

April 9, 2024

President Joe Biden  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Attorney General Merrick Garland  
Department of Justice  
950 Pennsylvania Avenue NW  
Washington, DC 20530

Dear President Biden and Attorney General Garland:

We are writing to express our concern about the steep drop in corporate criminal enforcement over the past two decades. We urge you to take steps to reverse this alarming trend—including by choosing nominees for currently vacant leadership roles in the Department of Justice (DOJ) who can be counted on to aggressively protect the public interest through corporate criminal prosecution.

Americans depend on the DOJ to hold corporations accountable for a wide range of criminal behavior, but its willingness to do so appears to be on the decline. According to a recent Public Citizen analysis, in 2000, the Department initiated almost three times as many corporate prosecutions as it did last year (304 vs. 113).<sup>1</sup> Not once has the Garland-Monaco Justice Department prosecuted as many corporations in a year as in the lowest year of the George W. Bush presidency, despite the Bush Administration's focus on terrorism and well-earned reputation for coziness with corporate America.<sup>2</sup>

We understand that prosecutorial decisions are influenced by a wide range of factors, including the availability of funding and the policy priorities established by the President and Attorney General. But the frequent revolving-door movement of prosecutors and staff between the DOJ and America's largest corporate law firms—and the resulting relationships and worldviews that develop from defending big corporations against government enforcement—almost certainly have a negative impact on DOJ decision-making. These individuals may not have nefarious motives, but there is a reason large corporations spend billions of dollars to keep the revolving door moving—because it works in tilting the scales in their direction. As Eric Schmidt, the former CEO of Google, once put it: People who “go into government, they are your emissaries... A rule of business is that if you could put your person in the company, they're likely to buy from you. It's the same principle.”<sup>3</sup>

Especially in Big Tech, prosecutors' relationships with the companies the DOJ regulates are highly concerning. Google currently has at least five in-house counsel on staff who came from the Department, including Jack Mellyn (their Strategy Counsel for Regulatory Response, who formerly served as Acting Assistant Chief for Competition Policy at the Department) and Kevin Yingling (formerly a trial attorney for the Antitrust Division).<sup>4</sup> Google's outside counsel firms brag about their DOJ and FTC agency veterans, and together they count more than a dozen former DOJ Antitrust Division personnel among their teams.<sup>5</sup> Apple has employed at least 15 former DOJ officials as the company anticipated and prepared for last month's antitrust suit—including its General Counsel, Katherine Adams.<sup>6</sup> Attorneys rotate in and out of Justice from

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<sup>1</sup> <https://www.citizen.org/article/enforcement-uptick-corporate-prosecutions-report-2023/>

<sup>2</sup> <https://www.citizen.org/article/enforcement-uptick-corporate-prosecutions-report-2023/>

<sup>3</sup> <https://www.bloomberg.com/news/articles/2023-09-08/google-ex-ceo-eric-schmidt-influences-ai-policy-with-27-billion-fortune>

<sup>4</sup> <https://www.cnbc.com/2023/03/17/google-stacks-legal-team-with-former-doj-employees-as-it-faces-antitrust-cases.html>

<sup>5</sup> Examples: <https://www.axinn.com/antitrust.html>; <https://www.ropesgray.com/en/services/practices/antitrust/>;

<https://www.wsgr.com/en/services/practice-areas/regulatory/antitrust/index.html>

<sup>6</sup> <https://www.apple.com/leadership/katherine-adams/>

other Big Tech firms like Facebook and Apple, too, as well as organizations funded by them and other corporations like Amazon, T-Mobile, AT&T, and Netflix.<sup>7</sup>

One illustrative example of the pervasive revolving door that exists at DOJ can be seen through the career background of Deputy Attorney General Lisa O. Monaco. Senior DOJ leadership should be free of any hint of conflict, but Ms. Monaco's "safe harbor" merger policy is unusually lenient toward criminal corporate offenders. It in effect rewards corporate lawbreaking, amounting (in the words of Sen. Elizabeth Warren) to the Department "putting its thumb on the scale in favor of these mergers."<sup>8</sup> Ms. Monaco's clients while at law firm O'Melveny & Myers included Apple.<sup>9</sup> She was also a principal at WestExec Advisors, a consulting firm which counted Big Tech companies such as Google among its clients.<sup>10</sup> Likewise, the Administration's recent failure to protect the budget of the Antitrust Division raises questions about how hard Department leadership fought on its behalf which are compounded by the pervasive revolving door in and out of the DOJ.<sup>11</sup>

You have an opportunity to reverse this alarming trend through future choices you make to fill pending vacancies, including the roles of Associate Attorney General (where Principal Deputy Associate AG Benjamin C. Mizer is currently serving in an Acting role) and Assistant Attorney General in the Criminal Division (where Principal Deputy Assistant AG Nicole M. Argentieri is currently serving in an Acting role). The American people deserve public servants in these critically important roles who have established strong track records of taking on big corporations and holding them accountable to the law.

