



Corporate Impunity Worsens Under Trump

DOJ Penalties for Megabanks and Other Corporate Offenders Drop 80% After Two Years of Trump

Jan. 29, 2019 – Despite President Trump’s “law and order” rhetoric and “zero tolerance” approach to immigration and street crime, the administration’s Department of Justice took an extremely lenient approach to corporate offenders in 2018.

Last year, Trump’s Department of Justice completed 227 cases¹ against corporate offenders, a 6 percent decrease from the 241 cases DOJ completed in Trump’s first year – a number sharply down from preceding Obama years. (See Table 1.)

Table 1: DOJ corporate enforcement cases and penalties, comparing Obama’s last two years to Trump’s first two years (Jan. 20, 2015 through Jan. 19, 2019).

Year	Cases	Penalties	Average
Trump 2	227	\$15,660,924,182	\$68,990,855
Trump 1	241	\$4,898,284,958	\$20,324,834
Obama 8	308	\$51,506,033,030	\$167,227,380
Obama 7	502	\$49,731,707,030	\$99,067,145

Source: Public Citizen analysis of [Violation Tracker](#) database and DOJ press releases. Includes all corporate cases with penalties of at least \$5,000.

While penalties did increase to \$15.7 billion in 2018 from \$4.9 billion in 2017, the 2018 penalty level remains far below the Obama DOJ’s penalty totals.² (See Chart 1.)

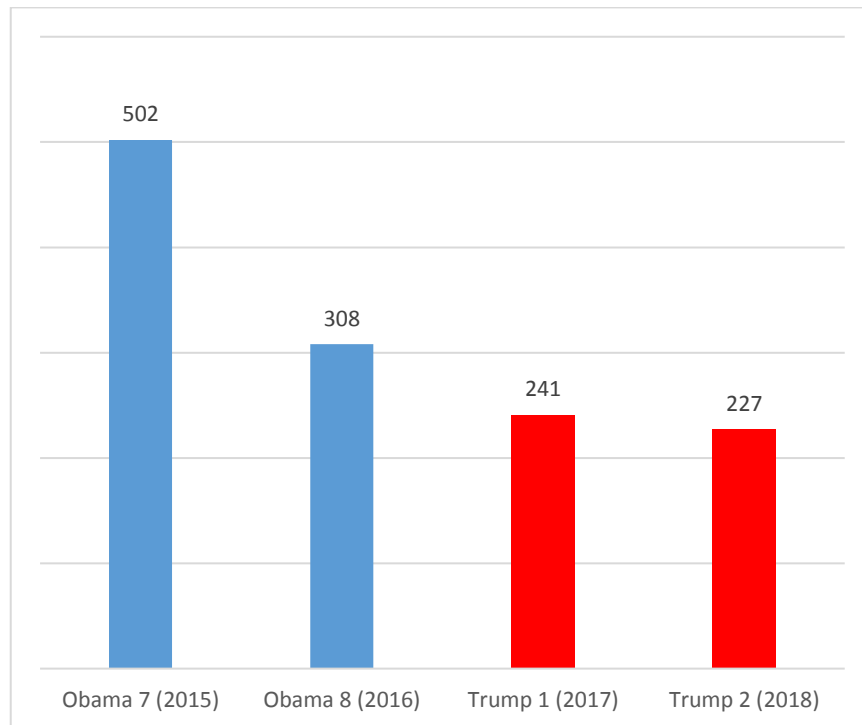
Public Citizen counted cases that were completed and attributed the cases to each year of the respective administration’s presidency. For example, all cases completed between January 20, 2016 and January 19, 2017 were attributed to Obama’s eighth year, and cases completed between January 20, 2017 and January 19, 2018 were attributed to Trump’s first year. The count includes cases against corporations that included a penalty of \$5,000 or more between January 20, 2015 and January 19, 2019.

¹ Completed cases are those for which settlement agreements and/or sentences have been announced. This count does not include small cases with settlements of less than \$5,000 and cases that lack a financial penalty.

² <https://corporatepresidency.org/enforcement/>

Most of the penalty total in Trump’s second year is attributable to just four cases that were initiated by the Obama administration against big banks to resolve financial crisis-era allegations. These four financial crisis settlements, which resulted in a \$4.9 billion penalty for Royal Bank of Scotland,³ a \$2.09 billion penalty for Wells Fargo⁴ a \$2 billion penalty for Barclays Capital⁵ and a \$765 million penalty for HSBC⁶ make up 62 percent of the DOJ’s 2018 penalties.

