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Justice Department's National Security Division Issues Second Declination Since Issuance of Revised Corporate Enforcement Policy

*By Craig R. Heeren, Peter W. Baldwin and Christopher B. Monahan**

In this article, the authors explain that the Department of Justice's National Security Division's recent decision declining to prosecute an aerospace company for export control and False Claims Act violations underscores the potential benefits of proactively addressing and disclosing compliance issues.

The National Security Division (NSD) of the Department of Justice (DOJ) has declined to prosecute the Universities Space Research Association (USRA), a federal government contractor, for violations of U.S. export control laws and the False Claims Act by a company employee. The employee, who previously pled guilty in 2023 and was sentenced to 20 months' imprisonment, admitted to exporting U.S. Army-developed aviation software to a university in the People's Republic of China (PRC) that had been placed on the Commerce Department's "Entity List."

This appears to be the second publicly disclosed declination decision by NSD pursuant to its Enforcement Policy for Business Organizations since its revision in May 2024. The declination letter describes the factors that led to DOJ's decision not to prosecute USRA, which included "timely and voluntary" disclosure of the misconduct and "exceptional and proactive cooperation." This decision by DOJ underscores the significance of prompt investigation of alleged misconduct by a business entity, the potential benefits of voluntarily cooperating with law enforcement, and the need for corporate leadership to plan in advance for the handling of such incidents.

BACKGROUND

According to the declination letter (Declination Letter)¹ and corresponding press release,² in 2016, USRA contracted with the National Aeronautic Space Administration (NASA) to license and distribute aeronautics-related and U.S.

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¹ <https://www.justice.gov/opa/media/1398471/dl?inline>.

² <https://www.justice.gov/opa/pr/justice-department-declines-prosecution-company-self-disclosed-export-control-offenses>.

Army-owned flight control software. Subsequently, NASA asked USRA about the sales of software licenses to PRC-based purchasers, which may have required a license for export and sale under U.S. law. USRA conducted an investigation, which included interviewing Jonathan Soong. Soong was a USRA employee responsible for performing due diligence on prospective purchasers, including checking to see if the purchaser was on the Entity List and could not be sold products without a license. After initially lying and fabricating evidence about his actions, Soong admitted to USRA's outside counsel that he had willfully sold equipment without an export license to a PRC-based university, Beijing University of Aeronautics and Astronautics (also called Beihang University), knowing that the university was on the Entity List. Soong also used an intermediary to obscure the illegal transaction from detection and embezzled more than \$160,000 dollars by directing purchasers to pay him at an account that he personally controlled.

Notably, Beihang University is on the Entity List because the U.S. government claims it is involved in the development of military rocket systems and unmanned air vehicle systems.

Charged with federal criminal offenses in 2022, Soong pleaded guilty in January 2023 to one count of violating the International Emergency Economic Powers Act (IEEPA), and was sentenced to 20 months in prison in April 2023 for his misconduct.

In April 2025, DOJ NSD issued a formal declination of prosecution of USRA, specifying that the declination covered violations of IEEPA,³ the Export Control Reform Act of 2018 (ECRA),⁴ the Export Administration Regulations (EAR),⁵ the False Claims Act,⁶ false statements,⁷ wire fraud,⁸ and obstruction of justice,⁹ related to Soong's misconduct.

DOJ'S REASONS FOR DECLINATION

DOJ provided several reasons for its decision to decline prosecution of USRA:

1. *Prompt Self-Disclosure*: USRA promptly disclosed the violations to

³ 50 U.S.C. §§ 1701–1707.

⁴ 50 U.S.C. §§ 4801–4852.

⁵ 15 C.F.R. Parts 730–774.

⁶ 18 U.S.C. § 287.

⁷ 18 U.S.C. § 1001.

⁸ 18 U.S.C. § 1343.

⁹ 18 U.S.C. § 1512.

DOJ, demonstrating a proactive approach to compliance and transparency. This self-disclosure occurred less than three months after outside counsel had been retained, within days of Mr. Soong's admission of wrongdoing and well before the internal investigation's completion.

