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CARES Act and COVID-19 Crisis: Government Enforcement and Compliance Considerations

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) was signed into law, making available \$2.2 trillion in relief funds. This summary identifies potential enforcement concerns for recipients of CARES Act funds, as well other related compliance risks.

I. Summary and Key Takeaways

Companies that plan to apply for — and ultimately use — CARES Act funds should consider the legal and regulatory framework governing those funds, particularly in light of the scrutiny and enforcement the CARES Act is likely to attract.

In particular, we offer the following thoughts:

- Based on enforcement activity following other large stimulus initiatives and government loan packages — including the 2009 Troubled Asset Relief Program (“TARP”) — we expect the government to aggressively pursue misconduct or fraud in the application for and use of CARES Act funds.
- The CARES Act creates an oversight and enforcement regime, including a separate Inspector General that is responsible for investigating any issues with respect to applications for — and usage of — funds.
- Given the unprecedented amount of relief available pursuant to the CARES Act, and the many companies that will likely be applying for relief, we anticipate close scrutiny of parties that apply for and receive funds.
- While details are still being ironed out, the Inspector General will have subpoena power and will likely work closely with the U.S. Department of Justice (“DOJ”) and other enforcement bodies.
- Existing laws such as the False Claims Act, insider trading prohibitions and various fraud statutes pose potential sources of liability.
- Companies may also consider other enterprise compliance risks that may be heightened during the COVID-19 crisis, including with respect to various fraud statutes.
- As discussed in greater detail herein, to help mitigate the above risks, companies should consider building or fortifying existing controls and policies to ensure the accuracy and completeness of any submissions to the government, as well as the scrupulous use of CARES Act funds.

II. CARES Act Funding Overview

The CARES Act provides \$500 billion of loans, loan guarantees and other investments as follows:

- \$25 billion for (i) passenger air carriers and (ii) “Eligible Businesses” certified under part 145 of title 14, Code of Federal Regulations, and approved to perform inspection, repair, replace or overhaul services, and ticket agents;
- \$4 billion for cargo air carriers;

- \$17 billion for businesses critical to national security; and
- \$454 billion (plus unused amounts above) for other Eligible Businesses, states and municipalities.

Other notable financial relief provisions of the CARES Act include the following:

- \$349 billion allocation under Section 7(a) of the Small Business Act for loans from the date of enactment of the CARES Act until June 30, 2020, including the Paycheck Protection Program (“PPP”);
- \$32 billion of grants to be used exclusively for the continuation of payment of employee wages, salaries and benefits as follows: (i) \$25 billion for passenger air carriers; (ii) \$4 billion for cargo air carriers; and (iii) \$3 billion for contractors of passenger air carriers;
- Refundable employee retention credit for certain employers and permits for businesses to delay payment of certain payroll taxes, increase utilization of Net Operating Losses and monetize Alternative Minimum Tax credits (loosening the rules for interest deductibility, increasing limitations on charitable deductions and expanding 100% expensing for certain improvements).

III. New CARES Act Enforcement Mechanisms

The CARES Act creates several enforcement mechanisms with significant latitude to investigate and pursue potential misconduct.

A. Special Inspector General for Pandemic Recovery (“SIGPR”)

The SIGPR will sit within the Treasury Department and is responsible for conducting, supervising and coordinating “audits and investigations of the making, purchase, management and sale of loans, loan guarantees, and other investments” by the Secretary of the Treasury under any program established under the CARES Act.¹ This is analogous to the appointment of a Special Inspector General under TARP (“SIGTARP”), who was appointed to identify and prosecute fraud, waste and abuse related to TARP, similar to the mandate of SIGPR. On April 6, 2020, President Donald J. Trump nominated Brian Miller, current White House lawyer and previous Inspector General of the General Services Administration, to be SIGPR. The SIGPR:

- Has authority to conduct audits and investigations.²
- Has the authorities provided in section 6 of the Inspection General Act of 1978, including subpoena power.³

B. Pandemic Response Accountability Committee (“PRAC”)

The PRAC is tasked with conducting, coordinating and supporting inspectors general in the oversight of funds from all three phases of the coronavirus legislative relief in order to “(1) detect and prevent fraud, waste, abuse, and mismanagement; and (2) mitigate major risks that cut across programs and agency boundaries.”⁴ Although the specifics of the committee’s role are still being finalized, PRAC:

