

A wide-angle photograph of the New York City skyline at sunset. The sky is a mix of blue, purple, and orange, with soft clouds. The water in the foreground is dark with gentle ripples. The city buildings are silhouetted against the bright sky, with some windows glowing. The One World Trade Center is the most prominent building in the center.

2024 SDNY / EDNY Trends and Takeaways

October 9, 2024

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MCLE Certificate Information

- Approved for 1.0 hour General PP credit.
- CLE credit form must be submitted by **Wednesday, October 16th**.
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 - Most participants should anticipate receiving their certificate of attendance in four to eight weeks following the webcast.
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AGENDA

01 SDNY/EDNY Overview

02 False Claims Act Matters

03 Digital Assets

04 National Security Trends

05 Whistleblower Programs

SDNY/EDNY Overview

01

SDNY

- Geographic jurisdiction: Manhattan, the Bronx, and six Hudson Valley counties.
- Approximately 220 Assistant United States Attorneys.
- U.S. Attorney Damian Williams
 - Undergrad at Harvard; J.D. from Yale.
 - Clerked for Judge Merrick Garland (D.C. Cir.) and Justice John Paul Stevens (U.S. Supreme Court).
 - He was at Paul Weiss from 2009-2012, then became an AUSA. In 2018, he became Chief of the Securities and Commodities Fraud Task Force.
 - Appointed as U.S. Attorney in 2021.



Damien Williams
United States Attorney for
the Southern District of
New York

SDNY Divisions

Criminal Division

- National Security and International Narcotics (14 lawyers)
- Securities and Commodities Fraud Task Force (19 lawyers)
- Complex Frauds and Cybercrime (15 lawyers)
- Public Corruption (17 lawyers)
- Illicit Finance and Money Laundering (15 lawyers)
- Violent and Organized Crime (17 lawyers)
- Narcotics (15 lawyers)
- Civil Rights (7 lawyers)
- General Crimes (19 lawyers)
- Appeals (6 lawyers)

Civil Division

- Civil Frauds Unit (CIFU)
- Civil Rights
- Environmental Protection
- General Defensive Litigation
- National Security and Foreign Policy
- Tax and Bankruptcy
- Appeals

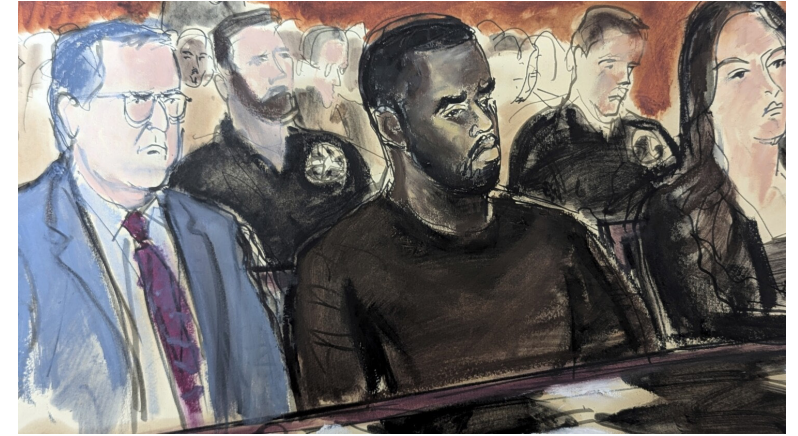
White Plains

- ~ 17 lawyers
- Criminal cases occurring primarily in Westchester, Rockland, Orange, Putnam, Dutchess, and Sullivan Counties.

MAJOR PENDING SDNY CASES



Mayor Eric Adams indicted on bribery and campaign finance charges



Sean "Diddy" Combs indicted on sex trafficking charges

SDNY SUMMER TRIAL WINNING STREAK

July 10: Sung Kook “Bill” Hwang and Patrick Halligan found guilty of a massive market manipulation scheme via Archegos.

“Hwang, founder and owner of Archegos, and Halligan, Archegos’s Chief Financial Officer, made false assurances and lied to Wall Street investment banks to induce them to provide capital to Archegos, which Hwang and Halligan then used to inflate the stock prices of several publicly traded companies. Hwang and Halligan lied about Archegos’s positions in these companies and just about every other materially important metric investment banks would use in determining the firm’s creditworthiness. In doing so, Hwang and Halligan were able to fraudulently inflate a \$1.5 billion portfolio into a \$36 billion portfolio. This verdict should send a resounding message that **this Office will continue to police the financial markets with an eagle eye and swiftly hold accountable those who think they can cheat the system.**” – U.S. Attorney Damian Williams

July 16: Miles Guo found guilty of racketeering conspiracy and various securities fraud, wire fraud, and money laundering charges.

