

THE POLITICS OF THE CRIMINAL ENFORCEMENT OF FIFRA: 1983-2021

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ABSTRACT

Registered pesticides, insecticides, fungicides, and rodenticides are common in agricultural use throughout the United States.¹ When these substances are used illegally, in a manner involving significant harm or culpable conduct, criminal prosecution may be warranted.² Historically, Republicans and Democrats offer extremely varied support for the criminal enforcement of environmental laws, yet we know little about how criminal enforcement varies across partisan regimes, particularly when it comes to pesticides. We used content analysis of 2,728 criminal prosecutions resulting from United States EPA criminal investigations for Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) violations from 1983 to 2021, to explore these relationships. Results show that 143 prosecutions were adjudicated, including 219 defendants receiving in excess of \$178 million in monetary penalties, 290 years of probation, and 93 years of incarceration.³ Prosecutions and penalties were more significant under Democratic Presidents, but not by

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1. See *Summary of Criminal Prosecutions*, U.S. ENV'T PROT. AGENCY (Sept. 23, 2022, 9:41 AM), https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm (select "FIFRA - Federal Insecticide, Fungicide, and Rodenticide Act" from Statute dropdown; then click "Search") [<https://perma.cc/Z358-NPR5>] (analyzing data set created from cases compiled from source).

2. See *Money Judgment of Forfeiture Against Defendant Sean Lawrence Gerson* at 1, U.S. v. Gerson, et al., No. 17-00013 (C.D. Cal. Jan. 10, 2017), ECF No. 66 [hereinafter *Money Judgment of Forfeiture*].

3. See *Summary of Criminal Prosecutions*, *supra* note 1 (analyzing data set created from cases compiled from source).

the margin one might expect.⁴ Results may also speak to longer term divestment in criminal enforcement across party lines.

I. INTRODUCTION

The federal regulation of pesticides began with the need to emphasize the management of quality through truth in labeling requirements and can be traced back to the Federal Insecticide Act of 1910.⁵ As science and public understanding of the risks that pesticides cause to humans and the natural environment grew, the need to scientifically understand health risks and develop appropriate tolerances for a variety of applications became necessary. After World War II, Congress acted to pass the Federal Environmental Pesticide Control Act of 1947 to begin addressing these issues under the auspices of the USDA.⁶ The next seismic shift in pesticide regulation occurred in 1972 with the passage of the Federal Environmental Pesticide Control Act, which handed over regulatory authority to the newly created EPA.⁷

The modern FIFRA is a culmination of previous legislative efforts that empowers the EPA to assess the benefits versus the risks of pesticides to humans, non-human animals, and the natural environment, greatly expanding the original governmental mission to insure truth in labeling.⁸ Today, the production, registration, sale, distribution, and use of registered pesticides comes under EPA regulation, as does the certification of commercial applicators and disposal guidelines.⁹

4. See *id.*; Joshua Ozymy, et al., *Persistence or Partisanship: Exploring the Relationship between Presidential Administrations and Criminal Enforcement by the U.S. Environmental Protection Agency, 1983-2019*, 81 PUB. ADM. REV. 49, 49 (2020); see generally *List of Presidents of the United States*, BRITANNICA (Nov. 8, 2022 4:40 PM CST), <https://www.britannica.com/topic/Presidents-of-the-United-States-1846696> [<https://perma.cc/7K5R-L5QB>] (Ronald Reagan 1981-1989 (Republican); George Bush 1989-1993 (Republican); Bill Clinton 1993-2001 (Democrat); George W. Bush 2001-2009 (Republican); Barack Obama 2009-2017 (Democrat); Donald Trump 2017-2021 (Republican); and Joe Biden 2021-Present (Democrat)).

5. See generally Insecticide Act of 1910, ch. 191, 36 Stat. 331 (repealed 1947).

6. *Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Federal Facilities*, U.S. ENV'T PROT. AGENCY (Sep. 4, 2022, 10:52 PM), <https://www.epa.gov/enforcement/federal-insecticide-fungicide-and-rodenticide-act-fifra-and-federal-facilities> [<https://perma.cc/5A9F-PGSY>] [hereinafter *Federal Insecticide*].

7. *Id.* (The EPA was formed in 1970 and responsibility for administering FIFRA transferred from the USDA to the EPA.).

8. Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 (1996) (amended 2012) (an extension was passed in 2018 to revise EPA's ability to engage in monitoring and gather performance data and better set fees for pesticide applications).

9. A pesticide is legally defined as, "any substance or mixture of substances intended

Prior to selling and distributing pesticides, companies must register pesticides with the EPA and demonstrate they do not cause an unreasonable adverse effect.¹⁰

While the EPA regulates pesticides and sets minimum standards, enforcement of FIFRA falls heavily to the individual states of the United States to register pesticides, set certification standards for commercial applicators, monitor, and enforce violations.¹¹ Typically, FIFRA violations are managed via civil enforcement remedies that seek to bring violators into compliance with the law and include such actions as fines or civil penalties, environmental mitigation plans, Administrative Orders of Consent (AOCs), Supplemental Environmental Projects (SEPs), or other compliance tools.¹² When violations involve significant harm or culpable conduct

for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, or any nitrogen stabilizer.” See *Federal Insecticide*, *supra* note 6; Most pesticides are in commercial use, only a small number are available to the public. See *generally id.* The manufacture and use of pesticides is overseen by the Office of Pesticide Programs (OPP). See *generally id.* Pesticides, biopesticides, and anti-microbials hold different risk assessments. See *generally Overview of Risk Assessment in the Pesticide Program*, U.S. ENV’T PROT. AGENCY (Sept. 27, 2022, 11:14 AM), <https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/overview-risk-assessment-pesticide-program> [<https://perma.cc/BBU7-3P48>].

10. *Summary of the Federal Insecticide, Fungicide, and Rodenticide Act*, U.S. ENV’T PROT. AGENCY (Sept. 4, 2022, 10:56 PM), <https://www.epa.gov/laws-regulations/summary-federal-insecticide-fungicide-and-rodenticide-act> [<https://perma.cc/DL8Q-Z23Z>]. Unreasonable adverse effect is defined as, “(1) any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide, or (2) a human dietary risk from residues that result from a use of a pesticide in or on any food inconsistent with the standard under section 408 of the Federal Food, Drug, and Cosmetic Act.” *Id.* The United States Food and Drug Administration (FDA) was given authority to regulate food, drugs, cosmetics, and medical devices with the passage of the Federal Food, Drug, and Cosmetic Act. See *generally* Federal Food, Drug, And Cosmetic Act, Pub. L. No. 75-717, 52 Stat. 1040 (1938).

11. See 40 C.F.R. § 171.303 (1974) (States can submit a State Certification Plan that meets EPA standards, allowing the state to develop their own programs for certifying commercial pesticide applicators. Tribal governments also have some enforcement authority for FIFRA violations); U.S. ENV’T PROT. AGENCY OFF. OF ENF’T AND COMPLIANCE ASSURANCE, COMPLIANCE MONITORING STRATEGY FOR FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA) 6 (2015), <https://www.epa.gov/sites/production/files/2015-09/documents/fifra-cms.pdf> [<https://perma.cc/PU4N-W4WX>]. The EPA has been roundly criticized for its enforcement of FIFRA due to its inability to undertake systematic risk assessments and its reliance of self-reported data to approve pesticides. See Michael J. Lynch et al., *The Weak Probability of Punishment for Environmental Offenses and Deterrence of Environmental Offenders: A Discussion Based on USEPA Criminal Cases, 1983-2013*, 37 *DEVIANT BEHAV.* 1095, 1096-97 (2016) [hereinafter *Deterrence of Environmental Offenders*].

12. *Basic Information on Enforcement*, U.S. ENV’T PROT. AGENCY (Sept. 4, 2022, 10:57 PM), <https://www.epa.gov/enforcement/basic-information-enforcement>

they may be remedied via a criminal process that centers on deterrence and punishment, instead of focusing on compliance.¹³ To date, very few studies have examined the criminal enforcement process, particularly when it comes to criminal violations of FIFRA.¹⁴ The need for a strong understanding of pesticide enforcement both legally and from a policy perspective merits further investigation into this phenomenon.¹⁵

The context of criminal enforcement is often politically charged, with Republican and Democratic Presidents offering very different levels of political and budgetary support for enforcement. While criminal enforcement began to institutionalize in the 1980s, it met resistance early on from the Reagan Administration and more recently the Trump Administration was terribly hostile to environmental regulation, whereas publicly the Clinton, Obama, and Biden Administrations have been much more supportive.¹⁶ One may generally expect enforcement resources and outcomes to rise with more supportive Democratic Presidents and decline under less supportive Republican Presidents, but whether and how criminal enforcement shifts across presidents is virtually unknown.¹⁷ We address both of these

[<https://perma.cc/8T38-ARNL>]; see generally *Deterrence of Environmental Offenders*, *supra* note 11; Michael J. Lynch, *The Sentencing/Punishment of Federal Environmental/Green Offenders, 2000-2013*, 38 *DEVIANT BEHAV.* 991, 991-92 (2017).

