

# **CORPORATE CRIMINALS ABOVE THE LAW**

Federal Prosecutions of Corporate Criminals Plunged to Just 94 in 2020 – The Lowest in A Quarter Century – While Corporate Leniency Agreements Rose to the Highest in Trump’s Term

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May 2021



## ACKNOWLEDGMENTS

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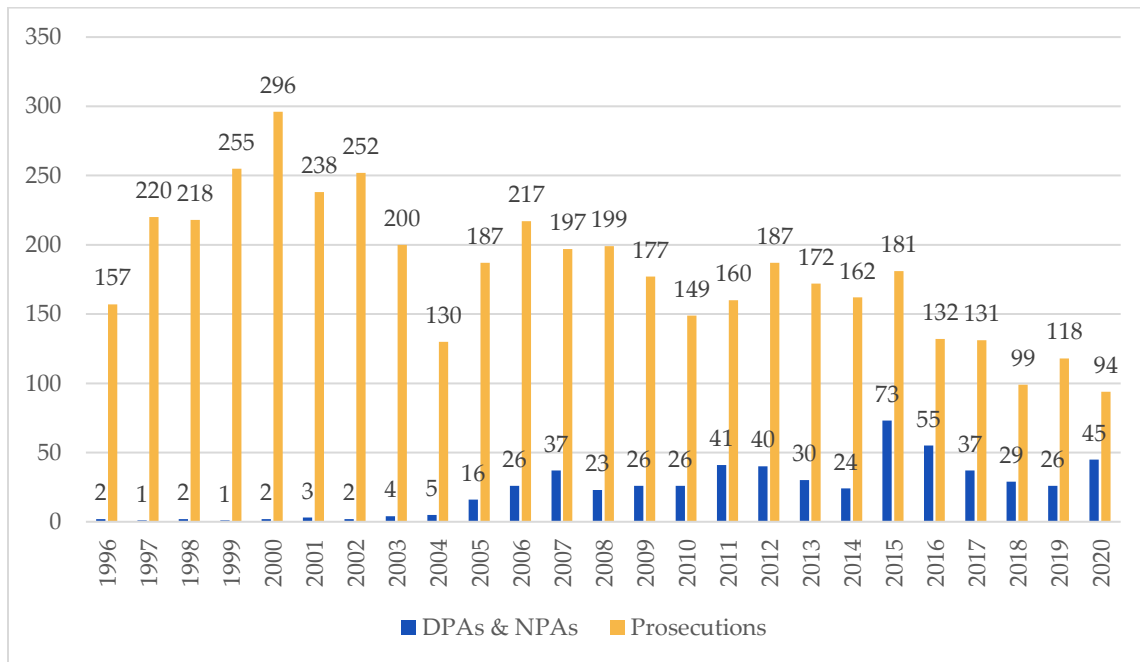
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Corporate impunity increased to record levels during President Trump’s last year in office, with federal prosecutions of corporate crime plunging to the lowest level in more than 25 years, a Public Citizen analysis of federal sentencing data has found.

The number of federal prosecutions of corporate criminals plummeted to a new low of just 94 in fiscal year 2020, according to data released by the [U.S. Sentencing Commission](#), a decline of 20% from 118 in 2019. This decline means that only 94 corporations either pled or were found guilty of crimes, down by two thirds from the peak of 296 corporate prosecutions in 2000 and the lowest on record since the U.S. Sentencing Commission started releasing corporate prosecution statistics in 1996. The year-over-year decline in corporate criminal prosecutions is greater than the [15% decline](#) in federal criminal cases overall.

At the same time, the number of times the U.S. Department of Justice (DOJ) negotiated leniency agreements with corporate offenders instead of prosecuting them rose during the pandemic year. According to data from the Duke University/University of Virginia [Corporate Prosecution Registry](#), Trump’s DOJ entered 45 deferred prosecution agreements and nonprosecution agreements with corporate offenders during the 2020 fiscal year. This represents an increase of 73% over 2019’s 26 agreements and makes 2020 the year with the highest number of these agreements over the four years of Trump’s presidency (Chart 1).

**Chart 1: Declining corporate prosecutions, increasing corporate leniency agreements, fiscal years 1996-2020.**



Source: U.S. Sentencing Commission and the Duke University/University of Virginia Corporate Prosecution Registry

Because of the simultaneous trends of declining corporate prosecutions and increasing corporate leniency agreements (i.e., deferred prosecution agreements and nonprosecution agreements), the agreements made up nearly one third (32%) of all resolutions of federal cases against corporations accused of crimes. This is the highest the percentage has ever been in the last quarter century. Two decades ago, prosecutors entered leniency agreements with corporate criminals only about 1% of the time. (Table 1)