Chart 1: Number of DOJ enforcement actions against corporations from Jan. 20, 2015, through Jan. 19, 2019, year-to-year comparison.



The 2017 Obama cases were resolved in that year between Jan. 1 and Jan. 19, before Trump’s inauguration.
Source: Public Citizen analysis of [Violation Tracker](#) database and DOJ press releases.

Though these three multibillion-dollar big bank penalties took up the lion’s share of the Trump DOJ’s 2018 penalties, penalties in all three cases were notably low. Using previous big bank penalties for comparable allegations as a benchmark, financial analysts in 2016 predicted the RBS penalty could exceed \$12 billion.⁷ Reuters described the \$4.9 billion RBS penalty as “smaller-than-expected.”⁸ Wells Fargo’s \$2.09 billion penalty, Bloomberg News

³ <https://www.justice.gov/opa/pr/royal-bank-scotland-agrees-pay-49-billion-financial-crisis-era-misconduct>

⁴ <https://www.justice.gov/opa/pr/wells-fargo-agrees-pay-209-billion-penalty-allegedly-misrepresenting-quality-loans-used>

⁵ <https://www.justice.gov/usao-edny/pr/barclays-agrees-pay-2-billion-civil-penalties-resolve-claims-fraud-sale-residential>

⁶ <https://www.justice.gov/usao-co/pr/hsbc-agrees-pay-765-million-connection-its-sale-residential-mortgage-backed-securities>

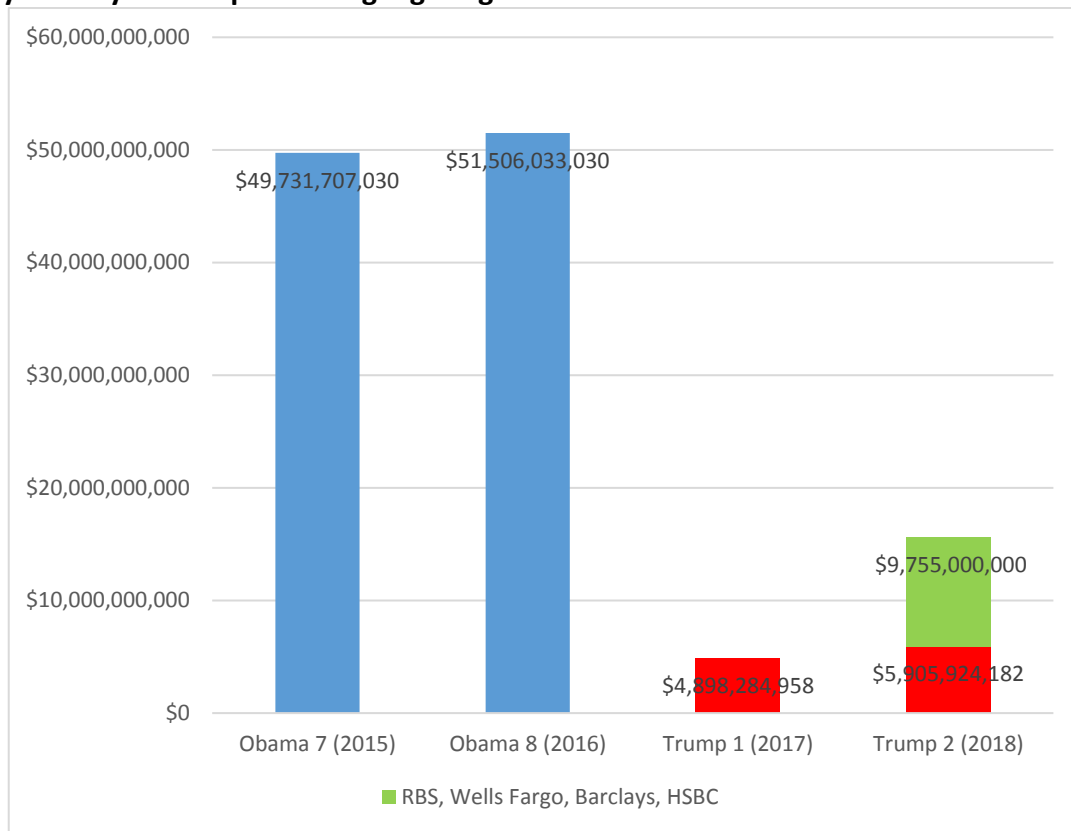
⁷ <https://www.theguardian.com/business/2016/nov/16/rbs-may-fined-more-than-12bn-settle-us-mis-selling-scandal>

