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ANTITRUST AT WORK: ENFORCEMENT OF ANTITRUST LAWS IN LABOR MARKETS

By John Roberti, Anant Raut & Elliot Buckman [1]

I. Introduction

For nearly a decade, U.S. antitrust regulators have made the enforcement of antitrust laws in labor markets one of their top priorities. We anticipate this enforcement will remain a focal point throughout the balance of the second Trump administration, as the antitrust enforcers installed by President Trump have reaffirmed its importance.

The key question is what such enforcement will look like. In the latter part of the Obama administration and the beginning of the first Trump term, labor enforcement efforts largely focused on agreements among employers to restrict the wages or mobility of workers. The government prosecuted these matters criminally. The Biden administration continued this criminal enforcement and supplemented it with a series of regulatory actions, including the insertion of labor considerations in key guidelines and, more famously, creating a rule against non-compete agreements. While the second Trump administration has reaffirmed its commitment to continuing these trends, it also seems poised to forge its own path. The Trump Federal Trade Commission ("FTC") has expressed hostility toward the Biden administration's rulemaking approach and has stated it will not enforce the ban on non-competes. These factors suggest labor market antitrust enforcement may well revert to civil non-merger prosecutions, whether by the federal government, state enforcers, or private plaintiffs.

It will also be important to monitor which labor markets the enforcers will choose to target. Whereas traditional labor market litigation has involved either health care workers or highly paid professionals, the Trump administration has expressed support for prioritizing blue-collar workers. This is notable because, historically, cartel cases based on wage fixing or no-poach agreements involving the working class have been infrequent.

This article considers the likely approaches to labor antitrust enforcement in the second Trump administration. It first surveys the history of enforcement in pre-2025 labor cases. It then analyzes statements made by Trump antitrust enforcers and concludes by considering what we believe the labor enforcement landscape will look like in the near future.

II. History of Labor Case Enforcement

a. Nascent Days

Antitrust enforcement in labor markets traces its roots to the first days of the Sherman Act. Early enforcement commonly involved challenges to restrictions on union access. After the Supreme Court ruled union activity was within the reach of the antitrust laws,[2] Congress

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[2] *Loewe v. Lawlor*, 208 U.S. 274, 301 (1908) (the Sherman Act "provided that 'every' contract, combination, or conspiracy in restraint of trade was illegal. The records of Congress

responded by enacting the Norris-LaGuardia Act, [3] which removed certain labor activities from under the antitrust umbrella. The ensuing decades saw few cases involving organized labor, and the courts confronting such cases often applied the Norris-LaGuardia exemption.[4]

b. The Modern Era

Since the late 20th century, antitrust labor enforcement has generally involved the review of practices related to a relatively small set of employees — health care workers (particularly nurses), college athletics personnel, and highly skilled workers. For example, in *United States v. Utah Society for Healthcare Human Resources Administration* (1994),[5] the Antitrust Division challenged the sharing among competitors of nonpublic wage information for registered nurses.[6] The defendants allegedly used mechanisms common to cartel cases: surveys, trade association meetings, and direct phone calls, all geared toward horizontal information sharing. The case ended in a consent decree prohibiting such coordination.[7]

In 2007, the Antitrust Division brought *United States v. Arizona Hospital and Healthcare Association*,[8] which similarly alleged that Arizona hospitals colluded to fix wages and benefits for temporary nurses through the use of shared registries. That case resulted in a ban on, among other things, certain agreements in billing rates and competitively sensitive contract terms.[9] Likewise in *United States v. Ass'n of Family Practice Residency Doctors*,[10] the Antitrust

show that several efforts were made to exempt, by legislation, organizations of farmers and laborers from the operation of the act, and that all these efforts failed, so that the act remained as we have it before us.").

[3] 29 U.S.C. §§ 101–15 (1932); *e.g.*, *id.* at § 101 ("No court of the United States . . . shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter.").

[4] *See, e.g.*, *United States v. Hutcheson*, 312 U.S. 219, 232, 61 S.Ct. 463, 85 L.Ed. 788 (1941) (holding Norris-LaGuardia Act exempts from Sherman Act liability activities of labor unions acting in their own self-interest and not in combination with non-labor groups).

