to Singapore • \$100,000,000 to Hong Kong	\$0 *This resolution occurred before the VOCA Fix Act.
10/27/2020	Beam Suntory Inc	• \$19,572,885 total monetary penalty	• \$19,572,885 to US Treasury ◦ \$18,985,698.45 to the Treasury's Miscellaneous Receipts ◦ \$587,186.55 to the Department of Justice Working Capital Fund	\$0 *This resolution occurred before the VOCA Fix Act.

⁵ One of the company's subsidiaries (Goldman Sachs Malaysia) also pled guilty as part of a single resolution. See Corporate Guilty Plea Chart.

Date	Case	U.S. Criminal Monetary Penalties	Recipient(s)	Amount to the Crime Victims Fund
12/3/2020	Vitol Inc.	• \$135,000,000 total monetary penalty ◦ Reduced to \$90,000,000 after \$45,000,000 credit to Brazil	• \$90,000,000 to US Treasury ◦ \$87,300,000 was to the Treasury's Miscellaneous Receipts ◦ \$2,700,000 to the Department of Justice Working Capital Fund • \$45,000,000 to Brazil	\$0 *This resolution occurred before the VOCA Fix Act.
1/7/2021	The Boeing Company	• \$243,600,000 total monetary penalty • \$1,770,000,000 total airline customer compensation • \$500,000,000 total crash victim beneficiary compensation	• \$243,600,000 to US Treasury ◦ \$236,292,000 to the Treasury's Miscellaneous Receipts ◦ \$7,308,000 to the Department of Justice Working Capital Fund • \$1,770,000,000 to airline customers • \$500,000,000 to crash victims' beneficiaries	\$0 *This resolution occurred before the VOCA Fix Act.

Date	Case	U.S. Criminal Monetary Penalties	Recipient(s)	Amount to the Crime Victims Fund
1/8/2021	Deutsche Bank Aktiengesellschaft	• \$85,186,206 total monetary penalty ○ Reduced to \$59,561,206 after \$5,625,000 credit to CFTC and \$20,000,000 payment to USPIS CFF • \$681,480 total disgorgement • \$1,223,738 total victim compensation	• \$59,561,206 (monetary penalty) to US Treasury ○ \$58,924,078 to the Crime Victims Fund ○ \$1,822,394 to the Department of Justice Working Capital Fund • \$681,480 (disgorgement) to US Treasury ○ \$661,035.60 to Treasury's Miscellaneous Receipts ○ \$20,444.40 to the Department of Justice Working Capital Fund • \$5,625,000 to CFTC • \$20,000,000 to USPIS CFF • \$1,223,738 to victims or US Treasury	\$58,924,078 *This resolution occurred before the VOCA Fix Act.
5/27/2021	Bank Julius Baer & Company Ltd	• \$43,320,000 total monetary penalty • \$36,368,400 total forfeiture	• \$43,320,000 to US Treasury ○ \$42,020,400 to the Crime Victims Fund ○ \$1,299,600 to the Department of Justice Working Capital Fund • \$36,368,400 to Assets Forfeiture Fund	\$42,020,400 *This resolution occurred before the VOCA Fix Act.

Date	Case	U.S. Criminal Monetary Penalties	Recipient(s)	Amount to the Crime Victims Fund
6/25/2021	Amec Foster Wheeler Energy Limited	• \$18,375,000 total monetary penalty ◦ Reduced to \$7,656,250 after \$6,125,000 credit to Brazil and \$4,593,750 credit to UK	• \$7,656,250 to US Treasury ◦ \$7,426,562.50 to the Treasury's Miscellaneous Receipts ◦ \$229,687.50 to the Department of Justice Working Capital Fund • \$6,125,000 to Brazil • \$4,593,750 to UK	\$0 *This resolution occurred before the VOCA Fix Act.
7/7/2021	Avanos Medical, Inc.	• \$12,600,000 total monetary penalty • \$689,000 total disgorgement • \$8,939,000 total victim compensation	• \$13,289,000 to US Treasury ◦ \$12,890,330 to the Crime Victims Fund ◦ \$398,670 to the Department of Justice Working Capital Fund • \$8,939,000 to victims	\$12,890,330
10/19/2021	Credit Suisse Group AG	• \$247,520,000 total monetary penalty ◦ Reduced to \$175,068,000 after \$500,000 credit for subsidiary guilty plea payment, \$47,200,000 credit to SEC, and \$24,752,000 credit to United Kingdom • \$10,344,865 total forfeiture ◦ Reduced to \$0 after \$10,344,865 credit to SEC	• \$175,068,000 to US Treasury ◦ \$169,815,960 to the Crime Victims Fund ◦ \$5,252,040 to the Department of Justice Working Capital Fund • \$57,544,865 to SEC • \$24,752,000 to United Kingdom	\$169,815,960

Date	Case	U.S. Criminal Monetary Penalties	Recipient(s)	Amount to the Crime Victims Fund
4/18/2022	Stericycle, Inc.	• \$52,500,000 total monetary penalty ○ Reduced to \$40,834,995 after credit of \$11,665,005 credit to Brazil	• \$40,834,995 to US Treasury ○ \$39,609,945.15 to the Crime Victims Fund ○ \$1,225,049.85 to the Department of Justice Working Capital Fund • \$11,665,005 to Brazil	\$39,609,945.15
9/16/2022	GOL Linhas Aereas Inteligentes S.A.	• \$87,000,000 total monetary penalty ○ Reduced to \$15,830,352.90 due to inability to pay and after \$1,700,000 credit to Brazil	• \$15,830,352.90 to US Treasury ○ \$15,355,442.31 to the Crime Victims Fund ○ \$474,910.59 to the Department of Justice Working Capital Fund • \$1,700,000 to Brazil	\$15,355,442.31

Date	Case	U.S. Criminal Monetary Penalties	Recipient(s)	Amount to the Crime Victims Fund
12/2/2022	ABB Ltd ⁶	• \$315,000,000 total monetary penalty ◦ Reduced to \$85,760,113.30 with additional payments potentially forthcoming, after \$1,000,000 credit for subsidiary guilty plea payment, and credits up to the following amounts in other jurisdictions: \$148,812,717 credit to South Africa, \$4,309,200 credit to Switzerland, \$11,000,000 credit to Germany, and \$63,000,000 credit to SEC.	• \$85,760,113.30 to US Treasury ◦ \$83,187,309.90 to the Crime Victims Fund ◦ \$2,572,803.40 to the Department of Justice Working Capital Fund • \$148,812,717 to South Africa • \$4,309,200 to Switzerland • \$11,000,000 to Germany • \$63,000,000 to SEC	\$83,187,309.90
12/19/2022	UOP LLC, d/b/a Honeywell UOP	• \$79,242,750 total monetary penalty ◦ Reduced to \$39,621,375 after \$39,621,375 credit to Brazil • \$105,657,000 total forfeiture ◦ Reduced to \$0 after \$61,554,213 credit to SEC and \$44,102,787 credit to Brazil	• \$39,621,375 to US Treasury ◦ \$38,432,733.75 to the Crime Victims Fund ◦ \$1,188,641.25 to the Department of Justice Working Capital Fund • \$83,724,162 to Brazil • \$61,554,213 to SEC	\$38,432,733.75

⁶ Two of the company's subsidiaries (ABB South Africa and ABB Management Services) also pled guilty as part of a single resolution. See Corporate Guilty Plea Chart.

Date	Case	U.S. Criminal Monetary Penalties	Recipient(s)	Amount to the Crime Victims Fund
8/10/2023	Corporacion Financiera Colombiana S.A.	• \$40,600,000 total monetary penalty ○ Reduced to \$20,300,000 after \$20,300,000 credit to Colombia • \$28,630,000 total forfeiture ○ Reduced to \$0 after \$28,630,000 credit to SEC	• \$20,300,000 to US Treasury ○ \$19,691,000 to the Crime Victims Fund ○ \$609,000 to the Department of Justice Working Capital Fund • \$20,300,000 to Colombia • \$28,630,000 to SEC	\$19,691,000
11/20/2023	Tysers Insurance Brokers Limited	• \$36,000,000 total monetary penalty • \$10,589,275 total forfeiture	• \$36,000,000 to US Treasury ○ \$34,920,000 to the Crime Victims Fund ○ \$1,080,000 to the Department of Justice Working Capital Fund • \$10,589,275 to Assets Forfeiture Fund	\$34,920,000
11/20/2023	H.W. Wood Limited	• \$22,500,000 total monetary penalty ○ Reduced to \$508,000 due to inability to pay • \$2,338,735 total forfeiture ○ Reduced to \$0 due to inability to pay	• \$508,000 to US Treasury ○ \$492,760.00 to the Crime Victims Fund ○ \$15,240 to the Department of Justice Working Capital Fund	\$492,760.00

Date	Case	U.S. Criminal Monetary Penalties	Recipient(s)	Amount to the Crime Victims Fund
12/14/2023	Freepoint Commodities LLC	• \$68,000,000 total monetary penalty ◦ Reduced to \$45,560,000 after \$22,440,000 credit to Brazil • \$30,551,150 total forfeiture ◦ Reduced to \$22,913,362 after \$7,637,788 credit to CFTC	• \$45,560,000 to US Treasury ◦ \$44,193,200 to the Crime Victims Fund ◦ \$1,366,800 to the Department of Justice Working Capital Fund • \$22,913,362 to Assets Forfeiture Fund • \$22,440,000 to Brazil • \$7,637,788 to CFTC	\$44,193,200
1/10/2024	SAP SE	• \$118,800,000 total monetary penalty ◦ Reduced to \$63,590,859 due to \$109,141 Clawback Pilot Program credit and \$55,100,000 credit to South Africa • \$103,396,765 total forfeiture ◦ Reduced to \$0 after \$85,046,035 credit to SEC and \$18,350,730 credit to South Africa	• \$63,590,859 to US Treasury ◦ \$61,683,133.23 to the Crime Victims Fund ◦ \$1,907,725.77 to the Department of Justice Working Capital Fund • \$73,450,730 to South Africa • \$85,046,035 to SEC	\$61,683,133.23

Criminal Division Corporate Investigations Resolved Through Non-Prosecution Agreements
(2019-present)

Date	Case	U.S. Criminal Monetary Penalties	Recipient(s)	Amount to the Crime Victims Fund
2/25/2019	Fresenius Medical Care AG & Co. KGaA	• \$84,715,273 total monetary penalty • \$147,000,000 total disgorgement • Reduced to \$0 after \$147,000,000 credit to SEC	• \$84,715,273 to US Treasury ◦ \$82,173,814.81 to Treasury's Miscellaneous Receipts ◦ \$2,541,458.19 to the Department of Justice Working Capital Fund • \$147,000,000 to SEC	\$0 *This resolution occurred before the VOCA Fix Act.
3/5/2019	Baton Holdings, LCC, the successor in interest of Bankrate, Inc.	• \$15,540,000 total monetary penalty • \$13,000,000 total compensation to individuals	• \$15,540,000 to USPIS Consumer Fraud Fund • \$13,000,000 individual compensation	\$0 *This resolution occurred before the VOCA Fix Act.
6/20/2019	Walmart Inc. ¹	• \$137,955,249 total monetary penalty ◦ Reduced to \$133,605,861 after credit for subsidiary's \$724,898 criminal fine and \$3,624,490 forfeiture payment	• \$133,605,861 to US Treasury ◦ \$129,597,685.17 to Treasury's Miscellaneous Receipts ◦ \$4,008,175.83 to the Department of Justice Working Capital Fund	\$0 *This resolution occurred before the VOCA Fix Act.

