

Border Czar Bribery Probe Spotlights 'Public Official' Scope

By **Gregory Rosen and Jason Manning** (October 29, 2025)

According to media reports citing internal documents and unnamed sources, in September 2024, a private citizen named Tom Homan allegedly accepted \$50,000 in cash from a federal agent posing as a contractor seeking future awards.[1] Months later, Homan became the so-called border czar for the new administration.[2]

Beyond the headlines, the episode frames a subtler question: When can a private citizen be prosecuted as a public official under Title 18 of the U.S. Code, Section 201?

The statutory definition extends to any "person acting for or on behalf of the United States, or any department, agency, or branch of Government thereof." [3] Does every current or future contractor or subcontractor act for or on behalf of the U.S. under federal bribery law?

Given the revolving door of contractors and grantees working for the government, and the significant legal ramifications of being considered a public official, it is critical to understand Section 201's reach.



Gregory Rosen



Jason Manning

The Federal Bribery Statute and Applicable Case Law

To start, the text of Section 201 gives little guidance.[4] It defines public official to include "an officer or employee or person acting for or on behalf of the United States." But neither the 1962 enactment nor the 1986 amendments define the phrase "acting for or on behalf of." [5]

Instead, the modern test is case law-driven, most prominently by the U.S. Supreme Court's 1984 decision in *Dixon v. U.S.*, which held that subgrantee officials who administered federal U.S. Department of Housing and Urban Development funds were public officials because they exercised federal authority over benefits to third parties.[6]

The proper inquiry was not whether the person was a contractor, subcontractor, grantee or agent, but the degree of influence over the allocation of public resources — particularly to third parties.[7]

Dixon drew on earlier authority, including the U.S. Court of Appeals for the Second Circuit's 1942 *U.S. v. Levine* decision — interpreting a 1909 version of the bribery statute — which treated a state milk marketing administrator as a public official where his unreviewed actions triggered federal disbursements.[8]

In *Dixon*, the court analyzed the legislative history of the bribery statute, including congressional reliance upon *Levine*, to underscore a broad application of what it means to be a public official.[9]

The thrust of both opinions is functional. A person qualifies as a public official for the

purposes of federal bribery law when: (1) They occupy a position of public trust; and (2) they wield substantial influence over federal decision-making — especially where third-party rights or benefits turn on that influence.

Dixson and its Progeny

Illustrative decisions across circuits properly follow this framework:

- In *U.S. v. Gallegos*, the U.S. District Court for the District of New Mexico in 1981 found that a state employee administering federal housing grants qualified as a federal public official because his recommendations were, in practice, determinative — giving him de facto control over the flow of federal funds.[10]
- In *U.S. v. Madeoy*, the U.S. Court of Appeals for the District of Columbia Circuit in 1990 treated an appraiser approved by the Federal Housing Administration as a public official because the government relied on his valuations with minimal review.[11]
- In *U.S. v. Hang*, the U.S. Court of Appeals for the Eighth Circuit in 1996 affirmed that an eligibility technician who effectively controlled access to federally subsidized housing met the standard.[12]
- In *U.S. v. Thomas*, the U.S. Court of Appeals for the Fifth Circuit in 2001 held that a privately employed corrections officer at a federal detention facility was a public official because his role was indistinguishable from a federally employed corrections officer, which meant he controlled the rights and privileges of third parties — the people in prison.[13]

A similar principle appears in procurement cases where a contractor has significant influence over the selection and/or administration of other prime contractors. For instance:

- In *U.S. v. Kenney*, the U.S. Court of Appeals for the Eleventh Circuit in 1999 affirmed a conviction where a U.S. Air Force acquisition support contractor solicited payment in exchange for favorable treatment, explaining that the functional authority exercised on behalf of the Air Force brought him within Section 201.[14]
- In *U.S. v. Wilson*, the Fifth Circuit in 2010 affirmed a jury instruction deeming the defendant a public official because of his role in post-Hurricane Katrina U.S. Army Corps of Engineers reconstruction projects, in which he was involved in prime contract selection and administration.[15]

Conversely, courts have rejected public official status where the individuals' ability to exercise to federal authority is deemed insufficient. In *U.S. v. Evans*, for instance, the Eleventh Circuit held in 2003 that the alleged recipient of a bribe was not a public official because his role in administering funds received as a landlord was not sufficiently a matter of federal official responsibility.[16]

In sum, the law envisions a continuum of conduct that might or might not implicate public official power. Where federal law has left decision-making to local authorities, or the evidence is too attenuated to implicate federal disbursement, local administrators or contractors may not qualify as federal public officials pursuant to Section 201.

