

ENFORCEMENT UPTICK

In 2023, DOJ Corporate Crime Prosecutions Increased Slightly

By Rick Claypool

March 25, 2024



ACKNOWLEDGMENTS

This report was written by Rick Claypool, a research director in Public Citizen’s president’s office. Robert Weissman, Public Citizen’s president, edited the report. Paul Alan Levy, an attorney in Public Citizen’s litigation group, reviewed the report.

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Overview

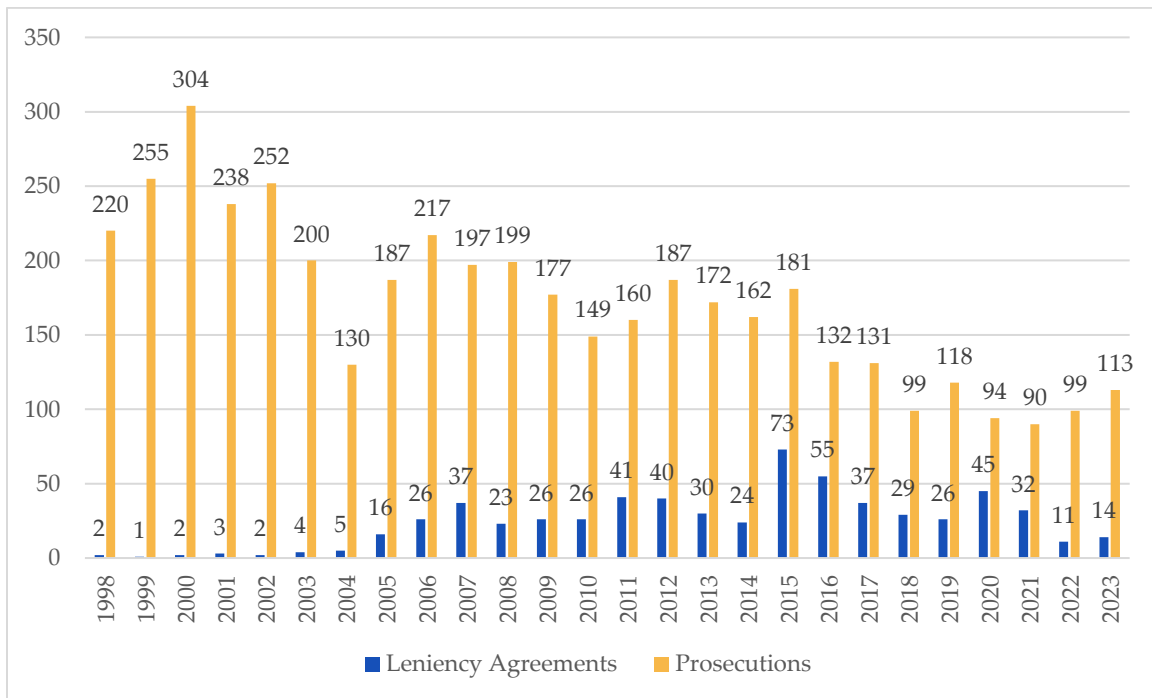
After federal prosecutions of corporations fell to a quarter-century low in 2021 (90), the Department of Justice marked modest upticks in corporate prosecutions in 2022 (99) and, according to newly released [U.S. Sentencing Commission data](#), 2023 (113).

The number of federal corporate prosecutions has been trending downward since 2000, when the DOJ prosecuted triple the number of corporations that it does today (304). The number of corporate prosecutions has remained far below their 25-year average (172) since the end of President Obama’s administration.

The modest uptick in corporate prosecutions is a welcome shift from the previous decline, though it is not the bold ramp-up Biden DOJ leadership promised early in the administration. In 2021, Deputy Attorney General Lisa Monaco urged prosecutors to “[be bold](#)” in holding corporate criminals accountable. Attorney General Merrick Garland gave [a speech in 2022](#), declaring, “I have [...] seen the Justice Department’s interest in prosecuting corporate crime wax and wane over time. Today, it is waxing again.”

Nevertheless, the newly announced DOJ policy of [rewarding corporate crime whistleblowers](#) introduces a powerful new tool that could contribute to the necessary ramp-up to the department’s caseload.

Corporate prosecutions and leniency agreements, fiscal years 1998-2023



Source: Public Citizen analysis of data from the US Sentencing Commission, Violation Tracker, and the Corporate Prosecution Registry

The DOJ's tendency in recent years to avoid criminally charging the largest corporations by resolving cases through leniency agreements instead of criminal prosecutions continued in 2023. While the number of leniency agreements as a proportion of cases is down significantly to 14 (11%) from the Trump administration's final year (45, 32% of resolutions in 2020), they remain overused, and the DOJ has [defended](#) their use even for recidivist corporations.