- Has auditing, reviewing and reporting responsibilities.⁵
- Has authority to conduct investigations, including through public hearings, and can refer matters to DOJ for criminal or civil investigation.⁶
- May issue and enforce subpoenas “to compel the testimony of persons who are not Federal officers or employees.”⁷

B. Congressional Oversight Commission

The Congressional Oversight Commission has authority to conduct oversight of the implementation of the stimulus package by the Treasury and the Federal Reserve.⁸ The Commission is required to submit monthly reports to Congress and has authority to:

- Hold hearings and take testimony.
- Receive evidence from any federal department or agency deemed necessary.⁹

IV. Other Existing Enforcement Regimes

A. Department of Justice (“DOJ”)

PRAC also has authority to refer matters to DOJ for criminal or civil investigation.¹⁰ DOJ has already indicated its intention to investigate misconduct associated with COVID-19 and the CARES Act:

- On March 16, 2020, U.S. Attorney General William Barr issued a memorandum to all U.S. Attorneys advising on COVID-19 DOJ priorities and broadly directing federal prosecutors “to prioritize the detection, investigation, and prosecution of all criminal conduct related to the current pandemic.”¹¹
- On March 20, 2020, Barr announced a national whistleblower mechanism by which citizens can report suspected fraud, and directed federal prosecutors to appoint a “Coronavirus Fraud Coordinator” in each federal district to serve as counsel tasked with prosecuting COVID-19 related crimes and conducting public outreach and awareness.¹²
- DOJ has a dedicated website concerning the COVID-19 pandemic, including a section on “Combatting Coronavirus Fraud.”¹³
- Once CARES Act funds are distributed, DOJ is expected to commence investigations into potential misconduct involving those funds.

B. Securities and Exchange Commission (“SEC”)

The SEC has a dedicated “SEC Coronavirus (COVID-19) Response” webpage stating that it will maintain the continuity of its operations, including enforcement and investor protection, with a particular focus on protecting critical market systems and vulnerable investors.¹⁴

- Along with its Enforcement Division and Office of Compliance Inspections and Examinations (“OCIE”), SEC has stated that it will continue actively monitoring the “markets for frauds, illicit schemes and other misconduct affecting U.S. investors relating to COVID-19 — and as circumstances warrant, will issue trading suspensions and use enforcement tools as appropriate.”
- SEC has indicated that it will continue to bring enforcement actions and “work in close coordination with other financial regulators and governmental authorities in the United States and globally.” This includes investigating individuals and entities that trade on material nonpublic information (“MNPI”) related to the coronavirus.¹⁵
- SEC Chairman Jay Clayton has emphasized the need for public companies and other persons to evaluate their obligations to make materially accurate and complete disclosures in accordance with federal securities laws, as well as continue to make good faith efforts to ensure compliance. Per Chairman Clayton, firms unable to make certain filings or meet other requirements because of disruptions caused by COVID-19 should contact SEC.¹⁶

C. Treasury Department

PRAC serves as the liaison to the Treasury Secretary for implementing the CARES Act. The Treasury Secretary is required to publish monthly reports to Congress and disclose relevant information on transactions with air carriers and national security businesses. Recipients of Treasury funds should expect to be subject to ongoing government oversight and transparency disclosure requirements. Congress has the right to launch investigations into funds provided, especially those perceived to be inappropriately granted.

D. State Attorneys General (“AGs”)

Following TARP, state AGs worked with SIGTARP to investigate misuse of TARP funds. Similar collaborations will likely result from the CARES Act. There are already joint efforts between federal and state authorities. For example, the National Center

for Disaster Fraud (“NCDF”) telephone and email hotline coordinates with state AGs and local authorities on complaints.¹⁷ As states roll out their own aid packages, additional sources of potential liability will likely arise, which will be subject to enforcement by state AGs.

E. Internal Revenue Service (“IRS”)

The IRS Criminal Investigation Division (“IRS-CI”) investigates potential criminal violations of the Internal Revenue Code and related financial crimes.

- IRS has a dedicated website concerning Coronavirus Tax Relief and economic impact payments.¹⁸ On April 2, 2020, IRS issued a release (IR-2020-64) warning about Coronavirus-related fraud tied to economic impact payments.¹⁹
- As CARES Act recipients will be receiving government funds and will be required to reflect this information on tax filings and in relevant disclosures, there is some risk of enforcement by IRS-CI, particularly given that IRS-CI has a mandate to broadly investigate potential tax schemes and tax fraud.