13. Memorandum from Earl E. Devaney, Dir. Off. of Crim. Enf't to All EPA Emp.'s Working in or in Support of the Crim. Enf't Program 6 (Jan. 12, 1994), <https://www.epa.gov/sites/production/files/documents/exercise.pdf> [<https://perma.cc/59AZ-MQT7>].

14. Joshua Ozymy et al., *supra* note 4, at 49; see generally KATHLEEN F. BRICKEY, *ENVIRONMENTAL CRIME: LAW, POLICY, PROSECUTION* (2008) (for an overview of environmental criminal enforcement).

15. For a summary of the criminal provisions of FIFRA, see *Criminal Provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)*, U.S. ENV'T PROT. AGENCY (Sept. 4, 2022, 10:49 PM), <https://www.epa.gov/enforcement/criminal-provisions-federal-insecticide-fungicide-and-rodenticide-act-fifra> [<https://perma.cc/8Y4J-6LTM>] [hereinafter *Criminal Provisions*].

16. Jessica Hejnay, *The Trump Administration and Environmental Policy: Regan Redux?*, 8(2) *J. OF ENV'T STUD. & SCIS.* 197, 198 (2018); see generally Judson W. Starr, *Turbulent Times at Justice and EPA: The Origins of Environmental Criminal Prosecutions and the Work that Remain*, 59 *GEO. WASH. L. REV.* 900, 900-902 (1991); Theodora Galactos, *The United States Department of Justice Environmental Crimes Section: A Case Study of Inter- and Intra-branch Conflict over Congressional Oversight and the Exercise of Prosecutorial Discretion*, 64(2) *FORDHAM L. REV.* 589 (1995).

17. Since Nixon, it is safe to assert Republican Presidents have been typically opposed to stronger environmental regulation and enforcement, even if major environmental legislation was passed under their administration, such as Richard Nixon and George H.W. Bush. See Interview by Debbie Elliot with President George W. Bush, NPR (June 3, 2007, 4:34 PM),

issues, with a systematic exploration of FIFRA criminal prosecutions stemming from EPA criminal investigations, across presidential administrations from Reagan to Biden.

II. FIFRA CRIMINAL ENFORCEMENT

The Rivers and Harbors Act and Lacey Act might be the best early examples of the development of criminal provisions in environmental law in the United States, which subsequently banned the illegal alteration or obstruction of waterways and unpermitted interstate wildlife trade respectively.¹⁸ The 1970s was an important era in the development of wide-ranging federal laws that affected various environmental media from the Clean Water Act (CWA), Resource Conservation and Recovery Act (RCRA), Toxic Substances Control Act (TSCA), and FIFRA, as well as the creation of the EPA to oversee the implementation of these laws.¹⁹ The necessity of developing criminal enforcement tools became evident in the 1970s with an inability of environmental agencies to deal with chronic non-compliance, and by the early 1980s a variety of changes began to take place to institutionalize criminal provisions in law, in federal law enforcement, and legal prosecution.²⁰

Criminal provisions came into law with RCRA in 1980, the CWA in 1987, and the Clean Air Act (CAA) in 1970, which were subsequently applied to other environmental statutes.²¹ Policing resources came with the creation of EPA's Office of Criminal Enforcement in 1981.²² Following creation, criminal investigators were hired, and by 1988, were granted full law enforcement authority by

<https://www.npr.org/templates/story/story.php?storyId=10687339> [<https://perma.cc/Y3QP-KH64>]. It can be the case with the Reagan Administration and the birth of an institutional process for criminal enforcement of the environment, that it took hold in spite of the president in office. *See id.*

18. *See* Rivers and Harbors Act, 33 U.S.C. § 403 (1899); Lacey Act, 16 U.S.C §§ 3371–3378 (1900).

19. *See* U.S. Clean Water Act, 33 U.S.C. § 71251 (1970); U.S. Resource Conservation and Recovery Act 42 U.S.C. § 6901 (1976); Toxic Substances Control Act, 53 U.S.C. § 2601 (1976); Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 (1972).

20. Starr, *supra* note 16, at 900-903. An example would be the need to prosecute corporate officers for hazardous waste crimes. *See* David T. Barton, *Corporate Officer Liability Under RCRA: Stringent but Not Strict*, 1991 BYU L. Rev. 1547, 1554 (1991).

21. *Historical Development of Environmental Criminal Law*, U.S. DEP'T OF JUST. ENV'T & NAT. RES. DIV. (May 13, 2015), <https://www.justice.gov/enrd/about-division/historical-development-environmental-criminal-law> [<https://perma.cc/S9UG-E3PX>].

22. *Id.*; Memorandum from John Peter Suarez, Assistant Adm'r, U.S. Env't Prot. Agency Off. of Enf't & Compliance Assurance, to the Off. of Crim. Enf't, Forensics & Training 5 (Dec. 15, 2003), <https://www.epa.gov/sites/production/files/documents/oceft-review03.pdf> [<https://perma.cc/MA4C-4LGZ>].

Congress.²³ The Pollution Prosecution Act expanded the statutory minimum number of criminal investigators, which are today housed within EPA's Criminal Investigation Division (EPA-CID), within the Office of Compliance Assurance (OECA), and some 145 investigators stationed throughout the country.²⁴ The United States Department of Justice (DOJ) organized the Public Lands Division in 1909, which was the initial basis for what is now called the Environment and Natural Resources Division (ENRD), who primarily oversees criminal prosecution and civil litigation against environmental violators.²⁵ The DOJ organized the Environmental Crimes Section (DOJ-ECS) in 1982; the DOJ-ECS was tasked with environmental crime prosecution and became a Unit within ENRD in 1987, now employing some 43 specialized attorneys and a dozen or so support staff.²⁶

For the environmental criminal enforcement apparatus to function properly, significant collaboration is required between EPA-CID and DOJ-ECS, to properly investigate, police, and prosecute environmental crimes.²⁷ Criminal investigators in EPA-CID build cases against offenders and take evidence to attorneys in DOJ-ECS or the United States Attorney's Office for prosecution, often working in conjunction with a variety of local, state, and other federal agents in taskforce settings, forming the genesis of those cases through regulatory filings and required

23. Memorandum from John Peter Suarez, *supra* note 22, at 7.

24. Pollution Prosecution Act of 1990, Pub. L. No. 101-593, § 202(a)(5), 104 Stat. 2962 (codified at 42 U.S.C. § 4321) (the statute required a minimum of 200 investigative staff for EPA-CID); PUB. EMP. FOR ENV'T RESP., *EPA CID Agent Count* (Sept. 2, 2022, 10:52 AM), https://www.peer.org/wp-content/uploads/2019/11/11_21_19-Federal_Pollution_EPA_CID_Agent_Count.pdf [<https://perma.cc/W6VD-K5ND>] (illustrating the EPA CID's agent count remained less than 200 from 2012 to 2019); *see generally* U.S. ENV'T PROT. AGENCY, U.S. ENVIRONMENTAL PROTECTION AGENCY CRIMINAL ENFORCEMENT PROGRAM: AMERICA'S ENVIRONMENTAL CRIME FIGHTERS (Sept. 2, 2022, 10:50 AM), <https://www.epa.gov/sites/production/files/documents/oceftbrochure.pdf> [<https://perma.cc/9C5T-4DJN>].

25. *History*, U.S. DEP'T OF JUST. ENV'T & NAT. RES. DIV. (May 18, 2021), <https://www.justice.gov/enrd/history> [<https://perma.cc/LRC6-7AAU>]; *An Overview of Our Practice: Environmental Enforcement Section*, U.S. DEP'T OF JUST. ENV'T & NAT. RES. DIV. (May 14, 2015), <https://www.justice.gov/enrd/overview-our-practice> [<https://perma.cc/5UQ5-NV7U>]; *see generally Historical Development of Environmental Criminal Law*, *supra* note 21.

26. *Historical Development of Environmental Criminal Law*, *supra* note 21; *Environmental Crimes Section*, U.S. DEP'T OF JUST. ENV'T & NAT. RES. DIV. (July 2, 2021), <https://www.justice.gov/enrd/environmental-crimes-section> [<https://perma.cc/G7KH-YEPZ>] (employment figures current through 2021).

