

# Conspiracy Theories

2026 Edition

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Now a year in, the Trump 2.0 commitment to continued and aggressive criminal antitrust enforcement is bearing fruit, bolstered by a “frenzy” of tips from the first-ever whistleblower rewards program. The Antitrust Division initiated 100 new investigations in 2025 and filed 24% more cases in 2025 compared to 2024. Ongoing investigations and litigation continue to focus on procurement, consumer-facing markets, labor markets, and exploring novel theories of harm involving the use of AI and environmental, social, and governance efforts. Even states are dusting off criminal authority with increasing frequency, and the DOJ continues to emphasize the need to invest in and update compliance efforts, or risk the possibility of criminal investigation, prosecution, and “significant prison sentences” for culpable executives.

**Based on recent developments and trends from the past year, here are our theories for what’s to come:**

1. The Whistleblower Program will prompt investigations, additional rewards, and amplify the importance of compliance efforts.
2. Public procurement and government spending will remain a priority.
3. Consumer-facing markets and affordability will continue to top the enforcement agenda.
4. Backed by the first guilty verdict for collusion affecting workers, the DOJ will continue to investigate no-poach and wage-fixing agreements.
5. The DOJ will continue to prioritize individual accountability, including seeking prison terms.
6. The DOJ will continue to pursue conduct beyond smoke-filled rooms to try untested theories likely overlapping with the subjects of civil litigation.
7. States will make use of their own criminal antitrust authority.

## 1. Whistleblower Program

In July 2025, the Antitrust Division announced the first-ever paid whistleblower program. Only six months later, the Division announced its first award of \$1 million.<sup>1</sup> The expeditious grant and publicity around the first award underscores the DOJ's commitment to the program. Now Acting Assistant Attorney General (AAG) for the Antitrust Division DOJ Omeed Assefi said he expects further announcements in the coming weeks and months and that it's becoming "a rarity" for antitrust investigations "not to include a whistleblower."<sup>2</sup>

The first award also highlighted the program's broad scope and implications for corporate compliance efforts. Because the whistleblower program is administered in partnership with the U.S. Postal Service (USPS), whistleblowers are only eligible for rewards if the conduct they report "affects" USPS. As we predicted,<sup>3</sup> the bar for showing a postal nexus is low and flexible. Acting Deputy Assistant Attorney General (DAAG) Daniel Glad emphasized that USPS "is the only part of the federal government that reaches every single home in America six days a week," and "that many things can affect the USPS," including sending price-fixed products or "sending or receiving invoices or payments through the mail."<sup>4</sup> Indeed, the first award arose in the context of bid rigging auctions for used cars; simply sending car titles through the mail was a sufficient hook. Because a Postal nexus can arise in many ways, it may be difficult to rule out a whistleblower at the outset of an internal or government investigation or challenge USPS's determination. USPS also has every incentive to find a nexus, as the USPS receives a portion of any resulting fines or penalties in exchange for their help with the investigation.

Prior to the introduction of the Whistleblower Rewards Program, companies would race against each other to reap the protections granted by the Corporate Leniency Policy. Now, a hefty financial incentive for employees, former employees, and anyone else who witnesses wrongdoing to report to the DOJ amplifies the pressure on companies to identify and report potential violations promptly and to build out robust internal reporting programs. Companies must prioritize developing employee

trust that leads to internal reporting. When concerns are raised, companies should vet them quickly and on a privileged basis all the while showing those who report that their concerns are being taken seriously.

Quick vetting is also a company's best shot at leniency, which affords non-prosecution protection to the first company to self-report. That race is now against employees, who have a strong financial incentive to go straight to the government and, unfortunately, are not required to report internally first.<sup>5</sup>

## 2. Continued Focus on Protecting Taxpayer Dollars

The Procurement Collusion Strike Force (PCSF) ensures public spending remains free from fraud and collusion. Investigating procurement agreements "remains a priority" because "procurement systems are vulnerable to collusion" and "the harm is direct and visible."<sup>6</sup> Indeed, procurement-related investigations amount to almost half of the Division's docket, and the DOJ continues its effort to educate more than 46,000 agents and procurement officials to recognize and investigate collusion.