¹ One of the company's subsidiaries (Walmart Brasilia) also plead guilty as part of a single resolution. See Corporate Guilty Plea Chart.

Date	Case	U.S. Criminal Monetary Penalties	Recipient(s)	Amount to the Crime Victims Fund
6/25/2019	Merrill Lynch Commodities, Inc.	• \$11,535,415 total monetary penalty • \$11,100,000 total disgorgement • \$2,364,585 total restitution	• \$22,635,415 to US Treasury - o \$21,956,352.55 to Treasury's Miscellaneous Receipts - o \$679,062.45 to the Department of Justice Working Capital Fund • \$2,364,585 in restitution	\$0 *This resolution occurred before the VOCA Fix Act.
7/22/2019	Microsoft Magyarország Számítástechnikai Szolgáltató és Kereskedelmi Kft.	• \$8,751,795 total monetary penalty	• \$8,751,795 to US Treasury - o \$8,489,241.15 to Treasury's Miscellaneous Receipts - o \$262,553.85 to the Department of Justice Working Capital Fund	\$0 *This resolution occurred before the VOCA Fix Act.
10/17/2019	ContextMedia Health, LLC, dba Outcome Health	• Up to \$70,000,000 total individual compensation	• Up to \$70,000,000 individual compensation	\$0 *This resolution occurred before the VOCA Fix Act.
12/2/2019	UniTrans International, Inc.	• \$18,000,000 total monetary penalty - o Reduced to \$4,500,000 after credit for parallel civil settlement payment • \$13,500,000 total individual compensation	• \$4,500,000.00 to US Treasury - o 4,365,000 was sent to Treasury's Miscellaneous Receipts - o \$135,000 to the Department of Justice Working Capital Fund • \$13,500,000 to the USVSST Fund	\$0 *This resolution occurred before the VOCA Fix Act.

Date	Case	U.S. Criminal Monetary Penalties	Recipient(s)	Amount to the Crime Victims Fund
4/15/2019	UniCredit Bank Austria AG ²	• \$20,000,000 forfeiture ◦ Reduced to \$0 after credit for payment to New York Department of Financial Services	• \$20,000,000 to New York DFS	\$0
4/30/2020	Bank Hapoalim B.M. and Hapoalim (Switzerland) Ltd.	• \$9,329,955 total monetary penalty • \$20,733,322 total forfeiture	• \$9,329,955 to U.S. Treasury ◦ \$9,050,095.15 to Crime Victims Fund ◦ \$279,899.85 to the Department of Justice Working Capital Fund ◦ \$50 overpayment to the Treasury's General Fund (redirected to CVF) • \$20,733,322 to Assets Forfeiture Fund	\$9,050,095.15 ³
6/8/2020	Alutiiq International Solutions, LLC	• \$1,259,444 total compensation	• \$1,259,444 compensation to the General Services Administration	\$0

² Another bank subsidiary (UniCredit Bank AG) also plead guilty as part of this resolution. *See* Corporate Guilty Plea Chart.

³ JMD reports that this payment was processed after the VOCA Fix though the resolution occurred before the VOCA Fix.

Date	Case	U.S. Criminal Monetary Penalties	Recipient(s)	Amount to the Crime Victims Fund
2/25/2021	United Airlines, Inc.	• \$8,215,592 total monetary penalty • \$9,055,823 total disgorgement	• 8,215,592 to US Treasury ◦ \$7,697,449.55 to Treasury's Miscellaneous Receipts ◦ \$518,142.45 to the Department of Justice Working Capital Fund • \$9,055,823.00 was sent to USPS	With the exception of \$100,000, all of the disbursements to the Miscellaneous Receipts occurred before the VOCA Fix Act. \$100,000 is in the process of being reversed and deposited to the CVF.
4/20/2023	IRB Brasil Resseguros SA	• \$5,000,000 total shareholder compensation	• \$5,000,000 to shareholder escrow account	\$0
9/28/2023	Albemarle Corporation	• \$98,236,547 total monetary penalty • \$98,511,669 total forfeiture ◦ Reduced to \$16,654,806 after \$81,856,863 credit to SEC	• \$98,236,547 to US Treasury ◦ \$95,289,450.59 to the Crime Victims Fund ◦ \$2,947,096.41 to the Department of Justice Working Capital Fund • \$16,654,806 to Treasury Forfeiture Fund • \$81,856,863 to SEC	\$95,289,450.59

**Criminal Division Corporate Investigations Resolved Through
Corporate Enforcement Policy Declinations with Disgorgement**
(2019-present)

Date	Case	U.S. Criminal Monetary Penalties	Recipient(s)	Amount to the Crime Victims Fund
2/13/2019	Cognizant Technology Solutions Corporation	• \$19,370,561 total disgorgement ◦ Reduced to \$2,976,210 after \$16,394,351 credit to SEC	• \$2,976,210 to US Treasury ◦ \$2,886,923.70 to Treasury's Miscellaneous Receipts ◦ \$89,286.30 to the Department of Justice Working Capital Fund • \$16,394,351 to SEC	\$0. *This resolution occurred before the VOCA Fix Act.
9/19/2019	Quad/Graphics Inc.	• \$6,936,174 total disgorgement ◦ Reduced to \$0 after \$6,936,174 credit to SEC	• \$6,936,174 to SEC	\$0
8/5/2020	World Acceptance Corporation	• \$17,826,000 total disgorgement ◦ Reduced to \$0 after \$17,826,000 credit to SEC	• \$17,826,000 to SEC	\$0

Date	Case	U.S. Criminal Monetary Penalties	Recipient(s)	Amount to the Crime Victims Fund
3/18/2022	Jardine Lloyd Thompson Group Holdings Ltd.	• \$29,081,951 total disgorgement	• \$29,081,951 to US Treasury - o \$28,209,492.47 to the Crime Victims Fund - o \$872,458.53 to the Department of Justice Working Capital Fund	\$28,209,492.47
12/21/2022	Safran S.A.	• \$17,159,753 total disgorgement	• \$17,159,753 to US Treasury - o \$16,644,960.41 to the Crime Victims Fund - o \$514,792.59 to the Department of Justice Working Capital Fund	\$16,644,960.41
3/8/2023	Corsa Coal Corporation	• \$32,695,881 total disgorgement - o Reduced to \$1,200,000 due to inability to pay	• \$1,200,000 to US Treasury - o \$1,164,000 to the Crime Victims Fund - o \$36,000 to the Department of Justice Working Capital Fund	\$1,164,000
10/25/2023	HealthSun Health Plans, Inc.	• \$53,170,114.60 in repayments to the U.S. Department of Health and Human Services ("HHS") Centers for Medicare & Medicaid Services ("CMS")	• \$53,170,114.60 to HHS CMS	\$0

Date	Case	U.S. Criminal Monetary Penalties	Recipient(s)	Amount to the Crime Victims Fund
11/16/2023	Lifecore Biomedical, Inc. (f/k/a Landec Corporation)	\$406,505 total disgorgement	\$406,505 to US Treasury \$394,309.85 to the Crime Victims Fund \$12,195.15 to the Department of Justice Working Capital Fund	\$394,309.85

Criminal Division Corporate Guilty Pleas
(2019 – Present)

Date	Name	U.S. Criminal Monetary Penalties	Recipient(s)
2/22/2019	Kolorit	• \$500,000 total criminal fine¹ • \$40,000,000 total criminal forfeiture	• \$500,000 fine paid to court • \$40,000,000 to Treasury Forfeiture Fund
4/15/2019	UniCredit Bank AG	• 468,350,000 total criminal fine ◦ Reduced to \$0 after credit of up to \$468,350,000 for payments made to the Board of Governors of the Federal Reserve System (\$157,770,000), the New York State Department of Financial Services (\$405,000,000) • \$316,545,816 criminal forfeiture	• \$316,545,816 criminal forfeiture ◦ \$316,514,161 to the U.S. Victims of State Sponsored Terrorism Fund ◦ \$31,655 to Assets Forfeiture Fund
5/13/2019	Hydro Extrusion Portland, Inc. (FKA: Sapa Profiles, Inc.) ²	• \$1,837,099 total criminal forfeiture • \$34,108,001.11 total restitution	• \$1,837,099 to Assets Forfeiture Fund • \$34,108,001.11 to court for restitution

¹ Criminal fines are made through the court and as a result the Department does not have visibility and is unable to confirm precise deposits to the Crime Victims Fund. Pursuant to 34 U.S.C. 20101, the Department believes that the majority of these fines—not forfeiture, restitution, or payments to victims or others—should be deposited to the CVF.

² The company's parent company (Hydro Extrusion USA, LLC) also entered into a DPA with the Fraud Section as part of a single resolution. See Corporate DPA Chart.