Prosecutors use DOJ leniency agreements – deferred prosecution agreements (DPAs) and nonprosecution agreements (NPAs) – to avoid filing criminal charges against corporate defendants. Originally developed to offer nonviolent first-time individual offenders a second chance, such agreements now help the most powerful businesses in the world dodge the legal consequences of their criminal misconduct. Instead of facing prosecution – which would mean plea agreements or trial in a public court of law – leniency deals are negotiated quietly between prosecutors and corporate lawyers with little or no judicial oversight. Proponents say the agreements are a streamlined way to effectively deter corporate crime. Public Citizen [research](#), however, shows about 15% of the agreements historically involve repeat offenders, casting doubt on their deterrent effect.

Leniency deals also tend to benefit bigger corporations. Most corporate repeat offenders that receive leniency agreements from the Department of Justice are large multinationals. Of the 14 corporations that received leniency deals in 2023, the majority (10, or 71%) had at least 5,000 employees or more. The largest, ABB, has over 100,000 employees. The leniency deal it received follows multiple prior criminal enforcement actions against the corporation over similar misconduct.

The inverse is true as well – small businesses are likelier than big businesses to be prosecuted by the federal government. [U.S. Sentencing Commission](#) data shows that in 2023, about 76% of the corporations DOJ prosecuted had only 50 employees or less, while only about 12% had 1,000 employees or more. This is the continuation of a longstanding trend – about 70% of the 4,946 corporations the federal government prosecuted between 1992 and 2021 were small businesses with fewer than 50 employees. Only about 6% employed 1,000 or more.

The success of large corporations leveraging their wealth and power to avoid prosecution creates the appearance that some businesses are “too big to jail” – and appears to enable some large businesses to operate above the law.

Among the 14 corporations that were not prosecuted and instead resolved allegations of criminal misconduct through leniency agreements were generic pharmaceutical companies Teva and Glenmark, multinational tobacco corporation British American Tobacco, the Illinois subsidiary of telecommunications corporation AT&T, and the Swiss multinational technology firm ABB.

- The [Teva and Glenmark](#) agreements resolved allegations the pharmaceutical corporations, along with other corporations, constituted an illegal cartel that

engaged in a price-fixing conspiracy to inflate the price of generic drugs, including the cholesterol drug pravastatin (both Teva and Glenmark) as well as generic drugs to treat fungal and bacterial infections (Teva). Both companies were required to divest – that is, to sell off – the lines of business where the misconduct was concentrated, a welcome enforcement innovation resulting in significant structural change to the offending companies. No Teva or Glenmark executives are mentioned as being charged in the DOJ announcement. [Four executives](#) have been charged with related misconduct.

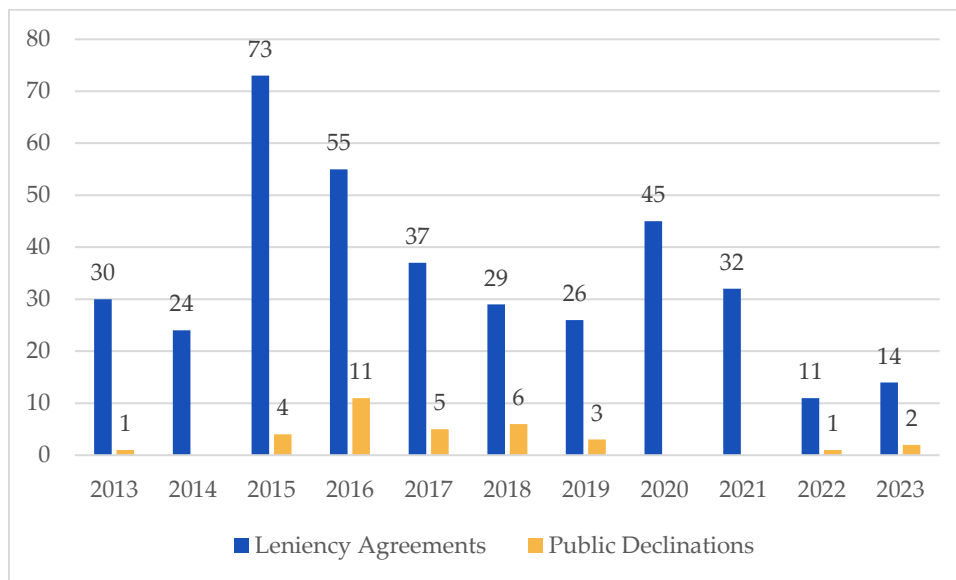
- The [British American Tobacco](#) agreement resolved allegations the corporation engaged in an illegal conspiracy to sell tobacco products in North Korea in violation of sanctions over the course of about ten years, until 2017. Charges were filed against three individuals in North Korea and China, which do not have extradition agreements with the United States.
- The [AT&T Illinois](#) agreement resolved allegations the subsidiary of the telecommunications multinational engaged in a [bribery scheme](#) to push state legislation favorable to the corporation. The subsidiary's former president, a lobbyist, and the former Illinois House Speaker were charged with related misconduct.
- The [ABB agreement](#) resolved global foreign bribery charges. The case is a particularly worrisome example of a recidivist corporation being rewarded with a leniency agreement instead of facing actual prosecution. The DOJ announcement dismisses the previous criminal cases against ABB as a “decade old” – failing to mention that the ABB misconduct this new leniency agreement addresses began, according to the attached [criminal information](#), within a year of its [prior leniency agreement](#)'s dismissal. No individuals are mentioned as being charged in the DOJ announcement.

