

How Federal and State Law Enforcement Authorities and the Courts Are Responding to New Challenges Created by COVID-19

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Both federal and state agencies and courts have adopted a myriad of actions in response to the ongoing coronavirus (COVID-19) pandemic. This article focuses on the U.S. Department of Justice's (DOJ) new directive and recent actions taken to target fraudulent schemes related to COVID-19. The article further outlines some initiatives that courts have recently taken to address the challenges that this global health crisis poses for our criminal justice system.

A New Directive from the Attorney General and the First DOJ Enforcement Action

On March 16, 2020, U.S. Attorney General William Barr directed all U.S. Attorneys "to prioritize the detection, investigation, and prosecution of all criminal conduct related to the current pandemic."¹ "[I]t is essential that the Department of Justice remain vigilant in detecting, investigating, and prosecuting wrongdoing related to the crisis," he wrote in a memo to all U.S. Attorneys.² Barr further encouraged U.S. Attorney's Offices to consult with certain Divisions at Main DOJ and to work closely with state and local authorities, in order to detect and prosecute fraud related to COVID-19. In a March 19, 2020 memo, Deputy Attorney General Jeffrey Rosen further directed each U.S. Attorney to appoint a COVID-19 fraud coordinator to: (a) serve as the legal counsel in his or her federal judicial district on COVID-19-related matters; (b) direct the prosecution of COVID-19-related crimes; (c) conduct outreach and awareness activities related to COVID-19; and (d) serve as a liaison between his/her Office and other federal, state, and local agencies.

Only six days after Barr's announcement, the federal government filed its first enforcement action against COVID-19-related fraud. On March 21, 2020, in an effort to obtain immediate relief from the courts, the U.S. Attorney's Office for the Western District of Texas filed a civil complaint seeking a temporary restraining order against the unknown operator(s) of a website, "coronavirusmedicalkit.com," that was purporting to sell fake World Health Organization (WHO) vaccine kits.³ The government alleged that the website operator(s) was engaging in wire fraud in violation of 18 U.S.C. § 1343 by claiming to offer consumers access to WHO vaccine kits in exchange for a \$4.95 shipping

charge that consumers could pay by entering their credit card information on the website. As noted by the government in its complaint, the website's claims are false, and the WHO is not giving away free vaccine kits.^[4] The court issued the temporary injunction that required the registrar of the website to take immediate action to block public access to that site. In addition to obtaining the temporary restraining order, the U.S. Attorney's Office for the Western District of Texas is also continuing with its investigation into the website and its unknown operator(s).

What is particularly significant about this first case is the DOJ's decision to use a civil action to seek immediate relief. This reflects a number of current realities, including the decreased availability of grand juries, and possible insight into new law enforcement strategies during the crisis. Seeking a preliminary injunction is swift and can easily be joined with a complaint seeking a forfeiture of assets or an account freeze. Such actions can be filed by prosecutors with supporting information from the investigating agencies and do not require grand jury presentations or action. While the civil action does not result in the immediate filing of criminal charges against the individuals responsible for the alleged wrongdoing, it hampers their ability to continue engaging in the alleged fraudulent scheme. Further, as the DOJ's investigation continues, criminal charges may ensue. In the meantime, the civil action reflects a very visible confirmation of the Attorney General's priorities during this global health crisis. Of course, the potential challenges that could be asserted against these tactics (e.g., the line for improper prior restraints) will depend on the facts of each case and remain to be seen.

The Identification of Fraudulent Schemes Related to COVID-19

In response to the Attorney General's recent declaration, U.S. Attorney's Offices throughout the country have begun expeditiously carrying out the DOJ's new priority of identifying, investigating, and prosecuting COVID-19-related fraud. Federal prosecutors,^[5] as well as other federal agencies such as the FBI^[6] and FTC,^[7] have already identified numerous forms of COVID-19-related fraud, including the following:

- **Price gouging schemes** – individuals and businesses sell certain, high demand goods (g., hand sanitizer and surgical masks) for significantly higher prices than in a typical, non-emergency situation.
- **Phone scams** – scammers contact people by phone or email, pretend to be doctors and hospitals that have treated a friend or relative for COVID-19, and demand payment for their purported services.
- **Robocalls** – robocalls offer everything from fake COVID-19 treatments to work-at-home schemes.
- **Fake charities** – nonexistent charities purportedly seek donations for individuals, groups, and areas affected by COVID-19.
- **Medical fraud** – medical providers fraudulently bill or overcharge for medical tests and procedures related to COVID-19.
- **Antitrust violations** – businesses engage in price-fixing, bid-rigging, market allocation schemes, or other antitrust violations related to COVID-19.
- **Cyber crimes** – malicious websites and apps claim to share COVID-19-related information, but instead gain and lock access to a user's device or infect the device with malware; websites make false claims or offers to sell medical products, medical cures, or counterfeit products; email phishing scams claim to be from health authorities, charitable organizations, or providers of stimulus funding; and websites offer investment scams related to small public companies that purportedly possess valuable services or products related to COVID-19.

Proactive Measures for Targeting COVID-19-Related Fraud Schemes

Federal, state, and local authorities have established joint task forces to coordinate their efforts to combat and prosecute COVID-19-related fraud.^[8] In addition, the federal government has established methods for the public to use to report instances of suspected fraud related to COVID-19. The National Center for Disaster Fraud (NCDF) has

established a public hotline and email address^[9] and shares the information that it receives with the relevant federal, state, and local authorities.