⁸ <https://www.reuters.com/article/us-royal-bank-scot-settlement/rbs-reaches-4-9-billion-deal-to-settle-u-s-mortgage-bond-probe-idUSKBN1IA3L0>

noted, was “smaller than sanctions borne by some of the bank’s competitors.”⁹ Barclays’ \$2 billion penalty was reported by Bloomberg News as a “win.”¹⁰ According to the *New York Times*, the Obama administration had sought penalties of closer to \$7 billion against the bank.¹¹ And *American Banker* noted, HSBC’s \$765 million penalty was “substantially lower” than penalties paid by other banks that faced similar allegations.¹²

Without these cases against megabanks, the Trump DOJ’s totals would be \$5.9 billion. (See Chart 2.)

Chart 2: DOJ penalties against corporations from Jan. 20, 2015 through Jan. 19, 2019, year-to-year comparison highlighting financial crisis-era bank settlements in 2018.



Source: Public Citizen analysis of [Violation Tracker](#) database and DOJ press releases.

A direct comparison between the final two years of the Obama administration and the first two years of the Trump administration finds that between the two-year period of Jan. 20, 2015 through Jan. 19, 2017 and the two-year period of Jan. 20, 2017 through Jan. 19, 2019, DOJ penalties against corporate offenders plummeted by 80 percent. (See Chart 3.)

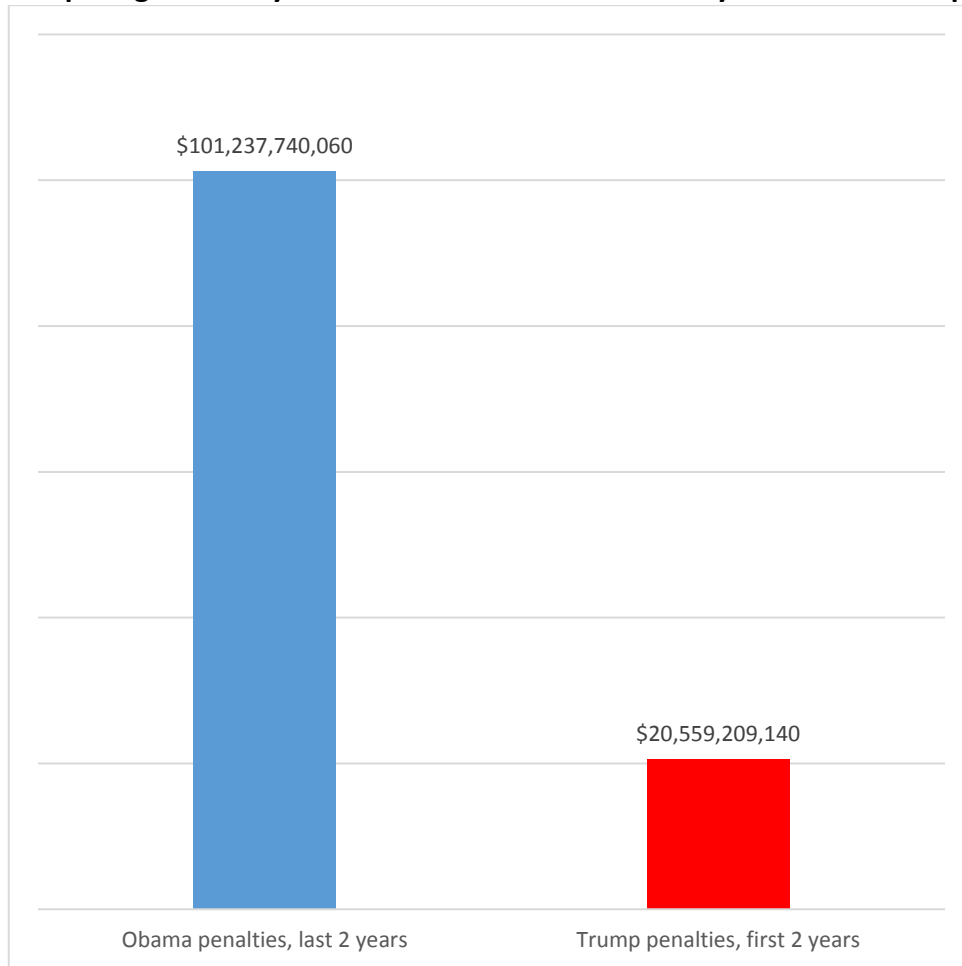
⁹ <https://www.bloomberg.com/news/articles/2018-08-01/wells-fargo-to-pay-2-09-billion-to-settle-u-s-mortgage-probe>

