

Bondi DOJ Pivots on Approach to National Security Enforcement

Client Alerts

February 12, 2025

By: Shreve Arial, Keisha N. Stanford, Shoba Pillay, Ian Moss, Brennan Murray, Philip J. Chertoff, Natasha Brown Harris, Julianna St. Onge

On February 5, 2025, in one of her first actions as the nation's chief law enforcement official, Attorney General Pam Bondi issued several new memoranda that significantly refocus US Department of Justice (DOJ) national security investigations, resources, and enforcement priorities. With two of these memos, *General Policy Regarding Charging, Plea Negotiations and Sentencing* (AG Bondi's Memo) and *Total Elimination of Cartels and Transnational Criminal Organizations* (Cartel Memo), the Attorney General (AG) has simultaneously deprioritized, and in some cases eliminated, a number of existing national security initiatives, all in the broader context of guidance to prioritize DOJ resources toward the investigation and prosecution of transnational organized crime and drug cartels.

First, AG Bondi has deprioritized the investigation and prosecution of criminal Foreign Agent Registration Act (FARA)^[1] and 18 U.S.C. § 951 (Section 951) violations, including by disbanding the Federal Bureau of Investigation's (FBI's) Foreign Influence Task Force (FITF). Going forward, DOJ's National Security Division's (NSD) FARA Unit has been directed to limit criminal enforcement to "conduct similar to traditional espionage" and to focus on "civil enforcement, regulatory initiatives, and public guidance." Second, NSD's Corporate Enforcement Unit (CEU), a "unit" within the Counterintelligence and Export Control Section (CES), which was established in 2023 to pursue enforcement of national security-related violations involving corporations (most notably sanctions evasion and export control violations), has been disbanded, along with Task Force KleptoCapture, the interagency law enforcement task force focused on enforcing sanctions and export controls imposed in response to Russia's invasion of Ukraine. Additionally, charging and investigative authority for many national security cases appears to have been removed from NSD and delegated to the 94 US Attorney's Offices around the country.

I. Background on the National Security Division's Role and FARA Enforcement

NSD came into existence in March 2006, with the passage of the USA Patriot Improvement and Reauthorization Act. Since its founding, NSD has served as the coordinating and approval authority within DOJ for the vast majority of all national security investigations and indictments brought by US Attorney's Offices around the country, acting as clearing house for terrorism, export control,

sanctions, FARA, espionage, and nation-state cybercrime cases. NSD's role was twofold: first, to provide expertise and ensure consistency in DOJ's approach to these complex and sensitive matters across the 94 US Attorney's Offices. And second, to create a central entity for the consideration of national security interests in DOJ's investigations and prosecutions, including coordination with other departments and agencies involved in national security, such as the State Department, Defense Department, and the intelligence community.

With respect to FARA, in September of 2016, DOJ's Office of the Inspector General published an audit of the enforcement and administration of FARA, effectively finding that NSD lacked a comprehensive strategy for the statute's enforcement. Around that same time, intelligence community reports regarding interference in the 2016 elections drew new attention to the efforts of foreign actors seeking influence over the American political process. As a result, NSD began to reprioritize enforcement of FARA, which criminalizes acting as an agent of a foreign government without prior notification, and its companion statute, Section 951. Beginning in 2017, DOJ Counterintelligence and Export Control Section (CES) and the FARA Unit pursued several high-profile prosecutions of FARA and Section 951 violations, including the prosecution of President Trump's former campaign chairman, Paul Manafort in 2018 (later pardoned), and the unsuccessful prosecutions of President Obama's former White House Counsel and Skadden Partner, Greg Craig in 2019, and of Trump fundraiser Tom Barrack in 2022, among others.

That trend of increasing criminal enforcement seemed only likely to continue, as the FARA Unit published 15 new Advisory Opinions in June 2024, signaling an increased focus on enforcement. On December 19, 2024, DOJ also submitted a long awaited Notice of Proposed Rulemaking (NPRM) to amend and clarify regulations issued under FARA. Among other points, the proposed rule "would make changes to key regulations, including those relating to the commercial exemption, the exemption for persons whose activities do not serve predominantly a foreign interest, and the exemption for persons qualified to practice law." Initial analysis of the proposed rule suggests that it would greatly expand DOJ's FARA enforcement capabilities, specifically by narrowing the registration exceptions for commercial activities and placing new requirements on the labeling of "informational materials."