F. Cross-Agency Collaboration

DOJ and other enforcement authorities can be expected to collaborate with a broad range of governmental agencies at the federal, state and local levels, as well as with non-governmental groups and stakeholders with respect to CARES Act-related civil and criminal enforcement. For example, on March 22, 2020, DOJ announced its first enforcement action against COVID-19 fraud and referenced the Consumer Protection Bureau, Federal Bureau of Investigation, Federal Trade Commission and SEC as government agencies responsible for oversight and enforcement over forms of fraud related to COVID-19.²⁰ Similar cross-agency collaboration should be expected in future DOJ CARES Act enforcement.

The NCDF, founded after Hurricane Katrina, receives and enters complaints into a centralized system that can be accessed by DOJ (including U.S. Attorneys) to identify, investigate and prosecute fraud schemes. Moreover, the NCDF also coordinates with 16 other federal law enforcement agencies, as well as state AGs and local authorities.

V. Other Applicable Laws

A. False Claims Act (“FCA”)

1. General Liability

Since the CARES Act requires numerous written certifications from applicants receiving funds, DOJ could prosecute alleged false statements or representations under the FCA.²¹ The FCA targets fraud in federal spending, contracting or procurement, and authorizes both criminal and civil cases. The FCA allows for damages in the form of: (1) triple the amount of false claims (referred to as “trebled damages”); and (2) a per-claim penalty.

In addition to actions being brought by DOJ (and many state governments that have adopted their own version of the FCA), the FCA permits private individuals (referred to as “whistleblowers” or “relators”) to file lawsuits on behalf of the U.S. The government may join such private lawsuits, in which case the private individual may receive between 15–30% of the total amount recovered. Moreover, FCA cases brought by private individuals may continue even if the government declines to join. Thus, the risk of lawsuits brought by private individuals further heightens exposure to litigation over usage of CARES Act funds.

- Under the certification theory of liability, “a claim for payment is false when it rests on a false representation of compliance with an applicable federal statute, federal regulation, or contractual term.”²²
- The FCA imposes liability only when a claimant acts “knowingly,” which can be satisfied without actual knowledge when a person acts with reckless disregard or deliberate ignorance of the truth or falsity of the information.²³
- The CARES Act requires loan recipients to make various certifications as follows:

- » Eligible Businesses seeking loans, loan guarantees or other investments, which have not otherwise received adequate relief in the form of loans or loan guarantees provided under the CARES Act, must certify that they (i) are created or organized in the U.S. or under U.S. law; (ii) have significant operations in the U.S.; and (iii) have a majority of employees based in the U.S.²⁴
- » Applicants under the Targeted Assistance Program for Mid-Size Businesses (one component of relief for Eligible Businesses) must make good-faith certifications regarding the necessity of the loan, intended use of the funds, compliance with conditions of the loan (e.g., retention of at least 90% of their workforce until September 30, 2020; not paying dividends or making stock repurchases; remaining neutral in any union organizing efforts), and their eligibility (e.g., having between 500 and 10,000 employees).²⁵
- » Small business borrowers under the PPP must make good-faith certifications related to the necessity of the loan, intended use of funds and their eligibility.²⁶
- » Additional certifications will likely be required as the Secretary and/or the Board of Governors of the Federal Reserve publish procedures and other guidance, such as adherence to certain covenants, representations, warranties and other requirements (e.g., audit rights).

2. Enforcement Priorities and Historical Comparison

While some recipients of CARES Act funds might be experienced with the FCA, the wide scope of funding eligibility means that other private businesses, manufacturers and health care firms may be managing this risk for the first time. Taking steps to ensure FCA compliance is critical, especially since DOJ has already expressed a desire to enforce the FCA with respect to representations made in the context of the COVID-19 pandemic:

- On March 17, 2020, DOJ stated that it is “committed to pursuing” FCA violations “especially during this critical time” in response to the COVID-19 pandemic.²⁷
- In a March 20, 2020 statement, Attorney General Barr urged “the public to report suspected fraud schemes related to COVID-19.”²⁸
- On March 24, 2020, Whistleblower Protection Caucus co-chairs urged Attorney General Barr to establish a task force to monitor and investigate FCA violations under federal programs and funds associated with the COVID-19 pandemic. Their letter underscored that with “trillions of taxpayers’ dollars going to support efforts to combat the effects of COVID-19, it is critical [DOJ] does everything in its power to ensure the prevention and detection of fraud . . . As federal agencies work together to ensure the protection of the American people, the [FCA] can serve as a critical tool of protection.”²⁹

There may be significant costs to businesses who are subject to a civil FCA investigation, including treble damages on a “per claim” basis, suspension or debarment in connection with federal contracts, and potential criminal liability.