27. Joel A. Mintz, *Some Thoughts on the Interdisciplinary Aspects of Environmental Enforcement*, 36 ENV'T L. REP. NEWS & ANALYSIS 10495, 10498 (2006).

disclosures, civil inspections, whistleblowers, and former employees.²⁸ Once a case has been built, investigators approach prosecutors to file a criminal information in federal court or convene a grand jury.²⁹

The idea of supporting a criminal enforcement apparatus for environmental crimes has always been a partisan affair to a great degree. The EPA, for example, was created under Nixon, who was not at all enthusiastic about a strong environmental regulator. The apparatus was institutionalized under Reagan, but he was also hostile toward regulation and appointed Anne Gorsuch to run the EPA, who subsequently acted to disband the fledgling apparatus.³⁰ Gorsuch implemented budget cuts, sharp reductions in enforcement actions, and the authority for criminal investigation spread across the agency, rather than being completely dismantled, but it was reinvigorated to a degree when Gorsuch was removed from her position by Congress and William Ruckelshaus was reinstated as head administrator.³¹

Budgets increased over time, despite funding cuts under the Reagan Administration.³² Those increases persisted through most of the Bush Administration³³, with enhancements to RCRA, CWA, and CAA during this time.³⁴ The increased penalties that came with adding criminal provisions to most major environmental statutes, as well as the Pollution Prosecution Act that bolstered criminal enforcement authority, led to greater funding and power for the EPA.³⁵ Republican

28. *See id.* at 10496-97 (case may also be forwarded to state or local officials for prosecution, instead of pursuing federal charges).

29. *See id.* at 10497 (discussing the nature of criminal investigations and collaborations).

30. JOEL A. MINTZ, ENFORCEMENT AT THE EPA: HIGH STAKES AND HARD CHOICES 44 (Univ. of Tex. Press 1st ed. 1995, rev. ed. 2012) (ebook).

31. Cally Carswell, *How Reagan's EPA Chief Paved the Way for Trump's Assault on the Agency*, THE NEW REPUBLIC (Mar. 21, 2017), <https://newrepublic.com/article/141471/reagans-epa-chief-paved-way-trumps-assault-agency> [<https://perma.cc/X24T-F73V>]; *EPA's Administrators*, U.S. ENV'T PROT. AGENCY (June 3, 2022), <https://www.epa.gov/history/epas-administrators> [<https://perma.cc/35B4-8L6M>] (William Ruckelshaus was the first Administrator of the EPA from 1970-73, and again from 1983-85); *see* David M. Uhlmann, *Environmental Crime Comes of Age: The Evolution of Criminal Enforcement in the Environmental Regulatory Scheme*, 2009 UTAH L. REV. 1223, 1223-52 (2009) (Criminal enforcement was dismantled under Gorsuch, but the functions were distributed across the EPA until being later restored); *see generally* Memorandum from John Peter Suarez, *supra* note 22, at 19.

32. Joshua Ozymy, et al., *supra* note 4, at 52-53.

33. WASH. LEGAL FUND, EPA CRIMINAL ENFORCEMENT POLICIES 2-3 (2022), <https://s3.us-east-2.amazonaws.com/washlegal-uploads/upload/Chapter2EPA.pdf> [<https://perma.cc/CVG4-P4NG>].

34. *Id.* at 2-2.

35. *Id.*; *see* Richard J. Lazarus, *Assimilating Environmental Protection into Legal Rules*

Presidents may not have been supporters of strong criminal enforcement per se, but the EPA managed to gain strength and institutionalize during this time as it rode the wave of bipartisanship that did exist, to a degree, in Congress. During this time, the EPA was able to enhance a range of penalties for criminal offenses across the board.³⁶

Bipartisanship over the environment diminished during the Clinton Administration as Republican opposition became better organized, more defiant, and oppositional to any of the President's proposals.³⁷ Clinton shifted away from enhanced deterrence and punishment toward flexible regulations and market-driven mechanisms that became more common with the earlier amendments to the CAA; resources continued to grow, but not by leaps and bounds during this era and it seems the growth phase of criminal enforcement may have arguably ended.³⁸

George W. Bush continued to send resources to criminal enforcement agencies, but supported returning authority to the states and continued a movement towards appointing loyalists, rather than careerists, to run key posts in these agencies.³⁹ Significantly enhanced resources did not materialize during his Administration.⁴⁰ Obama took action to strengthen environmental laws, particularly moving the EPA to regulate carbon emissions under the CAA and push tighter regulations on the fossil fuel industry.⁴¹ However, while some resources were enhanced, there was not a wholesale investment in the environment generally or a vast expansion in environmental enforcement during the Obama Era. From Clinton to George W. Bush and through Obama, substantive support for criminal enforcement failed to materialize, but it also failed to be significantly reduced. After

and the Problem with Environmental Crime, 27 LOY. L.A. L. REV. 867, 870-77 (1994) (Expanding criminal provisions in environmental law and the addition of resources for policing and prosecuting environmental crimes began to create political friction between the executive and legislative branches).

36. See WASH. LEGAL FUND, *supra* note 33, at 2-2; Lazarus, *supra* note 35. This movement also corresponded to a larger, global movement to criminalize environmental crimes. See Michael R. Pendleton, *Beyond the Threshold: The Criminalization of Logging*, SOC'Y & NAT. RES.: AN INT'L J. 181, 191-92 (1997).

37. See Joel A. Mintz, *Neither the Best of Times Nor the Worst of Times: EPA Enforcement During the Clinton Administration*, 35 ENV'T L. REP. 10390, 10390 (2005).

38. See *id.* at 10391; A good example of flexible regulation is the EPA's "Aiming for Excellence" initiative. See U.S. ENV'T PROT. AGENCY, AIMING FOR EXCELLENCE 61 (1999), <https://permanent.fdlp.gov/websites/epagov/www.epa.gov/innovation/report99.pdf> [<https://perma.cc/B2UR-5QHK>].

39. See Mintz, *supra* note 27, at 10503.

40. See *id.*

41. See Joshua K. Westmoreland, *Global Warming and Originalism: The Role of the EPA in the Obama Administration*, 37 B. C. ENV'T. AFFS. L. REV. 225, 255 (2012).

Trump took office and was overtly hostile to environmental regulation and enforcement, some 700 EPA staff opted to leave the agency.⁴² Former staffers made an unprecedented movement to organize political opposition to the regime.⁴³ While Trump promised major budgetary cuts to the EPA specifically, Congress muted some of the effect.⁴⁴

By the time Trump left office, most major environmental laws had received little revisions since the 1990s and criminal statutes were also in need of revision. Resources for policing and prosecuting environmental crimes had been stagnant, when adjusted for inflation, since the Clinton Administration.⁴⁵ Trump further demoralized staffers by removing scientists from key advisory committees, publicly lashing out against the EPA, actively undermining key parts of the CWA and CAA, and appointing a climate change denier to run the EPA.⁴⁶ Injunctive relief was at its lowest and the Trump DOJ placed restrictions on a variety of traditional prosecutorial tools to limit its enforcement reach.⁴⁷

42. Yaron Steinbuch, *Inside the Mass Exodus at the EPA*, N.Y. POST (Dec. 22, 2017, 11:31 AM), <https://nypost.com/2017/12/22/hundreds-have-quit-the-epa-since-trump-took-office/> [<https://perma.cc/6BVU-4VZJ>].

43. Valerie Volvcovici, *U.S. EPA Employees Protest Trump's Pick to Run Agency*, REUTERS (Feb. 6, 2017, 5:12 PM), <https://www.reuters.com/article/usa-epa-pruitt-idUSL1N1FR1NZ> [<https://perma.cc/HZ5M-W6CS>].

44. Elgie Holstein, *The Severe, Real-World Casualties of Trump's EPA Budget Cuts*, ENV'T DEF. FUND (Mar. 3, 2017), <https://www.edf.org/blog/2017/03/03/severe-real-world-casualties-trumps-epa-budget-cuts> [<https://perma.cc/2RU2-LQ8M>]; see Volvcovici, *supra* note 43; see also Steinbuch, *supra* note 42; *Congress Rejects Trump's EPA Budget Cuts*, ENV'T ADVOCATES N.Y. (March 23, 2018), https://eany.org/press_release/congress-rejects-trumps-epa-budget-cuts/ [<https://perma.cc/GGK9-ZFH5>].

45. DAVID M. ULHMANN, U. OF MICH. L.SCHOOL, ENV'L CRIMES PROJECT, NEW ENVIRONMENTAL CRIMES PROJECT DATA SHOWS THAT POLLUTION PROSECUTIONS PLUMMETED DURING THE FIRST TWO YEARS OF THE TRUMP ADMINISTRATION 2 (2020), <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1163&context=other> [<https://perma.cc/3UZN-C7PH>].

46. *Trump's War on the Environment*, ENV'T INTEGRITY PROJECT (Sept. 4, 2022, 10:32 PM), <https://environmentalintegrity.org/trump-watch-epa/> [<https://perma.cc/SBF6-8T58>]. The Trump Administration focused efforts to rollback many important provisions of the CWA, particularly Section 401 permits that had been denied by many states. See Peter Kalicki, Note, *Section 401 of the Clean Water Act from Trump to Biden*, ENV'T & ENERGY L. PROGRAM (Jan. 25, 2021), <https://eelp.law.harvard.edu/2021/01/section-401-of-the-clean-water-act-from-trump-to-biden/> [<https://perma.cc/F3JN-DKHA>].