¹⁰ <https://www.bloomberg.com/news/articles/2018-08-01/wells-fargo-to-pay-2-09-billion-to-settle-u-s-mortgage-probe>

¹¹ <https://www.nytimes.com/2018/11/03/us/trump-sec-doj-corporate-penalties.html>

¹² <https://www.americanbanker.com/articles/hsbc-to-pay-765-million-to-settle-crisis-era-mortgage-probe>

Chart 3: DOJ penalties against corporations from Jan. 20, 2015, through Jan. 19, 2019 comparing last two years under Obama and first two years under Trump.



Source: Public Citizen analysis of [Violation Tracker](#) database and DOJ press releases.

This sustained decline in corporate enforcement is the predictable outcome of corporate leniency policies the Trump Justice Department has embraced. These new policies include:

- Allowing corporations that engage in illegal bribery and corrupt activities abroad to completely avoid prosecution. As long as they meet certain DOJ conditions, corporations that violate the Foreign Corrupt Practices Act never have to enter a guilty plea. Their penalties are reduced by 50 percent.¹³
- Reducing corporate penalties by eliminating payments to third parties that help right corporate wrongs. In the past, corporate settlements often included payments to nonprofit organizations that repair corporate harms.¹⁴

¹³ <https://www.justice.gov/opa/speech/deputy-attorney-general-rosenstein-delivers-remarks-34th-international-conference-foreign>

¹⁴ <https://www.justice.gov/opa/press-release/file/971826/download>

- Reducing corporate penalties through a so-called anti-“piling on” policy that limits how much a single corporate violation can trigger penalties from multiple enforcement agencies and international jurisdictions.¹⁵
- Limiting the DOJ’s power to bring charges against corporations that defraud the government. Former Associate Attorney General Rachel Brand instructed DOJ lawyers to stop citing noncompliance with “guidance documents” as evidence that a violation has been committed. Guidance documents are interpretations of regulations provided to industry to facilitate compliance. This change severely restricts the DOJ’s power to bring cases against corporations, especially for False Claims Act violations of defrauding the government. Brand’s former employer, the U.S. Chamber of Commerce, celebrated the policy memo.¹⁶

The longer these policies are in place, the fewer corporate criminals and wrongdoers will be held accountable.

“Crime rates are not like the tides — we can help change them,” wrote former Attorney General Jeff Sessions in a *USA Today* op-ed¹⁷ celebrating a decline in violent crime reported by the FBI.¹⁸ So far, despite “tough on crime” rhetoric from the president and others in the administration, the Trump DOJ appears to have done little to change corporate crime rates.

Unfortunately, the department does not release reports on the corporate crime rate, and has not produced a report on corporate crime since 1979. Official data on the problem of corporate crime is sorely lacking.

The clear correlation between the decline in corporate enforcement and the Trump administration’s policies of extreme lenience toward corporate wrongdoers suggests the decline does not represent a decrease in corporate crime and wrongdoing. Rather, it shows that the administration has deprioritized enforcing laws and regulations against corporate and white-collar wrongdoing, even as it has insistently characterized itself as chiefly concerned with “law and order.”

¹⁵ <https://www.justice.gov/opa/speech/deputy-attorney-general-rod-rosenstein-delivers-remarks-bloomberg-law-leadership-forum>

¹⁶ <https://www.nytimes.com/2018/02/10/us/politics/legal-violations-federal-rules.html>

¹⁷ <https://www.usatoday.com/story/opinion/2018/01/23/trump-promised-end-american-carnage-has-come-true-jeff-sessions-column/1057630001/>

¹⁸ <https://www.politico.com/story/2018/01/23/sessions-attributes-crime-drop-to-trump-360671>