[5] No. 94-cv-1005 (D. Utah 1994).

[6] https://www.justice.gov/atr/case-document/file/514706/dl.

[7] *United States v. Utah Soc. for Healthcare Hum. Res. Admin.*, 1994 WL 729931 (D. Utah Sept. 14, 1994); *see also* https://www.justice.gov/atr/case-document/file/514696/dl (Final Judgment *Nunc Pro Tunc*). The state of Utah simultaneously entered a consent decree with the University of Utah for its alleged role in the conspiracy. *Utah v. University of Utah*, Civ No. 940901730M (Utah D. Ct., 3rd Dist., Salt Lake Cnty., March 16, 1994). *See* https://www.naag.org/multistate-case/utah-v-university-of-utah-civ-no-940901730m-utah-d-ct-3rd-dist-salt-lake-cnty-filed-3-16-94/.

[8] No. 07-cv-1030 (D. Ariz. 2007).

[9] *United States of America and the State of Arizona, Plaintiffs v. Arizona Hospital and Healthcare Association, and Azhha Service Corp., Defendants.*, Trade Reg. Rep. P 75869, *available at* https://www.justice.gov/atr/case-document/file/487106/dl.

[10] No. 96-575-cv-W-2 (W.D. Mo. May 28, 6 1996).

Division challenged the use of "Guidelines on the Ethical Recruitment of Family Practice Residents," which allegedly was designed to limit competition between residency programs for senior medical students. Members of the defendant association had agreed not to directly solicit residents from each other, an action the Division argued was *per se* unlawful under the Sherman Act.[11] That case culminated in an order instituting certain restraints on anti-competitive behavior by the association members.[12] By the same token, a number of class actions around this time alleged that hospitals colluded to suppress nurse wages by coordinating wage offers, exchanging compensation data, and agreeing not to compete for one another's employees.[13]

There were also important private labor market cases during this period, often involving specialized workers. In *Todd v. Exxon Corp.*,[14] petroleum companies were accused of sharing detailed information regarding compensation paid to certain non-union employees and using that information in setting those employees' salaries at artificially low levels. And, in *Law v. NCAA*,[15] the plaintiff alleged (and the Tenth Circuit held) that a rule promulgated by the National Collegiate Athletic Association, which placed a limit on coaches' annual compensation, violated the rule of reason.[16]

More recently, high profile investigations into high-tech workers have raised the prominence of labor antitrust enforcement in the U.S. In September 2010, the DOJ filed a civil antitrust complaint against Adobe Systems, Apple Inc., Google Inc., Intel Corp., Intuit Inc., and Pixar.[17] The Antitrust Division alleged the six defendants entered into agreements that banned "cold calling" employees of other companies, *i.e.,* unsolicited direct communications for recruitment purposes. The Division's competitive impact statement[18] reported that the agreements were reached through "direct and explicit communications," that "senior executives at each firm entered the express agreements, and implemented and enforced them" and that the agreements represented "a naked restraint of trade that was *per se* unlawful under Section 1 of the Sherman Act."[19] The Final Judgment enjoined the defendants from causing any person "to refrain from soliciting, cold calling, recruiting, or

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[11] *United States v. Ass'n of Family Practice Residency Doctors*, No. 96-575-cv-W-2 (W.D. Mo. May 28, 1996), Complaint at 6; Competitive Impact Statement, 61 FR 28891-02.

[12] ¶ 71,533 *United States v. Association of Family Practice Residency Directors.*, Trade Reg. Rep. P 71533, *available at* https://www.justice.gov/atr/case-document/file/628591/dl.

[13] *Cason-Merenda v. Detroit Med. Ctr.*, No. 06-cv-15601 (E.D. Mich. 2012); *Fleischman v. Albany Med. Ctr.*, No. 06-cv-0765 (N.D.N.Y. 2006); *Johnson v. Ariz. Hosp. & Healthcare Ass'n*, No. 07-cv- 1292 (D. Ariz. 2007).

[14] No. 1:97-cv-04557 (S.D.N.Y. 1997).

[15] No. 2:94-cv-02053 (D. Kan. 1994).

[16] 134 F.3d 1010 (10th Cir. 1998).

[17] *United States v. Adobe Sys. Inc.*, No. 10-cv-1629 (D.D.C. 2010).