SIGTARP was appointed to identify and prosecute fraud, waste and abuse related to TARP, similar to the mandate of SIGPR. SIGTARP has brought numerous investigations and recovered \$11 billion through the end of 2019, including \$900 million in 2019 alone. Select investigations are highlighted below and at [SIGTARP’s website](#).

- In 2012, Regions Financial Corp. settled an FCA action alleging that it undervalued a promissory note in order to qualify for money under TARP and then lied to investigators about its need for government assistance.³⁰
- In 2015, SIGTARP settled an FCA action with Fifth Third Bank for \$85 million after the company disclosed that employees had made false representations to the U.S. Department of Housing and Urban Development about the quality of the residential mortgages the bank originated.³¹
- In 2015, DOJ settled an FCA action for \$4 million against the estate of a former owner and president of a corporation based on false statements made about the financial condition of his corporation and the intended use of TARP funds.³²
- In 2018, SIGTARP settled an FCA action with Martin Enterprises for fraudulently submitting claims for federal TARP Blight Elimination Program funds for improperly performed demolition work.³³

The risk of CARES Act-related FCA enforcement is informed by enforcement actions in other contexts as well.

- In 2019, DOJ settled an FCA action for \$20 million (in addition to a prior \$17 million settlement with the company) against a CEO who falsely represented that his company met the eligibility criteria, including size, ownership, and operational control requirements, to qualify as a small business and take advantage of set-aside contracts.³⁴
- In *United States v. Sci. Applications Int'l Corp.*, the defendant scientific company entered into a contract with the Nuclear Regulatory Commission (“NRC”), which required the company to certify that it had no organizational conflicts of interest and that it would immediately inform the NRC if such relationships developed. The company subsequently engaged in work for other organizations that created a potential conflict, which it failed to disclose. The court found that FCA liability could attach where a company failed to disclose the violation of a material contractual condition, even if it was not an express prerequisite to payment.³⁵

3. Potential Liability for Investors/Sponsors

The FCA applies to any person or entity that “causes to be presented” false claims. Therefore, investors and sponsors face a potential risk of causing a false claim to be presented by a portfolio company, especially when the investor/sponsor exercises control over the investment and was involved in the decision to submit the claim.³⁶ Historically, there have been very few FCA actions brought against investors or private equity sponsors for conduct at a portfolio company. However, there have been a few recent cases indicating the government’s potential interest in pursuing FCA actions against sponsors.

In 2019, DOJ entered into a \$21 million FCA settlement with Diabetic Care Rx LLC d/b/a Patient Care America (“PCA”), PCA’s CEO, PCA’s former vice president of operations and private equity firm Riordan, Lewis & Haden Inc. for their involvement in a kickback scheme to generate referrals for various prescriptions that were reimbursed by the federal government. The government claimed that the sponsor played a leading and direct role in the alleged misconduct, including by serving on the board, having knowledge of the illegal referral scheme and being informed by counsel of the legal risks associated with the scheme.

Further, in a pending FCA suit against a mental health services provider and its private equity firm owner, although the U.S. declined to intervene on the federal claims, Massachusetts intervened in the state FCA case where it sought to hold the private equity firm liable for a scheme involving purported overbilling of state and federal health insurance programs. In rejecting the private equity firm’s argument that it was too far removed from the conduct to be held liable, the court found that the firm’s majority position on the portfolio company’s board and direct involvement in its operations were sufficient to allow the FCA claim to proceed.³⁷

These cases show that the closer the sponsor is to managing the portfolio company, the greater the likelihood of liability under the FCA. Factors such as having board control/oversight, other involvement in the portfolio company’s day-to-day operations and involvement in any decision to apply for the loan may increase the potential for liability.