47. See generally Robert D. Boley & J. Michael Showalter, *Three Strikes and the EPA's Scientist Advisory Committees Directive May be Out*, NAT'L L. REV. (Apr. 29, 2020), <https://www.natlawreview.com/article/three-strikes-and-epa-s-scientist-advisory-committees-directive-may-be-out> [<https://perma.cc/92P9-2NXB>]; *DOJ's Rapid Rollback of Trump Policies Marks Environmental Reset*, BLOOMBERG LAW (Feb. 5, 2021, 11:35 AM),

While Democrats have historically been more supportive of stronger environmental enforcement, a brief review shows that budgetary and other forms of political support have not been as strong as one might anticipate.⁴⁸ Under Republican Presidents, hostility was evident, but the apparatus institutionalized and persisted.⁴⁹ It was projected that once Trump left office, environmental enforcement agencies would be demoralized, not by his actions alone, but the constant give and take and underinvestment that had occurred for decades.⁵⁰ How these forces shape outcomes is mostly unknown, but we examine below the outcomes, in the context of how FIFRA prosecutions are shaped across partisan regimes, to illuminate these trends over time.⁵¹

III. DATA COLLECTION

We collected data for the analysis from the EPA's Summary of Criminal Prosecutions Database that provides every EPA-CID criminal investigation and

<https://news.bloomberglaw.com/business-and-practice/dojs-rapid-rollback-of-trump-policies-marks-environmental-reset?context=article-related> [https://perma.cc/L4FU-2B7E]; Aaron McCade, *EPA Takes Steps to Undo Trump-Era Rollback of Protections Under Clean Water Act*, NEWSWEEK (Nov. 18, 2021, 10:35 AM EST), <https://www.newsweek.com/epa-takes-steps-undo-trump-era-rollback-protections-under-clean-water-act-1651054> [https://perma.cc/32Q6-S6N6]; OFF. OF INSPECTOR GEN., U.S. ENV'T PROT. AGENCY, EPA'S COMPLIANCE MONITORING ACTIVITIES, ENFORCEMENT ACTIONS, AND ENFORCEMENT RESULTS GENERALLY DECLINED FROM FISCAL YEARS 2006 THROUGH 2018, at 11 (2020), https://www.epa.gov/sites/production/files/2020-04/documents/_epaog_20200331_20-p-0131_0.pdf [https://perma.cc/9BQ2-EVNS] ("The EPA concluded 2,932 enforcement actions with injunctive relief in FY 2007 compared to 1,245 in FY 2018, a 58 percent decrease"); Hana Vizcarra & Laura Bloomer, *DOJ Phases Out Supplemental Environmental Projects in Environmental Enforcement*, HARV. ENV'T AND ENERGY L. PROGRAM (Aug. 6, 2020), <https://eelp.law.harvard.edu/2020/08/doj-phases-out-supplemental-environmental-projects-in-environmental-enforcement/> [https://perma.cc/ST2C-WJRR]; Evan Lehmann & Emily Holden, *Trump Budget Cuts Funds for EPA by 31 Percent*, SCI. AM. (Mar. 16, 2017), <https://www.scientificamerican.com/article/trump-budget-cuts-funds-for-epa-by-31-percent/> [https://perma.cc/JAW8-9XAX] (explaining environmental infractions and crimes could see a 24 percent budget decrease).

48. Joshua Ozymy & Melissa Jarrell, *Why Do Regulatory Agencies Punish? The Impact of Political Principals, Agency Culture, and Transaction Costs in Predicting Environmental Criminal Prosecution Outcomes in the United States*, 33 REV. OF POL'Y RSCH. 71, 77 (2016).

49. *Id.* at 74.

50. Trump's War on the Environment, *supra* note 46.

51. For a review of the interplay of these factors, see Ozymy & Jarrell, *supra* note 48; Joshua Ozymy & Melissa L. Jarrell, *Wielding the Green Stick: An Examination of Criminal Enforcement at the EPA Under the Bush and Obama Administrations*, 24 ENV'T POL. 38, 39 (2015).

resulting prosecution from 1983-present.⁵² We searched data by fiscal year (FY), beginning with the first case and continuing until April 30, 2022, when data collection ceased.⁵³ We were able to assess FIFRA prosecutions from the beginnings of the institutionalization of the criminal enforcement apparatus under Reagan, through the first part of the Biden Administration.⁵⁴ Given the limited analysis available under Biden, we restricted the analysis of the data in the figures that follow to end with the Trump Administration, although we mention available data for prosecution outcomes under the Biden Administration in-text.

A grand total of 2,728 prosecutions were analyzed initially and 143 prosecutions that were undertaken for FIFRA criminal violations were included in the analysis herein.⁵⁵ From each case narrative available in the EPA's database, we coded the following data for the analysis: FY record for each case, narrative summary of the case, docket number, state identifier, the number of named defendants, whether at least one company is a named defendant in the case, and all sentencing data for companies and individuals, including total probation (months), total incarceration (months), and total monetary penalties to include fines, assessments, restitution, and any other such penalties assessed at sentencing. If EPA failed to include a case in the database, this would be unknown to us and it is not included in our analysis.

Our analytical strategy was to employ content analysis of each prosecution summary, by using two coders to read and code the data independently of one another. A pilot phase commenced for four weeks to better understand the data and to see patterns that may arise. Once we were confident in moving forward, one of the authors found discrepancies and we met to find consensus on values. Coding was mostly straightforward, with the exception of some more complex sentencing data that involved multiple defendants. Overall, inter-coder reliability for our study was roughly 95%.⁵⁶

52. See generally *Summary of Criminal Prosecutions*, U.S. ENV'T PROT. AGENCY (Sept. 4, 2022, 10:55 PM), <https://www.epa.gov/enforcement/summary-criminal-prosecutions> [<https://perma.cc/F466-WSQD>].

53. *Id.*

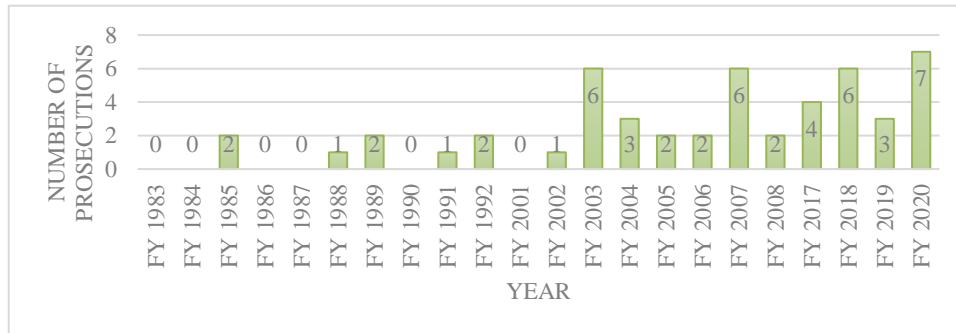
54. See generally *id.*

55. *Summary of Criminal Prosecutions*, *supra* note 1 (to gather data for the grand total, make no specific selections and search the database. Next, go back and select "FIFRA-Federal, Insecticide, Fungicide, and Rodenticide Act" to retrieve the FIFRA criminal violations) (The values change slightly due to updating of the database.).

56. See OLE R. HOLSTI, *CONTENT ANALYSIS FOR THE SOCIAL SCIENCES AND HUMANITIES* 140 (1969) (in this case, the agreed upon items are divided by non-agreed items).

IV. RESULTS

We begin the analysis with Figure 1, which explores total FIFRA prosecutions adjudicated under Republican Presidents since 1983.⁵⁷ We find few prosecuted during the Reagan Administration, with zero from 1981 through 1984 and two in 1985.⁵⁸ A total of eight prosecutions were adjudicated during Reagan/Bush.⁵⁹ Prosecutions increased under George W. Bush, peaking at six annual prosecutions in 2003 and 2007, with a total of 22 prosecutions adjudicated during his presidency.⁶⁰ Prosecutions reached a high point for Republicans with seven adju-



dicated during Trump's presidency in 2020, with a total of 20 adjudicated under Trump.⁶¹

Figure 1. Annual FIFRA Prosecutions Adjudicated Under Republican Presidents by Fiscal Year.⁶²

In Figure 2, we explore FIFRA prosecutions adjudicated under Democratic Presidents.⁶³ We find the Clinton Administration to be more robust than his predecessors, with a high point of eight prosecutions adjudicated in 1998 and a total of 30 adjudicated during his presidency.⁶⁴ Trends increase under Obama, peaking at 12 annual prosecutions adjudicated in 2012, with a total of 50 adjudicated during his presidency.⁶⁵ We find 13 prosecutions adjudicated during Biden's Administration.⁶⁶ Comparing political parties, for

57. *Summary of Criminal Prosecutions*, *supra* note 1.

