



On January 29, 2021, Acting Attorney General Monty Wilkinson rescinded the Trump administration's charging and [sentencing policy](#) that required federal prosecutors to hold as a "core principle" that they "charge and pursue the most serious, readily provable offense."

The Wilkinson memo, titled *Interim Guidance on Prosecutorial Discretion, Charging, and Sentencing*, "supersedes any conflicting [Justice Manual](#) provisions." Under the May 10, 2017 memo issued by former Attorney General Jeff Sessions, prosecutors were required to pursue the most serious charges or penalties. To do otherwise required that they first get permission from their supervisors. The Wilkinson memo reinstates the May 19, 2010 [Department Policy on Charging and Sentencing](#) issued by former Attorney General Eric Holder, which emphasized that prosecutors make an "individualized assessment of the extent to which particular charges fit the specific circumstances of the case, are consistent with the purpose of the Federal criminal code, and maximize the impact of Federal resources on crime." Acting Attorney General Wilkinson echoed this sentiment in the current policy memo: "The goal of this interim step is to ensure that decisions about charging, plea agreements, and advocacy at sentencing are based on the merits of each case and reflect an individualized assessment of relevant facts while longer-term policy is formulated." He also noted in support of going back to the prior policy that "the reasoned exercise of prosecutorial discretion is critical to the fairness, effectiveness, and integrity of the criminal justice system." In essence, this change in policy will now afford defendants and their legal counsel more opportunities to seek less serious charges or the inclusion of lesser counts in any criminal indictment or information, and negotiate with the government to consider plea agreements and sentencing positions that do not include the *de facto* stiffest penalty. The current Wilkinson memo comes on the heels of another recent policy shift rescinding the "zero tolerance" border policy for migrants crossing the U.S.-Mexico border illegally. As the new administration's appointments continue to be confirmed, it is likely that more guidance on charging and sentencing will be forthcoming. A copy of the memo is available [here](#):



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