Treating such individuals as outside the scope of Section 201 makes sense: Not every contractor or grantee becomes a public official simply by virtue of a contract. Otherwise, it might render the Anti-Kickback Act largely superfluous, given that the act explicitly deters subcontractors from making payments or contractors from accepting such payments in exchange for improper rewards.[17]

In the case of an individual like Homan, federal investigators would likely inquire about whether the subject understood his future position within the government, and if so, what role he would play in administering federal funds. Investigators would likewise assess whether a quid pro quo for an official act existed.

These investigations take time, so agents would ostensibly take a wait-and-see approach to discern, among other things, if the subject actually intended to act upon the gift, and if he solicited additional gifts once he was in his official role, which could further bolster the case.

Further, in an investigation of this nature, government attorneys might offer the subject an opportunity to explain his actions before pursuing an indictment.

Weighing Whether the Goalposts Will Move

In recent years, the Supreme Court has significantly narrowed the scope of federal bribery and gratuities statutes.

The court's landmark 2016 decision in *McDonnell v. U.S.* raised the bar for prosecutors to prove that the public official took an official act in connection with the alleged corrupt payments.[18]

In *Snyder v. U.S.*, which arose under Section 666 rather than Section 201, the court held last year that the federal statute criminalizing bribery on the part of state or local officials does not disallow gratuities for past official acts.[19] Notably, Section 666 explicitly expands the scope of those who may be held criminally liable, unlike Section 201.[20]

These decisions reflect the court's disposition toward construing anti-corruption statutes narrowly. Under the right circumstances, savvy defense counsel might convince the court — as a matter of law and policy — to pare back its previous holding on the reach of the "public official" term in Section 201.

Until then, however, *Dixson* and its progeny remain the law of the land. Government contractors and their counsel will be well-served to understand their scope.

Contractors Beware?

Bottom line: Section 201 turns on function, not title. A contractor, subcontractor, grantee or consultant acts on behalf of the U.S. when entrusted with federal power that materially affects third-party rights or benefits and resembles inherently governmental work — allocating funds, selecting contractors, adjudicating eligibility or controlling federally conferred privileges.

Does this mean a contractor who subsumes the role of a federal official qualifies? Under *Dixson*, the answer is likely yes.

Before accepting a contract, primes and sub-primes should be aware of the legal implications: Those who dole out federal money on behalf of the government risk becoming

public officials for the purpose of certain federal statutes. But, as with most issues, these inquiries turn on the specific facts of the contract, the function and the financing.

With the abrupt termination of the FBI investigation into Homan, we are unable to assess whether he was actually working for or on behalf of the government to bring his conduct within the scope of Section 201. But the story is a reminder of the federal bribery statutes' ability to reach private citizens.

That reminder bears repeating for the many thousands of contractors who continue to honorably serve the U.S.

Gregory P. Rosen is a shareholder at Rogers Joseph O'Donnell PC. He previously served as an assistant U.S. attorney, chief of the Capitol Siege Section, and chief of the Federal Major Crimes Section in the U.S. Attorney's Office for the District of Columbia.

Jason M. Manning is a partner at Levy Firestone Muse LLP. He previously served as a trial attorney in the Foreign Corrupt Practices Act Unit in the U.S. Department of Justice's Criminal Division.

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[1] See, e.g., Rhian Lubin, Katie Hawkinson, Trump's DOJ shut down investigation into Tom Homan after he allegedly accepted \$50,000 from undercover FBI agents, report claims, www.independent.co.uk (Sept. 21, 2025), available at <https://www.independent.co.uk/news/world/americas/us-politics/tom-homan-border-czar-bribery-investigation-b2830605.html>.