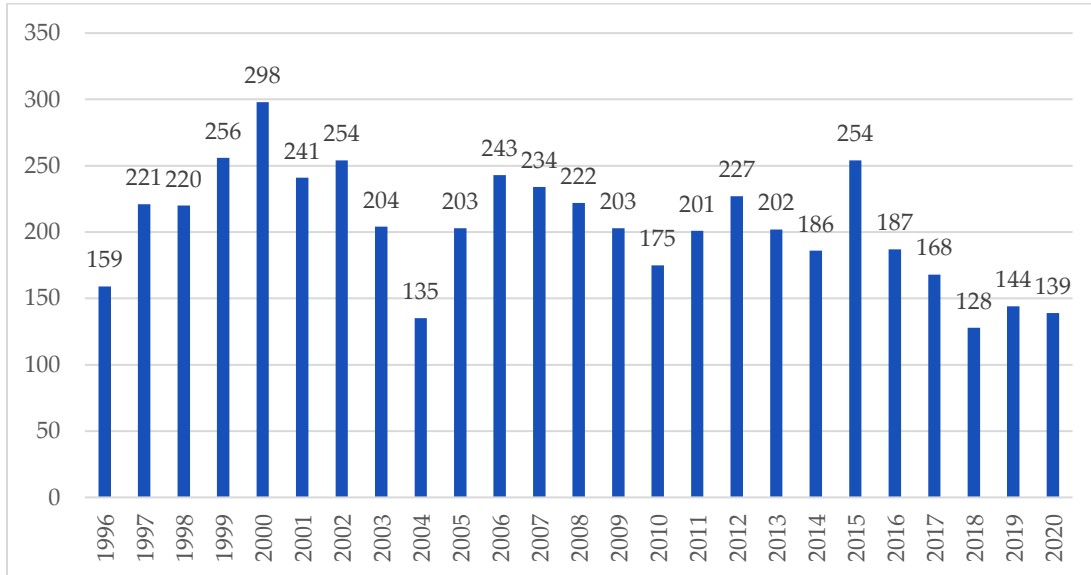
**Table 1: Corporate prosecutions and leniency agreements, fiscal years 1996-2020.**

Fiscal Year	Prosecutions	DPAs	NPAs	Total Leniency Agreements (DPAs + NPAs)	Percentage Leniency Agreements
1996	157	1	1	2	1%
1997	220	0	1	1	0%
1998	218	2	0	2	1%
1999	255	0	1	1	0%
2000	296	0	2	2	1%
2001	238	2	1	3	1%
2002	252	1	1	2	1%
2003	200	2	2	4	2%
2004	130	3	2	5	4%
2005	187	9	7	16	8%
2006	217	11	15	26	11%
2007	197	20	17	37	16%
2008	199	11	12	23	10%
2009	177	10	16	26	13%
2010	149	12	14	26	15%
2011	160	24	17	41	20%
2012	187	23	17	40	18%
2013	172	14	16	30	15%
2014	162	15	9	24	13%
2015	181	15	58	73	29%
2016	132	9	46	55	29%
2017	131	21	16	37	22%
2018	99	15	14	29	23%
2019	118	14	12	26	18%
2020	94	34	11	45	32%

Source: U.S. Sentencing Commission and the Duke University/University of Virginia Corporate Prosecution Registry

The combined total of 139 prosecutions and leniency agreements makes fiscal year 2020 the DOJ's third-lowest year for resolving criminal enforcement actions against corporations, behind 2004, when 135 such cases were resolved under President George W. Bush, and 2018, when Trump's DOJ resolved only 128, the record low. (Chart 2)

Chart 2: Declining corporate criminal enforcement actions  
(prosecutions and leniency agreements combined), fiscal years 1996-  
2020.



Source: U.S. Sentencing Commission and the Duke University/University of Virginia Corporate Prosecution Registry

Declining prosecutions and increasing leniency agreements are not signs that Corporate America has become better at obeying the law. On the contrary, they are signs that, despite Trump’s “law and order” rhetoric and his administration’s brutal crackdowns on immigrants, racial justice protestors and low-level offenders, the administration went out of its way to avoid prosecuting corporate criminals. The result is the creation of an environment of corporate impunity. Crimes committed by businesses in the name of greed and profits are seen as less serious than low-level property crimes. This bifurcation is evident in news stories about businesses defying COVID-19 safety rules and the excessive and deadly force police exerted against Black Americans that have gripped the country and inspired protests and growing nationwide awareness about racial injustice.

Prominent banks were well represented among corporations that received leniency agreements from the Justice Department in fiscal year 2020. Among the Big Banks were recidivists such as JPMorgan Chase, which received its second deferred prosecution agreement (and fourth leniency agreement) from the DOJ in less than 10 years, and HSBC, a London-based megabank that received its third deferred prosecution agreement since 2012. Wells Fargo received a deferred prosecution agreement to resolve its criminal liability over how executives over more than a decade pushed impossible sales goals on thousands of its employees, who faced discipline or firing for not meeting goals, resulting in predatory and fraudulent sales practices that victimized millions of customers.

