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November 15, 2021

Attorney General Merrick B. Garland
Deputy Attorney General Lisa Monaco
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Via email

Dear Attorney General Garland and Deputy Attorney General Monaco:

Public Citizen welcomes and applauds the U.S. Department of Justice's (DOJ) public recognition that it must do more to combat corporate crime. U.S. Sentencing Commission data show that under the previous administration, corporate crime enforcement plunged to a [quarter-century low](#). At the same time, the DOJ's overreliance on corporate leniency agreements (i.e., deferred and non-prosecution agreements) increased to the highest level in four years.

A Harvard Business School analysis recently concluded that major firms are engaging in misconduct [at least twice a week](#). The annual cost of corporate and white-collar crime to Americans is estimated at between [\\$300 and \\$800](#) billion a year, while street crime costs about \$16 billion. Workplace outbreaks of COVID-19, the supply chain chaos wreaking havoc on some sectors, and the ongoing fallout from the opioid epidemic demonstrate just few ways in which, right now, American workers, consumers and communities are uniquely vulnerable to corporate wrongdoing.

A new approach, clearly, is needed.

Proponents of leniency agreements have claimed that resolving criminal investigations through diversion instead of prosecution provides sufficient deterrent effects to prevent recidivism. But Public Citizen's [research findings](#) – which Deputy Attorney General's



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[October speech](#) shows is backed up internal DOJ data – has shown that corporate repeat offenders received 15% of all the leniency agreements the DOJ made with companies over nearly two decades.

Public Citizen has long urged (and continues to urge) the DOJ to end the failed experiment of resolving criminal investigations into corporate wrongdoing through leniency agreements. Instead, the DOJ's default approach should be to give corporate offenders a choice: negotiate a plea agreement or face trial in a public court of law. Leniency agreements should be reserved for rare circumstances, if they are to be used at all. They should be the exception, and not the rule, when the DOJ brings enforcement actions against big companies that break the law.

Nevertheless, because the DOJ has been relying on leniency agreements for so long, and because so many major companies currently are bound by them, making sure that the corporations bound by their terms are abiding by these terms is a sensible first step. While the terms of these agreements state that the corporations bound to them "shall" face prosecution for breaching them, this almost never happens. [Public Citizen's review](#) of publicly available criminal resolutions between the DOJ and corporations found only seven instances over a period of 17 years when the department held a corporation accountable for breaching its agreement by breaking its promise not to break the law in the future and only three instances when the company that breached its agreement was prosecuted.

This context makes the DOJ calling out two corporations – Ericsson and NatWest – in just the past month for breaching the terms of their leniency agreements especially notable and worthy of applause. Deputy Attorney General Monaco's declaration, "We will hold accountable any company that breaches the terms of its DPA or NPA" – paired with action is cause for optimism that the DOJ is taking seriously its responsibility to protect the public from corporate crime.

Because the DOJ has marked companies that are currently bound by leniency agreements for special scrutiny, Public Citizen is highlighting that among these corporate wrongdoers are 20 of the largest and most powerful companies engaged in a range of business pursuits, from aviation to banking, food to pharmaceuticals, energy to



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retail. Additionally, because [the memo](#) that coincided with Deputy Attorney General's announcement noted that a corporation's full record of misconduct – "including violations of criminal laws, civil laws, or regulatory rules" should be taken into account when considering penalties, we thought it was important to juxtapose a tally of past federal enforcement actions associated with each company. Please find the list of these companies and their prior histories of misconduct attached in [the report](#) we released on November 12.

Recent events have tested the American public's faith in both the rule of law and the DOJ's ability to enforce it fairly and equitably. Robust reforms, such as those the DOJ is taking steps to enact to protect Americans from corporate criminals, can demonstrate that no one is above the law – not the biggest businesses, not the most well-connected executives.

Neither restoring the American public's faith in justice nor rebuilding neglected corporate enforcement processes will be easy. But each step away from the recent state of rampant impunity among the most powerful and well-connected is a step worth celebrating. We encourage the DOJ to continue matching the boldness of its rhetoric with zealous prosecutions of corporate offenders.

Sincerely,

Robert Weissman
President

Rick Claypool
Research Director, President's Office

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