[2] President Trump announced the installment of Mr. Homan in his new role on or about November 11, 2024. See Rachel Treisman, What to know about Tom Homan, the former ICE head returning as Trump's 'border czar', [npr.org](https://www.npr.org) (Nov. 11, 2024), available at <https://www.npr.org/2024/11/11/nx-s1-5186522/tom-homan-border-czar-trump>. The Federal Bribery Statute expressly contemplates that a "person who has been selected to be a public official[,]" including a person who "has been officially informed that such person will be so nominated or appointed[,]" can be guilty of bribery under the statute. 18 U.S.C. § 201(a) and (b).

[3] See 18 U.S.C. § 201(a)(1); *United States v. Brewster*, 408 U.S. 501, 528-29 (1972) (prosecution of a U.S. Senator under the Federal Bribery Statute was not proscribed by the U.S. Constitution speech and debate clause); *United States v. Romano*, 879 F.2d 1056, 1060 (2d Cir. 1989) (a U.S. government employee is a public official under the bribery statute).

[4] See Pub. L. No. 87-849, § 201, 76 Stat. 1119 (Oct. 23, 1962); Criminal Law and Procedure Technical Amendments Act of 1986, Pub. Law No. 99-646, § 46, 100 Stat. 3592, 3601-04 (Nov. 10, 1986); see also H.R. Rep. No. 99-797, at 25-26 (Aug. 15, 1986) ("Section 31 of the bill expands 18 U.S.C. 201, which deals with bribery of public officials and witnesses, to cover all Delegates to Congress. Section 31 also makes technical changes in format and language in 18 U.S.C. 201 to conform that section with the drafting

conventions used generally in title 18 of the United States Code. The technical changes consist of designating or redesignating paragraphs and subparagraphs, aligning margins, eliminating superfluous language, and replacing gender specific language with gender neutral terms. The changes do not substantively alter the provisions of 18 U.S.C. 201.").

[5] Similarly, the Foreign Corrupt Practices Act and the Foreign Extortion Prevention Act statutorily both define the term "foreign official" to encompass not just "any officer or employee of a foreign government or any department, agency, or instrumentality thereof" but also "any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality." 15 U.S.C. § 78dd-1(f)(1); 18 U.S.C. § 1352(a)(1).

[6] *Dixson v. United States*, 465 U.S. 482 (1984) (determining that the term "public official" has a broad sweep that is supported by Congressional intent, including incorporating private citizens responsible for administering federally-funded or supervised programs).

[7] *Id.* at 497 ("By accepting the responsibility for distributing these federal fiscal resources, petitioners assumed the quintessentially official role of administering a social service program established by the United States Congress").

[8] *United States v. Levine*, 129 F.2d 745 (2d Cir. 1942).

[9] *Dixson*, 465 U.S. at 496.

[10] *United States v. Gallegos*, 510 F. Supp. 1112 (D.N.M. 1981).

[11] *United States v. Madeoy*, 912 F.2d 1486 (D.C. Cir. 1990) (noting that the decision did not implicate the rule of lenity when compared to *Dixson*).

[12] *United States v. Hang*, 75 F.3d 1275, 1280 (8th Cir. 1996) (Hang occupied an obvious position of public trust and had "primary authority for determining who would be the beneficiaries of federal funds").

[13] *United States v. Thomas*, 240 F.3d 445, 447–49 (5th Cir. 2001).

[14] *United States v. Kenney*, 185 F.3d 1217, 1222–23 (11th Cir. 1999).

[15] *United States v. Wilson*, 408 F. App'x 798, 800–03, 806 (5th Cir. 2010).

[16] *United States v. Evans*, 344 F.3d 1131, 1135–36 (11th Cir. 2003).

[17] See 41 U.S.C. §§ 8701–07.

[18] *McDonnell v. United States*, 579 U.S. 550 (2016).

[19] *Snyder v. United States*, 603 U.S. 1 (2024).

[20] See 18 U.S.C. § 666(a)(1) (explaining the different persons whose conduct may be targeted).