Other companies also resolved egregious violations through leniency agreements with the DOJ in fiscal year 2020. From 2015 to 2018, [Chipotle Mexican Grill](#), a fast food chain restaurant, was implicated in at least five foodborne illness outbreaks that sickened over 1,100 customers in California, Massachusetts, Ohio and Virginia, leading to the company resolving food safety violations with a deferred prosecution agreement. The statement of facts included in [the agreement](#) noted that employees felt they could not take sick leave and relays the story of an employee who was ordered to continue working even after falling so ill at work that the employee vomited on the job. An outbreak of 141 norovirus infections in the Boston area was attributed to the sick Chipotle employee.

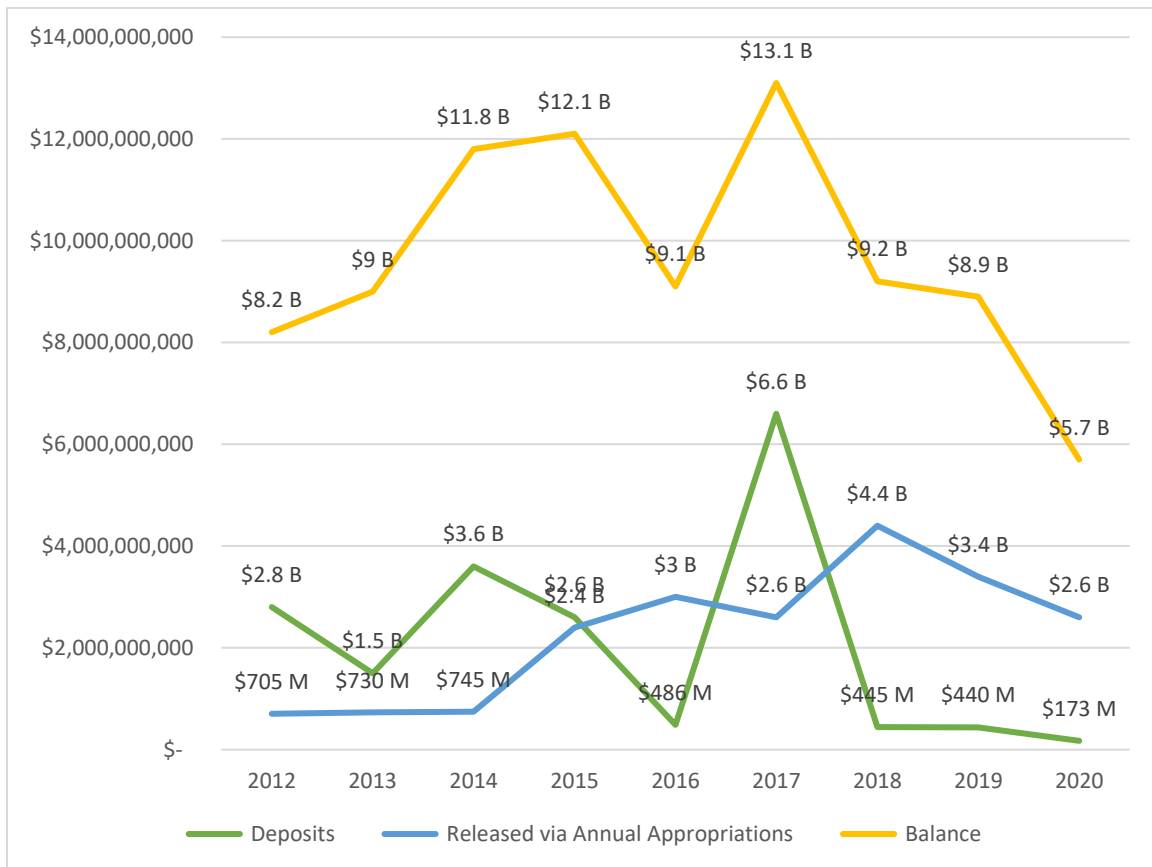
Novartis, a pharmaceutical corporation based in Switzerland, received multiple deferred prosecution agreements in fiscal year 2020. The corporation and its former subsidiary Alcon allegedly paid bribes to increase sales of its products in Greece and Vietnam, [according to the DOJ](#), which resolved Foreign Corrupt Practices Act charges against each entity with a separate deferred prosecution agreement. Additionally, Sandoz, a [Novartis subsidiary](#), resolved four felony charges of antitrust violations involving conspiracies with several competitor companies to allocate customers, rig bids and fix prices for generic drugs with a deferred prosecution agreement, according to [the DOJ](#).