Date	Name	U.S. Criminal Monetary Penalties	Recipient(s)
6/20/2019	Walmart Brasilia ³	• \$724,898 total criminal fine • \$3,624,490 total criminal forfeiture	• \$724,898 fine paid to court • \$3,624,490 to Assets Forfeiture Fund
6/25/2019	Technip USA, Inc. (Technip USA) ⁴	• \$500,000 total criminal fine	• \$500,000 paid to court
12/6/2019	Ericsson Egypt Ltd. ⁵	• \$9,520,000 total criminal fine	• \$9,520,000 paid to court
6/10/2020	SK Engineering & Construction Co., Ltd	• \$65,778,847.08 total criminal fine ◦ Reduced to 60,578,847.08 after \$5,200,000 credit for civil settlement • \$2,601,883.86 total restitution	• \$60,578,847.08 paid to court • \$5,200,000 for civil settlement • \$2,601,883.86 to court in restitution
9/22/2020	Sargeant Marine Inc.	• \$90,000,000 total criminal fine ◦ Reduced to \$16,600,000 due to inability to pay	• \$16,600,000 paid to court
10/14/2020	J&F Investimentos S.A.	• \$256,497,026 total criminal fine ◦ Reduced to \$128,248,513 after \$128,248,513 credit to Brazil	• \$128,248,513 paid to court • \$128,248,513 to Brazil

³ The company's parent company (Walmart Inc.) also entered into an NPA with the Fraud Section as part of a single resolution. See Corporate NPA Chart.

⁴ The company's parent company (TechnipMC plc) also entered into a DPA with the Fraud Section as part of a single resolution. See Corporate DPA Chart.

⁵ The company's parent company (Telefonaktiebolaget LM Ericsson) also entered into a DPA with the Fraud Section as part of a single resolution. See Corporate DPA Chart.

Date	Name	U.S. Criminal Monetary Penalties	Recipient(s)
10/22/2020	Goldman Sachs Malaysia ⁶	• \$500,000 total criminal fine	• \$500,000 paid to court
12/21/2021	NatWest Markets Plc	• \$25,200,000 total criminal fine • \$2,841,368 total criminal forfeiture • \$6,761,967 total restitution	• \$28,041,368 to US Treasury • \$6,761,967 to court for restitution
12/22/2021	Balfour Beatty Communities	• \$33,660,000 total criminal fine ◦ Reduced to \$11,346,786 after \$22,313,214 credit for civil settlement with DOJ	• \$11,346,786 paid to court • \$22,313,214 for civil settlement with the Civil Division of the Department of Justice
5/24/2022	Glencore International AG	• \$428,521,173 total criminal fine ◦ Reduced to \$262,590,214 after \$136,236,140 credit to United Kingdom and \$29,694,819 credit to Switzerland • \$272,185,792 total criminal forfeiture ◦ Reduced to \$181,457,195 after \$90,728,597 credit to CFTC	• \$262,590,214 paid to court • \$136,236,140 to United Kingdom • \$29,694,819 to Switzerland • \$90,728,597 to CFTC • \$181,457,195 to Assets Forfeiture Fund
5/24/2022	Glencore Ltd	• \$341,221,682 total criminal fine ◦ Reduced to \$170,610,841 after \$170,610,841 credit to CFTC • \$144,417,203 total criminal forfeiture	• \$170,610,841 paid to court • \$242,819,442 to CFTC • \$37,208,602 to Assets Forfeiture Fund • \$35,000,000 to USPIS Consumer Fraud Fund

⁶ The company's parent company (Goldman Sachs Group, Inc.) also entered into a DPA with the Fraud Section as part of a single resolution. See Corporate DPA Chart.

Date	Name	U.S. Criminal Monetary Penalties	Recipient(s)
		o Reduced to \$37,208,602 after \$72,208,601 credit to CFTC and \$35,000,000 credit to USPIIS Consumer Fraud Fund	
6/3/2022	FCA US LLC	• \$407,145,784 total criminal fine - o Reduced to \$96,145,784 after \$311,000,000 credit for civil settlement • \$203,572,892 total criminal forfeiture	• \$96,145,784 paid to court • \$203,572,892 to Assets Forfeiture Fund • \$311,000,000 for civil settlement
12/2/2022	ABB South Africa ⁷	• \$500,000 total criminal fine	• \$500,000 paid to court
12/2/2022	ABB Management Services	• \$500,000 total criminal fine	• \$500,000 paid to court
12/13/2022	Danske Bank A/S	• \$2,059,979,050 total criminal forfeiture - o Reduced to \$1,209,062,646 for credit of \$178,600,000 to SEC and credit of \$672,316,404 to Danish Authorities	• 1,209,062,646 to Assets Forfeiture Fund • \$178,600,000 to the SEC • \$672,316,404 to Danish Authorities
3/2/2023	Ericsson	• \$727,379,280 total criminal fine - o Reduced to \$206,728,848 for credit of \$520,650,432 for prior DPA payment	• \$206,728,848 paid to court
3/15/2023	Sterling Bancorp, Inc.	• \$62,168,142.60 total criminal fine - o Reduced to \$0 due to inability to pay	• \$27,239,000 restitution to court

⁷ The company's parent company (ABB Ltd) also entered into a DPA with the Fraud Section as part of a single resolution. See Corporate DPA Chart.

Date	Name	U.S. Criminal Monetary Penalties	Recipient(s)
		• \$69,075,714 total restitution ◦ Reduced to \$27,239,000 due to inability to pay	
11/21/2023	Binance Holdings Limited ⁸	• \$1,805,475,575 total criminal fine ◦ Reduced to \$1,505,475,575 due to credit of \$300,000,000 against payment to Department of Treasury agencies • \$898,618,825 total criminal forfeiture related to violation of International Emergency Economic Powers Act • \$1,612,031,763 total criminal forfeiture related to violation of 18 U.S.C. 1960 ◦ Reduced to \$112,031,763 after credit of \$550,000,000 to Department of Treasury agencies and \$950,000,000 to CFTC	• \$1,505,475,575 to be paid to court • \$898,618,825 to be paid to Treasury Forfeiture Fund • \$112,031,763 to be paid to Treasury Forfeiture Fund • \$850,000,000 to be paid to Treasury Agencies • \$950,000,000 to be paid to CFTC

⁸ Binance's payments are due beginning in March 2024 through the end of 2025 pursuant to the plea agreement. The Department through the Money Laundering and Asset Recovery Section, will assess the amounts when forfeited or applied to other penalties for eligibility for deposit to the U.S. Victims of State Sponsored Terrorism Fund.

Written Testimony Before the United States Senate Committee of the
Judiciary

“Cleaning Up the C-Suite: Ensuring Accountability for Corporate
Criminals”

Brandon L. Garrett

December 12, 2023

Chairman Durbin, Ranking Member Graham, Members of the Committee, and Staff: thank you for the opportunity to testify before you today about corporate prosecutions. I am the L. Neil Williams, Jr. Professor of Law at Duke University School of Law, and I have researched and tracked federal criminal prosecutions of organizations since they took their modern form in the early 2000s.¹

As legal persons, corporations can be criminals too, and never before has corporate criminal enforcement been so important in the United States and across the globe. Billion-dollar corporate criminal penalties are now regular events. And yet, concerns persist that the largest criminal offenders are corporations, but they can escape the type of punishment routinely meted out in lower-level cases. As the title of my 2011 book, “Too Big to Jail,” intended to convey, using criminal law to hold corporations accountable is inherently challenging.² It is also a comparatively recent undertaking.

Today, my goal is to give an overview of the changing landscape of federal corporate criminal enforcement. I began studying the field early in its evolution, as a new approach towards settling major federal corporate criminal cases emerged in the early aughts, in the wake of the Enron-era financial scandals.³ Deferred and non-prosecution agreements took off as a new strategy to settle the most significant corporate prosecutions without an indictment, much less a conviction. While my early work involved tracking what then amounted to dozens of large-scale cases, which I could stack in a single pile on my law school desk, by the time I wrote my 2011 book, there had been many hundreds of these largely out-of-court negotiated settlements. At the time, none were tracking federal prosecutions of organizations that did not involve sentencing in court, reflected in data maintained by the U.S. Sentencing Commission, but rather these largely out-of-court settlements.

¹ This testimony reflects my own views as a scholar and not those of Duke University, Duke University School of Law, the Wilson Center for Science and Justice at Duke Law, or any other institution.

² Brandon L. Garrett, *TOO BIG TO JAIL: HOW PROSECUTORS COMPROMISE WITH CORPORATIONS* (2016).

³ Brandon L. Garrett, *Structural Reform Prosecution*, 93 VA. L. REV. 853, 888–89 (2007) (describing the early rise in the use of negotiated settlements in federal corporate prosecutions).

This work led to the creation of the Corporate Prosecution Registry, in collaboration with Jon Ashley, currently a reference librarian at the Darden School at the University of Virginia.⁴ We have almost 5,000 cases digested in this freely available online repository, which mostly dates back to the early 2000s.⁵ Updating this repository is labor intensive, and Jon Ashley and I have scores of law students over the years to thank for their hard work on the Registry. The Registry has been widely used by practicing lawyers, policymakers, as well as academics, who have relied upon the data in a range of studies of corporate prosecutions and behavior.⁶

Updating the Registry has also occasionally involved federal Freedom of Information Act (FOIA) lawsuits, because some prosecution agreements with corporations had not been made public. A particular area of concern has been with regard to non-prosecution agreements and other such agreements that are not filed in a court and which as a result, are not available in the records of federal dockets. In the past, the U.S. Department of Justice (DOJ) has settled all such FOIA suits and attempted to locate each of the requested documents. The DOJ has responded similarly and cooperatively to the most recent FOIA suit, filed in 2021.⁷ However, we are still concerned that organizational non-prosecution agreements and other agreements not filed in court, particularly those entered by the various U.S. Attorney's Offices, may not always be publicly disclosed or available.

In response to transparency concerns, the DOJ recently adopted a practice of making agreements available online, with 51 cases included in a corporate crime case database since the beginning of this year.⁸ This database, although still new, represents a positive DOJ commitment to sharing more public information about corporate prosecution resolutions. Jon Ashley and I are committed to maintaining a Corporate Prosecution Registry, but we believe that this work should be a primarily public function.