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

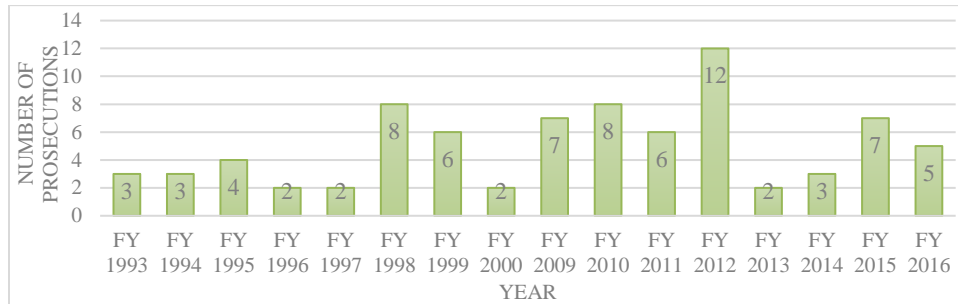
64. *Id.*

65. *Id.*

66. *Id.*

Democrats we find a total of 80 prosecutions adjudicated, with an average of five adjudications across four terms in office, whereas under Republican Presidents, we find 50 prosecutions, averaging 2.27 adjudications, which on both metrics, Republicans are much lower than Democrats.⁶⁷

Figure 2. Annual FIFRA Prosecutions Adjudicated Under Democratic Presidents by Fiscal Year.⁶⁸



Next, we move to explore total defendants prosecuted under Republican Presidents in Figure 3. We find that eight defendants were prosecuted during the 1980s.⁶⁹ Through Reagan and H.W. Bush administrations, a total of 25 defendants were prosecuted.⁷⁰ Under George W. Bush the number of defendants prosecuted grew to 28, and under Trump, defendants prosecuted increased to 31 during his presidency.⁷¹ A grand total of 84 defendants were prosecuted, with an annual average of 3.8 prosecutions during Republican Presidents in the analysis.⁷²

67. *Id.*

68. *Id.*

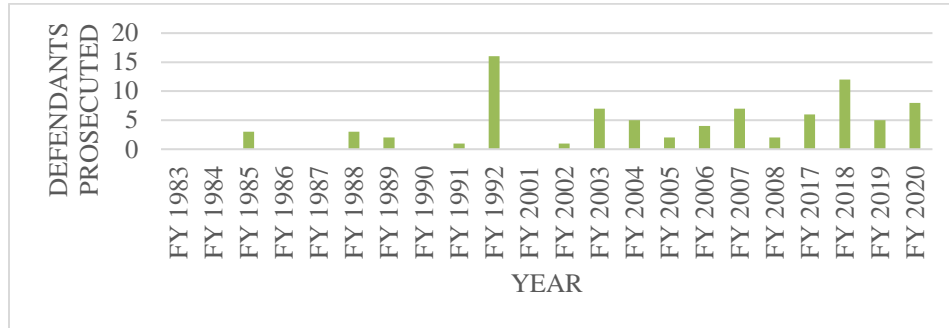
69. *Id.*

70. *Id.*

71. *Id.*

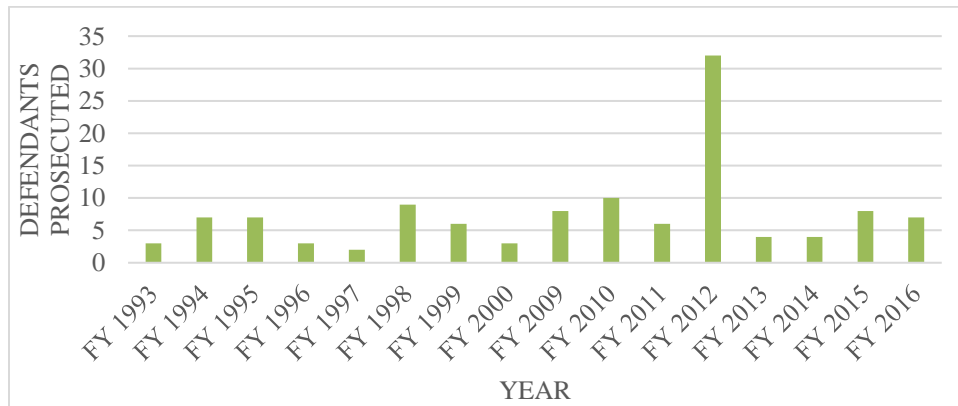
72. *Id.*

Figure 3. Total FIFRA Defendants Prosecuted Under Republican Presidents by Fiscal Year.



In Figure 4, we explore total defendants prosecuted under Democratic Presidents. During the Clinton Era, we found a total of 40 defendants prosecuted, which grew significantly to 79 defendants prosecuted during Obama's presidency.⁷³ Thus far the Biden Administration has successfully prosecuted 16 defendants.⁷⁴ Defendants prosecuted under Democratic administrations totaled 119, with an annual average of 7.4, both significantly higher than under Republican administrations.⁷⁵

Figure 4. Total FIFRA Defendants Prosecuted Under Democratic Presidents by Fiscal Year.



73. *Id.*

74. *Id.*

75. *Id.*

Figure 5 explores total FIFRA prosecutions including at least one company as a named defendant under Republican Presidents. Under the Reagan and Bush Administrations, a total of five prosecutions involved at least one company as a named defendant.⁷⁶ Prosecutions declined to a total of four under G.W. Bush and climbed to seven under Trump.⁷⁷ A grand total of 16 prosecutions involved at least one company under Republican presidents in our analysis, averaging 0.72 per year.⁷⁸

Figure 5. Total FIFRA Prosecutions Involving Companies Under Republican Presidents by Fiscal Year.

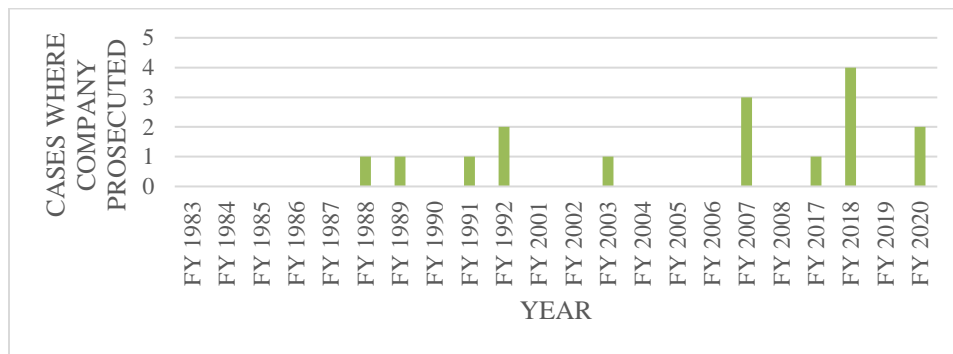


Figure 6 explores total FIFRA prosecutions involving at least one company as a named defendant under Democratic Presidents. During the Clinton Presidency, a total of ten prosecutions were adjudicated involving at least one company.⁷⁹ Under Obama, a total of 14 cases were adjudicated and under Biden, one case was adjudicated.⁸⁰ A total of 24 cases, averaging 1.5 annually, were adjudicated under Clinton and Obama, which on both metrics exceed Republican presidents, as shown in Figure 5.⁸¹

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

Figure 6. Total FIFRA Prosecutions Involving Companies Under Democratic Presidents by Fiscal Year.

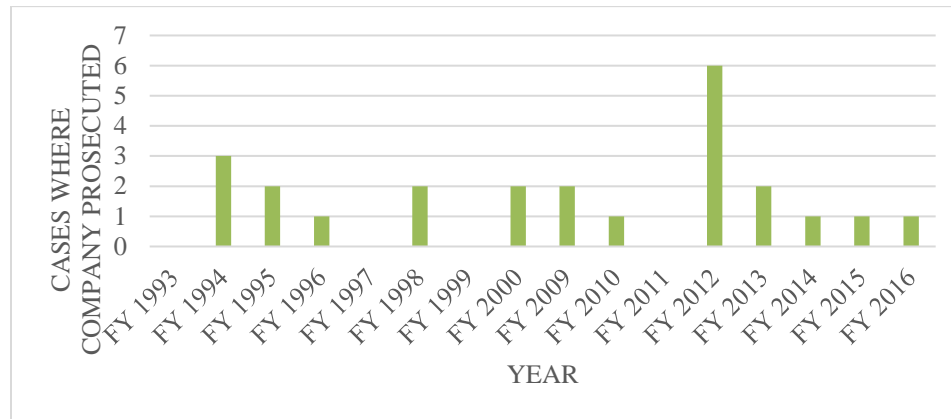


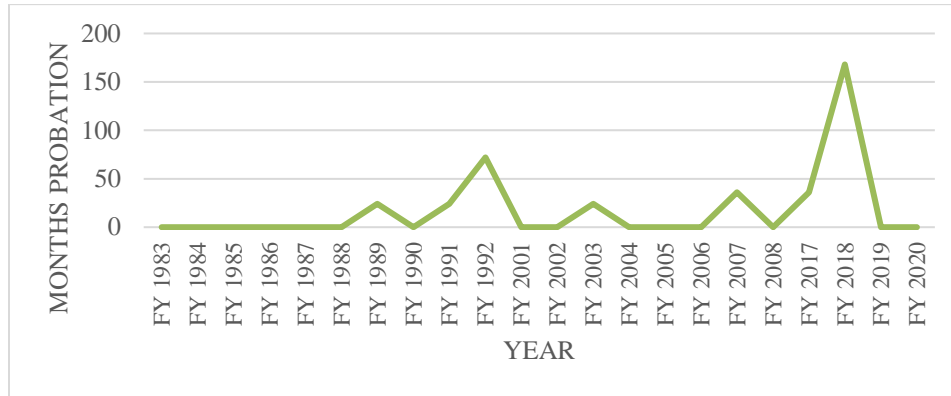
Figure 7 explores the total months of probation assessed to companies in FIFRA prosecutions under Republican presidents. A total of 120 months were assessed to companies during the Reagan-Bush Administration.⁸² This trend declined under G.W. Bush to 60 months of probation and increased to 204 months under Trump.⁸³ Companies received a total of 384 months of probation under Republican presidents, averaging about 17.5 months of probation assessed per year.⁸⁴

82. *Id.*

83. *Id.*

84. *Id.*

Figure 7. Total Probation Time (in Months) Assessed to Companies in FIFRA Prosecutions Under Republican Presidents by Fiscal Year.