Monsanto, the infamous chemical and biotech corporation acquired by German pharmaceutical giant Bayer in 2018, [pled guilty](#) to a misdemeanor charge of spraying an EPA-banned pesticide in Hawaii and received a deferred prosecution agreement to resolve two related felony charges of illegally storing hazardous waste. An [investigation](#) by the Project On Government Oversight, a watchdog organization, found that Deputy Attorney General Rod Rosenstein intervened in the case in response to Monsanto's lobbying, resulting in the resolution of the felony charges through the leniency agreement instead of by filing charges. This intervention is particularly notable in that it apparently contradicts the "core principle" of the Trump DOJ's enforcement policy, announced in [a memo](#) by Attorney General Jeff Sessions in 2017, that prosecutors "should charge and pursue the most serious, readily provable offense." Additionally, this was Monsanto's second leniency agreement; the corporation resolved charges of violating the Foreign Corrupt Practices Act with a deferred prosecution agreement it entered with the DOJ in 2005.

Public Citizen's 2019 report, [Soft on Corporate Crime](#), documents the rise of corporate leniency agreements. Although deferred and nonprosecution agreements originally were designed to divert defendants accused of low-level offenses from the criminal justice system, they have over the past two decades become the DOJ's routine method for resolving criminal cases against big corporations. That report's analysis found that individuals facing federal charges received these agreements less than 1% of the time. This stands in stark contrast with corporations receiving them a third of the time – and receiving them over and over again.

Meanwhile, the DOJ’s overreliance on corporate leniency agreements has led to the depletion of the [Crime Victims Fund](#). The fund, which is financed by fines and penalties paid by convicted federal offenders, is administered by the DOJ to support programs and services for crime victims. The fund’s balance was \$13.1 billion in 2017 but, according to research by the [National Network to End Domestic Violence](#) (NNED) fell by 56% over the past four years to \$5.7 billion. The reason for the depleting funds, according to NNED, is that “DOJ has increased its use of deferred and nonprosecution agreements.” Because corporate leniency agreements are not technically criminal convictions, the penalties corporations pay to resolve these criminal enforcement actions are not deposited into the Crime Victims Fund. NNED and a broad coalition of organizations that support crime victims are now [urging Congress to pass legislation](#) that will restore the fund. The bipartisan legislation the advocates are backing would direct penalties paid as part of corporate leniency agreements into the Crime Victims Fund – a commonsense fix that will protect essential work from cuts. While the DOJ should quickly stop entering leniency agreements with corporate criminals and start prosecuting them, it makes sense for all manner of penalty funds that are paid to resolve criminal enforcement actions, whether through leniency agreements or criminal convictions, to be directed toward the common purpose of supporting crime victims.

**Chart 3: Declining Crime Victims Fund annual deposits, releases and balances, 2012-2020.**



Source: National Network to End Domestic Violence

## Ten Policy Recommendations to Restore Corporate Criminal Accountability

Corporate America has long avoided accountability. Under President Trump, law enforcement against corporate criminals plummeted. The number of corporate prosecutions shrank to its lowest since the U.S. Sentencing Commission started keeping track, in 1996. Large businesses that faced consequences for their crimes consistently avoided prosecution and received lighter penalties – even repeat offenders. Executives almost always evaded accountability.

The Justice Department under Trump is infamous for pursuing a cruel “tough on crime” approach to immigrants and low-level offenders. Deputy Attorney General [Rod Rosenstein](#) reportedly told prosecutors to bring immigration cases against families with young children – the “zero tolerance” anti-immigration policy that resulted in federal agents separating thousands immigrant children from their parents, hundreds of which were never reunited. Attorney General [Jeff Sessions](#) replaced an Obama administration memo with a directive instructing prosecutors to pursue maximum charges against nonviolent drug offenders. Attorney General [William Barr](#) urged prosecutors to bring criminal sedition charges against Black Lives Matter protestors – and reportedly considered prosecuting Seattle’s mayor for resisting harsh enforcement against protests. Because of Barr, there were [more federal executions](#) under Trump than under the previous ten presidents combined.

The DOJ’s cruelty to low-level offenders looks even worse when juxtaposed with its leniency to corporate offenders. Senior DOJ officials ordered staff investigators and prosecutors to stand down in criminal cases against [Walmart](#) for opioid dispensation violations, [Monsanto](#) for illegally storing hazardous waste, [Royal Bank of Scotland](#) for its role in the 2008 financial crisis and [Caterpillar](#) for tax evasion, and reduced a civil penalty against British bank [Barclays](#) for its role in the financial crisis by billions. The DOJ cut deals to avoid prosecuting some of the most egregious corporate offenders, including [Boeing](#), whose 737 Max oversights resulted in the tragic deaths of 346 passengers, [Wells Fargo](#), whose rampant predatory cross-selling fraud lasted over a decade, and [Walmart](#), which benefited from massive bribery schemes to advance its business interests in Mexico, India, Brazil and China. Even the much-touted prosecution of [Purdue Pharma](#) for its illegal opioid pushing schemes is notably insufficient in its failure to hold a single executive or member of the Sackler family, the corporation’s owners, accountable.

This lenience toward the biggest multinational corporations sends the unmistakable message that the powerful are above the law. It is not, as Trump likes to say, “law and order.” It is two-tiered justice.