[18] https://www.justice.gov/atr/case-document/file/483431/dl.

[19] *Id.* at 3, 5.

otherwise competing for employees of the other person."[20]

For much of the last ten years, the discussion around the enforcement of antitrust laws in labor markets has been dominated by "no-poach" cases. However, labor market antitrust enforcement under the Biden administration gained traction—albeit sometimes temporary—in other arenas. For example:

- Early in the administration, President Biden issued the *Executive Order on Promoting Competition in the American Economy*,[21] which directed federal agencies to examine anticompetitive practices in labor markets.
- The FTC issued a rule banning non-compete agreements under most circumstances.[22]
- The FTC and DOJ issued revised Merger Guidelines which stated the agencies would assess a transaction's impact on labor markets as part of their merger review.[23]
- The DOJ blocked Penguin Random House's proposed acquisition of Simon & Schuster, in part based on claims that the combined company would be able to reduce advance compensation to authors.[24]
- The FTC challenged the Kroger-Albertsons merger, in part based on arguments that the consolidation would diminish unionized workers' bargaining power and lead to lower wages.[25]

c. The Pivot to Criminal Enforcement

Although the DOJ prosecuted the high-tech no-poach cases as civil matters, allegations of the sort underlying that case often give rise to criminal complaints. The choice to pursue civil enforcement of a Section 1 violation fact pattern was heavily criticized by the left wing of the Democratic party. These critics argued that labor workers had long been treated poorly by antitrust enforcers, who viewed labor as an expense, and rewarded merging parties by regarding post-merger layoffs as efficiencies *in favor* of greenlighting the transaction. Had the same companies conspired to reduce the price of physical goods, the critics argued, the Division would have likely pursued harsher remedies than it did when these entities conspired to reduce the price of labor. Labor, the argument went, should not be viewed as an expense to be minimized, but as a market to be protected.

This philosophical shift had its moment at the tail end of the Obama Administration,

[20] https://www.justice.gov/atr/case-document/file/483426/dl.

[21] Exec. Order No. 14036 (July 9, 2021), *available at* bidenwhitehouse.archives.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/ (accessed 29 July 2025), *revoked by* Exec. Order No. 14337 (Aug. 13, 2025).

[22] 16 C.F.R. 910, *invalidated by Ryan, LLC v. Fed. Trade Comm'n*, 746 F. Supp. 3d 369, 389 (N.D. Tex. 2024).

[23] U.S. Dep't of Just. & Fed. Trade Comm'n, Merger Guidelines (Dec. 18, 2023), https://www.justice.gov/d9/2023-12/2023%20Merger%20Guidelines.pdf, at 26-27.

[24] *United States v. Bertelsmann SE & Co. KGaA*, 646 F. Supp. 3d 1 (D.D.C. 2022).

[25] *Fed. Trade Comm'n v. Kroger Co.*, No. 3:24-cv-00347 (D. Or. Feb. 26, 2024); *see* https://www.ftc.gov/system/files/ftc_gov/pdf/kroger_albertsons_complaint_public.pdf.

when, in 2016, the DOJ announced its intention to prosecute wage fixing and no-poach activities criminally.[26] It did not file any such actions, however, until 2020. The DOJ's prosecutions since that time have been met with limited success.

d. Limited Returns

United States v. Jindal, et al.[27] marked the first instance of the DOJ bringing criminal antitrust charges related to wage fixing. The Government alleged that the defendants, who worked in the physical therapist staffing industry, conspired with competitors to lower their therapists' wages; writing, for example, "I am reaching out to my counterparts about lowering PTA rates to $45. . . . What are your thoughts if we all collectively do it together?"[28]

The defendants moved to dismiss. The district court noted that because the indictment "d[id] not allege any of the elements of a rule-of-reason offense," it could "only stand if the allegations in it constitute a *per se* violation of the Sherman Act."[29] This led the court to grapple with whether the case fell under the Sherman Act's umbrella, despite the fact that it "d[id] not present . . . the classic horizontal price-fixing scheme involv[ing] an agreement among sellers to fix the prices of goods they sell."[30]