Unfortunately, Mr. Mizer is a clear example of someone who should not be elevated into permanent leadership. His extended and lucrative period in private practice at Jones Day makes clear that he is tight with powerful corporate interests. While there, he successfully defended the pharmaceutical giant Sanofi against charges of insulin price-gouging, represented Verizon in class action lawsuits over illegal surveillance, and represented Walmart in a federal lawsuit, still ongoing, that alleged it required its pharmacists to fill suspicious prescriptions from "pill mill" doctors, despite their own medical objections.<sup>12</sup> Furthermore, Mr. Mizer was the lead attorney for Walmart in the Cherokee Nation's opioid litigation against the company and other major retail pharmacies for "their alleged role in an explosion of opioid abuse among tribe members."<sup>13</sup> As part of that litigation, Walmart took steps that egregiously disrespected tribal sovereignty, including by seeking to compel the Cherokee Nation to release names and birth dates for each of its citizens.<sup>14</sup> Mizer's resume is yet another example of a profile that has repeatedly failed to protect the American people from the most rapacious and amoral corporations. We lack confidence that Mizer should be

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<sup>7</sup> Examples: <https://prospect.org/cabinet-watch/merrick-garland-wants-former-facebook-lawyer-to-top-antitrust-division-susan-davies/> (Susan Davies), <https://prospect.org/cabinet-watch/corporate-lawyers-line-up-for-justice-department-top-slots/> (Emily Loeb)

<sup>8</sup> <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-o-monaco-announces-new-safe-harbor-policy-voluntary-self>;  
<https://www.warren.senate.gov/oversight/letters/senator-warren-condemns-new-justice-department-policy-that-rewards-corporate-lawbreaking-urges-doj-leadership-to-reverse-course>

<sup>9</sup>

[https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/D8689CA2E5870F7F852586870032DBC2/\\$FILE/Monaco%2C%20Lisa%20%20final278.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/D8689CA2E5870F7F852586870032DBC2/$FILE/Monaco%2C%20Lisa%20%20final278.pdf)

<sup>10</sup> <https://www.law360.com/articles/1420412/google-won-t-see-dismissal-of-epic-ag-play-store-suits>

<sup>11</sup> <https://www.bloomberg.com/news/articles/2024-03-04/us-funding-deal-delivers-blow-to-doj-antitrust-probes-of-apple-ticketmaster>

<sup>12</sup> <https://thecapitolforum.com/taking-a-closer-look-at-lantus-the-case-behind-the-fics-crackdown-on-improper-orange-book-listings/>;

<https://play.google.com/books/reader?id=7TxfeAAAQBAJ&pg=GBS.PT6>

<https://www.eff.org/fr/document/verizon-memorandum-support-motion-dismiss-lack-personal-jurisdiction>;

<https://www.justice.gov/opa/pr/department-justice-files-nationwide-lawsuit-against-walmart-inc-controlled-substances-act>

<sup>13</sup> <https://pacer.login.uscourts.gov/csologin/login.jsf?pseCourtId=OKEDC&appurl=https://ecf.oked.uscourts.gov/cgi-bin/qrvAttorneys.pl?26855> and

<https://www.law360.com/articles/1016952>

<sup>14</sup> See

[https://ecf.oked.uscourts.gov/cgi-bin/show\\_multidocs.pl?caseid=26855&arr\\_de\\_seq\\_nums=1327&magic\\_num=&pdf\\_header=1&hdr=&psf\\_report=&pdf\\_toggle\\_possible=1&exclude\\_attachments=&zipit=0&caseid=26855&zipit=0&magic\\_num=&arr\\_de\\_seq\\_nums=1327&got\\_warning=&create\\_roa=&create\\_appendix=&bates\\_format=&sort1=&date\\_range\\_type=&dkf=&got\\_receipt=1](https://ecf.oked.uscourts.gov/cgi-bin/show_multidocs.pl?caseid=26855&arr_de_seq_nums=1327&magic_num=&pdf_header=1&hdr=&psf_report=&pdf_toggle_possible=1&exclude_attachments=&zipit=0&caseid=26855&zipit=0&magic_num=&arr_de_seq_nums=1327&got_warning=&create_roa=&create_appendix=&bates_format=&sort1=&date_range_type=&dkf=&got_receipt=1)

trusted to advance the administration's commitment to ensuring that the law applies to everyone, no matter how wealthy or connected.

The steep decline in corporate criminal enforcement warrants scrutiny from the highest levels of your Administration, and we hope that in your nominations for these open senior positions and others like them, you will select candidates with a suitable level of commitment to the task, who will ensure that Americans benefit from aggressive and fair-minded prosecutorial decisions.

Sincerely,

Revolving Door Project  
American Economic Liberties Project  
Demand Progress Education Fund  
People's Parity Project  
Institute for Local Self-Reliance