One particular focus is defense spending. In February 2026, a metal fabrication and manufacturing executive pled guilty to rigging bids for \$8.5 million in military maintenance, repair, and operations contracts.<sup>7</sup> AAG Assefi, who was DAAG at the time, commented that the "Division and its partners in the Procurement Collusion Strike Force are laser focused on detecting and prosecuting those who seek to tilt the scales in their favor at the expense of American taxpayers and warfighters."<sup>8</sup>

An emphasis on protecting taxpayer money extends to public services beyond the Department of War. Following the recent indictment of three individuals for rigging bids for the sale of sports equipment to public schools in Mississippi, DAAG Glad said: "The Antitrust Division will continue to ensure that opportunities for public school children and taxpayer dollars receive the benefit of a competitive bidding process."<sup>9</sup> As was the case in the past year, we expect the PCSF will continue its broad focus on a range of government buyers and forms of wrongdoing. The past year saw the PCSF pursue a wide range of schemes, for example: those involving

kickbacks in exchange for influence over IT-related procurement contracts,<sup>10</sup> bid rigging of construction contracts at domestic military installations,<sup>11</sup> fraudulent sales of foreign forklifts to the Air Force,<sup>12</sup> bid rigging of consulting contracts with the New York City Department of Education,<sup>13</sup> and even fuel truck contracts for the U.S. Forest Service's wildfire fighting efforts.<sup>14</sup>

The DOJ's emphasis on protecting the government fisc is likely to dovetail with its expanded use of the False Claims Act<sup>15</sup> to advance the Administration's policy objectives. This potential was recognized in Trump 1.0. When reviewing the first year of the PCSF, for instance, Division officials noted the False Claims Act's mechanism to "provide civil penalties" when "the federal government or its agencies are victims of antitrust violations."<sup>16</sup> That same year, the Antitrust Division and the Civil Division jointly announced a settlement to resolve "civil antitrust and False Claims Act violations" for "a bid-rigging conspiracy that targeted contracts to supply fuel to U.S. military bases in South Korea."<sup>17</sup>

What was nascent in the first Trump Administration has now become reality. In January, the DOJ announced that "[s]ettlements and judgments under the False Claims Act exceeded \$6.8 billion in the fiscal year ending Sept. 30, 2025,"<sup>18</sup> and that amount included resolutions for false claims grounded in competition principles, namely, rigged government-contract bids for computer hardware products,<sup>19</sup> third-party logistics support,<sup>20</sup> and rigid wall shelters.<sup>21</sup> The DOJ explained that its record False Claims Act recovery "reflect[ed] the Department's focus on key enforcement areas, including combating fraud in . . . the government's procurement, loan, and grant programs."<sup>22</sup> This description aligns closely with the PCSF's objective "to combat antitrust crimes and related schemes in government procurement, grant, and program funding."<sup>23</sup> Add to this the White House's announcement of a new DOJ Division for National Fraud Enforcement to, among other things, "enforce the Federal criminal and civil laws against fraud targeting Federal government programs,"<sup>24</sup> aggressive procurement-related enforcement seems likely to continue on the upswing.

### 3. Kitchen-Table Enforcement Priorities

Criminal antitrust enforcement in 2025 targeted industries that impacted consumer wallets.<sup>25</sup> Throughout 2025, then-AAG Gail Slater regularly echoed statements about affordability from her confirmation hearings<sup>26</sup> noting that "vigorous antitrust enforcement" could "help protect Americans on pocketbook issues by promoting more affordable housing, healthcare, food, and transportation."<sup>27</sup>

In 2026, we expect that enforcement targeted at improving affordability will be a substantial priority for the Trump Administration and the DOJ. Indeed AAG Assefi, has emphasized as much in several 2026 statements, stating that the DOJ "will be unrelenting in our focus on affordability and kitchen-table issues that affect the lives of everyday Americans" while focusing on "issues such as housing as well as healthcare, food costs, transportation, insurance, entertainment and any other markets that have a direct impact on the lives of everyday Americans."<sup>28</sup>