Total probation time assessed to companies in FIFRA prosecutions under Democratic presidents is shown in Figure 8. During Clinton's Presidency, 264 months of probation was assessed to companies, marking a sharp rise from the Reagan-Bush Administration.⁸⁵ This trend continues slightly under Obama, with 291 months assessed to companies during his presidency.⁸⁶ So far during the Biden Administration, there have been 48 months of probation assessed to companies.⁸⁷ A total of 555 months of probation were assessed to companies under Democratic Administrations, averaging about 35 per year, with both metrics exceeding their Republican counterparts.⁸⁸

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

Figure 8. Total Probation Time (in Months) Assessed to Companies in FIFRA Prosecutions Under Democratic Presidents by Fiscal Year.



Figure 9 shows total monetary penalties assessed to companies in FIFRA prosecutions adjudicated under Republican Presidents. During the Reagan-Bush Administration, total penalties exceeded \$687,000.⁸⁹ Under George W. Bush, penalties increased significantly to over \$14 million.⁹⁰ During the Trump Presidency, penalties exceed \$10 million.⁹¹ Monetary penalties assessed to companies under Republicans exceeds \$25 million, with an annual average exceeding \$1.1. million.⁹²

89. *Id.*; *United States v. Orkin Exterminating Co.*, No. 88-00040 (W.D. Va. 1988) (Much of the corporate penalties here come from a \$500,000 fine assessed to Orkin Exterminating Company, where two employees engaged in the off-label use of Vikane, (a gas fumigant typically used to kill termites) that resulted in the death of a couple whose house was being fumigated in Galax, Virginia.) (EPA Prosecutions Database).

90. *Summary of Criminal Prosecutions*, *supra* note 1.

91. *Id.*

92. *Id.*

Figure 9. Total Monetary Penalties Assessed to Companies in FIFRA Prosecutions Under Republican Presidents by Fiscal Year.

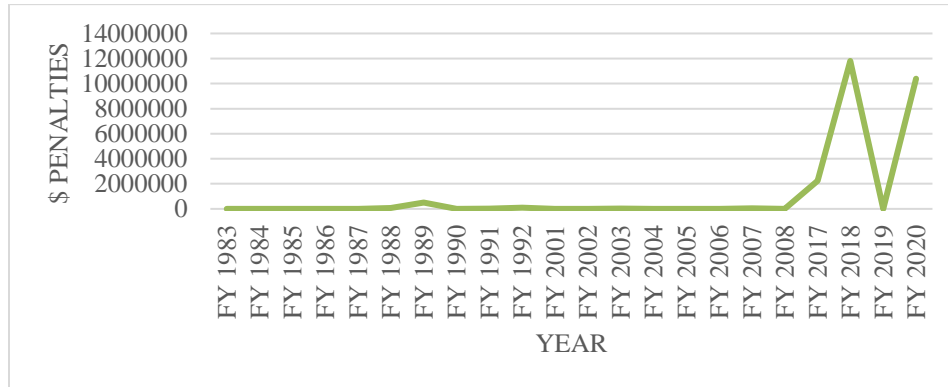


Figure 10 shows total monetary penalties assessed to companies under Democratic Presidents. Penalties during the Clinton Era greatly exceeded his predecessors, with some \$20 million in monetary penalties assessed to companies during his presidency.⁹³ Under the Obama Administration, penalties increased substantially to \$124 million.⁹⁴ Under the Biden Administration, \$20,000 in penalties have been assessed at the time of publication.⁹⁵ A grand total of \$144 million in monetary penalties were assessed to companies under Democrats, averaging \$9 million annually.⁹⁶ Both metrics show Democrats greatly exceed Republicans in terms of monetary penalties assessed to companies in FIFRA prosecutions over time.

93. *Id.* During the Clinton Administration, the conviction of Craven for conspiracy, mail fraud, obstruction, and other charges in connection with systematically providing fraudulent pesticide residue tests resulted in fines and restitution of some \$19.2 million assessed to the company. *United States v. Craven Laboratories, Inc.*, No. A-92-CR-152 (W.D. Tex. 1993) (EPA Prosecution Database).

94. *Summary of Criminal Prosecutions*, *supra* note 1. The majority of the penalties under Obama came from a \$110 million penalty assessed to Wal-Mart Missouri. *Wal-Mart Pleads Guilty to Federal Environmental Crimes, Admits Civil Violations and Will Pay More Than \$81 Million*, DEP'T OF JUST. OFF. OF PUB. AFF.'S (May 28, 2013), <https://www.justice.gov/opa/pr/wal-mart-pleads-guilty-federal-environmental-crimes-admits-civil-violations-and-will-pay-more> [<https://perma.cc/WXF9-XYNW>].

95. *Summary of Criminal Prosecutions*, *supra* note 1.

96. *Id.*

Figure 10. Total Monetary Penalties Assessed to Companies in FIFRA Prosecutions Under Democratic Presidents by Fiscal Year.

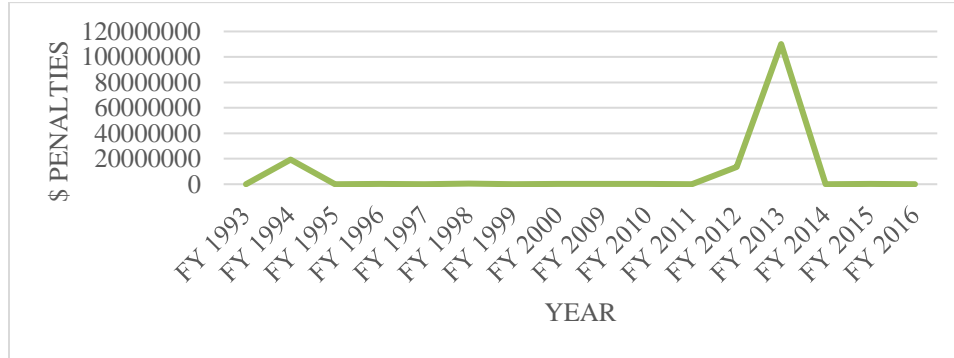
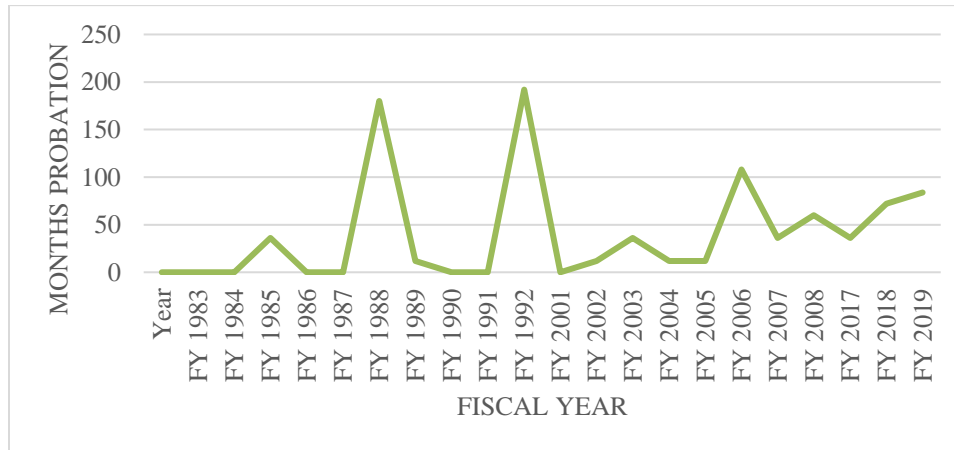


Figure 11 explores the total probation in months assessed to individuals in FIFRA prosecutions under Republican presidents. Under Reagan and Bush, 420 months of probation were assessed to individual defendants.⁹⁷ A total of 276 months were assessed to defendants under G.W. Bush and 218 months under Trump.⁹⁸ A grand total of 914 months of probation were assessed to defendants in FIFRA prosecutions under Republican presidents, with an annual average of 41.5 months.⁹⁹

Figure 11. Total Probation (in Months) Assessed to Individuals in FIFRA Prosecutions Under Republican Presidents by Fiscal Year.