B. Criminal Fraud

1. Forms of Liability

There are numerous other statutes that criminalize fraud. These statutes are very broad and can be invoked where liability may not fit under other theories, such as the FCA. Examples include:

- **Mail Fraud:** prohibits using interstate mail to execute a scheme to defraud others.
- **Wire Fraud:** prohibits making an interstate phone call, sending an e-mail or transferring funds in furtherance of a scheme to defraud.
- **Bank Fraud:** prohibits defrauding a financial institution, including by obtaining any assets under the control of such an institution.
- **Honest Services Fraud:** “a scheme or artifice to deprive another of the intangible right of honest services.” (For example, a university coach accepts bribes in exchange for a position on the team, thereby depriving the university (the coach’s employer) of the coach’s honest services.)
- **Travel Act:** criminalizes travel from state to state (or internationally) with the intent to promote or facilitate an unlawful activity.

- **Securities Fraud:** prohibits a wide range of illegal activities involving the deception of investors or the manipulation of financial markets, including high-yield investment fraud, Ponzi schemes, pyramid schemes, advanced fee schemes, foreign currency fraud, broker embezzlement, hedge fund-related fraud and late-day trading, among others.
- **Market Manipulation:** prohibits intentional conduct designed to deceive investors by controlling or artificially affecting the market for a security, including spreading false or misleading information about a company; improperly limiting the number of publicly available shares; or rigging quotes, prices or trades to create a false or deceptive picture of the demand for a security, among others.

2. Past Enforcement

SIGTARP brought numerous investigations under such criminal fraud theories, including the following:

- In 2017, following a SIGTARP investigation, three individuals were convicted of multiple counts of mail fraud, wire fraud, and conspiracy to commit mail and wire fraud and sentenced to a total of 39 years in prison for their involvement in a “home mortgage modification” fraud where they targeted struggling homeowners and made misrepresentations to induce homeowners to participate in what the individuals held out to be the Home Affordable Modification Program.³⁸
- In 2016, the former CEO of TierOne Bank was convicted of 12 counts, including conspiracy to commit wire fraud and securities fraud, and sentenced to 11 years in prison and a \$1.2 million fine for his involvement in a scheme involving intentional concealment of extensive losses to the bank’s portfolio, including providing inflated figures in the bank’s reports to SEC and the Office of Thrift Supervision.³⁹

VI. Best Practices and Recommendations

To help mitigate the risks associated with participating in CARES Act funding, parties should consider the following best practices:

Throughout the Entire Process:

- Memorialize and maintain steps taken throughout the process, ideally in a central repository. This includes all steps taken to ensure compliance; the bases for any required certifications; the rationale for making any modifications to existing processes; layers of review, including individuals (or functions) involved with reviews; and other internal controls designed to ensure robust, good-faith submissions and execution.
- Ensure that applicable personnel understand the importance of accuracy and transparency with respect to their individual roles and welcome feedback.
- Consider trainings or other communications to underscore the importance of careful adherence to rules.

Loan Application:

- Honestly and accurately complete CARES Act loan applications, including sections establishing eligibility. Knowingly or intentionally submitting inaccurate or false information in a CARES Act loan application could create potential enforcement liability, including under the FCA.
- Do not include any information that is false in furtherance of CARES Act loan applications; to that end, verify assertions with personnel most knowledgeable on the subject matter and be mindful of statements made in previous filings.
- Be mindful of statements made in previous filings and ensure that representations made in the loan application are consistent with the same (e.g., regarding a sponsor’s control rights).
- Consider appointing an individual or a sub-group to be responsible for a complete review of the submission to identify any inconsistencies or errors.
- Loan applications are likely subject to FOIA requests, so assume that they will be made public.

In Anticipation of Funds:

- Continue to monitor government guidance for additional information and/or regulations to ensure compliance with any new requirements.
- In consultation with legal and compliance personnel, (i) identify all compliance requirements related to the loan, and (ii) establish policies, procedures and controls to ensure compliance with all loan conditions.
- Ensure that any governmental modifications or waivers of requirements are documented in writing.

Upon Receipt of Funds:

- Implement policies, procedures and controls designed to ensure compliance with loan conditions, and actively monitor adherence to the same. Consider appointing a resource dedicated to monitoring compliance.
- Maintain an effective reporting system to identify and investigate compliance concerns, preferably in consultation with legal and compliance personnel.

Corporate Governance:

- Ensure that the board of directors vets decisions on all types of disclosures and filings (regulatory, investor, etc.).