2. *"Extraordinary" Cooperation:* USRA provided extensive cooperation during the investigation, including the disclosure of all known relevant facts about the misconduct and information about the individuals involved in the transfer and export of the software. USRA also preserved, collected and disclosed relevant documents and information, including overseas documents, third-party documents and translations, which materially assisted the government's prosecution of Soong.
3. *Nature and Seriousness of the Offense:* The DOJ considered the nature and relatively limited seriousness of the offense, noting that there were only four unlicensed exports of software in violation of the EAR. Additionally, the software was based on information in a publicly available textbook and was classified as "EAR99" (an export code that generally means that a product can be exported to most countries without a license unless, as was the case here, the end user is on the Entity List).
4. *Timely and Appropriate Remediation:* USRA took significant steps to address the compliance gaps and "root cause" that led to the violations, including terminating Soong and disciplining a supervisory employee. USRA also significantly improved its internal controls and compliance program and made restitution by repaying \$94,000 of Soong's salary to NASA and compensating the U.S. Treasury for the \$161,000 in sales embezzled by Soong.
5. *No Unlawful Gains:* DOJ determined that USRA did not unlawfully obtain any gains from the offenses. USRA was paid by NASA under a contract to administer the software licensing program, and the proceeds of license sales made pursuant to that contract were not retained by USRA. USRA has already refunded NASA for the portion of the contract payments used to pay Soong's salary during the time that he embezzled funds belonging to the government.

LESSONS LEARNED FROM THE DECLINATION DECISION

Business entities face significant legal exposure from the criminal misconduct of their employees, because DOJ is permitted to pursue criminal charges against

a company pursuant to respondeat superior liability.¹⁰ Indeed, DOJ specifically directs prosecutors to pursue both the corporation and individual agents/employees as criminal targets based on employee misconduct.¹¹ NSD's decision not to prosecute USRA should be seen as a substantial benefit to the company.

DOJ's decision in this case underscores the potential benefits for organizations that proactively address and disclose compliance issues. It also serves as a critical reminder for businesses to consider taking the following steps both before an incident occurs and promptly after any alleged misconduct has been reported:

1. *Implement Robust Compliance Programs:* Ensure that export control and compliance programs are thoroughly implemented and regularly updated to prevent and detect potential violations. Part of DOJ's analysis of a proper resolution (including whether to decline prosecution) will be based upon an analysis of the effectiveness of the compliance program existing at the time of the misconduct and how it was improved after the misconduct occurred.
2. *Conduct Thorough Due Diligence:* Perform comprehensive due diligence on all transactions, especially those involving entities on restricted lists. Ensure that the employees responsible for this work are trustworthy and are themselves supervised by effective and properly resourced management.
3. *Promote a Culture of Compliance:* Foster an organizational culture that prioritizes compliance and encourages employees to report potential issues. Doing so may lead to early notice of potential misconduct, before it is identified by law enforcement or the federal contractor, which will allow the business to investigate and consider the need for disclosure before DOJ has begun its criminal investigation. This may, in turn, lead to significant cooperation credit because of the decision to report the misconduct before it was known.
4. *Conduct a Timely and Thorough Investigation of Misconduct:* A key factor in the declination decision was USRA's internal investigation, which was done quickly after initial reports of misconduct and was thorough enough to allow counsel to confront the employee with evidence that contradicted his initial lies and led to his admission of

¹⁰ See DOJ Justice Manual 9-28.800 ("Under the doctrine of respondeat superior, a corporation may be held criminally liable for the illegal acts of its directors, officers, employees, and agents.").

¹¹ *Id.*

wrongdoing. A well-resourced and serious internal investigation by outside counsel allows for thoughtful decision making about a high-risk legal issue and may pay substantial dividends if the misconduct is real and should be reported.

5. *Consider Prompt Self-Disclosure:* When to self-disclose potential misconduct by an employee is a challenging decision, particularly since there is no guarantee that DOJ will agree to decline prosecution rather than pursue costly and potentially business-threatening criminal charges against the corporation. But, as both the USRA case, and NSD's prior declination of another corporate entity¹² indicate, timely self-disclosure and ongoing cooperation with the government can lead to the best possible outcome available when actual criminal misconduct by an employee has in fact occurred.

IN SUMMARY

- The DOJ's NSD has declined prosecution of an aerospace company for export control and False Claims Act violations.
- The declination letter identifies the company's prompt and voluntary self-disclosure and significant cooperation as reasons for the decision.
- The declination highlights the importance of a timely and rapid investigation of potential misconduct and an early decision about voluntary disclosure of the results of that inquiry.

¹² <https://www.justice.gov/nsd/media/1361041/dl>.