Now, President Biden and Attorney General, Merrick Garland have a golden opportunity to restore the rule of law by revoking the light-touch policy for corporate criminals and their executive enablers. Additionally, there are progressive reforms to hold corporate criminals accountable that the incoming administration has the authority to quickly put in place.

Public Citizen proposes a total of ten policy changes to restore corporate criminal accountability below.

Trump's DOJ adopted a series of corporate leniency policies that should be simple for the Biden administration to reverse. Indeed, the Biden administration has already started rolling back some of the Trump DOJ's worst enforcement policies. For example, Biden's acting chief of DOJ's Environment and Natural Resources Division (ENRD) [rescinded](#) the Trump ENRD chief's enforcement [policies](#), which, if kept in place, would have brought additional burdens to prosecuting corporate polluters.

To make sure that corporate criminals are brought to justice, here are the Trump DOJ policies President Biden and Attorney General Garland should immediately rescind:

1. **The anti-“piling on” policy, which reduces corporate penalties by limiting how much a single corporate violation can trigger penalties from multiple enforcement agencies.** Deputy Attorney General Rod Rosenstein complained that corporate penalties are too high, and announced the DOJ's anti-[“piling on”](#) policy, memorialized in [section 1-12.100](#) of the Justice Manual, as a way to restore certainty to corporate wrongdoers that might worry about the consequences of their violations. Giving businesses this much certainty literally enables their accounting departments to minimize penalties as mere “costs of doing business.” The policy should be revised to emphasize there is no safe harbor for corporate violations that breach multiple laws, trigger multiple investigations and result in multiple penalties. The practice of crediting the penalties imposed by one enforcement agency against the penalties imposed by another should end.
2. **Preemptively rewarding corporate criminals with ways to avoid prosecution.** Trump's DOJ [made permanent](#) an Obama administration pilot program allowing corporations that violate the Foreign Corrupt Practices Act (FCPA) to avoid prosecution and see their penalties reduced by 50%, if they self-report violations, cooperate with law enforcement and establish an effective compliance program by the time the case is resolved. It can be found in [section 9-47.120](#) of the Justice Manual. The policy of offering declinations to cooperating companies was also applied outside the FCPA space to [Barclays](#), a repeat offender. Trump's DOJ also started allowing corporations that violate antitrust laws, such as participating in criminal cartel or price-fixing conspiracies, [to avoid prosecution](#). Instead, companies will receive a [deferred prosecution agreement](#) if DOJ determines they

had a strong antitrust compliance program in place. This raises the obvious question of how strong the corporation's internal systems to prevent antitrust violations could have been if it was possible for a criminal violation to occur. Prosecutors always have the authority to negotiate sentences and the severity of charges sought against any alleged criminal. But these policies have made it so big corporations are rarely prosecuted. To deter crime and ensure corporations are held accountable, it's leniency agreements that help big companies avoid prosecution that should be rare, not prosecutions.

3. **Reducing corporate penalties by eliminating payments to third parties that help right corporate wrongs.** A [memo](#) from Attorney General Jeff Sessions blocked these payments, which can support the work of organizations with the mission and expertise required to effectively repair the damage done by corporate lawbreaking. One example of the practical result: Trump's DOJ [reduced](#) Harley Davidson's penalty for alleged emissions cheating violations by \$3 million because the funds would have gone to a third party: the American Lung Association. The memo was enshrined in [section 1-17.000](#) of the Justice Manual, and should be fully rescinded.
4. **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. Although guidance documents, by definition, cannot create new rights and obligations, their clarifying role can provide the certainty that makes it possible to hold corporations accountable for wrongdoing. The Brand memo applies to any lawsuit by or on behalf of the federal government "to impose penalties for violations of federal health, safety, civil rights or environmental laws." One notable area where it will have a severe impact is whistleblower lawsuits against health care providers that overcharge or defrauded the federal government. Now contained in [section 1-20.100](#) of the Justice Manual, the Brand memo should be rescinded.

Additionally, there are policy reforms the Biden administration should implement to strengthen the DOJ's ability to hold corporate criminals accountable. These reforms are:

5. **Reassert the prioritization of holding individuals accountable in corporate cases.** The [policy memo](#) authored by the Obama administration's Deputy Attorney General Sally Yates could have been a significant step forward. However, the Trump administration's apparent deprioritization of corporate enforcement meant the policy was never robustly implemented. Duke University [research shows](#) the number of responsible corporate agents being prosecuted as part of criminal cases against corporations did not meaningfully increase after the Yates memo. The memo instructed prosecutors to prioritize holding responsible individuals accountable for illegal acts committed by a corporation or