Both the Trump Administration and the Antitrust Division have already taken steps to target these "kitchen table" industries. For example, at the end of December 2025, President Trump signed an Executive Order targeting "anti-competitive conduct across food supply sectors," which explicitly ordered the Attorney General to "commence criminal proceedings as appropriate."<sup>29</sup> Ongoing investigations touch industries including healthcare; food supply; road building; infrastructure; and supplies for offices, schools, cars, and construction.<sup>30</sup>

### 4. Labor

2025 was a milestone in the DOJ's decade-long effort to criminally prosecute no-poach and wage-fixing agreements, marking the first labor-market guilty verdict in a case against Eduardo Lopez. Lopez was sentenced to 40 months in jail for fraud and wage fixing affecting Las Vegas nurses.<sup>31</sup>

Following its success in *Lopez*, the Department of Justice has publicly reaffirmed that it will continue to view wage-fixing agreements as *per se* illegal violations, stating that they "are nakedly unlawful attempts at unjustly profiting off American workers."<sup>32</sup>

In 2026, we expect the Department of Justice to be on the lookout for cases where they can employ the formula that worked in *Lopez*. That approach coupled antitrust collusion with fraud charges and allowed prosecutors to deploy victim testimony and highlight documentary evidence like text messages and recordings. But while the DOJ's commitment to labor-market enforcement is clear, duplicating the facts and evidence that led to a guilty verdict in *Lopez* seems like a tall order. *Lopez*, filed back in 2023, is the last labor case the DOJ charged.

## 5. Individual Accountability

For years, prosecutors have trumpeted a priority for individual accountability over corporate cases. In 2025, this rang true with the Division charging nearly six times more individuals (29) than companies (5). We see this focus continuing. "The agenda for the criminal program," according to AAG Assefi, "has been and will continue to be maximum incarceration."<sup>33</sup> AAG Assefi has also touted the fact that the number of days of incarceration for convicted antitrust defendants grew by 1,200 percent from 2024 to 2025.

Recent remarks draw upon arguments that white-collar defendants should not expect better treatment than blue-collar defendants. After an asphalt executive received a six-month sentence, AAG Assefi stated that "economic crime - like bid rigging - is not less harmful than violent crime. . . . The Antitrust Division . . . will continue to ensure that individuals who cheat and deprive the public of the benefits of competition are incarcerated."<sup>34</sup> Likewise, DAAG Glad argued "prison changes behavior, both for the individual sentenced and for the industry watching" and continued that "the idea that defendants in ATR's cases deserve preferential treatment at sentencing is anathema to our justice system."<sup>35</sup>

## 6. Looking Beyond Smoke-Filled Rooms

As civil suits seek to push the boundaries of *per se* illegal conduct, there are increasing risks of parallel DOJ investigations into conduct under similarly untested theories, including collusion through information exchange; algorithmic pricing software; and environmental, social, and governance efforts

that bring competitors together. Prosecutors will continue to comb civil suits for leads, and the DOJ has maintained its appointment of a special counsel for parallel proceedings, in recognition that overlap between civil and criminal may become more common and require expertise to navigate.

Just this month, AAG Assefi explained that "whether it's algorithmic collusion or another type of collusion, they're passing along to each other information that they normally would never give each other. And to me, that's the red flag."<sup>36</sup> Cases involving the intersection of information and algorithms are increasingly common. Modern "agreement by algorithm" cases have proliferated in recent years, targeting AI pricing and revenue-management tools<sup>37</sup> as well as benchmarking services.<sup>38</sup> Enforcers and private plaintiffs show no sign of slowing down, as pricing and market-analysis tools in the mortgage,<sup>39</sup> healthcare,<sup>40</sup> and agricultural<sup>41</sup> industries continue to come under scrutiny. States are also increasingly focusing on algorithmic price fixing, with California and New York recently enacting new legislation. California's Assembly Bill 325 targets use or distribution of "common pricing algorithms" across all industries,<sup>42</sup> while New York's Senate Bill S.7882 specifically prohibits the use of such software to fix residential rents.<sup>43</sup>

