



On January 29, 2021, Acting Attorney General Monty Wilkinson rescinded the Trump administration's charging and [sentencing policy](#) that required federal prosecutors to hold as a "core principle" that they "charge and pursue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



Office of the Attorney General  
Washington, D. C. 20530

January 29, 2021

MEMORANDUM FOR ALL FEDERAL PROSECUTORS

FROM: THE ACTING ATTORNEY GENERAL

A handwritten signature in blue ink, appearing to read "Matthew Whitaker", written over the printed name of the Acting Attorney General.

SUBJECT: Interim Guidance on Prosecutorial Discretion, Charging, and Sentencing

The reasoned exercise of prosecutorial discretion is critical to the fairness, effectiveness, and integrity of the criminal justice system. For decades, consistent with the *Principles of Federal Prosecution*, the Department of Justice has provided guidance to federal prosecutors underscoring the importance of making careful, case-specific assessments as to what matters to investigate, which charges to bring, when to enter into plea agreements, and how to advocate at sentencing.

To ensure that prosecutors are able to exercise this discretion in pursuing justice, I am rescinding, effective immediately, the directive entitled *Department Charging and Sentencing Policy* (May 10, 2017) and reinstating the guidance articulated in *Department Policy on Charging and Sentencing* (May 19, 2010) as an interim measure before Senate-confirmed leadership is in place at the Department. 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. This interim policy supersedes any conflicting *Justice Manual* provisions.

Together we will work to safeguard the public, maximize the impact of our federal resources, avoid unwarranted disparities, promote fair outcomes in sentencing, and seek justice in every case. Thank you for your continued dedication to achieving those goals.

## Authors



### Pravin Rao

Partner

[PRao@perkinscoie.com](mailto:PRao@perkinscoie.com) [312.324.8592](tel:312.324.8592)

## Explore more in

[White Collar & Investigations](#)

Blog series

## White Collar Briefly

Drawing from breaking news, ever changing government priorities, and significant judicial decisions, this blog from Perkins Coie's White Collar and Investigations group highlights key considerations and offers practical insights aimed to guide corporate stakeholders and counselors through an evolving regulatory environment.

[View the blog](#)