Dear Members of the Senate Judiciary Committee,

We, the 40 undersigned organizations, are writing to oppose inclusion in any criminal justice reform package of "mens rea" (state of mind) provisions that would make it harder for prosecutors to criminally prosecute companies and corporate executives that engage in criminal wrongdoing.

While most of our organizations do not work on issues of criminal justice reform, we are broadly supportive of the efforts to address issues of mass incarceration which are major drivers of poverty and inequality and are devastating many families and communities, especially communities of color.

Provisions that would make it harder to prosecute corporate crime or white-collar crime, however, are not aimed at addressing these aspects of the criminal justice system and should not be part of the current discussion of criminal justice reform.

Specifically, there are various mens rea proposals, including mens rea legislation proposed in the Senate, that are premised on the belief that our criminal laws are in need of a new, overarching set of standards relating to mens rea. These proposals would likely make it far harder to prosecute corporate crime by overturning the basic precept that "ignorance of the law is no defense" and may offer corporations and company executives an "ignorance of the law" defense. At minimum, they will create legal uncertainty – promoting litigation and chilling enforcement actions. Prosecutors and judges will struggle to figure out whether new mens rea standards apply to every element of a crime and what new standards of proof must be met, among many other intricate questions. Corporate criminal defendants and their counsel will use the new standards to innovate new ways to escape even the modest criminal liability that now attaches to corporate wrongdoing. In practical terms, these new problems, against the backdrop of the challenges that already burden corporate criminal prosecution, mean that in many instances prosecutors will simply give up and not seek to prosecute corporate wrongdoers in the first place given limited resources.

There is little evidence of any problem that needs to be solved with these new mens rea proposals. In fact, regulatory crime contributes only a tiny fraction, less than one percent,¹ to the federal prison population and we have too little, not too much, prosecution of corporate crime. In 2014, regulatory offenses comprised only two percent of all federal criminal prosecutions.² The reasons for this lack of prosecution are clear: In contrast to low-level street offenses, corporate criminal sanctions are typically far too lenient, not too tough. Corporate defendants, whether institutional or individual, are typically very well resourced, able to mount very effective defenses, and are not overwhelmed by prosecutors. In short, corporate crime is under-criminalized, not over-criminalized.

¹ See Inmate Statistics at https://www.bop.gov/about/statistics/statistics_inmate_offenses.jsp

² See Federal Judicial Caseload Statistics at http://www.uscourts.gov/statistics/table/d-2/federal-judicial-caseload-statistics/2014/03/31

Corporate criminals are rational actors. Weak enforcement and lax standards, as we have seen over and over, will invite more corporate crime and wrongdoing. Given incentives to escape criminal prosecution through strategic ignorance, corporations and executives will respond with more criminal conduct.

These are not esoteric matters. Corporate wrongdoing inflicts a horrific toll on our society– injuries and deaths from dangerous cars and other products, workers maimed, killed and afflicted with disease due to occupational hazards, lives lost through polluted air and water, consumers ripped off of life savings and family assets, and more.

There is absolutely no reason for the otherwise laudable criminal justice reform bill to contain any measure to weaken what are already ineffective standards for corporate criminal prosecution.

While we oppose the current proposals to establish a default mens rea standard, we support provisions in the bi-partisan Senate Sentencing Reform and Corrections Act of 2015 that will require the government to document the federal statutes that do not currently contain mens rea or state of mind requirements as well as the frequency of prosecutions (or lack thereof) under those statutes. Such information is a crucial precondition to adequately assessing the need for default mens rea legislation and will help inform policy makers and the public of the full scope and impact of the various mens rea proposals.

We therefore ask members to reject attempts to add mens rea provisions to criminal justice reform legislation that would make it more difficult to enforce bedrock regulatory safeguards and permit corporations to avoid complying with these fundamental protections.

AFL-CIO American Friends Service Committee Asbestos Disease Awareness Organization Center for American Progress Center for Biological Diversity Center for Effective Government Center for Food Safety Center for Justice and Democracy Center for Progressive Reform Center for Responsible Lending Center for Science in the Public Interest Coalition for Sensible Safeguards Connecticut Council on Occupational Safety and Health (ConnectiCOSH) **Consumer** Action Consumer Federation of America CounterCorp Earthjustice Environmental Action Center Environmental Working Group **Economic Policy Institute**

Food & Water Watch Government Accountability Project Institute for Agriculture and Trade Policy Labor & Employment Committee of the National Lawyers Guild Leadership Conference on Civil and Human Rights National Association of Consumer Advocates National Association of Social Workers National Center for Law and Economic Justice National Consumer Law Center National Consumers League National Employment Law Project Natural Resources Defense Council Occupational Health Clinical Center Public Citizen SAFER (Stable, Accountable, Fair and Efficient Financial Reform) SafeWork Washington Sciencecorps Sierra Club U.S. PIRG Wisconsin Committee on Occupational Safety and Health (WisCOSH)