

DOJ to Refocus on Individualized Determinations in Criminal Prosecutions

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While President Biden's nominee for attorney general, Merrick Garland, awaits a hearing before the Senate Judiciary Committee, Acting U.S. Attorney General Robert M. "Monty" Wilkinson has [revoked](#) May 10, 2017 guidance issued to federal prosecutors by then-Attorney General Jeff Sessions ([Sessions Memo](#)) and reinstated previous Obama-era guidance, focusing on individualized determinations for charging decisions, plea agreements, and advocacy at sentencing.

Nine days after assuming the role, Acting Attorney General Monty Wilkinson replaced the previously issued guidance with the policy adopted in May 2010 by then-Attorney General Eric H. Holder, Jr. ([Holder Memo](#)), calling for decisions regarding charging, plea agreements, and advocacy at sentencing to be based on the merits of each case. The now-revoked May 2017 Sessions Memo had directed federal prosecutors to "charge and pursue the most serious, readily provable offense," which included "those that carry the most substantial guidelines sentence, including mandatory minimum sentences." While the 2010 Holder Memo reiterated the "long-standing principle" that "a federal prosecutor should *ordinarily* charge 'the most serious offense that is consistent with the nature of the defendant's conduct, and that is likely to result in a sustainable conviction,'" (emphasis added), it also recognized the prosecutor's obligation to make this determination "in the context of 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 AG Wilkinson took this step "as an interim measure before Senate-confirmed leadership is in place at the Department" and to "ensure that decisions about charging, plea agreements, and advocacy at sentencing are based on the merits of each case and reflect individualized assessments." The short, three paragraph memorandum concludes by reiterating the "goals" of the new administration: safeguarding the public, maximizing the impact of federal resources, avoiding unwanted sentencing disparities, promoting fair outcomes in sentencing, and seeking justice in every case.

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