



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

August 4, 2017

The Honorable Mike Lee
United States Senator
361A Russell Senate Office Building
Washington, D.C. 20510

The Honorable Rand Paul
United States Senator
167 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Richard Durbin
United States Senator
711 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Cory Booker
United States Senator
359 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senators Lee, Durbin, Paul, and Booker:

Thank you for your letter dated June 7, 2017, concerning the “Department’s Charging and Sentencing Policy” memorandum issued on May 10, 2017 (“memorandum”). We at the Department of Justice must follow law. We do not make law. At bottom, this memorandum follows the law that Congress has enacted.

As you know, charging and sentencing recommendations play a crucial role in our criminal justice system. The Department of Justice memorandum simply reinstates policies that have served as the cornerstone for federal charging decisions under nearly every attorney general since they were first implemented over 30 years ago. Additionally, this policy provides prosecutors with more discretion, allowing them to seek exceptions when warranted by the unusual facts of individual cases.

The effective administration of justice requires that consequences for crime be predictable, fair, and consistent. The memorandum requires our prosecutors to ensure that justice is done in every case, and ensures that criminals who commit similar crimes under similar circumstances face similar charges. It incentivizes cooperation from criminals (a virtual necessity to dismantle large criminal networks), and it helps protect the public from violence and lawlessness. It does not mandate maximum sentences—only minimum sentences as required by law.

The Department’s memorandum is neither radical nor novel. Indeed, in 2010, former Attorney General Holder himself directed federal prosecutors to charge the most serious readily provable offense. Only in 2013 did he change course and direct prosecutors not to charge the most serious readily provable offense in certain circumstances, representing a major shift away from the

longstanding Department practice. The Holder policy implemented a rigid rule that prevented prosecutors from charging many defendants with the crimes they actually committed.

General non-enforcement of certain laws the administration did not agree with—only allowing enforcement in certain, limited circumstances—represented an unprincipled retreat from the Department’s duty to apply the law as enacted by Congress except in special cases where the interests of justice justify an exception. By returning to the tried-and-true policy of normally charging the most serious, readily provable offense, this memorandum honors the responsibility Congress entrusted to them, while at the same time promoting consistency and respect for the rule of law. Especially in light of the Supreme Court’s 2005 decision making the sentencing guidelines advisory, and the systematic weakening of those sentencing guidelines over the past decade, honesty and candor in charging decisions are even more critical than before. Indeed, under our sentencing guidelines and mandatory minimums structure, the systematic policy of a prosecutor not to charge certain crimes in order to substantially reduce sentences would be an abuse and inconsistent with integrity and sound policy.

The policy outlined in the Department’s memorandum draws upon decades of precedent and adherence to the standard practices of federal prosecutors. Our longstanding policy was restored after extensive consultation with United States Attorneys, line Assistant United States Attorneys at both the trial and appellate level, and career Main Justice attorneys. The resulting policy is firmly rooted in law and supported by principles of justice. In any criminal justice system, there are bound to be circumstances where a strict application of the most serious, readily provable offense policy would be imprudent. When such a situation arises, this memorandum permits prosecutors to deviate from the policy with approval of their local supervisors, not Washington lawyers.

With respect to the prior criminal prosecutions mentioned in your letter, I refer you to publicly available materials and information about those cases. For example, in the case of Weldon Angelos, the United States Court of Appeals for the Tenth Circuit has already fully reviewed all relevant information and concluded that the “suggestion that [Angelos’] crime was nonviolent . . . is false to the point of absurdity,” and “that the sentences imposed on Angelos are not grossly disproportionate to his crimes.” *United States v. Angelos*, 433 F.3d 738, 751-52 (10th Cir. 2006) (ellipsis in original)).

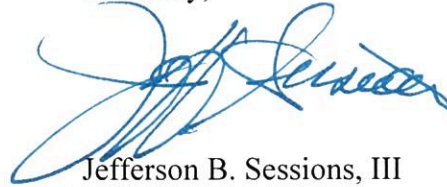
Under the policy articulated in the memorandum, prosecutors will continue to individually assess every case, determine what charges are readily provable based on the available evidence, and inquire as to whether unique circumstances require deviation from the law and the policy. This approach, which the Department of Justice has followed for decades, is effective and appropriate. The Department’s prosecutors and staff throughout the country do excellent work with great integrity and professionalism. This charging policy provides them with the guidance they need to enforce the law and protect the public, which is especially important given rising violent crime

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and the drug trafficking epidemic with its surging numbers of overdose deaths that are plaguing our communities.

I look forward to continuing to work with you on these important issues. Please do not hesitate to contact me with additional questions or concerns in the future.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeff Sessions", written in a cursive style.

Jefferson B. Sessions, III
Attorney General