In denying the defendants' motion, the court answered in the affirmative. It observed that "[c]ourts have not limited price-fixing conspiracies to agreements concerning the purchase and sale of goods but have found them to cover the purchase and sale of services."[31] Relying on Justice Kavanaugh's concurrence in *National Collegiate Athletic Ass'n v. Alston*[32] for the notion that "fixing the price of labor, or wage fixing, is a form of price fixing," the *Jindal* court held that "naked horizontal agreements to fix the price of labor, like the agreement here, are . . . *per se* illegal."[33] In a pattern that would soon prove familiar, the defendants overcame this ruling to prevail at trial, obtaining a full acquittal on the Sherman Act claims.[34]

Where *Jindal* was the DOJ's first criminal wage fixing action, *United States v. Surgical Care Affiliates LLC, et al*.[35] marked the first criminal prosecution premised upon no-poach activities. The indictment there charged that the defendants conspired not to solicit one another's senior-level employees.[36] For reasons not entirely known, the DOJ voluntarily dismissed the case in November 2023.[37]

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[26] U.S. Dep't of Just. & Fed. Trade Comm'n, Antitrust Guidance for Human Resource Professionals (Oct. 2016), https://www.justice.gov/atr/file/903511/dl?inline=.

[27] Criminal Action No. 4:20-cr-00358 (E.D. Tex. 2020) ("*Jindal*").

[28] *Jindal*, ECF No. 21.

[29] *Jindal*, ECF No. 56 at 7-8.

[30] *Id.* at 9.

[31] *Id.* at 9-10 (citing cases).

[32] 141 S. Ct. 2141 (2021) (Kavanaugh, J., concurring).

[33] *See id.* at 13.

[34] *Jindal*, ECF No. 112. Jindal was, however, convicted of obstructing the DOJ's investigation. *See id.*

[35] Criminal Action No. 3:21-cr-00011 (N.D. Tex. 2021) ("*Surgical Care Affiliates*").

[36] *Surgical Care Affiliates*, ECF No. 48.

[37] *Surgical Care Affiliates*, ECF No. 203.

Around the same time, the DOJ brought *United States v. DaVita Inc., et al.*,[38] which involved similar allegations as *Surgical Care Affiliates*.[39] *DaVita* carried an extra layer of intrigue owing to the public profile of the individual defendant, Kent Thiry (then-CEO of DaVita Inc.).[40]

As in *Jindal*, the *DaVita* court denied the defendants' motion to dismiss, holding that the agreements at issue had the effect of horizontally allocating the market and were therefore *per se* unreasonable.[41] Critically, however, in that decision, the court wrote the Government would have to prove at trial that the "defendants entered into an agreement with the purpose of allocating the market."[42] Ultimately, the Government could not sustain its burden, and after two days of deliberation, the jury reached a defense verdict.[43]

The Government fared better in *United States v. Hee, et al.*[44] The indictment there alleged the nursing industry defendants and a competitor agreed not to recruit one another's nurses and to refrain from raising those nurses' wages.[45] The individual defendant entered a pretrial diversion agreement (similar to a deferred prosecution agreement) and the corporate entity entered a plea agreement under which it would pay a $62,000 fine and $72,000 in restitution.[46] Although modest, these penalties amounted to the Government's first successful criminal prosecution of a labor market antitrust case.

Next up was *United States v. Patel, et al.*,[47] which involved allegations against several aerospace and staffing company executives for conspiring to "restrict the hiring and recruiting of engineers and other skilled-labor employees between and among" their companies.[48] At the pleading stage, *Patel* fell in line with prior cases, with the court finding the agreements at issue subject to *per se* treatment and denying the defendants' motion to dismiss.[49] Trial, however, was another matter. In an almost unprecedented turn of events, the court granted the defendants' Rule 29 motion for judgment of acquittal after the DOJ's case-in-chief, holding the parties' agreement "[could] not be said to allocate the market . . . to any meaningful extent," and therefore, was "not a market allocation agreement as a matter of law."[50] Prior to *Patel*, the Division had not lost a Rule 29

[38] Criminal Action No. 1:21-cr-00229 (D. Colo. 2021) ("*DaVita*").

[39] *DaVita*, ECF No. 74.

