

## New DOJ Roles Underscore National Security Focus

By **Henry Hockeimer, Beth Moskow-Schnoll and Katherine Oaks** (October 20, 2023)

On Sept. 11, the U.S. Department of Justice announced the creation of two new leadership positions in its National Security Division.

Ian Richardson, a former assistant U.S. attorney in the Eastern District of New York focused on national security corporate prosecutions, will serve as chief counsel for corporate enforcement.

Christian Nauvel, formerly senior counsel to the assistant attorney general for the DOJ's Criminal Division, will be deputy chief counsel for corporate enforcement.

This step by the Justice Department sends another strong signal to the private sector that federal law enforcement is pouring resources into corporate investigations to identify potential national security violations, such as evasion of sanctions and export controls and material support for terrorism.

These appointments are part of the Justice Department's broader efforts to target corporate criminal conduct, particularly where companies are accused of violating laws passed to protect the security of the U.S.

Deputy Attorney General Lisa Monaco previously described the "new level of intensity and commitment to sanctions enforcement" in particular in recent years, reiterating on several occasions that sanctions are "the new [Foreign Corrupt Practices Act]."

That new level of intensity is also meant to encourage companies to fully investigate any potential violations and disclose such conduct to the DOJ.

In a June 2022 speech, Monaco explained:

The growth of sanctions enforcement follows the path that the FCPA traveled before it. Both FCPA and sanctions enforcement are relevant to an expanding number of industries. They have extended beyond just U.S. actions to an increasingly multilateral enforcement regime. And they both reward companies that develop the capacity to identify misconduct within the organization, and then come forward and voluntarily disclose that misconduct to the department.

Both appointees are former prosecutors with experience prosecuting companies for sanctions violations and related economic crimes, which are a key recent focus of the corporate enforcement program.

Last October, Richardson secured the department's "first corporate conviction for providing material support to foreign terrorist organizations" in U.S. v. Lafarge SA. In a press release



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on Oct. 18, 2022, Monaco described the Lafarge SA matter as "a vivid reminder of how corporate crime can intersect with national security."

And, more recently, as part of Operation Medusa, Richardson was responsible for securing a "court order that authorized [the FBI] to remotely neutralize malware used by Russia for long-term cyber-espionage."

In Richardson's new role, this intersection of corporate crime and national security will be his focus.

His experience as lead prosecutor in Operation Medusa, which involved assistance from the National Security Division, also suggests that he will emphasize a coordinated multiagency approach to corporate investigations.

Nauvel also brings experience prosecuting corporate crime in the national security space to his new role. Before becoming senior counsel, he was a trial attorney in the Criminal Division's Money Laundering and Asset Recovery Section and with the National Cryptocurrency Enforcement Team, where he led the prosecution of defendants in U.S. v. Huawei Technologies Co. Ltd. for racketeering, sanctions violations and theft of trade secrets.

That case, involving the world's largest telecommunications equipment manufacturer, is another example of a prosecution involving national security-related corporate crime.

Nauvel's National Cryptocurrency Enforcement Team experience also suggests the corporate enforcement program will scrutinize the use of cryptocurrency in investigations of conduct involving threats to national security.

More broadly, the intersection of corporate crime and national security is a trend that has been increasing, according to Associate Deputy Attorney General Marshall Miller, who said in a speech delivered at the Ethics and Compliance Initiative IMPACT Conference in May that the DOJ is responding by "dramatically scaling up our investment in fighting national security-related corporate crime."

According to Miller, in the prior seven months alone, about two-thirds of major corporate criminal resolutions secured by the DOJ had national security implications.

Notably, these examples tended to span industries ranging "from construction and finance to agriculture and telecommunications," according to Miller, and vary in nature "from sanctions violations to terrorism crimes and money laundering for Russian interests."

This increasing intersection of corporate crime and national security was also the subject of a panel on which Richardson previously spoke the day his new role was announced.

The panel, Sanctions and Export Controls: "The New FCPA," was part of the Practising Law Institute's 2023 White Collar Crime Conference. Referencing his new position, Richardson pledged he would work to "introduce some consistency and predictability in how we approach corporate investigations in the national security space" and "to help coordinate and drive National Security Division investigations of corporate wrongdoing."

Commenting on the new leadership appointments, National Security Division Assistant Attorney General Matthew Olsen explained this effort is aligned with the National Security Division's core mission to protect national security: "In an era of renewed nation-state

competition, corporations are on the front lines of the fight to defend our national security."