“[A]n exiled Chinese businessman and purported billionaire, brazenly operated several interrelated fraud schemes, all designed to fleece his loyal followers out of their hard-earned money so that Guo could spend his days in his 50,000 square foot mansion, driving his \$1 million Lamborghini, or lounging on his \$37 million yacht. Thousands of Guo’s online followers were victimized so that Guo could live of a life of excess. Today, Guo’s schemes have been put to an end. Moments ago, a unanimous jury found Miles Guo guilty of racketeering conspiracy and various securities fraud, wire fraud, and money laundering charges. He faces decades in prison. I commend the career prosecutors of this Office and our law enforcement partners for bringing this case and seizing hundreds of millions of dollars’ worth of fraud proceeds so that justice can be brought to Guo’s victims. This Office will not waver in our dedication to prosecuting malicious and harmful fraud schemes.” – U.S. Attorney Damian Williams

July 16: Senator Robert Menendez convicted of corruption.

“This case has always been about shocking levels of corruption. Hundreds of thousands of dollars of bribes, including gold, cash, and a Mercedes-Benz. This wasn’t politics as usual; this was politics for profit. Because Senator Menendez has now been found guilty, his years of selling his office to the highest bidder have finally come to an end. Corruption isn’t costless: it erodes public trust, and it undermines the rule of law. That’s why we’re so committed to fighting it, regardless of political party. I want to thank the career prosecutors and law enforcement agents who meticulously investigated and prosecuted this case. Their work brought this egregious corruption to light. They are the best of the best, and I am enormously proud to serve with them.” – U.S. Attorney Damian Williams

EDNY

- Represents the United States in three of the five boroughs of New York City—Brooklyn, Queens and Staten Island—and Long Island.
- Approximately 160 Assistant United States Attorneys.
- U.S. Attorney Breon Pearce
 - Undergraduate from University of California, Berkeley; JD from NYU.
 - Prior to appointment in 2021, he was partner at Cleary Gottlieb (NY) and member of the firm’s White-Collar Defense and Investigations and Litigation Groups.
 - Chairperson of the White Collar Fraud subcommittee for the Attorney General’s Advisory Committee (AGAC).



Breon Pearce
United States Attorney for the
Eastern District of New York

EDNY Divisions

Criminal Division

- ~120 lawyers
- Business and Securities Fraud (16 lawyers)
- National Security and Cybercrime (15 lawyers)
- Public Integrity (12 lawyers)
- Organized Crime and Gangs (16 lawyers)
- International Narcotics and Money Laundering (15 lawyers)
- General Crimes (18 lawyers)
- Long Island Criminal Division (18 lawyers)
- Forfeiture Practice
- Civil Rights

Civil Division

- ~40 lawyers
- Affirmative Civil Enforcement (ACE)
- Environmental
- Defensive Litigation
- Programmatic Cases
- Asset recovery practice / bankruptcy
- Financial Litigation Program (FLP)

Appeals

- ~5 attorneys
- Oversees handling of appeals in criminal cases in the district.

MAJOR EDNY CASES



George Santos pled guilty to wire fraud and aggravated identify theft.



Ex-energy trader for Vitol pled guilty to second international bribery scheme resulting from bribery payments made to affiliate of PEMEX, a Mexican state-owned oil company. In 2023, same defendant was found guilty of bribery involving an Ecuadorian state-owned oil company.



Investment banker charged with FCPA violations and money laundering related to efforts to secure a power plant deal for investment banking client.

False Claims Act Matters

02

SDNY FCA Cases

\$475.6M settlement with [Endo International](#) for claims arising from manufacture and sale of Opana ER, a powerful branded opioid drug.

- FCA penalty resulted from losses to federal healthcare programs that paid for Opana ER.
- Endo also paid \$464.9M as part of a global bankruptcy resolution.

\$25.5M settlement with durable medical equipment supplier [Lincare, Inc.](#)

- Lincare admitted receiving reimbursements for claims that did not comply with billing rules and guidance and continued to seek payments in instances when it was aware patients were not using respiratory equipment.