[40] *See, e.g.*, Andrew Kenney, *The multimillionaire who reshaped Colorado's electoral system wants to make even bigger changes*, CPR NEWS (Aug. 20, 2024, 4:00 am), https://www.cpr.org/2024/08/20/kent-thiry-reshaped-colorado-electoral-system-initiative-310/.

[41] *DaVita*, ECF No. 132.

[42] *See id.* at 18-19; *see also* ECF No. 254 at 15 (jury instructions).

[43] *See DaVita*, ECF No. 264.

[44] Criminal Action No. 2:21-cr-00098 (D. Nev. 2021) ("*Hee*").

[45] *Hee*, ECF No. 1.

[46] *Hee*, ECF No. 106, 115.

[47] Criminal Action No. 3:21-cr-00220 (D. Conn. 2021) ("*Patel*").

[48] *Patel*, ECF No. 20.

[49] *See Patel*, ECF No. 257.

[50] *See Patel*, ECF No. 599 at 18-19 (citation and quotation marks omitted).

motion in decades, but Judge Bolden concluded from the facts presented that the agreement held too many exceptions, and switching employers within the industry was too commonplace, to sustain the government's central *per se* market allocation charge.

The sole labor market antitrust case filed in 2022 was *United States v. Manahe, et al.*,[51] where the defendants—owners or managers of home healthcare agencies—were charged with collaborating to fix wages and agreeing not to hire one another's employees.[52] Unsurprisingly by this time, the court denied the defendants' motion to dismiss, writing that although "the Defendants have a valid defense to the per se rule if they can show that any restraint resulting from the alleged arrangement was ancillary to efficiency-enhancing economic activity," the defendants would have to prove this affirmative defense at trial.[53] When the case proceeded to trial, the jury acquitted all four defendants.[54]

The DOJ finally secured a meaningful victory in *United States v. Lopez*.[55] The indictment there charged Eduardo Lopez with conspiring to fix wages for nurses employed by home healthcare agencies.[56] In April 2025, the jury convicted Lopez of wage-fixing (as well as related wire fraud charges).[57] Lopez's Sherman Act violations carry maximum penalties of ten years in prison and a $1 million fine.[58]

The DOJ's criminal labor market prosecutions to date have, with certain exceptions, followed a common track: the Government brings charges—often against owners or managers of healthcare service providers—that survive motions to dismiss on the strength of the allegations amounting to *per se* antitrust violations. Federal judges and juries, however, seem reluctant to return convictions based upon such activities.

III. Labor Enforcement in the New Administration

a. What We Know

The antitrust enforcers in the second Trump administration have made a series of statements suggesting they will continue to prioritize enforcement in labor markets. For example, FTC Chair Andrew Ferguson stated in 2025 that "American workers and small businesses are consumers too, and the Commission is taking a comprehensive approach — through enforcement and advocacy — to ensure that they are not held back by unfair or deceptive practices."[59] DOJ Assistant Attorney

[51] Criminal Action No. 2:22-cr-00013 (D. Me. 2022) ("*Manahe*").

[52] *Manahe*, ECF No. 1.

[53] *Manahe*, ECF No. 112 at 13-14.

[54] *Manahe*, ECF No. 247.

[55] Criminal Action No. 2:23-cr-00055 (D. Nev. 2023) ("*Lopez*").

[56] *Lopez*, ECF No. 49.

[57] *Lopez*, ECF No. 662.

[58] Sentencing was initially scheduled for July 2025 but has been delayed by post-trial proceedings.

[59] Testimony of the Federal Trade Commission Before the Subcomm. on Fin. Servs. & Gen. Gov't of the H. Comm. on Appropriations, 119th Cong. (May 15, 2025), https://www.ftc.gov/legal-library/browse/ftc-chairman-andrew-n-ferguson-testimony-house-appropriations-committee-subcommittee-financial.

