

Jan. 6 Probe, COVID Relief Fraud Have DOJ Stretched Thin

By Phillip Bantz

Law360 (March 3, 2023, 5:19 PM EST) -- As the U.S. Department of Justice grapples with the sprawling investigation into the Jan. 6 attack on the U.S. Capitol and a tidal wave of COVID-19 relief fraud cases, some experts predict the strain on the agency's resources, hindering more conventional enforcement efforts and prompting calls for an influx of funding.

Aiming to bolster the government's fraud-fighting resources, President Joe Biden on Thursday unveiled a \$1.6 billion "sweeping pandemic anti-fraud proposal" to inject \$600 million into COVID-19-related fraud enforcement. The plan calls for \$300 million for the creation of at least 10 new COVID-19 fraud "strike force" teams, adding to the existing three teams, which include federal prosecutors and law enforcement agents focused on recovering fraudulent pandemic relief loans.

Jan. 6 Capitol Riots by the numbers

- **985** arrests
- **500** guilty pleas
- **52** guilty verdicts at trial
- **394** defendants sentenced
- **260** suspects are still being sought by the FBI

As of Feb. 3, 2023. Source: DOJ

Biden also requested \$300 million to hire more investigators for the Pandemic Response Accountability Committee, which is made up of 20 inspectors general and oversees more than \$5 trillion in COVID-19 relief funds. Without additional investigators and other resources, it "would take decades to prosecute the known caseload," according to the proposal.

"There are only so many people and hours in a day," Justin Murphy, a partner in McDermott Will & Emery LLP's regulatory practice group in Washington, D.C., and a former federal prosecutor, told Law360. "When you have prosecutors with full dockets, and they're diverted to work on another important and demanding series of cases, what they were working on might get passed to someone else, who already had a full docket."

Meanwhile, the Justice Department's budget request for fiscal year 2023 shed some light on the toll that the Jan. 6 investigation was taking on the agency's resources. The department asked for more than \$34

million to pay for 80 prosecutors and 50 other staffers to assist in the U.S. Attorney's Office for the District of Columbia's "unprecedented" effort of investigating and prosecuting "hundreds complex and resource intensive cases."

"Without the requested temporary resources, the USAO community will have to continue carrying the resource burden of performing these duties in FY 2023 at the expense of base operations," the funding request stated.

The request was included in a **\$1.7 trillion federal spending bill** that President Joe Biden signed into law in late December.

The Jan. 6 enforcement efforts have so far resulted in 985 arrests, 500 guilty pleas, 52 guilty verdicts at trial and 394 defendants sentenced. The FBI is searching for another 260 suspects, according to the latest statistics released by the Justice Department in early February.

As a federal prosecutor based in Washington, D.C., Jason Crawford was involved in the Jan. 6 prosecutions before joining Crowell & Moring LLP earlier this year. He said he worked alongside "some of the brightest and most talented [prosecutors] in the country, and they made valuable contributions in D.C., but that meant they weren't able to dedicate themselves to their work in their home offices."

"For some folks, their bread-and-butter at the home office was white collar enforcement," he added.

COVID Fraud Enforcement by the numbers

- **1,500** defendants criminally charged
- **\$1.2 billion** in relief funds seized
- **1,800** individuals and entities under civil investigation
- **\$6 billion** in loans under civil investigation

Numbers are approximate and from September 2022, the most recent statistics available from the DOJ

Adding to the DOJ's workload is the rapidly growing number of COVID-19 relief fraud cases. So far, the government has brought criminal charges against more than 1,500 defendants, seized at least \$1.2 billion in relief funds and opened civil investigations into more than 1,800 individuals and entities in cases involving more than \$6 billion in pandemic relief loans, according to statistics released in September 2022, the most recent data available.

"The United States Attorneys expect the workload to rise dramatically in the coming years because of fraud associated with the COVID-19 pandemic and the unprecedented government spending for pandemic relief," the Justice Department stated in its 2023 budget request. The agency expects the effort will take "several years."

A DOJ spokesperson declined to disclose the number of prosecutors who have been diverted to the Jan. 6 investigation and COVID-19 relief fraud enforcement or to comment on how those efforts might affect the agency's ability to investigate and prosecute traditional white collar crime.

Several white collar lawyers told Law360 that they have clients who were under investigation before the pandemic, but they've heard nothing from the government for the past three years and are in the dark

about the status of those matters. The attorneys declined to talk on the record so as to not draw unnecessary attention to their clients.

Bob Rhoad, a partner at Nichols Liu LLP, said he's noticed a slowdown in white collar cases in Washington, D.C., where he's based. He attributed the lag primarily to earlier pandemic-related closures and, possibly, Jan. 6 cases. But he said the action seems to be picking back up, adding that he's talked with white collar lawyers in Chicago and metro areas of California, New York and Michigan, and "there doesn't seem to be any slowdown" in those jurisdictions.

Tanisha Palvia, a white collar partner at Brooks Pierce McLendon Humphrey & Leonard LLP in North Carolina, said she believes white collar prosecutions have ticked up in the Eastern and Western Districts of the state, and not just for COVID relief fraud but also more traditional crimes such as Ponzi schemes and wire fraud.

"However, DOJ's resources are not infinite, so given its focus on handling these [COVID fraud] cases, it is likely going to have to give somewhere," Palvia said. "I am just not sure where, but in my opinion, all types of white collar cases continue to have DOJ's attention."

During the Biden administration, the DOJ has emphasized that it is focused on white collar crime, which Deputy Attorney General Lisa Monaco described as "first priority" in a September 2022 memo. That memo and subsequent policy announcements offer leniency to companies that self-report misconduct before they're on the government's radar.

Those policy changes could be part of an attempt to alleviate some of the strain on the Justice Department's resources, according to Murphy of McDermott.

"This incentivizes a company to come in and self-disclose, which makes the government's life a lot easier," he said. "They don't have to go out and build a case from scratch. The company is bringing in documents and witnesses and, in some ways, potentially tying up a case in a neat little bow for the DOJ."

Murphy said he expects that the pendulum will swing back, but predicted that another resource shift will occur at the Justice Department in the near future as a result of fraud stemming from the influx of government money from the more than \$1 trillion infrastructure bill, which Biden signed into law in November 2021.

"You'll see a spike in investigations and prosecutions for fraud and collusion related to the infrastructure bill dollars," he said. "Where the government is a victim or where government dollars are at play, the DOJ's presence will be enhanced."

Crawford, of Crowell & Moring, noted that the Justice Department has had to shift significant resources in the past to deal with incidents like the 9/11 terrorist attacks and widespread fraud associated with the subprime mortgage crisis from 2007 to 2010.

"This readjusts with time," he said.

--Editing by Alanna Weissman.

All Content © 2003-2023, Portfolio Media, Inc.