Compliance Program:

- Assess and amend, if needed, relevant compliance policies, procedures and controls to prevent employee theft of, or other fraud related to, incoming CARES Act funds.
- Evaluate potential heightened risk areas in the context of the COVID-19 crisis, and the adequacy of corresponding policies, procedures, systems, controls and employee training.
- Closely follow, review and adhere to evolving government guidance related to the CARES Act and COVID-19 crisis.

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1. CARES Act, § 4018(c)(1).
 2. CARES Act, § 4018(c)(1).
 3. CARES Act, § 4018(d)(1).
 4. CARES Act, § 15010(b).
 5. CARES Act, §§ 15010(d)-(e).
 6. CARES Act, § 15010(d)-(e).
 7. CARES Act, § 15010(e)(3)(A).
 8. CARES Act, § 4020(b)(1).
 9. CARES Act, § 4020(e)(1).
 10. CARES Act, § 15010.
 11. See <https://www.justice.gov/ag/page/file/1258676/download>.
 12. See <https://www.justice.gov/file/1262766/download>.

13. See <https://www.justice.gov/opa/pr/attorney-general-william-p-barr-urges-american-public-report-covid-19-fraud>.
14. See <https://www.sec.gov/sec-coronavirus-covid-19-response>.
15. See *id.*
16. See <https://www.kirkland.com/publications/kirkland-aim/2020/03/sec-offers-limited-filing-relief-to-advisers>
17. See <https://www.justice.gov/disaster-fraud>.
18. See <https://www.irs.gov/coronavirus>.
19. See <https://www.irs.gov/newsroom/irs-issues-warning-about-coronavirus-related-scams-watch-out-for-schemes-tied-to-economic-impact-payments>.
20. See <https://www.justice.gov/opa/pr/justice-department-files-its-first-enforcement-action-against-covid-19-fraud>.
21. 31 U.S.C. § 3729 et seq.
22. See *United States ex rel. Folliard v. Comstor Corp.*, Civil Action No. 11-731 (BAH), 2018 WL 5777085, at *2 (D.D.C. Nov. 2, 2018).
23. 31 U.S.C. § 3729(b).
24. CARES Act, § 4003(c)(2)(H).
25. CARES Act, § 4003(c)(3)(D)(i).
26. CARES Act, § 1102(a)(2)(G)(i).
27. See <https://news.bloomberglaw.com/health-law-and-business/coronavirus-false-claims-task-force-urged-at-justice-department>.
28. See <https://www.justice.gov/opa/pr/attorney-general-william-p-barr-urges-american-public-report-covid-19-fraud>.
29. See https://speier.house.gov/_cache/files/9/4/9421f026-6520-424a-92e3-50ee6fd5929d/71328304C4DABFE74CDBFF899E8E0280.letter-requesting-doj-set-up-coronavirus-fca-task-force-3.24.20-final.pdf; see also <https://speier.house.gov/2020/3/whistleblower-protection-caucus-co-chairs-speier-and-rice-joined-by-colleagues-to-urge-doj-to-create-task-force-to-fight-fraud-in-the-covid-19-response>.
30. See *United States of America ex rel. Eduardo Garcia et al. v. Regions Financial Corp. et al.*, No. 1:09-cv-21402 (S.D. Fl. 2012).
31. See https://www.sig tarp.gov/Press%20Releases/Fifth_Third_Bancorp_Settlement_Press_Release.pdf.
32. See *United States v. Estate of Layton P. Stuart, et al.*, No. 1:15-cv-01044 2015 WL 10569723 (D.C.C. Oct. 16, 2015).
33. See https://www.sig tarp.gov/Press%20Releases/Martin_Enterprises_Press_Release.pdf.
34. See *United States ex rel. Ameliorate Partners, LLP v. ADS Tactical, Inc. et al.*, Case No. 13-cv-1880 (D.C. Cir. 2019).
35. 626 F.3d 1257 (D.C. Cir. 2010).
36. See *Commonwealth ex rel. Martino- Fleming v. South Bay Mental Health Center, Inc.*, 15-13065-PBS (D. Mass.).

37. *See id.*
38. *See United States v. Araya*, No. 1:15-cr-301 (E.D. Va. 2017).
39. *See United States v. Gilbert G. Lundstrom*, No. 4:14-cr-03136 (D. Neb. 2016).

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