General Abigail Slater has similarly emphasized that the DOJ will "stand for America's forgotten workers" and that "any conduct that harms competition for workers can violate not only the spirit but the letter of the antitrust laws."[60]

More tangibly, the FTC recently announced the formation of a Joint Labor Task Force to address anticompetitive conduct in labor markets.[61] The task force is intended to "root[ ] out and prosecuting deceptive, unfair, and anticompetitive labor-market practices that harm American workers," as well as "promot[e] research regarding harmful labor market practices to inform the FTC and the public."[62]

While it seems likely that the agencies will continue supporting enforcement in labor markets, it remains to be seen what form this enforcement will take. In his memo establishing the Joint Labor Task Force,[63] Chairman Ferguson charged the group with examining issues such as non-compete clauses, monopsonies in labor markets, deceptive job advertising, and harmful licensing standards, all conventional areas for review. However, the memo also included a field new to antitrust enforcement: investigations into "[c]ollusion or unlawful coordination on DEI [diversity equity, and inclusion] metrics, which may reduce labor competition by excluding certain workers from markets, or students from professional training schools, based on race, sex, or sexual orientation."[64] With the Trump administration having long focused on eliminating corporate and academic DEI programs, Chairman Ferguson's specific reference to DEI suggests labor market investigations are steeled to reflect major administration priorities that have not traditionally been closely linked to antitrust.

Another clue may be found in the challenge brought by the FTC alleging the overly broad, anticompetitive use of non-competes by the largest pet cremation services company in the country to suppress competition and new entry.[65] Rather than use the FTC's non-compete rule, the agency instead brought this case as an unfair method of competition challenge under Section 5 of the FTC Act,[66] seemingly relying upon facially incriminating internal documents to allege harm to smaller competitors, potential competition, consumers, *and* employees. The

[60] Gail Slater, Assistant Att'y Gen., U.S. Dep't of Just., *The Conservative Roots of America First Antitrust Enforcement*, Address at the University of Notre Dame Law School (Apr. 28, 2025), https://www.justice.gov/opa/speech/assistant-attorney-general-gail-slater-delivers-first-antitrust-address-university-notre.

[61] Press Release, Fed. Trade Comm'n, FTC Launches Joint Labor Task Force to Protect American Workers (Feb. 26, 2025), https://www.ftc.gov/news-events/news/press-releases/2025/02/ftc-launches-joint-labor-task-force-protect-american-workers.

[62] *Id.*

[63] Chairman Andrew N. Ferguson, Directive Regarding Labor Markets Task Force (February 26, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/memorandum-chairman-ferguson-re-labor-task-force-2025-02-26.pdf.

[64] *Id.* at 2 (emphasis removed).

[65] Complaint, *F.T.C. v Gateway Pet Memorial Services/West Coast* (September 4, 2025), *available at* https://www.ftc.gov/system/files/ftc_gov/pdf/Gateway-Complaint.pdf.

[66] 15 U.S.C. § 45.

FTC voted 3-1 along party lines to issue the complaint and accept the proposed consent order[67] for public comment, with Democratic Commissioner Rebecca Slaughter supporting the action against the non-compete restrictions but arguing that the proposed consent order did not go far enough in structurally changing the market to restore competition. Similarly, on September 10, 2025, Chairman Ferguson issued warning letters to several large healthcare employers and staffing firms, urging them to conduct a comprehensive review of their employment agreements, including any noncompete clauses or other restrictive covenants, to ensure compliance with antitrust laws and to avoid anticompetitive practices that harm workers' mobility.[68]

b. What's Next

It is difficult to know where antitrust enforcement in labor markets will lead next, but it is safe to say the agencies will not follow the precise path of the prior administration. Throughout the Biden years, now-Chairman Ferguson and Commissioner Holyoak dissented from several of the FTC's efforts to enforce antitrust laws in labor markets. Both voted against the FTC's adoption of the non-compete ban,[69] and Holyoak also objected to the inclusion of labor market information in Hart-Scott-Rodino form revisions,[70] calling this "a solution in search of a nonexistent problem," adding that "[t]he agencies have never brought a standalone labor challenge to an acquisition. And this is not for lack of trying. Officials at the Commission, Department of Justice, and state enforcers have stated their desire to focus on harms to the labor market, especially in mergers, since at least 2018, but the expended resources so far have been to no avail."[71] While this statement preceded the DOJ's victory in *Lopez*, it underscores the prevailing Republican skepticism about labor antitrust enforcement.

With this past as prologue, we can make a few predictions about what to expect throughout the balance of the Trump administration.