- organization. If both the corporation and its agents committed crimes, then both the corporation and its agents should be prosecuted.
6. **Release an annual DOJ report and public database on corporate crime.** The FBI's annual Crime in the US report overemphasizes – and arguably sensationalizes – law enforcement against violent crime and drug offenses. At the same time, the DOJ makes no similar annual report demonstrating the success and significance of law enforcement against corporate criminals. In fact, the DOJ has not made *any* report on corporate crime since 1979. This oversight should be easy to address. The DOJ has all of the information, which the public has the right to see, on corporate defendants, the charges against them and the penalties they were required to pay. To create the corporate crime database, the DOJ should use the proposed [Corporate Crime Database Act](#) as a blueprint.
  7. **End the practice of negotiating leniency agreements with corporations.** As an approach to reforming corporations that violate the law, deferred and non-prosecution agreements have failed. While using these agreements had the laudable intention of reforming corporate criminals into responsible corporate citizens, instead, they have had the opposite effect by failing to deter [corporate repeat offenders](#). Punishment that poses a serious threat to corporate profits by restricting a company's activities can deter corporate crime more effectively than negotiated agreements that are premised on protecting a corporate violator's profitability, as DPAs and NPAs do. When corporate criminals actually face the credible threat of prosecution, the public interest is advanced through the deterrence of corporate crime. No executive order or legislation is required for the DOJ to end its use of DPAs and NPAs. All that is needed is the Department of Justice's will to make it so. It is time that it does.
  8. **Instruct prosecutors to pursue the most serious, most readily provable offenses that corporations commit.** While it makes sense to apply the full range of approaches to leniency, including deferred and non-prosecution agreements, to individual human defendants, corporations should be held to a stricter standard. People can commit crimes for all sorts of reasons – they commit acts that can be impulsive, irrational or self-destructive. They can be addicted to illegal substances or turn to crime as a way to survive when employment options are limited. Corporations, on the other hand, are fundamentally rational, mechanical creations whose actions and inactions typically are the product of deliberate decisions. Prosecution and serious penalties have even more power to discipline corporations than they do people, because, unlike individuals, a corporation has only one motive and one purpose: to turn a profit. If the consequences of a possible criminal violation are not profitable, then crime will not pay.
  9. **Corporations that plead or are found guilty should be automatically debarred from government contracts.** The US government should not do business with corporate criminals. The federal government should enforce the baseline, law-abiding standard businesses employed by the government are expected to maintain. Suspension and debarment protects taxpayers from relying on bad and

untrustworthy actors to deliver goods and services. Similarly, the government should not hesitate to revoke other privileges, such as oil companies' permission to drill on public land and pharmaceutical companies' patent monopolies, when those companies break the law.

10. **End to “Too Big to Jail” by breaking up criminal corporations and monopolies.**

If systemic risk to the financial or economic system is a real concern for a corporation facing prosecution, the DOJ should impose forced divestitures to break up the corporate offender and concentrate the most severe consequences on the spun-off criminal subsidiary. While in some cases a corporation's monopoly control over an industry or product may make a prosecution that leads to automatic debarment difficult, the DOJ should work with agencies that rely on corporate contractors to develop contingency plans to ensure that the government does not rely on any individual private business to such a degree that it is effectively shielded from prosecution.

In order to serve and protect the public, the Department of Justice must engage in robust reforms to protect Americans from corporate criminals and assert that no one is above the law – not even the biggest businesses or most well-connected executives.

The Biden administration has a duty to begin the hard work of restoring the American public's faith in justice. If we are to move forward from rampant impunity among the most powerful and well-connected, a strong, no-nonsense approach to corporate accountability is going to be essential.

## The Worst Recipients of Corporate Leniency Agreements in Fiscal Year 2020

**Corporate wrongdoer:** Chipotle Mexican Grill, Inc., a Delaware corporation based in California.<sup>1</sup>

**Offense resulting in DPA:** Food safety violations from 2015 to 2018.

The DOJ is charging the corporation for its involvement in “foodborne illness outbreaks that sickened more than 1,100 people.”<sup>2</sup> Accounts in the DPA detail numerous employees vomiting while at work.

**Criminal enforcement action (April 21, 2020):** Chipotle Mexican Grill, Inc., entered a three-year deferred prosecution agreement, paid a criminal penalty of \$25 million, and admitted responsibility. The corporation also agreed to “implement a comprehensive compliance program” for “at least three years from the date of this agreement.”<sup>3</sup>

**Corporate wrongdoer:** HSBC, a London-based multinational financial corporation.

**Offense resulting in DPA:** Tax fraud violations from 2000 to 2010.<sup>4</sup>

HSBC Switzerland conspired to file false federal tax returns, concealing U.S. clients’ offshore assets and incomes to evade U.S. federal income taxes.<sup>5</sup>

“According to court documents, HSBC Switzerland admits that between 2000 and 2010 it conspired with its employees, third-party and wholly owned fiduciaries, and U.S. clients to: 1) defraud the United States with respect to taxes; 2) commit tax evasion; and 3) file

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<sup>1</sup> U.S. Department of Justice, Deferred Prosecution Agreement with Chipotle Mexican Grill, Inc., 21 April 2020. <https://corporate-prosecution-registry.s3.amazonaws.com/media/agreement/chipotle.pdf>