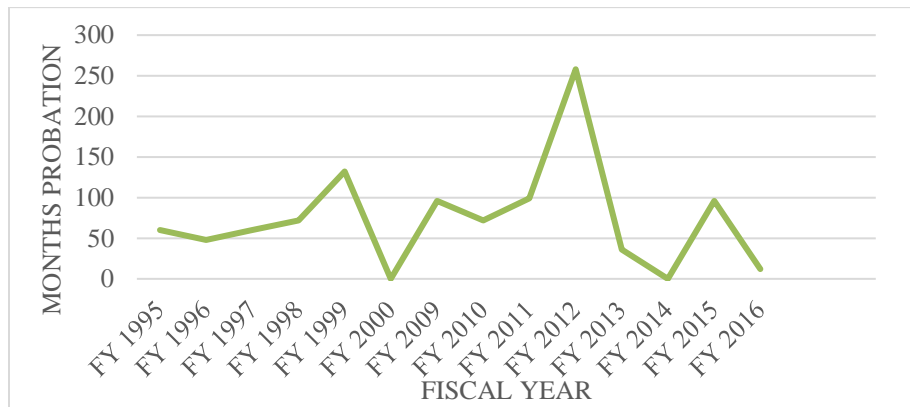
97. *Id.*

98. *Id.*

99. *Id.*

Figure 12 shows the total probation in months assessed to individual defendants in FIFRA prosecutions under Democratic Presidents. The Clinton Administration was very robust compared to the Reagan and Bush Administrations, with 672 months of probation assessed to defendants.¹⁰⁰ This trend declines slightly to 669 months under Obama.¹⁰¹ Under Biden, 247 months of probation have been assessed to defendants thus far.¹⁰² An overall total of 1,341 months of probation were assessed under the Clinton and Obama Administrations, averaging 83.8 months per year—a significant increase from Republicans.¹⁰³

Figure 12. Total Probation (in Months) Assessed to Individuals in FIFRA Prosecutions Under Democratic Presidents by Fiscal Year.



In Figure 13, we explore total monetary penalties assessed to individuals in FIFRA prosecutions under Republican presidents. Under Reagan and Bush, less than \$68,000 in monetary penalties were assessed to individual defendants in FIFRA prosecutions.¹⁰⁴ Under George W. Bush, total penalties exceeded \$324,000.¹⁰⁵ Under Trump, penalties expanded to \$3.6 million.¹⁰⁶ A grand total of approximately \$4 million in monetary penalties

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*; see Money Judgment of Forfeiture, *supra* note 2, at 1 (ordering the defendant to pay \$2.5 million); *Owner of Los Angeles-Area Pet Products Company Pleads Guilty to Selling Pet Meds Without Prescriptions, Some of Which Were Not Approved For US Sale*, U.S. IMMIGR. & CUSTOMS ENF'T (Sept. 11, 2017), <https://www.ice.gov/news/releases/owner-los-angeles-area-pet-products-company-pleads-guilty-selling-pet-meds-without> [https://perma.cc/R5KD-7XUT] (Sean Gerson, owner of Vaccination Services, Inc., was

were assessed to individual defendants under Republicans, with an annual average exceeding \$185,000.¹⁰⁷

Figure 13. Total Monetary Penalties Assessed to Individuals in FIFRA Prosecutions Under Republican Presidents by Fiscal Year.

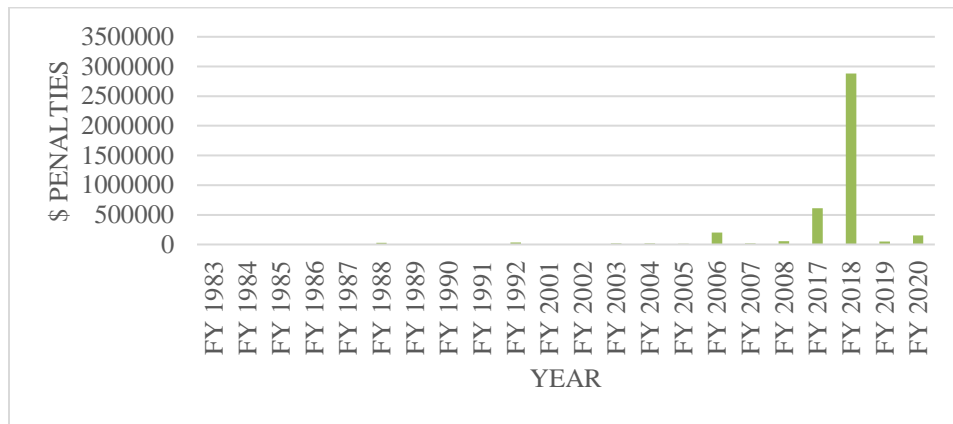


Figure 14 shows total monetary penalties assessed to individual defendants in FIFRA prosecutions under Democratic Presidents. Under Clinton, over \$3.4 million in monetary penalties were assessed to defendants.¹⁰⁸ Penalties were \$710,000 under Obama and around \$176,000 under Biden.¹⁰⁹ Over \$4.1 million in monetary penalties were assessed under Clinton and Obama, averaging \$260,000 per year.¹¹⁰ Although the overall total of penalties under Democrats is comparable to Republicans, the annual average is much larger under Democrats.¹¹¹

convicted of selling misbranded veterinary medications and was sentenced to pay at least \$2.5 million in fines and forfeiture, helping to explain the large jump in monetary penalties under the Trump Administration).

107. *Summary of Criminal Prosecutions*, *supra* note 1.

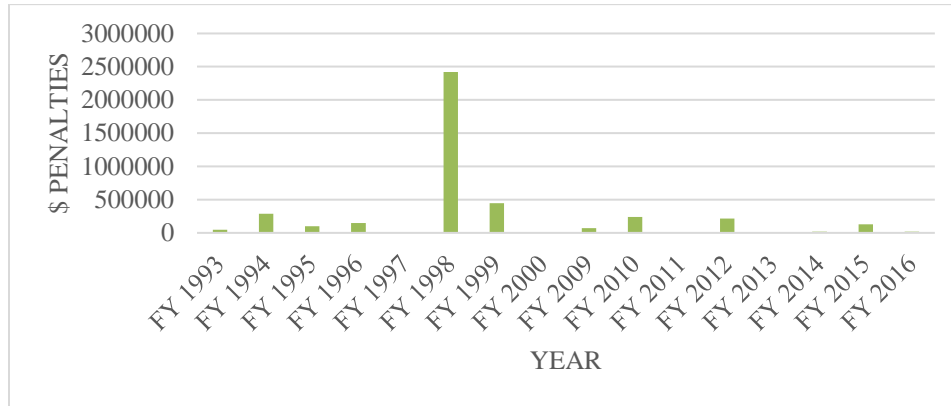
108. *Id.*; *United States v. Poole*, 97-CR-50068-FL (E.D. MI 1998) (assessing over \$2.3 million in fines and restitution to Lee Poole for illegally spraying methyl parathion, an insecticide, in homes around Houma, Louisiana, requiring the EPA to spend \$2.1 million in emergency clean up) (EPA Prosecutions Database).

109. *Summary of Criminal Prosecutions*, *supra* note 1.

110. *Id.*

111. *Id.*

Figure 14. Total Monetary Penalties Assessed to Individuals in FIFRA Prosecutions Under Democratic Presidents by Fiscal Year.



In Figure 15, we explore total incarceration in months assessed to defendants in FIFRA prosecutions under Republican presidents. Under Reagan and Bush, we find 24 months incarceration assessed to defendants.¹¹² This trend increases under George W. Bush to 67 months incarceration assessed to defendants.¹¹³ Under Trump, the trend continues with 313 months assessed to defendants during his single term in office.¹¹⁴ Prosecutors sentenced individual defendants to a grand total of 404 months incarceration under Republican presidents, with an annual average of 18 prosecutions.¹¹⁵

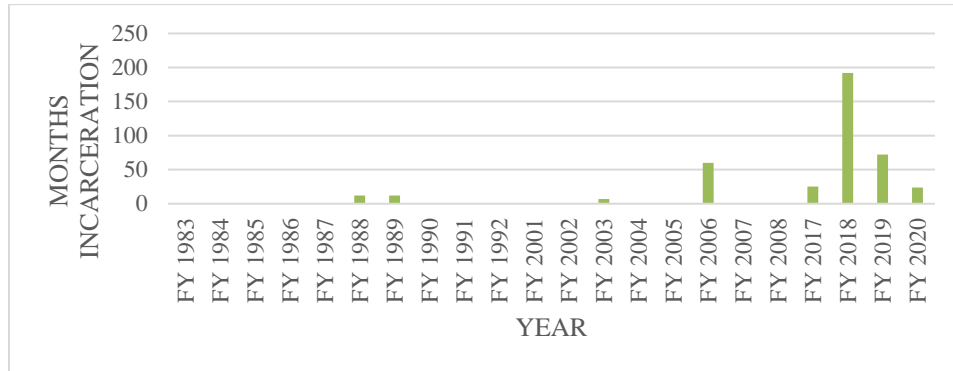
112. *See id.*

113. *See id.*

114. *See id.*; *see also* Judgment in a Criminal Case at 2, *United States v. Haisten*, No. 16-00461 (E.D. Pa. May 10, 2018) (Judy and David Haisten were prosecuted for selling mis-branded pesticides and animal drugs over the internet; collectively, they were sentenced to 138 months incarceration, helping to explain the totals here).