Courts' Initiatives to Meet the Challenges of the COVID-19 Crisis

As the DOJ gears up to target COVID-19-related fraud, courts throughout the country have been considering and developing their own innovative means of responding to the COVID-19 crisis and its impact on our criminal justice system. Specifically, courts are taking swift action intended to ensure that they can meet prosecutorial and defense needs, while protecting the health and rights of participants in our judicial system and ensuring that the interests of justice are served. Among other things, some courts have been: (i) suspending grand juries; (ii) continuing criminal matters scheduled before magistrate judges (*i.e.*, initial appearances, arraignments, detention hearings, and the issuance of warrants); (iii) weighing requests to release detainees on bail to diminish the overcrowded prison population and attendant risks of contracting COVID-19; (iv) issuing blanket tolling of the Speedy Trial Act; and (v) in at least one jurisdiction, closing the courthouse altogether and suspending all court services. Other courts have adopted, or will soon adopt, various substitute measures, such as: (i) conducting teleconferences and videoconferences as much as practicably possible; (ii) giving individual judges discretion on whether to proceed in the normal course with their ongoing criminal cases; and (iii) in the Southern District of New York, allowing for remote grand jury sessions where jurors may participate by videoconference from any courthouse in the jurisdiction.

Key Takeaways

- As the number of cases of COVID-19-related fraud rises, we expect the number of civil and criminal enforcement actions in this area to increase as well.
- The recent temporary injunction sought and obtained by the U.S. Attorney's Office for the Western District of Texas as a means of putting a COVID-19 fraud scheme out of business quickly and efficiently is likely the first of many swift civil enforcement actions we will see, as the government targets the anticipated increase in COVID-19-related fraud and balances its new enforcement priority with the challenge of having diminished traditional investigative techniques at its disposal.
- Federal, state, and local law enforcement, as well as the courts, are responding in different and innovative ways to meet the challenges that COVID-19 poses on enforcement and judicial functions.
- Lastly, we can expect that the initiatives already developed by various courts will continue to evolve as we learn more about the impact and stress points of this global health crisis, and the courts continue to focus on balancing the health and well-being of the public and the participants in the criminal justice system with the interests of justice.

This article was drafted by Suzanne Jaffe Bloom and Abbe David Lowell, who are the co-chairs of Winston & Strawn's White Collar Practice Group, and Lisa C. Chan, a Senior Associate in the Group. For further information or questions, please contact Suzanne Jaffe Bloom, Abbe David Lowell, Lisa C. Chan, or your Winston relationship attorney.

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^[1] Memorandum from the Attorney General to all United States Attorneys, *COVID-19 – Department of Justice Priorities* (Mar. 16, 2020), available at <https://www.justice.gov/aa/paqa/file/1258676/download>.

^[2] *Id.*

^[3] *United States v. Doe, a/k/a/ "coronavirusmedicalkit.com,"* Case No. A-20-CV-306 (W.D. Tex. Mar. 21, 2020) (Compl.).

^[4] *Id.* ¶ 12.

^[5] U.S. Dep't of Justice, *Report COVID-19 Fraud* (Mar. 20, 2020), available at <https://www.justice.gov/coronavirus>.

[Federal Bureau of Investigation, FBI Sees Rise in Fraud Schemes Related to the Coronavirus \(COVID-19\) Pandemic \(Mar. 20, 2020\)](#), available at <https://www.ic3.gov/media/2020/200320.aspx>.

[Federal Trade Commission, Coronavirus Scams: What the FTC is Doing \(Mar. 20, 2020\)](#), available at <https://www.consumer.ftc.gov/features/coronavirus-scams-what-ftc-doing>; *id.*, *FTC: Coronavirus Scams, Part 2* (Mar. 19, 2020), available at <https://www.consumer.ftc.gov/blog/2020/03/ftc-coronavirus-scams-part-2>.

See, e.g., U.S. Dep't of Justice, U.S. Attorney's Office, Western District of Virginia, *Federal and State Officials Launch Virginia Coronavirus Fraud Task Force* (Mar. 20, 2020), available at <https://www.justice.gov/usao-wdva/pr/federal-and-state-officials-launch-virginia-coronavirus-fraud-task-force>; U.S. Dep't of Justice, U.S. Attorney's Office, Western District of Pennsylvania, *U.S. Attorney Scott Brady and Pennsylvania Attorney General Josh Shapiro Announce Formation of Joint Western Pennsylvania COVID-19 Task Force* (Mar. 19, 2020), available at <https://www.justice.gov/usao-wdpa/pr/us-attorney-scott-brady-and-pennsylvania-attorney-general-josh-shapiro-announce>; U.S. Dep't of Justice, U.S. Attorney's Office, District of Columbia, *Statement From the U.S. Attorney for the District of Columbia on COVID-19 Scam Prevention Measures* (Mar. 18, 2020), available at <https://www.justice.gov/usao-dc/pr/statement-us-attorney-district-columbia-covid-19-scam-prevention-measures>.

To report suspected fraudulent schemes related to COVID-19, the public should call the NCDF hotline at 1-866-720-5721 or email the NCDF at disaster@leo.gov.

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Abbe David Lowell