

# CLIENT ALERTS

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## Federal Prosecutors Directed To Again Focus on An Individualized Assessment of Relevant Facts in Charging Decisions

2.3.2021

While the new Biden administration is working on a long-term prosecutorial policy, as of January 29th, federal prosecutors should focus on an “individualized assessment” of relevant facts. This instruction was issued by acting Attorney General Monty Wilkinson in a memorandum to all federal prosecutors dated January 29, 2021 and in which he reinstated former Attorney General Eric Holder’s policy from 2010, known as the “Holder Memorandum.” Under this policy, federal prosecutors are instructed “to ensure that decisions about charging, plea agreements, and advocacy at sentencing are based on the merits of each case and reflect an individualized assessment of relevant facts.” Additionally, Wilkinson said that federal prosecutors “will work to safeguard the public, maximize the impact of our federal resources, avoid unwanted disparities, promote fair outcomes in sentencing, and seek justice in every case.” In doing so, Wilkinson rescinded the May 10, 2017 memorandum from then- Attorney General Jeff Sessions which instructed federal prosecutors to always pursue the most serious readily provable offenses and penalties possible under the facts of the case unless they received specific permission from their supervisors to vary from that directive, and the reasons documented in the case file.

President Biden has nominated Merrick Garland for Attorney General and it is likely the Department of Justice will review the overall charging and sentencing policies once the new leadership is in place.

The Butzel Long White Collar Criminal Defense team has vast experience in counseling and defending both individuals and companies who are faced with a government investigation and the threat of prosecution and are ready to help should you or your company encounter this situation.

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