115. *Summary of Criminal Prosecutions*, *supra* note 1.

Figure 15. Total Incarceration (in Months) Assessed to Individuals in FIFRA Prosecutions Under Republican Presidents by Fiscal Year.



In our final Figure, we explore total incarceration sentences of defendants in FIFRA prosecutions under Democratic presidents. Incarceration totals 251 months during the Clinton Administration, again, representing a significant increase over the Reagan and Bush Administrations.¹¹⁶ Under Obama, the trend continues upward to 472 months during his presidency.¹¹⁷ We find less than one year incarceration assessed at this juncture under the Biden Administration.¹¹⁸ With 723 total months, averaging 45 annually, incarceration penalties were significantly higher under Democrats when compared to Republicans, as was the case with most metrics in our analysis.¹¹⁹

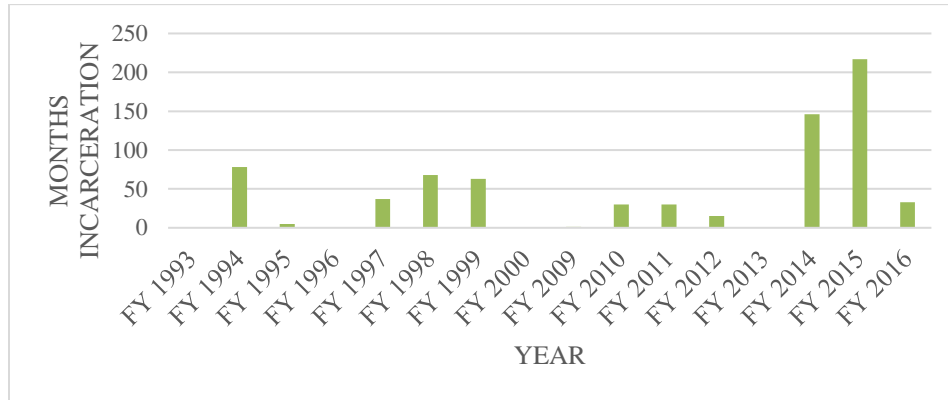
116. *See id.*

117. Judgment in a Criminal Case at 2, *United States v. Villasenor*, No. 12-00184 (E.D. Cal. Dec. 5, 2014) (Defendant was prosecuted for illegally cultivating marijuana in the Sequoia National Forest and distributing unregistered pesticides, resulting in ten years of incarceration; helping to explain the totals here).

118. *Summary of Criminal Prosecutions*, *supra* note 1.

119. *See id.*

Figure 16. Total Incarceration (in Months) Assessed to Individuals in FIFRA Prosecutions Under Democratic Presidents by Fiscal Year.



V. CONCLUSION

Republican presidents in the modern era have been less than enthusiastic when it comes to strong enforcement of environmental law. Alternatively, Democrats tend to show significant support for bolstering the regulatory apparatus. Yet, how have these differences manifested in enforcement outcomes in the context of FIFRA criminal enforcement? How have career staff been able to enforce criminal provisions under these varied contexts? We illuminate some answers to these questions through our analysis of FIFRA criminal prosecutions from Reagan to Trump.

As Reagan came into office, his administration pushed forward with budgetary and enforcement cuts to the EPA that began to hamper development of an institutionalization process. Responsibilities shifted throughout the agency during the 1980s and 1990s. Significant gains, illustrated by felony provisions and stiffer penalties added to environmental laws, upgraded major environmental statutes, and funding for environmental policing and prosecution, were made.¹²⁰ We see this in our FIFRA analysis, as prosecutions grow steadily during the Reagan and Bush Administrations through the Clinton Era. Prosecutions drop under George W. Bush's presidency, rise again under Obama, and drop under Trump. We see mostly the same pattern with the number of defendants prosecuted, number of cases where at least one company is prosecuted, probation time assessed to companies,

120. See *Historical Development of Environmental Criminal Law*, *supra* note 21; Raymond W. Mushal, *Up from the Sewers: A Perspective on the Evolution of the Federal Environmental Crimes Program*, 2009(4) UTAH L. REV. 1103, 1111 (2009); Memorandum from John Peter Suarez, *supra* note 22, at 19.

incarceration time assessed to individuals, monetary penalties, and probation time assessed to individuals.

The number of prosecutions and penalties increased under Democratic presidents, as expected, and declined under Republican presidents.¹²¹ With the exception of a few large monetary penalties against companies, we don't see a complete drop-off when it comes to prosecutions and penalties under Republican administrations or significant gains under Democratic administrations over time.¹²² One explanation for the consistency across the administrations may be the career staff that learn to persist, albeit sub-optimally, in this environment.¹²³ Another explanation is that despite strong rhetoric on both sides of the political aisle, neither party has really been engaging in significant investment or disinvestment in criminal enforcement; instead, budgets have been stagnant in nominal terms and declining in real terms.¹²⁴

Using the EPA as an example, adjusted for inflation, their Fiscal Year 1980 budget was the agency's financial high point.¹²⁵ While there were some cuts during the 1980s, the budget mostly grew or remained steady in a nominal (but not substantive) sense. Additionally, there was a substantial increase under Obama in Fiscal Year 2010.¹²⁶ If we examine staffing at the EPA, it grew after the Pollution Prosecution Act and throughout the Clinton Era but reached its zenith of 18,110 members in the Fiscal Year 1999.¹²⁷ After this peak, staffing declined under the Obama Administration and through the Trump Administration.¹²⁸ The ENRD's budget has also suffered from significant stagnation for a number of years, mirroring the disinvestment of the EPA.¹²⁹

If Trump represents the future of the Republican Party's handling of environmental enforcement, the ability of agencies to tread water will diminish significantly. If Democrats are to counter such a possibility, they will need to make up for their lack of investment during the Clinton and Obama Administrations. Biden's Fiscal Year 2022 budget proposal

121. MINTZ, *supra* note 27, at 59.

122. *See generally* Mintz, *supra* note 27.

123. *See generally id.*

124. *See generally id.*; *see also* EPA's Budget and Spending, U.S. ENV'T PROT. AGENCY (May 16, 2022), <https://www.epa.gov/planandbudget/budget> [<https://perma.cc/5ML2-AYNM>].

125. EPA's Budget and Spending, *supra* note 124.

126. *Id.*

127. *Id.*

128. *Id.*

129. *See Budget and Performance Summary Environment and Natural Resources Division*, U.S. DEP'T OF JUST. (July 1, 2022), <https://www.justice.gov/doj/budget-and-performance> [<https://perma.cc/2P5R-XD32>] (search the Budget and Performance Summary for DOJ; then look for the ENRD's budget. The data is found in the archives for various years prior to FY 2015).

increased EPA funding to \$11 billion and added 15,000 staff.¹³⁰ In reality, this is worse than what the agency faced a decade ago under Obama, but the real appropriation lagged further at \$9.5 billion and 14,581 staff.¹³¹ Proposals to push ENRD's budget to \$133 million fails to advance over Obama's funding in nominal terms.¹³² These continuing trends cast doubt on the ability of these agencies to advance criminal enforcement in an era of increasing partisanship between Congress and the White House and the enhanced responsibilities that will come with major known and unknown threats from Climate Change.

130. *Statement by Administrator Regan on the President's FY 2022 Budget*, U.S. ENV'T PROT. AGENCY (June 2, 2021), <https://www.epa.gov/newsreleases/statement-administrator-regan-presidents-fy-2022-budget> [<https://perma.cc/TEM7-4ZCA>]; U.S. ENV'T PROT. AGENCY, *FY 2022 EPA BUDGET IN BRIEF 3* (2021), <https://www.epa.gov/sites/default/files/2021-05/documents/fy-2022-epa-bib.pdf> [<https://perma.cc/X4QT-25EM>].

131. *EPA's Budget and Spending*, U.S. ENV'T PROT. AGENCY (May 16, 2022), <https://www.epa.gov/planandbudget/budget> [<https://perma.cc/5ML2-AYNM>].

132. U.S. DEP'T OF JUST., *FY 2023 PERFORMANCE BUDGET 15, 20* (2022), <https://www.justice.gov/jmd/page/file/1491706/download> [<https://perma.cc/DCM7-QDSL>].