



U.S. Department of Justice  
Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

January 25, 2022

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS  
ASSISTANT ATTORNEY GENERAL, NATIONAL SECURITY  
DIVISION  
ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION  
ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS  
DIVISION  
ALL FEDERAL PROSECUTORS

FROM: THE DEPUTY ATTORNEY GENERAL *Lin Muraco*

SUBJECT: Interim Changes to Procedures for Authorization Not to Seek the  
Death Penalty

On July 1, 2021, Attorney General Garland issued a moratorium on federal executions and directed a review of the Department's policies and procedures regarding capital cases, noting that the Department of Justice must ensure that everyone in the federal criminal justice system is treated fairly and humanely. In his memorandum, the Attorney General directed a review of relevant provisions of the Justice Manual and whether any of those provisions should be rescinded or modified. While a thorough review of the Justice Manual's chapter regarding capital crimes (Chapter 9-10.000) is ongoing, I am today announcing two changes to the Department's procedures for death-eligible cases that shall take immediate effect as the remainder of that review is underway.

First, the process by which U.S. Attorney's Offices and Department components obtain authorization not to seek the death penalty shall be streamlined. For cases in which the U.S. Attorney or Department component head recommends against seeking the death penalty, the Attorney General's Review Committee for Capital Cases will review the case within 30 days of its submission to the Capital Case Section (CCS). When two or more Committee members agree with the no-seek recommendation, the Committee's vote will constitute the Department's decision not to seek the death penalty. Such cases will no longer require a decision by the Attorney General. This change maintains the Justice Manual's essential purpose of promoting uniformity and consistency in the handling of potential capital cases, while vesting appropriate discretion in the U.S. Attorneys' offices and significantly reducing the expenditure of time and resources otherwise devoted to the review process for no-seek recommendations.



The United States Attorney or relevant Department component head shall continue to prepare the materials required by the Justice Manual and transmit those materials to CCS for review by the Committee. For any no-seek recommendations submitted from today forward, the United States Attorney or relevant Department component head is authorized to advise the court and opposing counsel of the decision not to seek the death penalty thirty days from the date of submission to CCS or at the time CCS informs the United States Attorney or Department component of the Committee's no-seek vote, whichever occurs sooner, unless three or more Committee members vote for a conference about the case within those thirty days.<sup>1</sup> In those cases where three or more Committee members have voted for a conference, the vote after the meeting will control the path taken by the case. If, after the conference, three or more Committee members recommend seeking the death penalty, the provisions of the Justice Manual for review by the Office of the Deputy Attorney General and decision by the Attorney General will remain in force. If instead, after the conference, two or more Committee members concur with the recommendation not to seek the death penalty, the Committee's vote constitutes the Department's no-seek decision, and CCS will so notify the U.S. Attorney.

Second, and relatedly, the provisions in the Justice Manual requiring that the Attorney General authorize and approve plea agreements for capital-eligible offenses where the intention of the United States Attorney or Department component head is not to seek the death penalty, shall also be adjusted and streamlined. U.S. Attorneys may continue to negotiate conditional plea agreements prior to receiving the Department's no-seek authorization. In addition, going forward, plea agreements can be finalized 30 days after the case is submitted to CCS or upon notice from CCS that the Committee made its no-seek decision, whichever occurs first, unless three or more Committee members have voted for a conference with defense counsel. If the latter has occurred, the plea agreement can be finalized after the conference unless three Committee members vote to recommend seeking the death penalty—in which case the plea agreement must be authorized by the Attorney General.<sup>2</sup>

These interim alterations to the Department's procedures are intended to promote our commitment to fairness and justice and to avoid unnecessary delays in cases where a capital prosecution is clearly not justified. The Department's thorough review of Chapter 9-10.000 shall continue, additional changes will be forthcoming. Until then, this memorandum supersedes any conflicting provisions contained therein.

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<sup>1</sup> If the Committee requests additional information from the USAO, the time between the Committee's request and the USAO's response will not count toward the 30 day review period.

<sup>2</sup> Note that this new procedure only applies in cases where the Attorney General has not previously authorized the seeking of capital punishment in the case. In cases where the Attorney General has previously authorized the seeking of capital punishment, Attorney General approval of a plea agreement to a non-capital count still applies.