

Garland Memo, Emphasizing Prosecutorial Lenity, Reflects Significant DOJ Policy Shift

Here's the intro from a [recent blog](#) by Sean Solis over on our ["White Collar Briefly" Blog](#): "On December 16, 2022, U.S. Attorney General Merrick Garland issued a [memorandum](#) (the Garland memo) to all federal prosecutors, reflecting a significant new policy regarding charging, pleas, and sentencing in federal criminal cases. The Garland memo replaces prior U.S. Department of Justice (DOJ) policy and applies to all federal criminal prosecutions initiated on or after January 17, 2023.

Under the new DOJ policy, federal prosecutors making charging decisions must consider whether the consequences of those charges *for sentencing* would yield a result that "is proportional to the seriousness of the defendant's conduct, and . . . achieves such purposes of the criminal law as punishment, protection of the public, specific and general deterrence, and rehabilitation." The new policy makes clear that the goal of any prosecution is a sanction that is "sufficient, but not greater than necessary" to satisfy these considerations. The Garland memo further provides that prosecutors should not file charges, or threaten to do so, simply to exert leverage to induce a plea.

The Garland memo reflects a continued departure from the [prior administration's policy](#), which provided that federal prosecutors "should charge and pursue the most serious, readily provable offense." The prior policy was [revoked](#) in January 2021 by then-acting U.S. Attorney General Monty Wilkinson.

The Garland memo, in short, appears to be embracing a policy of prosecutorial lenity, and could prove to be a useful tool going forward for the defense bar in plea negotiations and at sentencing."

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