

Corporate and White-Collar Prosecutions Hit New All-Time Lows in FY 2022

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The latest available case-by-case records from the Department of Justice (DOJ) show that the prosecution of white-collar offenders in FY 2022 reached a new all-time low since tracking began during the Reagan administration. During the last fiscal year which ended last September, only 4,180 white-collar defendants were prosecuted. White-collar prosecutions last year were lower than in any year during the Trump administration. FY 2022 figures are even lower than during FY 2020 when due to the pandemic and federal partial shutdowns, federal criminal enforcement activities of all kinds were sharply curtailed. See Figure 1.

In general prosecutions of white-collar offenders have been steadily declining. The number of prosecutions over the last two decades peaked during the Obama administration during FY 2011. In that year, white-collar prosecutions had climbed to 10,162. This is nearly two and a half times current levels. Since then, as shown in Figure 1, prosecutions of white-collar offenders have steadily dropped.

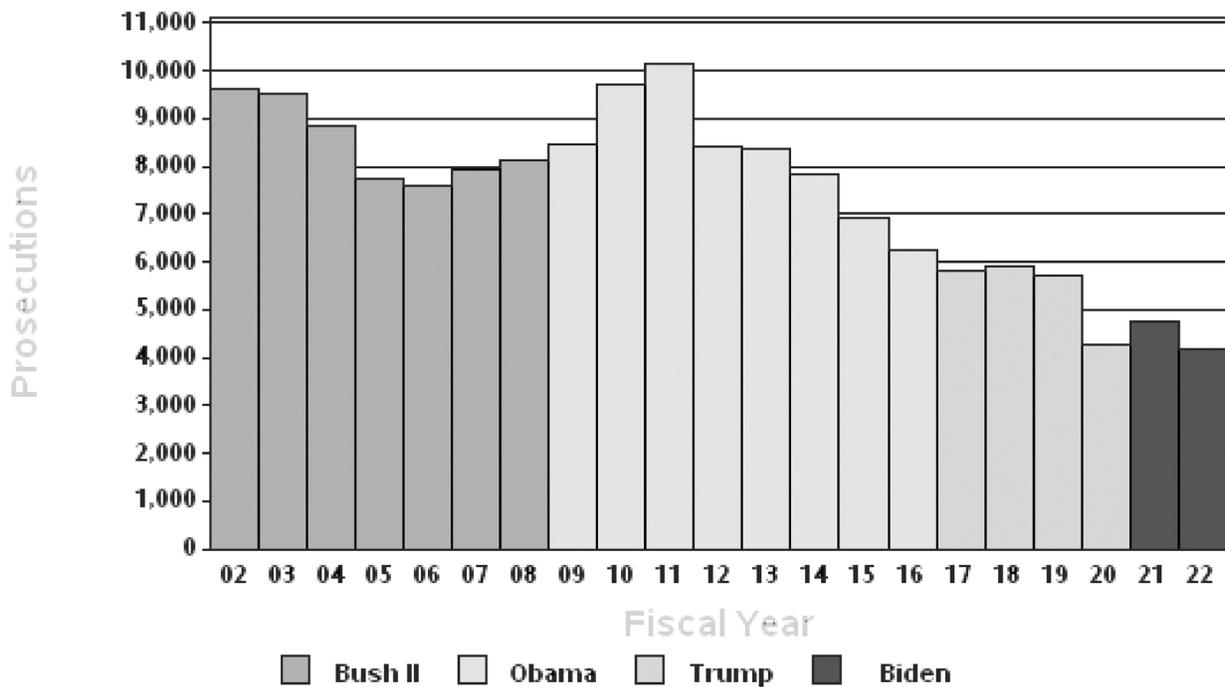


Figure 1. Federal Criminal White-Collar Prosecutions Over the Last 20 Years

Criminal Referrals for White-Collar Offenses Often Not Pursued

The odds of prosecution for white-collar offenses that were referred last year was 38 percent. This means that in 38 percent of criminal referrals for prosecution, a prosecution was actually filed. In the remaining 62 percent of referrals, the matter was closed without filing a prosecution. ^[1]

White-collar prosecution rates are generally lower than for many other types of federal crimes. ^[2] Overall, during FY 2022 federal attorneys prosecuted seven out of every ten (70%) criminal referrals they received. Prosecution rates varied markedly by the “program category” that federal prosecutors assigned each case based upon the federal prosecutor’s assessment of the nature of the offense involved. The highest likelihood of prosecution was 96 percent for immigration offenses, followed by drug offenses at 73 percent and crimes involving weapons at 68 percent. The lowest rate of prosecution was 23 percent for civil rights matters. See Figure 2.