<sup>2</sup> U.S. Department of Justice, Press Release: “Chipotle Mexican Grill Agrees to Pay \$25 Million Fine and Enter a Deferred Prosecution Agreement to Resolve Charges Related to Foodborne Illness Outbreaks,” 21 April 2020, <https://corporate-prosecution-registry.s3.amazonaws.com/media/press-release/chipotle-pr.pdf>

<sup>3</sup> U.S. Department of Justice, Deferred Prosecution Agreement with Chipotle Mexican Grill, Inc., 21 April 2020. <https://corporate-prosecution-registry.s3.amazonaws.com/media/agreement/chipotle.pdf>

<sup>4</sup> U.S. Department of Justice, Press Release: “Justice Department Announces Deferred Prosecution Agreement with HSBC Private Bank (Suisse) SA,” 10 December 2019, <https://www.justice.gov/opa/pr/justice-department-announces-deferred-prosecution-agreement-hsbc-private-bank-suisse-sa>

<sup>5</sup> U.S. Department of Justice, Deferred Prosecution Agreement with HSBC Private Bank (Suisse) SA, 10 December 2019. <https://corporate-prosecution-registry.s3.amazonaws.com/media/agreement/hbsc-2019.pdf>

false federal tax returns. In 2002, the bank had approximately 720 undeclared U.S. client relationships, with an aggregate value of more than \$800 million.”<sup>6</sup>

**Criminal enforcement action (December 10, 2019):** HSBC Private Bank (Suisse) SA, an HSBC subsidiary, entered a three-year DPA, admitted responsibility for its illegal conduct, and paid \$192.35 million in fines, restitution, and disgorgement.

**Corporate wrongdoer:** JPMorgan Chase, the largest bank in the U.S., based in New York City.

**Offense resulting in DPA:** Fraud, unlawful precious metal trading between 2008 and 2016.<sup>7</sup>

“In tens of thousands of instances, traders on the precious metals desk placed orders to buy and sell precious metals futures contracts with the intent to cancel those orders before execution, including in an attempt to profit by deceiving other market participants through injecting false and misleading information concerning the existence of genuine supply and demand for precious metals futures contracts.”<sup>8</sup> Also, “traders on JPMorgan’s U.S. Treasuries desk located in New York and London engaged in a scheme to defraud in connection with the purchase and sale of U.S. Treasury futures contracts that traded on the Chicago Board of Trade.”<sup>9</sup> The bank admitted and accepted responsibility for the illegal conduct.

**Criminal enforcement action (September 25, 2020):** JPMorgan Chase entered a three-year DPA, paid \$920 million in community service, fines, and disgorgement, and agreed to “implement a compliance and ethics program designed to prevent and detect violations of the Securities and Commodities Laws throughout their operations, including those of their affiliates, agents, and joint ventures.”<sup>10</sup>

**Corporate wrongdoer:** Novartis, a Switzerland-based pharmaceutical corporation.

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<sup>6</sup> U.S. Department of Justice, Press Release: “Justice Department Announces Deferred Prosecution Agreement with HSBC Private Bank (Suisse) SA,” 10 December 2019, <https://www.justice.gov/opa/pr/justice-department-announces-deferred-prosecution-agreement-hsbc-private-bank-suisse-sa>

<sup>7</sup> U.S. Department of Justice, Press Release: “JPMorgan Chase & Co. Agrees To Pay \$920 Million in Connection with Schemes to Defraud Precious Metals and U.S. Treasuries Markets,” 29 September 2020, <https://corporate-prosecution-registry.s3.amazonaws.com/media/press-release/jp-morgan-2020-pr.pdf>

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> U.S. Department of Justice, Deferred Prosecution Agreement with JPMorgan Chase, 25 September 2020. <https://corporate-prosecution-registry.s3.amazonaws.com/media/agreement/jp-morgan-2020.pdf>

**Offense resulting in first DPA:** Antitrust violations between March 2013 and December 2015.

Sandoz, Inc., a generic drug company and Novartis subsidiary, “conspired to suppress and eliminate competition by agreeing to allocate customers and rig bids for, and stabilize, maintain, and fix prices of, generic drugs.”<sup>11</sup>

**Criminal enforcement action (March 2, 2020):** The Novartis subsidiary entered a three-year DPA, paid a penalty of \$195 million and admitted to wrongdoing.