The trends from these data continue to be highly informative, over a decade after I wrote "Too Big to Jail," and as we continue to update the Registry. First, one can readily see the remarkable rise in the size, but not the numbers, of federal

⁴ See Jon Ashley and Brandon L. Garrett, CORPORATE PROSECUTION REGISTRY, <https://corporate-prosecution-registry.com/browse/>.

⁵ See *Data and Documents*, CORPORATE PROSECUTION REGISTRY, <https://corporate-prosecution-registry.com/browse/>. At present, 4,471 cases are available on the Registry. However, we are presently updating the site to include about three hundred additional entries, including cases obtained through the most recent FOIA litigation, as well as more recent 2022 and 2023 cases.

⁶ We have included examples of such work, relying in part on Registry data, on our website. See *Resources*, CORPORATE PROSECUTION REGISTRY, <https://corporate-prosecution-registry.com/resources/>.

⁷ See, e.g. Justin Wise, *DOJ Sued by Law Librarian Over Non-Prosecution Records*, LAW360, November 9, 2021.

⁸ See U.S. Department of Justice, Corporate Crime Database, at <https://www.justice.gov/corporate-crime/corporate-crime-case-database>.

corporate prosecutions in recent years.⁹ Over the past two decades, far more financial institutions were being charged than in the past.¹⁰ Prosecutors began to use criminal statutes such as the Bank Secrecy Act and the Foreign Corrupt Practices Act (FCPA), which had been neglected in the past. Billion-dollar criminal penalties are now an annual event; such penalties had never existed before the modern era of corporate settlements. In 2023, we have seen \$1.8 billion in total criminal penalties so far, and more may be yet to come, including a \$4 billion resolution, involving guilty pleas, recently announced with Binance Holdings Ltd., but not yet finalized.¹¹ In 2022, we observed approximately \$1.2 billion in penalties, and in 2021, it was approximately \$3.8 billion. Each year, the bulk of those total penalties come from just a handful of cases. Typically, the largest cases are mostly resolved, not through trials or guilty pleas, but rather out-of-court deals crediting companies for cooperation and compliance. Whether they deserve that credit is often hard to gauge based on the limited information that is disclosed in these deals.

Indeed, deferred prosecution agreements were never intended or imagined as a vehicle to resolve prosecutions of major corporations. They grew out of a provision in the 1974 Speedy Trial Act that reflected efforts to divert first-time and juvenile non-violent offenders for rehabilitative reasons.¹² It would be very helpful to amend the Speedy Trial Act to add dedicated provisions governing the factors relevant when a criminal case involving a firm is deferred. Instead, we have little to no judicial involvement in the approval of these agreements, as would occur for a plea bargain. Nor do we have adequate judicial oversight of these undertakings, as would occur for a civil consent decree or corporate probation under the terms of a plea agreement. When judges have occasionally intervened to potentially review or supervise corporate prosecution agreements, appellate courts have reversed such efforts.¹³

With federal judges largely relegated to a sideline role in many of the largest federal corporate prosecution cases, still commonly resolved without a conviction, the relevant decisionmaking occurs through the substantial discretion of prosecutors, as

⁹ See *Corporate Settlements*, CORPORATE PROSECUTION REGISTRY, at <https://corporate-prosecution-registry.com/visuals/>.

¹⁰ See Brandon L. Garrett, *The Rise of Bank Prosecutions*, 126 YALE L.J. F. 33, 35 (2016) (detailing changing approach towards prosecution of financial institutions).

¹¹ Press Release, *Binance and CEO Plead Guilty to Federal Charges in \$4B Resolution*, U.S. Department of Justice, Nov. 21, 2023, at <https://www.justice.gov/opa/pr/binance-and-ceo-plead-guilty-federal-charges-4b-resolution>.

¹² Speedy Trial Act of 1974, 18 U.S.C. §§ 3161-74 (2012). Under Title 18, United States Code, Section 3161(h)(2) of the Speedy Trial Act, a judge may defer the prosecution of a defendant to permit the defendant to show “good conduct.” The provisions of the Act were generally intended to “strengthen[] the supervision over persons released pending trial” and encourage the then-“current trend” of creating diversion programs as an alternative to prosecution for low-level, nonviolent individual offenders. See H.R. Rep. No. 93-1508, at 1 (1974), reprinted in 1974 U.S.C.C.A.N. 7401, 7401; S. Rep. No. 93-1021, at 36-37 (1974); see also Anthony Partridge, Fed. Judicial Ctr., *Legislative History of Title I of the Speedy Trial Act of 1974*, at 117 (1980) (referring to good behavior).

¹³ See, e.g. *U.S. v. Fokker Servs., B.V.*, 818 F.3d 733, 742 (D.C. Cir. 2016).

guided by an evolving set of statements in the U.S. Attorney's Manual and other DOJ documents. In 1999, then-Deputy Attorney General Eric Holder cemented the growing importance of corporate prosecutions in a novel memo regarding charging corporate defendants.¹⁴ In the early 2000s, a new approach revolutionized corporate prosecutions, as the DOJ emphasized large-scale settlements using deferred and non-prosecution agreements.¹⁵ In 2015, the DOJ adopted a revision to its policies to focus on individual investigations and prosecutions.¹⁶ In February 2017, the DOJ's Criminal Fraud Section produced new guidance on evaluating corporate compliance, which was then updated in 2019 and 2023.¹⁷ In 2017 and 2018, the DOJ made a series of policy changes intended to reduce the impact of criminal prosecution on corporations.¹⁸ More recently, the DOJ has restored prior policies and adopted new ones, including regarding public selection of monitors, and a policy rewarding voluntary self-disclosures.¹⁹ It was noteworthy that in the last round of revisions to those priorities, the Department of Justice reached out to a broader set of stakeholders, including academics like myself.

However, we have not seen sharp changes in the pattern of corporate prosecution outcomes accompanying many of these various changes to DOJ policy. Some of these DOJ policy changes have been temporary, such as the change in focus to prioritize individual prosecutions, which was rescinded and then restored. Other changes have been institutional and perhaps longer lasting, like the larger numbers of prosecutors focusing on bringing anti-corruption prosecutions. Over time, concerns have grown that we not only lack sufficient information about corporate crime, but that enforcement may not be effective enough, given high-profile examples of repeat offending by corporations. What are areas of possible improvement? I outline four general areas in this testimony, focusing on areas in which Congress could play an important role.

¹⁴ See Garrett, *Too Big to Jail*, *supra* note 2, at 54-56 (providing an overview of the changing approach towards corporation prosecutions during the 1990s and early 2000s).

¹⁵ Larry D. Thompson, Deputy Att'y Gen., U.S. Dep't of Justice, Memorandum to Heads of Department Components and United States Attorneys (Jan. 20, 2003).

¹⁶ See Sally Yates, Deputy Attorney Gen., U.S. Dep't of Justice, Memorandum to Heads of Dep't Components & U.S. Attorneys, Individual Accountability for Corporate Wrongdoing, at 1 (Sept. 9, 2015), Brandon L. Garrett, *The Metamorphosis of Corporate Criminal Prosecutions*, 101 VA. L. REV. ONLINE 60, 61 (2016); Elizabeth E. Joh & Thomas W. Joo, *The Corporation as Snitch: The New DOJ Guidelines on Prosecuting White Collar Crime*, 101 VA. L. REV. ONLINE 51 (2015).

¹⁷ U.S. DEP'T OF JUSTICE, EVALUATION OF CORP. COMPLIANCE PROGRAMS (March 2023), <https://www.justice.gov/criminal-fraud/page/file/937501/download>.

¹⁸ For a summary of those 2017-2018 changes, see Brandon L. Garrett, *Declining Corporate Prosecutions*, 57 AM. CRIM. L. REV. 109 (2020).

¹⁹ Memorandum from DAG Monaco to DOJ on Further Revisions to Corporate Criminal Enforcement Policies (Sept. 15, 2022), <https://www.justice.gov/opa/speech/file/1535301/download>; United States Attorneys' Offices Voluntary Self-Disclosure Policy, at <https://www.justice.gov/media/1276521/dl?inline>; United States Attorneys' Offices Monitor Selection for Corporate Criminal Enforcement, at <https://www.justice.gov/media/1276526/dl?inline>.

First, federal legislation could promote more comprehensive public data collection regarding corporate crime, and it should.²⁰ The nascent DOJ database is only a first step in that direction. In other areas, the DOJ and prosecutors have long insisted on routine monitoring with public reporting, where monitors' reports for consent decrees are introduced in court and made available for review and input by stakeholders. In corporate prosecutions, however, oversight process is typically not transparent. Instead, oversight in corporate prosecutions should include public reporting, as in other areas in which there is government oversight. Further, prosecution agreements could disclose far more about the nature of the conduct that led to the prosecution.

Second, legislation should amend the Speedy Trial Act to provide a dedicated set of provisions requiring more careful judicial supervision of the approval and implementation of deferred prosecution agreements, just as legislation has already required victim notice for such settlements.²¹ The language of the Speedy Trial Act, to be sure, already makes clear that judges may or may not approve a deferred prosecution.²² However, courts have interpreted that language as foreclosing substantive review of the fairness or advisability of deferred prosecution agreements with corporations.²³ An amendment could also beneficially include clear criteria for reviewing whether proffered corporate deferred prosecution agreements serve the public interest.²⁴ That amendment could also set out criteria for judicial oversight of a corporate deferred prosecution agreement if it is approved. That oversight could involve probation supervision. Indeed, when companies plead guilty, dedicated resources for corporate probation could also improve the supervision of corporations that plead guilty.

Third, legislation could allocate more enforcement resources, to both civil regulators, and to prosecutors if a case warrants prosecution, to support more expert staff to fairly address the most complex cases. Without adequate resources, we cannot expect prosecutors to pursue convictions in the most complex corporate cases. A Corporate Prosecution Section or Division could be created at Main Justice with branch offices in key districts for corporate prosecutions, such as Southern District of New York, the Eastern District of Virginia, and the Northern District of California.