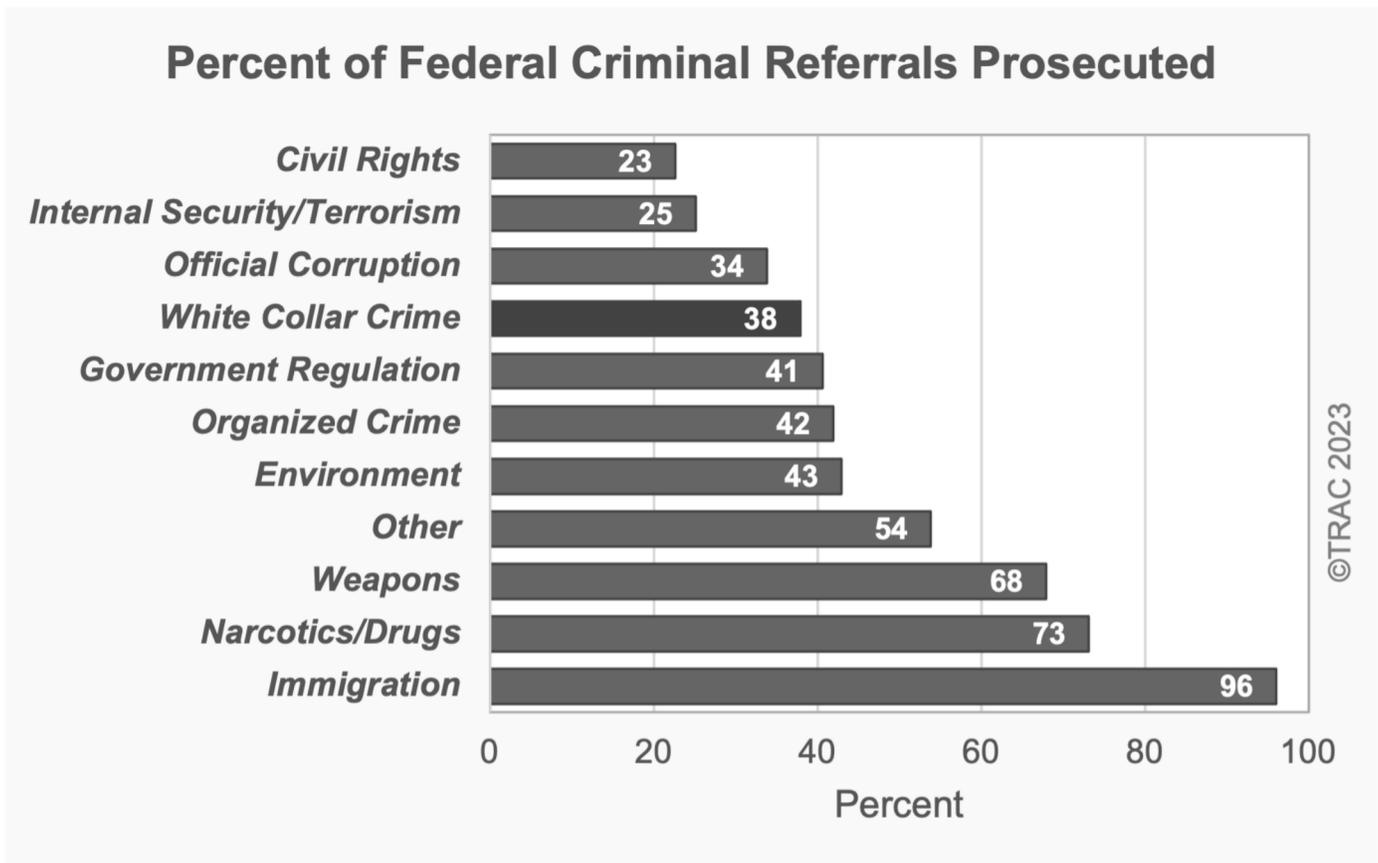


Figure 2. Percent of Criminal Referrals to Federal Prosecutors for White-Collar Offenses Where Prosecution Filed Rather Than Closed Without Prosecution During FY 2022