The DOJ continues to overemphasize offering the carrot of leniency to corporate criminals to encourage the voluntary self-disclosure of information that could lead to the prosecution of culpable individuals. This approach risks rewarding systemically criminogenic corporations for scapegoating supposed bad apple employees when effective criminal enforcement often requires systemic corporate discipline and court supervision. To deter corporate crime, the DOJ should charge both culpable individuals *and* offending corporations.

To the Justice Department’s credit, this is sometimes what it does. The most notable recent case of the DOJ prosecuting both culpable individuals and the corporate offender is the cryptocurrency exchange [Binance](#) along with founder and CEO Changpeng Zhao in November of 2023, the DOJ’s largest corporate guilty plea involving a CEO’s guilty plea as well. Binance and Zhao’s financial crimes stemmed from the prioritization of profits over the law and facilitated illegal transactions, including money laundering, sanctions violations, and online scams. The corporation was sentenced to pay \$4.3 billion in penalties and ordered to serve a three-year corporate probation. Zhao, a Canadian national, faces \$50 million fine and a sentence of 18 months in prison (or [more](#)), is scheduled to be sentenced in [April](#). He is free on bail (set at \$175 million) and currently residing in the United Arab Emirates.

The DOJ continued to reward some corporate offenders that self-report misconduct with [declinations](#). According to the DOJ, two corporations in fiscal year 2023 resolved alleged violations of the Foreign Corrupt Practices Act with declinations: Safran and Corsa Coal Corporation. Safran, an aerospace multinational, received [its declination](#) after self-reporting the alleged violations of a subsidiary prior to its acquisition. Safran agreed to disgorge \$17.2 million in ill-gotten gains.

Leniency agreements and declinations, fiscal years 2013-2023



Source: Public Citizen analysis of data from the US Sentencing Commission, Violation Tracker, and the Corporate Prosecution Registry Holding Repeat Offenders Accountable

Corsa Coal, a metallurgical coal corporation, received [its declination](#) after self-reporting misconduct, including a corrupt payment of \$4.8 million to an Egypt-based intermediary that enabled the corporation to secure \$143 million in coal contracts and earn approximately \$32.7 million in ill-gotten profits. Corsa Coal claimed to be unable to pay the full amount, and was instead permitted by the DOJ to pay \$1.2 million. This is the result of [a policy](#) introduced during the Trump administration enabling prosecutors to

reduce penalties “to avoid substantially jeopardizing the continued viability of the organization.” Two Corsa Coal executives have been [charged](#) with related misconduct; one pled guilty, the other will face trial.

Holding Corporate Recidivists Accountable

In a [March 7 speech](#) before the American Bar Association’s National Institute on White Collar Crime, Deputy Attorney General Lisa Monaco reaffirmed the importance of “delivering consequences for corporate recidivists,” stating:

“A history of misconduct matters. After all, penalties exist, in part, to deter future misconduct. They’re not the cost of doing business. So when a company breaks the law again – and it’s clear the message wasn’t received – we need to ratchet up the sanctions.”

The first example Monaco provides of the Justice Department holding corporate repeat offenders accountable is Ericsson. Ericsson [breached](#) its 2019 leniency agreement with the DOJ to [resolve allegations](#) of criminal violations of the Foreign Corrupt Practices Act in Djibouti, China, Vietnam, Indonesia, and Kuwait. Following the breach – failing to meet cooperation and disclosure requirements – the DOJ subsequently prosecuted the corporation for its misconduct.

Other major corporations that have been prosecuted after breaching leniency agreements include the multinational agrichemical corporation [Monsanto](#) and the financial corporation formerly known as [Royal Bank of Scotland](#), [NatWest Group](#), which reportedly rebranded in part to dissociate itself from its past misconduct.

The DOJ’s fresh willingness to hold corporate offenders accountable for leniency agreement breaches is among the strongest and most necessary corporate accountability reforms implemented by the Biden administration. It’s also one that is currently facing its greatest test: Boeing.