II. Summary of the AG Memoranda

A. Shifting Priorities

DOJ's approach to FARA over the past eight years changed on February 5, 2025, with the release of AG Bondi's Memo. Under the new guidelines, criminal charges under FARA and Section 951 will be "limited to instances of alleged conduct similar to more traditional espionage by foreign government actors." Rather than pushing for criminal prosecution, the memo directs CES and the FARA Unit to focus more "on civil enforcement, regulatory initiatives, and public guidance."

The memo's reference to "traditional espionage" suggests that NSD will continue to investigate and prosecute cases like the one brought this past year against Linda Sun, former aide to New York

Governor Kathy Hochul, for acting as an undisclosed agent of the People’s Republic of China. Otherwise, the memo does not include additional guidance on FARA civil enforcement priorities (which are limited because DOJ’s ability to seek retroactive registration has been recently curtailed). Moreover, the status of DOJ’s proposed updates to FARA’s regulations remains uncertain, and the AG’s approach suggests that DOJ may seek to rescind the proposed rule and direct NSD to take a different approach.

B. Shifting Resources

In addition to revising DOJ’s approach to FARA and Section 951 cases, AG Bondi disbanded two other significant units that were the product of key national security initiatives out of the last administration. First, AG Bondi disbanded Task Force KleptoCapture, the interagency law enforcement task force focused on enforcing sanctions and export controls imposed in response to Russia’s invasion of Ukraine. Second, AG Bondi disbanded NSD’s CEU, which reflected the Biden Administration’s support for prioritization of the enforcement of national security-related violations involving corporations—most notably sanctions evasion and export control violations. AG Bondi has also directed the CEU “personnel assigned to the Unit [to] return to their previous posts”—though it is uncertain how this will impact staffing in CES, given that most attorneys in the section carry a diverse set of responsibilities and only spend part of their time supporting CEU-specific cases.

C. Changes in Authority at NSD

Finally, the Cartel Memo also conveyed a pronounced shift in DOJ’s approach to interagency coordination on national security, seeking to “remov[e] bureaucratic impediments to aggressive prosecution” by suspending many of NSD’s approval requirements, in particular for terrorism and International Emergency Economic Powers Act (IEEPA) charges. By eliminating many of NSD’s approval requirements, the new guidance may reduce coordination within DOJ, and between DOJ and other foreign policy and national security components of the US government.^[2] That decreased cooperation, in turn, may result in more independent and speedier decision-making by US Attorneys when charging terrorism suspects, but may come at the expense of consistency in the application of the law and of deconfliction between criminal prosecutors and other national security stakeholders (such as the State Department or the intelligence community), likely creating some confusion in US foreign policy and diplomatic relations.

III. What Do These Changes Mean in Practice?

Overall, the speed at which DOJ has issued these memos leaves room for ambiguities. As DOJ processes these directives, impacted units and offices will seek clarity from the AG or Deputy Attorney General’s (DAG’s) offices on how these new policies will be applied. If there are conflicts identified—both in the language and the intent of the directives—the AG or DAG will need to resolve those disputes. That iterative engagement will likely result in more clarity. Nonetheless, given the recent pace of guidance out of the executive branch, AG Bondi may well end up issuing follow-on or supplemental policies that supersede the directives in the memoranda discussed here.

In the short term, companies and individuals focused on FARA and Section 951 should proceed with business as usual. While it appears that criminal enforcement will be deprioritized in the new administration, the laws and regulatory regime in this area remain unchanged. And, with the shift away from criminal enforcement, individuals and entities working with foreign individuals and governments could see an increase in the uptick of letters of inquiry, regulatory engagement, and/or civil enforcement actions out of the FARA Unit related to the requirements to register.

In the long term too, companies and individuals would be wise to continue complying with registration requirements of FARA and Section 951, given the recent history of enforcement of criminal FARA and Section 951 violations, as well as the significant statute of limitations available to bring charges under FARA and Section 951 (five years for both criminal FARA and Section 951). To the extent that a future administration takes a different view—and, once again, prioritizes criminal enforcement—individuals and corporations that have ignored registration requirements would be hard pressed to claim (as many have tried related to conduct predating 2017) that they were not on notice that criminal prosecution was a possibility. Moreover, given the history of engagement on FARA and Section 951 from Congress, it is likely that DOJ will not be the last word in this area. Senate Judiciary Chairman Chuck Grassley has already responded to AG Bondi’s memoranda publicly, congratulating aspects of her approach (including the decision to disband the FBI’s FITF), conveying Judiciary’s intention to “do[] oversight” of the AG’s recent memorandum, and conveying his view that “civil enforcement MUST B[E] VERY AGGRESSIVE on foreign agent registration enforcement.”