\$4.6M False Claims Act settlement with restaurants, fur apparel companies, and their owners and managers for submitting false information to obtain paycheck protection program loans.

- The settlement resolves claims that the Defendants—four restaurants located in New York, two companies based in New Jersey that distribute, sell, and service fur apparel, and five individuals who owned/managed these businesses—inflated payroll figures in their PPP loan and forgiveness applications by, among other things, misrepresenting that family members and an acquaintance of the owners/managers were employed by the businesses when they were not, and listing the same individuals as “full-time employees” of multiple businesses.

\$3.1M False Claims Act settlement with [The Radiology Company](#) and its CEO for fraudulent billing practices

- The Radiology Group and its CEO failed to ensure that U.S.-based radiologists conducted a meaningful and adequate review of draft reports prepared by contractors in India before sending findings to health care providers.

EDNY FCA Cases

New York Presbyterian/Brooklyn Methodist Hospital settled health care fraud claims for \$17.3M.

- Matter involved “a compensation scheme that incentivized physicians to make referrals for services based on how much they would be paid and were essentially kickbacks.”
- The hospital voluntarily self-disclosed the conduct, which resulted in mitigation of the penalties.

Edison Home HealthCare of New York and **Preferred Home Health Care of New York** settled fraud claims for \$9.75M and agreed to pay \$7.5M in wages and benefits to underpaid aides.

- The related companies allegedly received federal government funding meant to pay their aides’ benefits and wages, yet the aides were paid only minimum NY-State wages.

Genomic Health, Inc. paid \$32.5M to resolve False Claims Act violations related to genomic diagnostic tests.

- In October 2023, the company reached a settlement to resolve charges arising from an alleged nationwide scheme to improperly bill Medicare for laboratory tests known as “Oncotype DX.”

Digital Assets: The Rise of Crypto

03

Digital Assets: Continued Focus on Cryptocurrency

- Offices have been central to policing cryptocurrency-related fraud in recent years.
- Are cryptocurrencies securities, commodities, or some other asset?
- Most recent indictments brought under AML statutes.





- In March 2024, FTX founder, Samuel Bankman-Fried, was found guilty of multiple fraud schemes and sentenced to 25 Years in prison and ordered to forfeit over \$11 billion.
 - SBF channeled billions of dollars in customer deposits from FTX to Alameda, then used those funds to invest for his own benefit, to make political contributions, and to purchase personal real estate.
 - SBF also defrauded lenders by providing false and misleading financial information that concealed his misuse of customer deposits.
- Raised questions about the boundary between Chapter 11 and the criminal justice system.

“Samuel Bankman-Fried orchestrated one of the largest financial frauds in history, stealing over \$8 billion of his customers’ money. His deliberate and ongoing lies demonstrated a brazen disregard for customers’ expectations and disrespect for the rule of law, all so that he could secretly use his customers’ money to expand his own power and influence. The scale of his crimes is measured not just by the amount of money that was stolen, but by the extraordinary harm caused to victims, who in some cases had their life savings wiped out overnight. As a result of his unprecedented fraud, Bankman-Fried faces 25 years in prison and forfeiture of over \$11 billion. Today’s sentence will prevent the defendant from ever again committing fraud and is an important message to others who might be tempted to engage in financial crimes that justice will be swift, and the consequences will be severe.”

– U.S. Attorney Damian Williams

"This was a pyramid of deceit built by the defendant on a foundation of lies and false promises, all to get money He had the arrogance to think he could get away with it." – AUSA Nicholas Roos, Closing Argument

OpenSea NFT Insider Trading



SDNY treated NFTs as securities.

- Former OpenSea product manager sentenced to **three months in prison** in connection with a scheme to commit insider trading in Non-Fungible Tokens, or “NFTs.”
- Product Manager’s job was to select NFTs to be featured on OpenSea’s homepage. Those featured NFTs were secret until they appeared on OpenSea’s homepage.
- Product manager bought the NFTs before they were announced, then, after the NFTs were featured on OpenSea, sold them for huge profit.