He referred to an increasing number of violations of national security laws coming to light through the division's investigations, and said that "[e]nforcing the laws that deny our adversaries the benefits of America's innovation economy and protect technologies that will define the future is core to the National Security Division's mission."

As part of the DOJ's broader efforts to prosecute corporate conduct believed to threaten national security, the department also is adding more than 25 prosecutors to investigate and prosecute economic crimes like sanctions evasion and export control violations.

This expansion was announced in a March speech by Monaco, when she also previewed the establishment of the chief and deputy chief counsel positions the division filled in September.

Monaco stated that "these actions demonstrate the breadth of the department's commitment to [combating] corporate crime, particularly where it places our collective security at risk."

She specifically called out the National Security Division's increasing focus on corporate sanctions violations, saying the division "will work closely with U.S. attorneys' offices and the Criminal Division to apply enforcement strategies that have proven their worth in other areas of the department."

The creation of these leadership roles reflects a concern regarding the increasing number of violations of laws that protect national security. It likewise reflects an interest in strengthening the National Security Division's corporate criminal enforcement efforts in cases involving, for example, exports of contraband in violation of sanctions, and that raise concerns that the U.S. financial system is being used to fund terrorist organizations.

The Sept. 11 press release comes on the heels of the DOJ unsealing an unprecedented criminal resolution on Sept. 8, involving a shipping company that transported close to 1 million barrels of crude oil from Iran in violation of sanctions.

The company, Suez Rajan Ltd., pled guilty in April to conspiracy to violate the International Emergency Economic Powers Act.

As part of its sentence, the court ordered the company to pay a nearly \$2.5 million fine and imposed three years of corporate probation.

Additionally, Empire Navigation, the company operating the vessel carrying the contraband oil, agreed, as part of a deferred prosecution agreement, to cooperate. As part of its cooperation, Empire transported the seized oil to the U.S. at its own expense.

The National Security Division — specifically the Counterintelligence and Export Control Section — is among the departments involved in investigating and prosecuting the criminal matter, and continues to be involved in ongoing related investigations and litigation, including a civil forfeiture action brought concerning the contraband Iranian oil now in the U.S.

That action is based on terrorism and money laundering statutes, according to the DOJ.

Another key element of the DOJ's focus on the trend emerging in corporate crime

implicating national security is the department's "new and enhanced premium on voluntary self-disclosure," according to Miller, speaking at the Global Investigations Review Annual Meeting held Sept. 21.

According to Miller, equally important to the success of the enhanced corporate enforcement efforts has been the department's decision to place a high premium on collaboration by the private sector.

As of late September, and for the first time, "all 94 U.S. Attorneys' Offices have now adopted a single Voluntary Self-Disclosure policy that applies from Anchorage to Honolulu to right here in New York — and everywhere in between."

Emphasizing the department's efforts to enhance transparency, consistency and predictability, Miller noted that the Criminal Division's voluntary self-disclosure policy "explains exactly what a company needs to do" to receive a presumption of a declination — to avoid charges based on noncompliance — through voluntary self-disclosure.

And, in a speech Oct. 4 at the Society of Corporate Compliance and Ethics' 22nd Annual Compliance and Ethics Institute, Monaco announced the latest step the DOJ is taking to promote a corporate culture of compliance — a mergers and acquisitions safe harbor policy designed "to incentivize the acquiring company to timely disclose misconduct uncovered during the M&A process."

Notably, however, while companies will generally qualify for safe harbor so long as they disclose discovered misconduct within six months of the acquisition, she warned that where misconduct threatens national security, companies "can't wait for a deadline to self-disclose."

According to Monaco, the entire department will be guided by three corporate enforcement principles moving forward: "(1) holding corporate and individual wrongdoers accountable, (2) incentivizing compliance, self-disclosure, remediation, and cooperation, and (3) deterring and penalizing repeat bad actors."

## **Conclusion**

The expansion of the corporate enforcement program and establishment of new leadership to spearhead these efforts is a clear indication that the DOJ is serious about targeting companies for sanctions violations and other allegations of corporate criminal conduct in areas implicating national security.

The Iranian oil case highlights these efforts, and is just one example of the increasing focus within corporate criminal enforcement on investigating and prosecuting sanctions violations and conduct in violation of export control measures or otherwise threatening national security.

The latest actions to enhance enforcement of corporate crime include an increased value being placed on voluntary self-disclosure and cooperation by the private sector.

Recent enforcement actions highlight this renewed emphasis on prosecuting corporate crime where it implicates national security, and reveal the flip side of the coin — the discretion prosecutors are exercising to decline to bring charges in exchange for companies selecting to voluntarily self-disclose noncompliance.

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