²⁰ Legislation regarding transparency in corporate settlements passed in the U.S. Senate in 2015, but was not enacted. See Truth in Settlements Act of 2015, S. 1109, 114th Cong. (as passed by Senate, Sept. 21, 2015). As part of the Justice for Victims of Trafficking Act of 2015, Congress enhanced crime victim's rights when deferred prosecution agreements are entered with corporations. 18 U.S.C. § 3771(a)(9).

²¹ See Brandon L. Garrett, *The Public Interest in Corporate Settlements*, 58 B.C. L. REV. 1483, 1509, 1511 (2017).

²² See 18 U.S.C. § 3161(h).

²³ See, e.g., *U.S. v. Fokker Servs., B.V.*, 818 F.3d 733, 742 (D.C. Cir. 2016).

²⁴ An analogous change was made to highlight the importance and mandatory nature of judicial review regarding the public interest under the Tunney Act, regarding antitrust settlements. See 15 U.S.C. § 16(e) (2012).

The Antitrust Division has a long tradition of independent policy and consistency in practice, and it similarly has field offices.

Fourth, legislation, regulation, and enforcement guidelines could emphasize the need for effective compliance. If companies receive credit for implementing compliance remedies, we need to be sure that it is empirically tested assess the degree to which these compliance efforts are effective.²⁵ For too long, prosecutors had credited assurances that best practices were in place when resolving the most serious corporate prosecution cases. In more recent years, DOJ policies have been gradually changing to demand more testing of the quality of compliance programs, including in the revised guidance regarding compliance programs and their assessment. The DOJ asks for evidence that a program “works in practice,” including through “periodic testing.”²⁶ In resolutions regarding foreign bribery and corruption, the DOJ has also often provided that “periodic reviews and testing” should occur for all aspects of compliance.²⁷ Understandably, companies may resist spending large sums on ineffective compliance. Instead, they should be credited for conducting the type of experiments that can test the quality of compliance. Just as legislation and regulations require quality controls and quality assurance for systems to test emissions or medical outcomes, we should require quality controls and quality assurance for compliance designed to prevent criminality.

Finally, I highlight the importance of the international picture, and a changing global legal and enforcement landscape, as other countries have reacted to enforcement in the U.S. and adopted their own corporate prosecution approaches, often through legislation, rather than prosecutorial discretion.²⁸ Many of the largest corporate crime cases have involved conduct spanning the globe, and increasingly, the cooperation of foreign enforcers. The DOJ correctly credits foreign enforcement efforts, which we should promote, when resolving matters in the U.S.²⁹

²⁵ See Brandon L. Garrett & Gregory Mitchell, *Testing Compliance*, 83 L. & CONTEMP. PROB. 47 (2020).

²⁶ U.S. Department of Justice Criminal Division, Evaluation of Corporate Compliance Programs (Updated March 2023), at <https://www.justice.gov/criminal-fraud/page/file/937501/download>.

²⁷ See Department of Justice, Appendix C, Corporate Compliance Program, at https://www.millerchevalier.com/sites/default/files/resources/General_Alerts/DOJ_Revised-Attachment-C.pdf.

²⁸ See, e.g., Bribery Act, 2010, c. 23 § 7(1)(a)(b) (U.K.), https://www.legislation.gov.uk/ukpga/2010/23/pdfs/ukpga_20100023_en.pdf; French Government Press Release, *Sapin II Law: Transparency, The Fight Against Corruption, Modernisation of the Economy* (6 April 2016), <http://www.gouvernement.fr/en/sapin-ii-law-transparency-the-fight-against-corruption-modernisation-of-the-economy>; News Release, *Canada to Enhance its Toolkit to Address Corporate Wrongdoing*, March 20, 2018, at <https://www.canada.ca/en/public-services-procurement/news/2018/03/canada-to-enhance-its-toolkit-to-address-corporate-wrongdoing.html>; OECD, *Resolving Foreign Bribery Cases with Non-Trial Resolutions: Settlements and Non-Trial Agreements by Parties to the Anti-Bribery Convention* (2019), at www.oecd.org/corruption/Resolving-Foreign-Bribery-Cases-with-Non-Trial-Resolutions.htm.

²⁹ Memo to DOJ Working Group on Corporate Enforcement & Accountability, Policy on Coordination of Corporate Enforcement Penalties, May 9, 2018.

Getting corporate prosecutions right is not something that only federal prosecutors can or should do. I have argued that although the DOJ has made important refinements in its evolving set of approaches, the U.S. system largely relying on negotiated outcomes in corporate prosecutions does not deliver sufficient certainty for corporations, it does not adequately deter, it does not adequately remediate, and it at bottom, does not adequately serve the public interest. A greater role for lawmakers and the judiciary is much needed, so that the process does not purely depend on evolving prosecutorial discretion and the application of complex internal DOJ guidelines. I thank the Committee for its continued attention to the challenges and the importance of corporate prosecutions.

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**TESTIMONY
OF
RYAN HAMPTON
ADDICTION RECOVERY ADVOCATE**

**BEFORE THE JUDICIARY COMMITTEE
UNITED STATES SENATE
DECEMBER 12, 2023**

Mr. Chairman and members of the committee: My name is Ryan Hampton. I'm an advocate and person proudly in recovery from opioid use disorder. The story of my opioid addiction is not unique. Millions upon millions of Americans have experienced the very same pain and misery I have at the hands of corporate criminals. I just happen to be one of the lucky few who survived.

Today, I'm using my voice as a survivor and advocate committed to the recovery community. I'm here to call for true accountability and justice for corporate crime, and to highlight the urgent need for action at the Department of Justice toward corporate criminals. The latest available data shows a staggering decline of white-collar prosecutions at the DOJ. Just 90 corporate crime cases were brought forward in 2021, that's less than half of the average annual number of corporate crime prosecutions in the previous 25 years. This was the lowest number of corporate prosecutions since tracking began during the Reagan administration.

The notion that certain executives at select companies are simply "too big to jail" has caused tremendous harm to American citizens and has eroded the public's trust in our institutions.

My painful, near-death experience at the hands of pharmaceutical companies illustrates how dire this problem is. From the 1990s to the 2010s, a tidal wave of pharmaceutical opioids crashed down on this country, drowning thousands of communities in an unprecedented volume of pills that caused dependence, addiction, and death. Like so many, I had to learn this the hard way. I was prescribed an absurd dose for an absurd amount of time by licensed doctors who made scant mention of serious side-effects. After I became addicted, doctors continued re-filling my prescriptions—until one day they didn't. At my most sick and desperate, I was cut-off and

left to fend for myself, without any referral for treatment. Instead of being seen as a patient who needed help, I was now treated as a liability, and faced with prejudice and shame.

What truly stuns me is that while all of this was going on, federal prosecutors at the Department of Justice had already opened multiple investigations into several pharmaceutical companies, from Purdue Pharma, which manufactured the medications; to McKesson, which distributed the medications; and pharmacies like Wal-Mart, which dispensed the medications—medications that were approved by the FDA under false and deceptive pretenses. The truth of this fraud and deception was out there, but I had no way of knowing.

I often think about why so many of us learned about the true nature of these pain relievers after it was far too late. After we were addicted, after we were sick and shivering in withdrawal, after we had lost everything, after people were incarcerated for their addictions, after our friends and loved ones died.

I'm not here today to only demand justice and retribution for corporate crimes. But I believe these waves of pain and despair can be prevented, not only by full prosecution under the law, but through transparency and public awareness. The Corporate Crime Database Act would require the DOJ to collect, analyze, and publish comprehensive data on federal corporate criminal enforcement actions. That's an important start. By making these enforcement actions publicly available, the public would be better informed about the products they purchase and use. A balance of deterrence and transparency can prevent future disasters and spare others from what I experienced.

I'd like to talk more about deterrence today and highlight the fact that white-collar corporate criminals are rarely held accountable in this country. Though numerous pharmaceutical companies have pled guilty to major federal crimes, and settled multi-billion-dollar lawsuits,

justice has still not materialized for victims. The simple fact is this: the more opioids flooded communities, the richer they became. Without enforcement and deterrence, these executives had zero incentive to change their business model.

People at corporations made the decision to break the law, and many remain unapologetic and openly defiant. The Sackler family, for example, could not give a clear answer on whether they feel responsibility or even whether they're sorry for their actions. It seems that the wealthy get off scot-free or with a slap on the wrist, offered sweetheart deals and offered non-prosecution agreements. The most they expect is a measly fine, in what amounts to rounding errors in their enormous profits, chalked up as the cost of doing business.

These powerful companies knowingly defrauded the government and misinformed the public. Senators, these are felonies. Where I'm from, if you commit a felony, you get punished for it. But if you run a big pharma corporation, it appears that wealth and power grant your entry into a parallel system of justice. This parallel system for the wealthy and powerful generates cynicism and erodes faith in our institutions. A society that does not own and face up to its crimes is doomed to repeat them. That is why families like the Sacklers must be fully investigated, indicted, and prosecuted, with transparency by the DOJ, to the full extent of federal law—for the lives they cut short, the communities they tore apart, and the families they destroyed.

America deserves better than this. My community deserves better than this. And we are better than this. Thank you.

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Testimony of Andrew E. Lelling
Former United States Attorney, District of Massachusetts

“Cleaning Up the C-Suite: Ensuring Accountability for Corporate Criminals”
December 12, 2023

Thank you Chairman Durbin and Ranking Member Graham for the invitation to address this Committee on the complex issue of corporate crime and the accountability of “c-suite”-level executives.

I have been a student of this issue for over 20 years. I joined the U.S. Department of Justice (“DOJ”) in August 2001. Of course, that was one month before the attacks of September 11, 2001, but it was also four months before the final collapse of the Enron Corporation, an event that evaporated approximately \$74 billion in shareholder value along with the hard-earned pensions of thousands of Enron employees. The reckless corporate accounting and audit practices characterizing the Enron debacle ushered in a new era of corporate criminal enforcement, and DOJ has wrestled ever since with how to strike the balance between corporate accountability and heavy-handedness. After all, DOJ successfully prosecuted Enron’s senior-most executives – President and CEO Kenneth Lay and CEO and COO Jeffrey Skilling – but DOJ also destroyed Arthur Andersen, a major accounting firm indicted for obstructing the investigation of Enron’s accounting practices. That prosecution led to Arthur Andersen’s collapse in 2002 but, rather too late, its criminal conviction was reversed by the U.S. Supreme Court – unanimously – in 2005.¹

I spent most of my time at DOJ handling white collar matters. I was a federal prosecutor from 2001 – 2021, focusing mostly on complex fraud investigations, including corporate accounting fraud, tax crimes, securities fraud and other investment-related misconduct. I was also the United States Attorney for the District of Massachusetts from 2017 – 2021, a period in which I led several major white collar enforcement actions, including the largest single-bank financial settlement – \$5 billion – to arise from the financial crisis of 2008 – 2009 (Royal Bank of Scotland); the first-ever prosecution of senior pharma executives for their role in exacerbating the opioid epidemic (Insys, Inc.); and Operation Varsity Blues. Today, now in the private sector, I defend companies and executives implicated in federal criminal and civil investigations.

