



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

August 12, 2013

MEMORANDUM TO HEADS OF DEPARTMENT OF JUSTICE COMPONENTS
AND UNITED STATES ATTORNEYS

FROM: THE ATTORNEY GENERAL

SUBJECT: Federal Prosecution Priorities

We must always endeavor to ensure we use our limited resources in a manner that is consistent with our responsibility to effectively enforce the criminal law. With the current strains on Department of Justice resources, we must maximize efforts to prosecute the right criminal cases consistent with our mission. Our reaction to these budget challenges should not be driven by statistics alone. Rather, we must set quality, evidence-based priorities for the types of cases we bring with an eye toward promoting public safety, deterrence, and fairness. This necessarily will mean focusing our resources on fewer but the most significant cases.

In order to initiate charges against a defendant, prosecutors must determine not only that the person's conduct constitutes a federal offense and admissible evidence is sufficient to obtain and sustain a conviction, but also that the prosecution serves a substantial federal interest, the person is not subject to effective prosecution elsewhere, and there is no adequate non-criminal alternative to prosecution. *See* Attorney General Holder Memorandum (May 19, 2010); USAM 9-27.220.

Of these criteria that must be satisfied before bringing a case, it is of primary importance to assess whether a prosecution serves a substantial federal interest. For this reason, I am asking all United States Attorneys, in conjunction with their law enforcement partners, to develop – or update existing – district-specific guidelines for determining when federal prosecutions should be brought and in what priority areas.

Your local guidelines should define what cases serve a district's substantial federal interests and should be informed by a number of factors, including both national and local law enforcement priorities. Nationally, the Department's priorities are (1) protecting Americans from national security threats; (2) protecting Americans from violent crime; (3) protecting Americans from financial fraud; and (4) protecting the most vulnerable members of our society. Locally, a particular district's priorities will often depend on local criminal threats and needs, and each United States Attorney is in the best position to clearly articulate his or her priorities.

The United States Attorney's Manual already contains specific guidance to prosecutors on determining whether a prosecution would serve a substantial federal interest. *See* USAM 9-27.230. While designed to help prosecutors analyze individual cases, the USAM also will

inform United States Attorneys in shaping their district-specific criteria. In addition, the below list of factors relevant to assessing the federal interest in different types of criminal cases should supplement the USAM's excellent guidance and further inform your efforts.

Finally, it is important that federal law enforcement agency priorities in each district align with our prosecution goals. For this reason, your evaluations should be conducted jointly with federal law enforcement leaders and in consultation with state, local, and tribal law enforcement as appropriate.

I am confident that these thoughtful and reasoned assessments will better advance our shared law enforcement mission.

Factors to Consider when Developing District Investigative and Prosecution Priorities

Explicit Federal Priorities

- Does the matter fall within the Department's four law enforcement priorities?
- If the offense charged does not fall within the Attorney General's stated priorities, does the defendant's ancillary or underlying conduct nevertheless implicate the Department's stated priorities?
- Is the matter part of a program or priority for which Congress, the Department of Justice, or another federal agency has provided specific funding?
- Would accepting the case potentially lead to another case implicating more significant Department or Government-wide priorities?

Primary or Exclusive Jurisdiction

- Did the criminal conduct occur on a federal enclave, such as a national park or a military base where the U.S. Attorney's office has exclusive jurisdiction?
- Does the primary criminal conduct to be addressed involve statutory schemes, such as immigration laws, that are enforced exclusively by the federal government?
- Does the crime have international, interstate, or multi-district impact?
- Is a federal agency or employee a victim of the crime?

Effective Alternatives

- Is the defendant currently serving a state or federal sentence of imprisonment for other criminal conduct, and if so, is the defendant unlikely to be released soon?

- Does the state or local government have a statute and sentencing scheme that adequately addresses the criminal conduct?
- If the criminal conduct occurred in Indian Country, will tribal statutes and available sentences adequately address the criminal conduct?
- Is the matter a “complex” case requiring resources or evidence collection capabilities beyond the scope of local abilities?
- Would taking the case federally be a particularly effective mechanism for removing a violent person or repeat offender from society?
- When a case involves a matter that, pursuant to the above criteria, would be more appropriately brought by the state, does the case nevertheless address an extraordinary public safety or public health concern to which the U.S. Attorney’s Office is particularly able to respond? If so, is the case part of a carefully-designed local program or initiative coordinated between the United States Attorney and local law enforcement?