Cryptocurrency Exchanges

- “Mixing” and “tumbling”: Services that allow users to engage in transactions that obscure identities of senders and recipients in a blockchain.
- In late 2023, the Biden Administration designated foreign cryptocurrency mixers as primary money-laundering hubs threatening national security.
- In addition to potential sanctions violations, concern that cryptocurrency is being used to fund terrorist groups.
- As a result, DOJ’s reach over crypto companies has expanded geographically, even reaching cryptocurrency companies based outside of the United States.
- Recently, DOJ has levelled charges against other types of service providers, such as those who provided add on services that enhance security of transactions

Targeted Mixers: Tornado Cash and Samurai Wallet



- SDNY charged Tornado Cash co-founders with money laundering and sanctions violations.
- Tornado Cash facilitated more than \$1 billion in money laundering transactions, including hundreds of millions of dollars in transactions involving a North Korean cybercrime organization.



- SDNY charged Samurai Wallet co-founders with conspiracy to commit money laundering and conspiracy to operate an unlicensed MSB.
- Samurai executed transactions valued at more than \$100 million in illicit funds through coordinated batches of cryptocurrency exchanges between groups of users.

DOJ's Expanded Jurisdiction: BitMEX

- Cryptocurrency exchange based in the Seychelles, pled guilty to violations of the Bank Secrecy Act in July 2024.
- Although headquartered overseas, BitMEX operated in the U.S. and served a population of American users.
- BitMEX failed to implement AML programs with a “Know Your Customer” (KYC) component.
- SDNY charged that this resulted in “large-scale money laundering and sanctions evasion schemes.”



Takeaways

- Given DOJ's keen focus on crypto—particularly “tumblers” and “mixers”—the number and scale of prosecutions are likely to increase.
- Utilizing third-party advisor guidance may help avoid claims.
- Maintain a robust AML program to minimize risk.

National Security Trends

04

International Emergency Economic Powers Act (IEEPA) Violations



- In 2018, EDNY charged Chinese telecommunications conglomerate with violating the International Emergency Economic Powers Act (IEEPA) arising from Huawei's alleged export of goods, technology, and services to Iran.
- Huawei was also indicted for bank fraud as the result of allegedly deceiving HSBC and other banks about its business in Iran.
- In 2020, an interceding indictment was entered adding charges for racketeering, conspiracy to commit wire fraud, and conspiracy to steal trade secrets.
- In September 2021, Wanzhou Meng, Huawei Technologies Co.'s Chief Financial Officer, entered a deferred prosecution agreement (DPA). "Her admissions in the statement of facts confirm that, while acting as the Chief Financial Officer for Huawei, Meng made multiple material misrepresentations to a senior executive of a financial institution regarding Huawei's business operations in Iran in an effort to preserve Huawei's banking relationship with the financial institution. . . . Meng's admissions confirm the crux of the government's allegations in the prosecution of this financial fraud—that Meng and her fellow Huawei employees engaged in a concerted effort to deceive global financial institutions, the U.S. government, and the public about Huawei's activities in Iran."
- In April 2024, U.S. Attorney's Office announced that settlement discussions were at an impasse. The case heads for trial in early 2026.

Terrorism



EDNY prosecuting Lafarge for its alleged material support of terrorism

- In October 2022, Lafarge S.A., a global building materials manufacturer headquartered in France, and Lafarge Cement Syria, S.A., a subsidiary headquartered in Syria, pled guilty to charges that they'd conspired to provide material support and resources to the Islamic State of Iraq and al-Sham (ISIS) and the al-Nusrah Front (ANF).
- Charges arose out of payments ISIS and ANF in exchange for permission to operate a cement plant in Syria from August 2013 to October 2014, which enabled LCS to obtain approximately \$70.30 million in revenue.

Individual National Security Defendants

- Two employees of Russian state-owned broadcaster RT indicted over alleged \$10M scheme to publish pro-Russian RT-curated content through a Tennessee-based online content creation company.
- “RT Created, in the words of its editor-in-chief, an “entire empire of covert projects” designed to shape public opinion in “Western audiences.” Sealed Indictment ¶ 1.



THE WHITE HOUSE

Sue Mi Terry

- Former CIA and White House official
- Arrested for acting as unregistered agent for South Korea
- In exchange for money and gifts, she disclosed sensitive information to South Korean intelligence and used position to influence U.S. policy.

Individual National Security Defendants



Senator Robert Menendez

- Democrat who once led the Senate Foreign Relations Committee convicted of participating in vast international bribery scheme involving Egypt.
- Prosecutors said he had accepted gold, cash, and other payoffs worth hundreds of thousands of dollars in exchange for political favors at home and abroad.

Linda Sun

- Former aide to New York governor Kathy Hochul charged with secretly acting as an agent for Chinese government in exchange for millions of dollars in compensation and gifts.