I have seen these matters from the inside and the outside. Based on my experience, I have a few observations, in the hope that they assist the Committee with its thinking in this area.

First, I am struck by the evolution and increasing sophistication of DOJ’s corporate enforcement efforts since the Enron days. Recall that concern about corporate, and “c-suite” liability is not new. For example, Enron, WorldCom,² and other corporate scandals in that era led

¹ *Arthur Andersen LLP v. United States*, 544 U.S. 696, 708 (2005).

² In 2005, Bernard Ebbers, the CEO of WorldCom, was convicted on fraud and conspiracy charges arising from a corporate accounting scandal implicating \$11 billion in revenue. See, e.g., Ken Belson, *Ex-Chief of WorldCom is Found Guilty in \$11 Billion Fraud*, N.Y. TIMES, Mar. 16, 2005, available at <https://www.nytimes.com/2005/03/16/business/exchief-of-worldcom-is-found-guilty-in-11-billion-fraud.html>.

to the Sarbanes-Oxley Act,³ which substantially reformed and supplemented federal financial reporting obligations for corporations, including bolstering the arsenal of criminal statutes DOJ could use against corporate executives. The financial crisis of 2008 – 2009 led to the Dodd-Frank Wall Street Reform and Consumer Protection Act,⁴ which reorganized the financial regulatory system and increased regulation in the securities and related industries. And there has been a steady stream of policy pronouncements from DOJ over the last 20 years, in an effort to properly calibrate federal enforcement in the corporate context.

The result today is that DOJ has many tools at its disposal when it comes to investigating and prosecuting corporations and their executives. On the investigative side, there are the usual tools, including grand juries, wire taps – now used in the white collar context more than ever – search warrants, and other forensic tools used by DOJ and federal law enforcement agencies. DOJ is also now more sophisticated in mining large data sets, especially in the healthcare context.⁵ On the prosecution side, even within certain limits imposed by the U.S. Supreme Court over the last ten years or so, DOJ retains flexibility in charging corporations and individuals. The most common federal crimes in this context are wire fraud, mail fraud, securities fraud, and the various anti-money laundering statutes, all of which can be supplemented by conspiracy charges.⁶

Moreover, over the years it has been the consistent position of the Department, unofficially and then officially, to prioritize prosecuting individual corporate employees over prosecuting the entity itself.⁷ There has been broad agreement on this policy across administrations, since corporations are composed of persons making business decisions every day, and it is persons – not entities – who can be deterred from future wrongdoing.

This brings me to a genuinely persistent myth I have encountered over my years in federal enforcement: the myth that federal prosecutors are somehow scared to pursue and indict senior executives at large companies.⁸ This is simply false. In my experience over two decades, your average federal prosecutor – and definitely your average U.S. Attorney – would love to indict “c-suite” executives if he or she could accumulate the evidence to do so. Charges against senior executives are ambitious and high profile – plum assignments for aggressive AUSAs. They draw

³ 116 Stat. 745 (2002).

⁴ 12 U.S.C. § 5511.

⁵ The government’s recent Paycheck Protection Program (PPP) prosecutions provide a concrete example of the DOJ’s success with data analytics. See AAG Brian Rabbitt, *Remarks at the PPP Criminal Fraud Enforcement Action Press Conference*, Sept. 10, 2020, (“Second, I’d like to highlight the Division’s use of data analytics to develop these cases so quickly. As I mentioned before, there were over 5.2 million PPP loans made. To bring these cases as quickly as we have, and to sort through the volume of loans made by the SBA, the Fraud Section and its partners deployed the first-in-class data analytics capabilities they have developed and employed to great effect in other criminal investigative areas, such as health care fraud and market manipulation.”).

⁶ See 18 U.S.C. § 1343 (wire fraud); 18 U.S.C. § 1341 (mail fraud); 18 U.S.C. § 1348 (securities fraud); 18 U.S.C. §§ 1956 and 1957 (money laundering).

⁷ Sally Q. Yates, Deputy Attorney General, Memorandum, *Individual Accountability for Corporate Wrongdoing*, Sept. 9, 2015 (“Yates Memo”).

⁸ See, e.g., Jesse Eisinger, *The Chickenshit Club: Why the Justice Department Fails to Prosecute Executives* (July 11, 2017).

media attention and change the behavior of industries. Of course there will be prosecutors too lazy, or too scared, to pursue such charges, but that is an exception, not some kind of DOJ policy or unofficial practice that can be fixed through legislation.

The real issue in this context is that it is simply harder to prove criminal charges against senior executives, who are often somewhat distant from the actual criminal conduct, be it accounting fraud, securities fraud, money laundering, sanctions violations or some other corporate malfeasance. Because of that distance, it may be that the senior executives simply are not culpable – regardless of the public desire to see heads roll – or that the government just can't prove it. I've seen both. Not unreasonably, in light of the corporate scandals of the early 2000s, the financial crisis of 2008 – 2009, and the early years of the opioid epidemic, there has been occasional debate over whether “c-suite” executives at major companies are getting away with something. While there are, of course, exceptions, overall the answer is, “No.” Proving fraud requires proving the specific intent of the defendant beyond a reasonable doubt, a high standard that often cannot be met with participants who did not directly engage in the relevant misconduct.⁹ Even with conspiracy charges, which do not require proving the same level of intent,¹⁰ it can be difficult to show that the executive was knowingly assisting in a group effort to commit a federal crime, as opposed to knowingly participating in just another business activity.

Over the years, Congress has taken legislative steps to address this problem. For example, the Sarbanes Oxley Act implemented a requirement that corporate CEOs and CFOs personally certify the accuracy of company financial statements – this was in part a response to Kenneth Lay's defense strategy at trial – and made it a new federal crime to so certify knowing that the underlying financials did not “fairly present” the company's financial condition.¹¹ These laws were good policy; I and other prosecutors have used them to indict CEOs and CFOs of publicly traded companies.¹² Determined prosecutors find other means as well; for example, in 2019 the Boston U.S. Attorney's Office secured convictions at trial against senior executives of Insys, Inc., for illegally marketing an exceptionally powerful synthetic opioid.¹³ We used not only mail fraud and conspiracy charges, but RICO and the federal drug trafficking laws. That case was the basis for the recent Netflix film, *The Pain Hustlers*.

In turn, no company I have ever seen, whether as a prosecutor or on the defense side, scoffs at the risks of federal criminal enforcement. Most major companies, through their counsel, closely follow changes in federal enforcement policy. For a corporation, regardless of size, the costs of federal enforcement are enormous: defending against the investigation, even if it never results in criminal charges, often costs millions of dollars; settlements – whether pre- or post-charging – can

⁹ See, e.g., *United States v. Stalnaker*, 571 F.3d 428, 436 (5th Cir. 2009) (“Wire fraud is a specific-intent crime requiring proof that the defendant knew the scheme involved false representations . . . which related to material information.” (internal quotations and citation omitted)).

¹⁰ 18 U.S.C. § 371.

¹¹ 18 U.S.C. § 1350.

¹² See, e.g., *United States v. Jon Latorella & James Fields*, No. 1:10-CR-10388 (D. Mass. 2010).

¹³ See *United States v. Kapoor*, 1:16-CR-10343 (D. Mass. 2012).

reach into the billions;¹⁴ any public resolution damages the business reputation of the entity, to say nothing of the market effects for publicly traded companies; and it is an enormous drain on leadership and management resources. The point here is not to curry sympathy for massive corporations. It is that – under the current laws and DOJ practice – most businesses do fear enforcement and take steps to avoid it. There is a reason why compliance is a fast-growing segment of corporate legal departments and law firm practices.¹⁵

This is true on the individual level as well. Senior executives and board members at large companies perceive DOJ as active and aggressive in white collar enforcement – I know, I talk to these people. And after Enron, the U.S. Sentencing Guidelines applicable to misconduct by corporate executives were patched and patched again, to the point where fairly routine corporate fraud cases yielded exceptionally high sentences.¹⁶ These changes were not lost on those who run corporate America. I do note that through Sentencing Guideline amendments and legislation, white collar sentencing has recently been mitigated – perhaps even too much in some instances: In combination, these adjustments often allow a sentence that appears impressive on the front end to be drastically reduced on the back end (long after anyone is really paying attention).¹⁷ Recent Guideline adjustments also invite judges to reduce or eliminate sentences for white collar

¹⁴ For example, in 2012, global health care giant GlaxoSmithKline LLC (“GSK”) agreed to plead guilty and pay \$3 billion to resolve criminal and civil liability arising from the company’s unlawful promotion of certain prescription drugs, failure to report safety data, and liability arising from improper price reporting practices. GSK pleaded guilty to a three-count criminal information. Under the terms of the plea agreement, GSK paid a total of \$1 billion, including a criminal fine of \$956,814,400 and forfeiture in the amount of \$43,185,600. The criminal plea agreement also included compliance commitments and certifications by GSK’s U.S. president and board of directors. DOJ Press Release, *GlaxoSmithKline to Plead Guilty and Pay \$3 Billion to Resolve Fraud Allegations and Failure to Report Safety Data*, July 2, 2012, available at <https://www.justice.gov/opa/pr/glaxosmithkline-plead-guilty-and-pay-3-billion-resolve-fraud-allegations-and-failure-report>.