White-Collar Investigations Can Be Lengthy

White-collar investigations often take years before they result in filing a criminal case. Thus, prosecutions last year were significantly shaped by what investigations were ongoing before President Biden assumed office. No empirical information is available measuring how long the investigative process took before these criminal referrals were made. However, TRAC has compiled data that measures how long the review process at federal prosecutor offices took for each prosecution filed in FY 2022. The average days between receipt of these referrals and the actual filing of the prosecution for white-collar crimes was 452 days. This is 3.6 times greater than the average time spent for all federal prosecutions last year.

Some types of cases do go through this review process swiftly. Immigration cases took an average of only 27 days between receipt of the referral and the prosecution filing. Weapons cases required on average 103 days in FY 2022, while drug cases took an average of 128 days. Thus, in contrast the review process for many complex white-collar offenses is lengthy. And indeed, no other offenses took as long for this consideration process as the average of 452 days consumed before these white-collar prosecutions were filed.

Few Prosecutions of Businesses and Corporations

Prosecutors chiefly pursue individuals when prosecuting white-collar crimes. Corporations and other business organizations are rarely prosecuted. Yet white-collar crimes typically involve some form of fraud or anti-trust violations involving financial, insurance or mortgage institutions; health care providers; securities and commodities firms; or frauds committed in tax, federal procurement or federal programs among others.



Figure 3. Proportion of Federal White-Collar Prosecutions Involving Business Entities

During FY 2022 out of the 4,180 prosecutions for white-collar offenses, under one percent or only 31 of these defendants were businesses or corporate entities. This is the lowest number of criminal prosecutions of business entities for white-collar offenses since federal prosecutor tracking began for these in FY 2004.

In general, the proportion of prosecutions that involve business entities rather than individuals has remained fairly constant so that when white-collar prosecutions fell, so did the number of prosecutions involving business entities. Year after year, an average of just one (1) business entity was prosecuted out of every 100 white-collar prosecutions. For the period of FY 2004 when tracking first began through January 2020 right before the pandemic hit, business entities accounted for 1,300 out of the 124,402 white-collar prosecutions, or an average of 1.0 percent during this entire period.

The more complex and potentially important a case – ones that involve wrongdoing possibly by a large corporation — the longer this investigative period can naturally take. The delays caused by the pandemic may have particularly slowed the completion of the investigative phase for referrals involving larger cases which are more likely to involve business entities. In addition, when a business entity was prosecuted for a white-collar offense, the consideration of the case by federal prosecutors has taken on average twice as long — 1,025 days instead of 452 days. Thus, these referrals involving business entities generally were the result of investigations during the Trump administration since the referral was received on average before President Biden assumed office. ^[3]

Conclusion

These federal government records document that the prosecution of white-collar offenses has been declining for more than a decade. Results also show that the majority of criminal referrals for white-collar offenses that federal prosecutors receive are closed without prosecution. A further clear finding is that the decision to criminally charge a business in contrast to an individual for engaging in white-collar criminal activity is exceedingly rare (just 1%), and this low rate has persisted whether the presidency was held by a Republican or by a Democratic.

Footnotes

^[1] Rates are based on the actions taken by federal prosecutors during a given fiscal year to prosecute a case or close the referral without filing a prosecution.

^[2] During FY 2022 federal prosecutors turned down 522 criminal referrals by business entities that DOJ had received from federal, state and local law enforcement agencies for white-collar offenses and filed suit in just 31. This means that little more than five percent of referred white-collar cases involving businesses were prosecuted.

^[3]^ The rate during the Biden administration of 0.74 percent in FY 2022 and 0.69 percent during FY 2021 is if anything a bit on the low side of this long-term 1.0 percent average, although not markedly so. For example, the rate was 0.64 percent during FY 2011 when the Obama administration prosecuted the highest number of white-collar offenders. It was similarly as low as 0.76 percent during FY 2018 under the Trump administration.

TRAC is a nonpartisan, nonprofit data research project founded in 1989. Its public website has moved from trac.syr.edu to tracreports.org. For more information, contact info@tracreports.org.

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