Takeaways

- FARA prosecutions for failure to register are being vigorously pursued.
- Closely monitor business locations with civil or political unrest.
- Thoughtful and controlled use of sub-contractors.
- Closely monitor sharing of sensitive information with foreign investors, including sovereign wealth funds and state-owned enterprises.

SDNY, EDNY, and Main Justice Whistleblower Programs

05

New Whistleblower Programs

SDNY Whistleblower Program

- “[D]esigned to encourage early and voluntary self-disclosure of criminal conduct by individual participants in certain non-violent offenses.”
- Individual participants will receive a non-prosecution agreement where certain conditions are met, including that they provide information “that the Government was not previously aware of the criminal conduct” being disclosed.
- Program focuses specifically on criminal misconduct undertaken by companies and financial institutions as well as investment fund fraud, bribery by public officials and fraud related to federal, state or local funds.

New Whistleblower Programs

EDNY Whistleblower Program

- “[D]esigned to encourage individuals to disclose original and actionable information about previously unknown criminal conduct undertaken by or through public or private entities or organizations.”
- Seeking information regarding criminal conduct undertaken by two or more individuals, or by or through public or private entities or organizations, including corporations, partnerships, non-profits, exchanges, money services businesses, banks, financial institutions, investment advisers, or investment funds.
- Program focused on
 - Fraud or corporate control failures;
 - Intellectual property theft and related violations;
 - Market integrity;
 - State or local bribery or fraud relating to federal, state, or local funds;
 - Obstruction of justice, perjury, or false statements;
 - Healthcare fraud, including violations of the Anti-Kickback statute; and
 - Money laundering related to any of the prior-listed crimes.
- Individuals will receive a Non-Prosecution Agreement (NPA) when certain conditions are met, including that the information was not already known to the DOJ and the individual’s role in the alleged conduct did not involve “leading or originating the illegal activity; violence or the threat of violence; any federal or state sex offense involving fraud, force, coercion, or a minor; or any federal or state offense involving terrorism.”

New Whistleblower Programs

Main Justice Whistleblower Awards Program

- Individuals who know about and come forward to report corporate crime that results in forfeiture could get paid a portion of the recovery from the case, so long as they didn't play a meaningful role in the misconduct.
- Information must relate to one of the following areas
 1. Certain crimes involving financial institutions, from traditional banks to cryptocurrency businesses;
 2. foreign corruption involving misconduct by companies;
 3. Domestic corruption involving misconduct by companies; or
 4. Health care fraud schemes involving private insurance plans.
- Companies that voluntarily self-report within 120 days of receiving an internal whistleblower report may be eligible for a presumption of a declination under the Criminal Division's Corporate Enforcement and Voluntary Self-Disclosure Policy if the company reports to the Department before the Department contacts the company.

Upcoming Programs – Fall White Collar Webcast Series

Date and Time	Program	Registration Link
<p>Thursday, October 17, 2024 12:00 PM – 1:00 PM ET 9:00 AM – 10:00 AM PT</p>	<p>Sanctions and Export Controls: Key Regulatory and Enforcement Trends Presenters: Adam Smith, Christopher Timura, Scott Toussaint, Anna Searcey</p>	<p>Event Details</p>
<p>Tuesday, October 22, 2024 12:30 PM – 1:30 PM ET 9:30 AM – 10:00 AM PT</p>	<p>A New Era of Environmental Criminal Enforcement Presenters: Michael Diamant, Rachel Levick, Stacie Fletcher, David Fotouhi</p>	<p>Event Details</p>
<p>Thursday, October 24, 2024 12:00 PM – 1:00 PM ET 9:00 AM – 10:00 AM PT</p>	<p>SEC Enforcement Update Presenters: Mark Schonfeld, David Woodcock, Tina Samanta</p>	<p>Event Details</p>
<p>Thursday, November 7, 2024 1:00 PM – 2:30 PM ET 10:00 AM – 11:30 AM PT</p>	<p>False Claims Act Enforcement in the Life Sciences and Health Care Sectors Presenters: John Partridge, Jonathan Phillips, Katlin McKelvie, Jim Zelenay</p>	<p>Event Details</p>

A wide-angle photograph of the New York City skyline at dusk. The Freedom Tower stands prominently in the center, its spire reaching into a sky of soft blues and oranges. Other skyscrapers are visible on either side, some reflecting the low light. The water of the harbor is in the foreground, with a few small boats visible.

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