Last month, Binance Holdings Limited, the entity that operates the world’s largest cryptocurrency exchange, pleaded guilty and agreed to pay over \$4 billion to resolve the Justice Department’s investigation into violations related to the Bank Secrecy Act, failure to register as a money transmitting business, and violations of the International Emergency Economic Powers Act. Binance’s founder and CEO also pleaded guilty to failing to maintain an effective anti-money laundering program, and resigned as CEO. As part of the plea agreement, Binance agreed to forfeit \$2,510,650,588 and pay a criminal fine of \$1,805,475,575, for a total financial penalty of \$4,316,126,163. Binance also agreed to retain an independent compliance monitor for three years and enhance their anti-money laundering and sanctions compliance programs. Binance also separately reached agreements with the CFTC, FinCEN, and OFAC. DOJ Press Release, *Binance and CEO Plead Guilty to Federal Charges in \$4B Resolution*, Nov. 21, 2023, available at <https://www.justice.gov/opa/pr/binance-and-ceo-plead-guilty-federal-charges-4b-resolution>.

¹⁵ See, e.g., William Josten, *Are Rising Regulatory Concerns a Headache for In-House Teams and a Missed Opportunity for Law Firms?*, THOMSON REUTERS, Apr. 12, 2023, available at <https://www.thomsonreuters.com/en-us/posts/legal/rising-regulatory-concerns-corporate-law/>.

¹⁶ See, e.g., U.S.S.G. § 2B1.1 (2023). In the Enron-related prosecutions, CEO Kenneth Lay died of a heart attack two days before his sentencing hearing; he faced decades in prison. Co-defendant Jeffrey Skilling was sentenced to 24 years in prison, which was later reduced on appeal after the U.S. Supreme Court reversed certain of his convictions. Both men were sentenced when the federal sentencing guidelines were still mandatory.

¹⁷ See, e.g., Walter Pavlo, *The First Step Act Shortens Federal Prison Sentences, Including Elizabeth Holmes’*, PROGRAM ON CORPORATE COMPLIANCE AND ENFORCEMENT (noting that, under the First Step Act and various other BOP programs, Holmes could serve 66 months of her 135-month sentence before being released to home confinement), available at https://wp.nyu.edu/compliance_enforcement/2023/07/05/the-first-step-act-shortens-federal-prison-sentences-including-elizabeth-holmes/#:~:text=However%2C%20a%20prison%20term%20after,have%20under%20older%20federal%20laws.

defendants who have no prior criminal history, which of course is nearly every executive working at a corporation.¹⁸ Overall, however, it would be a mistake to assume that corporate executives perceive the risk of prosecution – or of the likely punishment – as having receded.

Over the last 20 years, there has been occasional debate about numbers and “stats” – is DOJ doing “enough” white collar enforcement, at least according to the metric of exactly how many cases were brought in a given year.¹⁹ I’ve had this discussion with senior Department officials numerous times. But while the tempo of enforcement activity varies, both across time and across the 93 U.S. Attorney’s Offices, in my view this is not precisely the right question. The right question is whether DOJ’s current level of activity is achieving the central goals of criminal enforcement: proportional punishment for wrongdoers, and deterrence of others who are in a position to commit similar offenses.²⁰ As noted above, corporations are very aware of DOJ enforcement and fear it. As to individuals, it’s easy to declare that senior executives need to be held to account, but it is harder to achieve in practice. Even so, any number of corporate executives are prosecuted in a given year, and the sentences are often high.²¹

A factor to bear in mind is the resource-intensive nature of this kind of enforcement. These are not “guns and drugs” cases. These kinds of investigations often involve the government subpoenaing terabytes of business data, from email to accounting records, which is then reviewed by the assigned agents and analysts (one to two people in most cases), and eventually by the assigned AUSA (usually one). To understand the alleged fraud, government lawyers need to understand the underlying business and often GAAP accounting principles as well – complex tasks that often require the support of experts and/or grand jury witnesses. Along the way, the government is negotiating with numerous outside lawyers – those representing individual

¹⁸ For example, the United States Sentencing Commission has added an application note to § 5C1.1 of the Guidelines, which provides that (1) a non-incarceration sentence is “generally appropriate” for a defendant with no criminal history, who received a two-level reduction under §4C1.1, and is in Zone A or B; and (2) a downward departure, including to a non-incarceration sentence, “may be appropriate” for a defendant with no criminal history who received the same reduction, is in Zone C or D (a higher sentencing range), and whose guideline range “overstates the gravity of the offense” because the offense was neither violent nor otherwise serious. These amendments went into effect on November 1, 2023.

¹⁹ See, e.g., David Dayen, *Talk of Criminally Prosecuting Corporations Up, Actual Prosecutions Down*, THE INTERCEPT (Oct. 13, 2015), available at <https://theintercept.com/2015/10/13/talk-of-criminally-prosecuting-corporations-up-actual-prosecutions-down/>.

²⁰ See, e.g., 18 U.S.C. § 3553(a).

²¹ Reviewing the current year, see, for example, *United States v. Lopez*, No. 2:23-cr-55 (D. Nev. 2023) (Eduardo Lopez, a health care staffing executive, indicted for conspiring to fix wages and commit fraud to facilitate selling company); *United States v. Peizer*, No. 2:23-cr-89 (N.D. Cal. 2023) (CEO and Chairman of Ontrak Inc., a publicly traded health care company, indicted for insider trading involving over \$12.5 million in avoided loss); *United States v. Lindberg*, No. 3:23-cr-48 (N.D. Cal. 2023) (owner or controller of multiple insurance companies charged with conspiracy, fraud, and false statements in connection with \$2 billion scheme to defraud by misrepresenting financial condition of companies and use of company funds); *United States v. F. Allied Construction Co.*, No. 2:23-cr-20381 (E.D. Mich. 2023) (corporation and executives pleaded guilty to conspiracy to suppress and eliminate competition via bid rigging); *United States v. Shah*, No. 1:19-cr-864 (N.D. Ill. 2023) (three former executives of Outcome Health, a health technology company, convicted at trial for roles in fraud scheme involving approximately \$1 billion in fraudulently obtained funds).

corporate executives and whoever is defending the corporation itself. All of this is unavoidably time-consuming, regardless of the number of people working on the matter.

In turn, once the government has a handle on what happened, negotiations with individuals and the corporation itself can take months or years, as the government and defense lawyers negotiate immunity deals, produce additional documents or data, exchange expert findings, and/or arrange opportunities for defense counsel to make presentations relating to culpability or penalties. If the parties do not reach a resolution short of criminal charges, prosecution itself will take additional months or years, depending on the district and the complexity of the case.

As a corollary to the concern over “stats,” there is intermittent hand-wringing about the use of deferred prosecution agreements (“DPA”) and non-prosecution agreements (“NPA”) to resolve criminal investigations of corporate entities. A DPA is a contractual arrangement between DOJ and the target company in which the government brings charges against the entity but agrees not to pursue them so long as the entity meets certain requirements; for example, paying a financial penalty and revising internal compliance programs in a manner approved by DOJ. The company also publicly admits to a factual statement, drafted by DOJ, summarizing the company’s misconduct. Other requirements often include agreeing to cooperate with the government’s investigation of corporate executives or other entities and waiving the relevant statute of limitations. If the company meets all of these requirements, DOJ agrees to seek dismissal of the charges after a certain period, usually years.²² An NPA is similar, involves no criminal charges and a government commitment not to bring any if the company meets certain requirements. These are more unusual.

In the corporate context, DPAs are rarely used with individual defendants but, as to corporate entities, what the previous discussion of resource realities shows is that DPAs are often a useful and efficient tool for addressing and deterring corporate misconduct. It is true that they can be used inappropriately, in situations where more severe handling is warranted, but these kinds of misjudgments are true in all areas of federal prosecution. In the corporate sphere, DPAs are often a means of publicly holding a company to account for its misconduct – including a criminal charge, admission to a highly unfavorable statement of facts written by federal prosecutors, and a severe financial penalty – while shaving months or years of further investigation and litigation and also requiring the company to implement substantial internal changes to deter future misconduct.²³

In short, this kind of resolution is often, though of course not always, in the public interest, and it usually assists the effort to hold individual executives accountable through criminal charges.

²² See U.S. Dep’t of Justice, *Justice Manual*, 9-28.200 (General Considerations of Corporate Liability). For a recent example, see *United States v. British American Tobacco P.L.C.*, No. 23-cr-118 (D.D.C. 2023) (Deferred prosecution agreement) (British American Tobacco and its subsidiary agreed to pay penalties totaling more than \$629 million to resolve bank fraud and sanctions violations charges arising out of the companies’ scheme to do business in North Korea through a third-party company in Singapore, in violation of the bank fraud statute and the International Emergency Economic Powers Act).

²³ Cf. *United States v. Taro Pharmaceuticals U.S.A., Inc.*, No. 20-cr-213 (E.D. Pa. 2020) (deferred prosecution agreement). As part of Taro’s cooperations obligations, the company agreed to cooperate with the Antitrust Division’s ongoing criminal investigation of the generic drug industry. In February 2020, Taro’s former executive, Ara Aprahamian, was indicted. After Taro’s DPA, other companies reached settlements with DOJ.

If the use of DPAs were eliminated, the time frame for resolving criminal cases against corporations and their executives would, as an average, substantially increase. Especially in cases where investors were harmed, would this be better? It would greatly delay restitution to those investors. Similarly, it would delay, and could stymie in the event of an acquittal, the effort to require companies to implement meaningful compliance reforms.

Along the same theme, DOJ's recent implementation of self-disclosure policies for corporate wrongdoing is a good idea.²⁴ This has worked well in prior contexts.²⁵ For one, it materially increases the amount of wrongdoing addressed by the Department, as self-disclosure supplements the government's own policing efforts. With official recognition that self-disclosure could lead to more lenient treatment, companies must now add this factor to their risk calculus when they uncover internal wrongdoing.²⁶ The policy also creates a wedge between the company's interests and those of individual executives: the corporation may benefit from self-disclosure, but the price may be cooperation against its own personnel.

