

DOJ Creates New “Enforcement & Affirmative Litigation Branch” to Enforce “Federal Policies”

by Alex Hontos and Matthew Gillespie

The Administration’s muscular, policy-driven enforcement efforts will now get a new branch within the Department of Justice’s Civil Division, likely forecasting more civil litigation against those organizations misaligned with “federal policies.” This restructuring includes consolidation of civil enforcement authorities from existing DOJ components and what appears to be the creation of a new mandate for affirmative litigation against entities that “interfere with or obstruct federal policies.”

As part of the restructuring, the “Enforcement Section” of the newly formed “Enforcement & Affirmative Litigation Branch” (“EAL Branch”) will consolidate civil enforcement authority from the now-defunct Consumer Protection Branch (“CPB”), as well as the Federal Programs Branch and the Office of Immigration Litigation (“OIL”). Some of the criminal enforcement authority previously vested with CPB is now delegated to DOJ’s Criminal Division. The EAL Branch’s Enforcement Section will therefore be responsible for enforcing statutes such as the Controlled Substances Act; the Federal Food, Drug, and Cosmetic Act; the Consumer Product Safety Act; the Federal Trade Commission Act; the Children’s Online Privacy Protection Act; and the Restore Online Shoppers’ Confidence Act.

The second section of the EAL Branch—the “Affirmative Litigation Section”—has a much broader mandate that does not clearly correspond to an existing DOJ enforcement function. According to DOJ’s press release, the Affirmative Litigation Section is responsible for “filing lawsuits against states, municipalities, and private entities that interfere with or obstruct federal policies, ensuring nationwide compliance with the U.S. Constitution and federal law.” The press release identifies two “enforcement priorities” for which EAL will be responsible, including:

- “Protecting women and children from pharmaceutical companies, health care providers, and medical associations profiting off of false and misleading claims related to so-called gender transition”; and
- “Ending sanctuary jurisdiction laws, policies, and practices that impede federal immigration enforcement and make Americans less safe in their communities.”

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- Alex Hontos
- Matthew Gillespie

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What Does This Mean?

Federal litigation is a function of resources and priorities. This change shows that the Administration is changing the DOJ to implement its priorities through allocation of dedicated resources. Targets of the Administration's ire may get additional scrutiny and lawsuits now that a dedicated corps of DOJ trial attorneys will exist to bring lawsuits that may stray from traditional DOJ priorities, like civil-rights enforcement, voting rights enforcement, and environmental litigation.

Notably, the Civil Frauds Section of Main Justice—and its enforcement of the False Claims Act—seems to be untouched for now, but we expect that the new EAL Branch may coordinate with Civil Frauds to deploy the False Claims Act against entities, like municipalities impeding Federal immigration enforcement.

Entities with frequent interactions with controlled substances and FDA- or FTC-regulated industries should be mindful that many of the functions of DOJ's CPB are now vested with the EAL Branch, and future subpoenas and communications will likely indicate that fact shortly.

Consistent with DOJ's previously identified enforcement priorities, the creation of the EAL Branch and its stated mandate also serves as yet another signal that the Second Trump Administration intends to aggressively interpret federal obligations to align with its public policy objectives. As a result, both public and private entities that are conspicuously diverting from the Second Trump Administration's policy priorities should be mindful of the potential litigation risks involved. While it is unclear under what authorities the Affirmative Litigation Branch will "fil[e] lawsuits against . . . entities that interfere with or obstruct federal policies," it is likely we will be seeing litigation against healthcare providers and insurers that provide gender-affirming care and sanctuary jurisdictions in the coming months and additional civil litigation involving states, cities, and employers alleging immigration-related civil liability.