**Offense resulting in second DPA:** Violations of the Foreign Corrupt Practices Act between 2012 and 2015, by “engaging in a scheme to bribe employees of state-owned and state-controlled hospitals and clinics in Greece in order to increase the sale of Novartis-branded pharmaceutical products.”<sup>12</sup>

“Novartis Greece also admitted that between 2009 and 2010, Novartis Greece made improper payments to health care providers in connection with an epidemiological study that was intended to increase sales of certain Novartis-branded prescription drugs.”<sup>13</sup>

“The resolutions arise out of a Novartis Greece scheme to bribe employees of state-owned and state-controlled hospitals and clinics in Greece and to falsely record improper payments relating to the corrupt scheme and similar conduct.”<sup>14</sup>

**Criminal enforcement action (June 25, 2020):** Novartis Hellas S.A.C.I., a Novartis subsidiary in Greece, entered a three-year DPA, paid \$225 million in criminal penalty payments, and accepted responsibility for the illegal conduct.<sup>15</sup>

**Corporate wrongdoer:** Monsanto, an agrochemical corporation owned by Bayer, a German pharmaceutical corporation.

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<sup>11</sup> U.S. Department of Justice, Deferred Prosecution Agreement with Sandoz Inc., 2 March 2020. <https://corporate-prosecution-registry.s3.amazonaws.com/media/agreement/sandoz.pdf>

<sup>12</sup> U.S. Department of Justice, Press Release: “Novartis Hellas S.A.C.I. and Alcon Pte Ltd Agree to Pay over \$233 Million Combined to Resolve Criminal FCPA Cases,” 25 June 2020, <https://corporate-prosecution-registry.s3.amazonaws.com/media/press-release/novartis-hellas-pr.pdf>

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> U.S. Department of Justice, Deferred Prosecution Agreement with Novartis Hellas, 22 June 2020. <https://corporate-prosecution-registry.s3.amazonaws.com/media/agreement/novartis-hellas.pdf>

**Offense resulting in DPA:** Two felony counts of illegally storing an “acute hazardous waste” in 2013 and 2014.<sup>16</sup>

“In a statement of facts filed in court today, Monsanto admitted that it knowingly used, transported and stored Penncap-M in violation of federal law. ... From March 2013 through August 2014, even though the pesticide was on the company’s lists of chemicals that needed disposal, Monsanto stored 160 pounds of Penncap-M hazardous waste at its Molokai facility, which under RCRA made Monsanto a “Large Quantity Generator” of hazardous waste. ... In addition to spraying the banned pesticide at one of its three facilities on Maui, Monsanto also stored a total of 111 gallons of Penncap-M at Valley Farm and sites known as Maalaea and Piilani.”<sup>17</sup>

Monsanto also pled guilty to a misdemeanor offense of illegally spraying a banned pesticide in Kihei, Hawaii, in 2014.<sup>18</sup>

**Criminal enforcement action (November 21, 2019):** Monsanto Co. entered a two-year DPA, paid \$6 million in a criminal penalty and \$4 million in community service payments to the Hawaiian government.<sup>19</sup>

**Corporate wrongdoer:** Wells Fargo, one of the largest banks in the U.S., based in San Francisco.

**Offense resulting in DPA:** Fraud beginning in “at least” 2002 and lasting through 2016.<sup>20</sup>

Wells Fargo encouraged “Onerous sales goals and accompanying management pressure [that] led employees to engage in: (1) unlawful conduct to attain sales through fraud, identity theft, and the falsification of bank records, and (2) unethical practices to sell products of no or low value to the customer, while believing that the customer did not actually need the account and was not going to use the account.”<sup>21</sup>

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<sup>16</sup> U.S. Department of Justice, Press Release: “Monsanto Agrees to Plead Guilty to Illegally Spraying Banned Pesticide at Maui Facility: Company also Enters into Deferred Prosecution Agreement that Calls for \$10 Million Payment Related to Storage of Banned Pesticide on Maui and Molokai,” 21 November 2019, <https://www.justice.gov/usao-cdca/pr/monsanto-agrees-plead-guilty-illegally-spraying-banned-pesticide-maui-facility>

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> U.S. Department of Justice, Deferred Prosecution Agreement with Monsanto Company, 21 November 2019, <https://corporate-prosecution-registry.s3.amazonaws.com/media/agreement/monsanto-2019-dpa.pdf>

<sup>20</sup> U.S. Department of Justice, Deferred Prosecution Agreement with Wells Fargo, 20 February 2020. <https://corporate-prosecution-registry.s3.amazonaws.com/media/agreement/wells-fargo-2020.pdf>

<sup>21</sup> Ibid.



**Criminal enforcement action (February 20, 2020):** Wells Fargo entered a three-year DPA and paid \$3 billion in a criminal penalty, after admitting, accepting, and acknowledging responsibility for the illegal scheme.<sup>22</sup>

The DPA is granted on condition of Wells Fargo's "acceptance of responsibility, previous settlements," and "cooperation" in "its disclosure of relevant facts, including information relating to the individuals involved in the offense conduct, and Wells Fargo's extensive remediation in this matter."<sup>23</sup>

Wells Fargo had previously settled regulatory and civil actions related to its improper sales practices: the *Jabbari* consumer class action settlement; 2016 with CFPB, OCC, and City of LA; 2018 again with CFPB and OCC; October 2018 with the NY AG; December 2018 with the AGs of 50 states and D.C.; and the *Hefler* securities class action settlement.<sup>24</sup>

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<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.



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