The impact of the national security resource shift is not entirely obvious. While the elimination of the CEU may suggest a paring back of efforts to go after the business-related national security cases, it is hard to see this administration pulling back on any cases tied to threat actors associated with the Chinese Communist Party, given the prior Trump administration’s efforts in this area. Moreover, there is no indication that cases currently assigned within the CEU and Task Force KleptoCapture will be closed, and it is unclear which attorneys (other than those focused solely on CEU cases) will be “returned to their previous posts.” Notably too, matters originating from those units are jointly staffed with other prosecuting units within the Criminal Division or the US Attorney’s Offices located around the country. And, finally, the cutting of red tape in seeking sanction, export control, and terrorism charges may lead to more, and not fewer, national security cases—as US Attorney’s Offices around the country feel emboldened to pursue prosecutions that may have otherwise been held up due to interagency coordination.

Jenner & Block will continue to monitor new developments regarding FARA enforcement and national security-centered investigations. Our team is counseling clients on these issues and is available to provide guidance. Shreve Ariail, Shoba Pillay, and Keisha N. Stanford are partners in the firm’s National Security and Crisis Practice, with Shreve and Shoba serving as co-chairs. Ian Moss is a special counsel in the firm’s Investigations, Compliance, and Defense Practice. Philip Chertoff, Julianna St. Onge, Natasha Brown Harris, and Brennan Murray are associates with Jenner & Block.

Footnotes

[1] FARA was enacted in 1938 in response to a rise in foreign propaganda. Under FARA, agents of foreign principals who are engaged in political activities or other activities specified in the statute are required to make periodic public disclosures to DOJ to disclose their relationship, activities, receipts, and any disbursements in support of their activities.

[2] That said, it is not entirely clear whether most sanctions and terrorism cases are now exempt from NSD coordination, or if the NSD coordination exemption *is limited just to* designated drug cartels and transnational criminal organizations. Notably, the Cartel Memo targets a 90-day policy reassessment period, and requests input from the NSD and the Criminal Division “regarding any modifications believed to be necessary to the Justice Manual and existing regulations to effectuate [the] policy,” suggesting that additional clarifying guidance is forthcoming.

Related Attorneys

Shreve Ariail

Partner
sariail@jenner.com
+1 202 639 6871

Keisha N. Stanford

Partner
kstanford@jenner.com
+1 202 639 6889

Shoba Pillay

Partner
spillay@jenner.com
+1 312 923 2605

Ian Moss

Special Counsel
imoss@jenner.com
+1 202 639 6074

Brennan Murray

Associate
bmurray@jenner.com
+1 312 840 7283

Philip J. Chertoff

Associate
pchertoff@jenner.com
+1 202 637 6346

Natasha Brown Harris

Associate

nbrownharris@jenner.com

+1 312 840 7428

Julianna St. Onge

Associate

jstonge@jenner.com

+1 312 840 7368

Related Capabilities

Investigations, Compliance, and Defense

National Security and Crisis

© 2026 Jenner & Block LLP. Attorney Advertising. Jenner & Block LLP is an Illinois Limited Liability Partnership including professional corporations. This publication, presentation, or event is not intended to provide legal advice but to provide information on legal matters and/or firm news of interest to our clients and colleagues. Readers or attendees should seek specific legal advice before taking any action with respect to matters mentioned in this publication or at this event. The attorney responsible for this communication is Brent E. Kidwell, Jenner & Block LLP, 353 N. Clark Street, Chicago, IL 60654-3456. Prior results do not guarantee a similar outcome. Jenner & Block London LLP, an affiliate of Jenner & Block LLP, is a limited liability partnership established under the laws of the State of Delaware, USA and is authorised and regulated by the Solicitors Regulation Authority with SRA number 615729. Information regarding the data we collect and the rights you have over your data can be found in our Privacy Notice. For further inquiries, please contact dataprotection@jenner.com.

Stay Informed