ESG initiatives have also faced scrutiny as vehicles for information exchange or other coordination. In 2026, the State of Michigan sued major oil companies for allegedly using trade associations and other industry organizations as a platform to coordinate their influence over the energy industry.<sup>44</sup> The State alleges a "multifaceted" campaign to suppress renewable energy development and maintain fossil-fuel dominance, including by suppressing and skewing information being published by an "alphabet soup of organizations" that were created or controlled by defendants.<sup>45</sup>

## 7. Increased State Enforcement

While state antitrust criminal enforcement actions have historically been rare and underused, states are signaling an increasing willingness to pursue such enforcement, with the State of Ohio recently announcing a bid-rigging indictment and others

signaling forthcoming enforcement action through legislation and staff trainings.

In a rare enforcement action, Ohio's Attorney General's office announced on February 24, 2026 an indictment alleging criminal violation of Ohio's Valentine Act (state antitrust law). The indictment charged a Columbus resident with bid rigging in online auctions to drive up prices of auction items by using fake bidder identities, also known as "shill bidding."<sup>46</sup>

The Ohio case may be a harbinger of more state criminal antitrust enforcement. Other states have adopted or proposed new laws to strengthen criminal antitrust enforcement. California's Senate Bill 763, which became effective January 1, 2026, increased the Cartwright Act's maximum criminal fine for corporations from \$1 million to \$6 million per violation, and for individuals, from \$250,000 to \$1 million.<sup>47</sup> Legislation is also pending in New York that would criminalize "abuse of dominance" conduct and increase corporate fines to from \$1 million to \$100 million and individual fines from \$100,000 to \$1 million.<sup>48</sup>

States are also investing in institutional capacity for criminal antitrust enforcement. The Bid Rigging and Criminal Enforcement Committee (BRACE) through the National Association of Attorneys General Multistate Task Force brings together state investigators and prosecutors to improve detection of collusion in areas such as public procurement and foreclosure actions.<sup>49</sup> The DOJ also partnered with state attorneys general in BRACE to host a training last year to improve states' ability to identify and prosecute antitrust violations.

Companies should expect increased scrutiny of cartel conduct, procurement practices, and algorithmic coordination. Companies should ensure that compliance programs address not only federal antitrust risk but also state-level criminal antitrust exposure.

## Authors



**Tiffany Rider**  
Partner  
She | Her | Hers  
Washington, DC  
trider@axinn.com



**James W. Attridge**  
Partner  
He | Him | His  
Washington, DC  
jattridge@axinn.com



**Daniel K. Oakes**  
Partner  
He | Him | His  
Washington, DC  
doakes@axinn.com



**Jacklin Chou Lem**  
Partner  
She | Her | Hers  
San Francisco  
jlem@axinn.com



**Mary Helen Wimberly**  
Partner  
She | Her | Hers  
Washington, DC  
mhwimberly@axinn.com

**Thank you to our Associates  
for their contributions**

**Tasneem Chowdhury** | Washington, DC  
**Chandler Gordon** | Washington, DC  
**Aigerim Saudabayeva** | Washington, DC  
**Duncan Weals** | Washington, DC

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<sup>47</sup>S.B. 763, 2025-2026 Reg. Sess., (Cal. 2025), [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=202520260SB763](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202520260SB763)

<sup>48</sup>Twenty-First Century Antitrust Act, S.B. 335 2025-2026 Reg. Sess., (N.Y. 2025), <https://legislation.nysenate.gov/pdf/bills/2025/S335>

<sup>49</sup>Sandra Talbott And Derek Whiddon, Promoting Competition and Protecting Taxpayer Dollars: A Federal and State Response to Bid Rigging in Public Procurements, <https://www.americanbar.org/content/dam/aba/publications/antitrust/magazine/2025/vol-39-issue-2/promoting-competition-protecting-taxpayer-dollars.pdf>

## About Axinn

Incisive. Inclusive. Invested. Inquisitive. We're Axinn. Focusing on antitrust, intellectual property, and litigation, we make it our mission to understand your business, so we can anticipate every move. Acting with precision and conviction, we protect and accelerate your business growth, always thinking ahead.