

April 11, 2017

The Honorable Jeffrey B. Wall
Acting Solicitor General
Office of the Solicitor General
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: Austin “Jack” DeCoster and Peter DeCoster v. United States of America, Petition
for a Writ of Certiorari

Dear Solicitor General Wall:

Currently pending before the Supreme Court of the United States is a Petition for a Writ of Certiorari in the case of *Austin “Jack” DeCoster and Peter DeCoster v. United States of America* (Case No. 16-877). The Petition raises two questions: (1) whether the Due Process Clause prohibits the imposition of a term of imprisonment as punishment for a supervisory liability offense, such as the one described in *United States v. Park*, 421 U.S. 658 (1975); and (2) whether *Park* and its predecessor, *United States v. Dotterweich*, 320 U.S. 277 (1943), should be overruled. We write to express our strong opinion that Supreme Court review of this case is critical and that certiorari is appropriate.

Briefly, *DeCoster* involves the prosecution of two corporate officers (“petitioners”) for violations of the Federal Food, Drug, and Cosmetic Act (FDCA) based on a Salmonella outbreak that was linked to their company, Quality Egg. The petitioners each pled guilty to one count of introducing adulterated food into interstate commerce, a violation of section 301(a) of the FDCA, stipulating in their plea agreements that they had no knowledge that eggs sold by Quality Egg were actually contaminated; however, because the petitioners were responsible corporate officers at the time of the relevant offense, they were held responsible for the company’s actions. Even though the petitioners did not knowingly violate the FDCA, the district court sentenced each petitioner to a three-month term of imprisonment; they were also ordered to pay criminal fines. On appeal, the Eighth Circuit affirmed the district court’s sentences. Both of these decisions relied on the Supreme Court’s decision in *Park*, in which the Court held that a responsible corporate officer can be held criminally liable for a company’s violations of the FDCA based solely on that officer’s supervisory authority, even if the responsible corporate officer had no knowledge of or direct responsibility for any wrongdoing.

We believe that the Eight Circuit decision for which the petitioners seek review, affirming the district court’s sentence of imprisonment of corporate officers solely based on their supervisory authority, extends the *Park* doctrine in a way that directly conflicts with the Due Process Clause. We strongly agree with the legal arguments set forth in the DeCoster’s Petition, as well as those in the *amicus* brief submitted by the Washington Legal Foundation. We do not repeat those arguments in this letter. Instead, we explain briefly below why such an expansion of *Park* would have significant and negative implications within the food industry.

If any responsible corporate officer could face imprisonment for a misdemeanor violation committed by that officer’s company, even if such violations pose no risk to the public’s health, serving as a corporate officer in a company regulated by the Food and Drug Administration (as

all food companies are) would become a significantly more perilous position. Individuals serving in these positions could reasonably seek more compensation and additional organizational oversight to counter the increased risk of a criminal conviction and incarceration solely due to the nature of their position. This would ultimately lead to inefficiencies in corporate oversight and increased costs for consumers.

Further, we strongly believe that the Court should more broadly reconsider the scope of *Park* to determine whether the manner in which district and appellate courts have relied upon it in recent years is consistent with other Court precedent and also to ensure that protections are in place such that it cannot be implicated arbitrarily or counter to established public policy.

We appreciate the opportunity to present our perspective on this critical issue. If there are any questions you would like to discuss further, please contact John Bode, President and CEO of the Corn Refiners Association.

Best Regards,

American Bakers Association
American Beverage Association
American Frozen Food Institute
Corn Refiners Association
Grocery Manufacturers Association
International Dairy Foods Association
North American Millers' Association
SNAC International
The Sugar Association
United Fresh Produce Association

cc: Jeff Sessions
Attorney General
US Department of Justice

Chad A. Readler
Acting Assistant Attorney General
US Department of Justice, Civil Division