Another recent step by DOJ is worth noting. This year, DOJ stood up a publicly-available database intended to capture all corporate resolutions, including pre-charging settlements like DPAs.²⁷ Private organizations have tried to maintain these kinds of databases; in fact I think Professor Brandon Garrett helps maintain one of the better ones.²⁸ I think most of us, regardless of our particular views on the current state of corporate criminal enforcement, agree that more transparency is better – better data leads to better policy, and the public should be able to see how DOJ does business. This is especially so in an age in which major corporations profoundly impact the lives of ordinary Americans, right down to what they are allowed to say on social media platforms serving millions of people. Based on my experience, a comprehensive review of enforcement efforts, whether or not they result in filed charges, shows that, while the system isn't perfect, no corporation dismisses the risks of federal enforcement. Moreover, the ever-present threat of federal enforcement has prompted U.S.-based corporations to implement internal controls that are among the most effective in the world.

²⁴ See U.S. Dep't of Justice, *Justice Manual*, 9-47.120 (Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy); U.S. Dep't of Justice, *United States Attorneys' Offices Voluntary Self-Disclosure Policy* (Feb. 22, 2023).

²⁵ See, e.g., *Self Reporting to the Authorities and Other Disclosure Obligations: The US Perspective*, GLOBAL INVESTIGATIONS REVIEW, Feb. 8, 2021 (discussing, *inter alia*, DOJ's FCPA voluntary disclosure program), available at <https://globalinvestigationsreview.com/guide/the-practitioners-guide-global-investigations/2021/article/self-reporting-the-authorities-and-other-disclosure-obligations-the-us-perspective>.

²⁶ Ariel A. Neuman & Jen C. Won, *When and Why to Consider Self-Disclosure of Criminal Conduct*, ABA ("Self-disclosure of criminal conduct is virtually becoming a requirement given current DOJ policy. Failure to disclose upon detection will lead to prosecutions and the imposition of significant penalties that may otherwise be avoided. Whether the misconduct comes to light in the context of a referral from an opponent in civil litigation, a whistleblower, or a victim report, the consequences for a company will be far worse if the feds knock on the company's door, as opposed to vice versa. Civil litigators who represent corporations will want to keep these considerations in mind and strive to stay informed about the latest developments in DOJ policy.").

²⁷ U.S. Dep't of Justice, Corporate Crime Database, available at <https://www.justice.gov/corporate-crime/corporate-crime-case-database>.

²⁸ *Corporate Prosecution Registry*, Duke Law, available at <https://corporate-prosecution-registry.com/>.

All federal enforcement is about resource allocation. This was true when the DOJ workforce could fit in one room,²⁹ and it remains true today, with a workforce of over 10,000 lawyers worldwide.³⁰ We are a big country; DOJ has never been able to devote “enough” prosecutors to a given type of crime and every type, when scrutinized, calls out for additional troops. In the current moment, I caution against prioritizing limited resources for prosecuting corporations and their executives, as opposed to other kinds of crime. When I was the U.S. Attorney in Boston, about 70,000 Americans a year were dying from opioid overdoses and other drugs.³¹ We called it a crisis. Now that number is about 110,000, fueled by Mexican drug cartels pumping thousands of pounds of fentanyl into the United States every year over a porous, unsecure border.³² Our major cities are wracked by not only violent crime but the kind of “lifestyle” crime – shoplifting, vandalism, petty theft – that contributes to an atmosphere of fear and societal decline.³³ Many factors contribute to this, but a lack of determined prosecution is definitely one of them.³⁴

Thank you again for the opportunity to address these important issues, and I look forward to whatever questions you may have.

²⁹ See, e.g., U.S. Dept. of Justice, 150 YEARS OF THE DEPARTMENT OF JUSTICE, available at <https://www.justice.gov/history/timeline/150-years-department-justice#event-creation-of-the-us-department-of-justice-and-civil-rights-enforcement-1870-1872>.

³⁰ See, e.g., U.S. Dept. of Justice, OFFICE OF ATTORNEY RECRUITMENT & MANAGEMENT, available at <https://www.justice.gov/oarm/#:~:text=Attorney%20Recruitment%20%26%20Management,About%20the%20Office,more%20than%2010%2C000%20attorneys%20nationwide>.

³¹ See, e.g., Natl. Inst. Of Health, DRUG & OPIOID-INVOLVED OVERDOSE DEATHS – UNITED STATES, 2017 – 2018, available at <https://pubmed.ncbi.nlm.nih.gov/32191688/#:~:text=During%202018%2C%20a%20total%20of,%2C%20and%204,1%25%2C%20respectively>.

³² See, e.g., Natl. Inst. On Drug Abuse, DRUG OVERDOSE DEATH RATES, available at <https://nida.nih.gov/research-topics/trends-statistics/overdose-death-rates>.

³³ See, e.g., Yuri Avila & John Blanchard, *S.F. Downtown Exodus: Map Shows Every Major Retail Closure This Year*, SAN FRANCISCO CHRONICLE, Dec. 5, 2023, available at <https://www.sfchronicle.com/projects/2023/san-francisco-downtown-closing/#:~:text=AT%26T%2C%20Banana%20Republic%20and%20First,the%20mall%20only%2055%25%20leas> cd.

³⁴ See Zack Smith & Charles Stimson, ROGUE PROSECUTORS: HOW RADICAL SOROS LAWYERS ARE DESTROYING AMERICA’S COMMUNITIES (2023).

Questions for the Record from Senator Chuck Grassley
Matthew Olsen
Senate Judiciary Committee Hearing
“Cleaning Up the C-Suite: Ensuring Accountability for Corporate Criminals”
December 12, 2023

Mr. Olsen: In your written testimony you stated, “the Department announced its largest corporate resolution that also involved the guilty plea of a chief executive officer (CEO). Binance pleaded guilty to violating the Bank Secrecy Act, failing to register as a money transmitting business, and violating U.S. sanctions, and Binance’s CEO, Changpeng Zhao, pleaded guilty to causing Binance to violate the Bank Secrecy Act. Binance agreed to pay \$4.3 billion in penalties...”

According to the terms of the plea agreement, Binance agreed to pay a criminal fine of approximately \$1.8 billion.¹ They also agreed to pay a “money judgment” of roughly \$2.5 billion representing the value of assets required to be forfeited to the U.S. government, which is not currently statutorily required to be deposited into the CVF.² However, the Department will offset the \$1.8 billion criminal fine by \$950 million paid to the CFTC and \$850 million paid to FinCEN or OFAC in connection with their parallel investigations. Meaning, of the multi-billion-dollar penalty, it appears that *nothing* could be deposited into the Crime Victims Fund if the criminal fine is completely offset.

- a. Were any criminal penalties from the Binance plea agreement collected and deposited into the CVF? If so, how much? If not, why not?
- b. Was the \$2.5 billion asset forfeiture “money judgment” offset by other fines or penalties Binance paid? If not, why not?

According to Zhao’s plea agreement, the ex-CEO was ordered to pay a \$50 million fine pursuant to 31 U.S.C. § 5322(e)(1).³ However, the Department deemed this fine satisfied if Zhao paid \$50 million to the CFTC by the time of sentencing.

- a. When the \$50 million criminal fine was collected, was it statutorily required to be deposited into the CVF regardless of who collected the fine?⁴ Please explain.
- a. How much of the \$50 million criminal fine imposed was collected and deposited into the CVF? If none, why not?

In response to my February letter this year about the CVF, the Justice Department said that ABB Limited agreed to pay a \$315 million criminal penalty as part of a deferred prosecution agreement. However, the terms of the agreement stated only \$72.5 million would be collected by

¹ U.S. v. Binance Holdings, Ltd., Plea Agreement (Nov. 21, 2023) 13-14 <https://www.justice.gov/media/1326901/dl?inline>.

² U.S. v. Binance Holdings, Ltd., Order of Forfeiture (Nov. 21, 2023)

³ U.S. V. Changpeng Zhao, Plea Agreement (Nov. 21, 2023) <https://www.justice.gov/media/1326906/dl?inline>.

⁴ 31 U.S.C. § 5322(e)(1) requires a fine to be imposed and 34 U.S.C. § 20101(b) requires a CVF deposit once a fine is collected.

the U.S. The rest would be reduced by up to \$242.5 million to settle other claims, including \$179.5 million involving foreign governments.

During the hearing, in response to my question about the settlement, Acting AAG Argentieri stated “when we do these resolutions where it’s important to have cooperation from foreign countries because that’s how we get evidence internationally, we do credit foreign governments.”

- b. In corporate criminal cases prosecuted by foreign governments, have foreign authorities credited monetary penalties to U.S. authorities conducting parallel investigations? If so, when, who and how much?
- c. What investigative assistance did the South African government provide to the Department that warranted such a credit?

In response to my February letter this year about the CVF, the Justice Department stated “[w]e are not aware of any circumstances since enactment of the VOCA Fix in which the Department resolved a case with a monetary penalty by DPA or NPA without collecting a monetary penalty for the Fund.”

Yet in a 2022 NPA with Jardine Lloyd Thompson Group Holdings Ltd. (JLT), the company agreed to disgorge approximately \$29 million in ill-gotten gains to the U.S. Treasury. However, the agreement provided the Department would credit up to 100 percent of the disgorgement amount in what the company pays to foreign authorities. Additionally, a 2022 NPA between the Department and Safran S.A. states the company would disgorge about \$17 million in ill-gotten profits. But it doesn’t specify if the company was to pay this money to the U.S. Treasury, and thus to the CVF or elsewhere.

- a. Were criminal penalties from these non-prosecution agreements collected and deposited into the CVF? If so, how much?

According to the 2022 year-end report of the Department’s Criminal Division fraud unit, it imposed more than \$1.15 billion in total U.S. criminal monetary penalties. And yet, collection of these penalties doesn’t appear to be reflected by the CVF. During the hearing, I asked Acting AAG Argentieri for the financials showing how much of the criminal penalties imposed have been collected and deposited into the CVF. She committed to get back to me with those exact answers. She also agreed to provide answers with respect to how much of the \$315 million from the ABB Ltd. deferred prosecution agreement was collected and deposited into the CVF. Accordingly, what are those answers?

A P P E N D I X

The following submissions are available at:

<https://www.govinfo.gov/content/pkg/CHRG-118shrg62797/pdf/CHRG-118shrg62797-add1.pdf>

Submitted by Chair Durbin:

Public Citizen, Washington, DC, statement 2