The 2021 leniency agreement the outgoing Trump administration cut with [Boeing](#) over a single count of defrauding the federal government for crashes that cost 346 lives has been widely criticized. Victims’ families, legal scholars, and public interest advocates have pointed out its [extraordinary leniency](#), its failure to include consultation with [crime victims’](#) families, and its failure to acknowledge the [widespread nature](#) of the alleged misconduct and hold senior executives accountable. In normal times, the agreement might have been a national scandal. As it happened, Trump’s DOJ announced the deal on January 7, 2021, one day after the thwarted January 6 insurrection.

That leniency agreement expired on January 7, 2024. Over the following six months, the DOJ is to determine whether Boeing abided by the agreement. If Boeing is found to have

abided by the agreement, the Fraud Section is to seek to have the charge against the corporation dismissed; if not, the Fraud Section has the authority to prosecute Boeing for this and any other criminal violation it may have committed.

On January 5, 2024 – just days before the agreement was set to expire – a door plug on Alaska Airlines Flight 1282 flew off the Boeing 737 Max 9 as it ascended 16,000 feet into the sky. Thankfully, no one was seriously injured.

The Federal Aviation Administration (FAA) undertook [an investigation](#) “to determine if Boeing failed to ensure completed products conformed to its approved design and were in a condition for safe operation in compliance with FAA regulations.” The FAA’s letter to Boeing executive Carole Murray further states that “After the incident, the FAA was notified of [additional discrepancies](#) on other Boeing 737-9 airplanes.” The letter cites FAA requirements and alleges, “Boeing may have failed to ensure its completed products conformed to its approved design and were in a condition for safe operation in accordance with quality system inspection and test procedures.”

An [update](#) the FAA posted about its investigation notes the agency uncovered “non-compliance issues in Boeing’s manufacturing process control, parts handling and storage, and product control.” The agency halted 737 Max production and gave Boeing a 90-day deadline to produce a plan to fix “systemic quality control issues.”

Public Citizen sent DOJ officials [a letter](#) in February urging them to undertake an investigation into whether the door plug explosion is a sign of misconduct in violation of Boeing’s leniency deal. The letter noted that Boeing’s possible failure to ensure its completed products conformed to its approved design and in a condition for safe operation also precisely describes the felony fraud charge as detailed in the 2021 [criminal information](#). If Boeing breached its agreement, the letter argued, then the DOJ should rectify the outrageous leniency of the original agreement and, if the facts and law support it, charge Boeing with much more than a single count and to consider manslaughter charges.

According to reports in [Bloomberg News](#) and the [Wall Street Journal](#), the Justice Department is indeed undertaking a criminal investigation of the door plug failure and determining whether the misconduct constitutes a breach of its leniency deal. What the DOJ finds – and what it does – will serve as an important test of the DOJ’s convictions regarding holding corporate recidivists accountable. The DOJ owes it to the families of the 346 victims of Lion Air Flight 610 and Ethiopian Airlines Flight 302 to use its prosecutorial power against Boeing in order to deter this kind of deadly corporate criminal misconduct.

Conclusion

The rest of 2024 presents the Justice Department with key opportunities to flex its authority to hold corporate criminals accountable. In addition to Boeing, ongoing investigations to watch include those concerning [Abbott Labs](#) (over the tainted baby formula crisis of 2022), [Tesla](#) (over allegedly deceptive claims regarding self-driving vehicles), and TikTok parent corporation [ByteDance](#) (over allegations the corporation used its popular app for surveillance against U.S. journalists). Cases involving the physical harms and deaths of individuals should receive extra scrutiny. Corporate defendants whose misconduct sickened, injured, or killed people should not receive more lenient treatment from our justice system than human defendants whose misconduct caused comparable harms.

The DOJ's development of a new program to pay whistleblowers who report corporate crime is a welcome announcement. The whistleblower program the U.S. Securities & Exchange Commission established as directed by the 2010 Dodd-Frank Wall Street reform law has been [very successful](#), generating more than 52,400 tips as of 2022 and resulting in nearly \$5 billion in penalties against securities lawbreakers, according to a Better Markets report. The new program can empower those who become aware of corporate misconduct from within to speak up, creating a powerful new incentive for businesses to obey the law.

Corporations are sophisticated, rational economic decision makers. Their executives and management earn generous compensation packages to steer businesses toward the most profitable courses of action. To deter corporate crime, it is not enough merely to reward corporations and their executives somewhat less handsomely. When they engage in criminal misconduct, they should be treated like the sophisticated, rational actors they are – and prosecuted for their misconduct. The DOJ's job is not to protect corporate criminals from the consequences of their lawbreaking – it is to ensure that corporate criminals are caught, held accountable, and face the legal consequences of their actions. It is, ultimately, to make sure corporate decision makers think twice before prioritizing profits over the law.