First, we believe the agencies will continue to prioritize the enforcement of antitrust in labor markets. Democrats and Republicans alike are fighting for the role of party of the working class, and the enforcement of labor cases makes for good press. All signs point to health care and white-collar workers standing to benefit the most from these efforts.

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[67] https://www.ftc.gov/system/files/ftc_gov/pdf/Gateway-DecisionOrder.pdf.

[68] Press Release, Fed. Trade Comm'n, FTC Chairman Ferguson Issues Noncompete Warning Letters to Healthcare Employers, Staffing Companies (Sept. 10, 2025), https://www.ftc.gov/news-events/news/press-releases/2025/09/ftc-chairman-ferguson-issues-noncompete-warning-letters-healthcare-employers-staffing-companies.

[69] Dissenting Statement of Chair Andrew N. Ferguson, Fed. Trade Comm'n, *In re Non-Compete Clause Rulemaking* (Apr. 23, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-noncompete-dissent.pdf.

[70] Statement of Comm'r Melissa Holyoak, Fed. Trade Comm'n, *Regarding the Final Rule Amending the Premerger Notification Form and Associated Instructions* (July 24, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/holyoak-hsr-rule-statement.pdf.

[71] *Id.* at 10.

Second, one notable area of emerging antitrust enforcement is the sports markets. A case involving UFC fighters recently reached a significant settlement,[72] and in July, President Trump issued an executive order[73] addressing compensation for college athletes, a hot button issue with substantial antitrust considerations.[74]

Third, we anticipate criminal actions involving labor antitrust will slow down. The DOJ's many setbacks in this area will certainly have a chilling effect, and with dramatically fewer resources, it stands to reason the DOJ will focus elsewhere. Will the FTC's Labor Task Force, which has an ambitious agenda and mandate, make progress? Time will tell.

Finally, we expect labor antitrust enforcement will take on an even more overt political dimension than in the past. Professor Stephen Calkins of Wayne State University recently wrote about the current antitrust leaders harboring a greater political bent than those in prior administrations,[75] observing that although "[a]ntitrust agency leadership may have [previously grown] more political, . . . the sharp political focus of the leaders of the current antitrust agencies—especially Chairman Ferguson—. . . represents a sharp break with traditional norms."[76] It follows that enforcement decisions may well be guided by an intentional and conspicuous effort to support President Trump's policy agenda. This may translate to aggressive enforcement in labor markets to achieve policy goals like challenging DEI programs or using pretextual antitrust arguments to wring extraordinary concessions from Ivy League universities.

IV. Conclusion

The enforcement of antitrust laws in labor markets is nothing novel and nothing new. Since being announced as a major priority nearly ten years ago, it has remained at the top of the agenda through the administrations of three presidents (Obama, Trump I and Biden) and resulted in serious criminal investigations by the U.S. antitrust agencies.

Because, as discussed, these cases have proven difficult to prosecute criminally, a new approach is anticipated. We do not believe that enforcers will drop labor antitrust enforcement; instead, we expect they will shift to bringing cases under non-criminal theories. State enforcers, meanwhile, remain undeterred and will bolster federal enforcement, likely pursuing more traditional theories such as unfair methods of competition. And private plaintiffs will continue to look for cases.

A key challenge facing the new federal enforcers will involve threading the needle to bring enforcement actions consistent with the economic populism spearheaded by President Trump and favored by the MAGA movement while at the same time not offending traditional conservatives, who view muscular antitrust

[72] *Le v. Zuffa, LLC*, No. No. 2:15-cv-01045 (D. Nev. 2023).

[73] Exec. Order No. 14322, 90 FR 35821 (July 29, 2025).

[74] *Cf. House v. NCAA*, No. No. 4:20-cv-03919-CW (2024).

[75] Stephen Calkins, *Politicization of Antitrust, Part II: Politics and Communication by Antitrust*, Concurrences No. 7 (2025), https://www.concurrences.com/en/review/issues/no-7-2025/dossier/the-politicization-of-antitrust/politicization-of-antitrust-part-ii-politics-and-communication-by-antitrust.

[76] *Id.*

enforcement with skepticism. That may involve targeting cases popular across both movements, such as challenges to DEI policies. Whatever the next chapter of antitrust enforcement ultimately brings, we remain confident that labor markets will continue to be scrutinized by antitrust enforcers.