



Office of the Attorney General

Washington, D.C. 20530

August 29, 2013

MEMORANDUM TO THE UNITED STATES ATTORNEYS AND
ASSISTANT ATTORNEY GENERAL FOR THE CRIMINAL DIVISION

FROM:

THE ATTORNEY GENERAL

A handwritten signature in blue ink, which appears to be "Eric Holder", is written over the printed name of the Attorney General.

SUBJECT:

Retroactive Application of Department Policy on Charging Mandatory
Minimum Sentences and Recidivist Enhancements in Certain Drug Cases

This memorandum provides additional guidance to federal prosecutors for cases that were charged before I issued the August 12, 2013, memorandum setting forth Department policy on charging mandatory minimum sentences and recidivist enhancements in certain drug cases (hereinafter referred to as the "Attorney General's policy memorandum"). In brief, the policy applies as follows:

- For cases charged and awaiting adjudication of guilt: the policy is applicable to all such cases.
- For cases in which guilt has been adjudicated and sentence has not yet been imposed: the policy may be applied in the discretion of the prosecutor, and prosecutors are encouraged to apply the policy in guilty-plea cases where legally and practically feasible.
- For cases in which sentence has been imposed: the policy is not retroactively applicable.

DISCUSSION

The applicability of the Department's policy depends on the stage of the proceeding.

Defendants Charged But Not Yet Convicted. In the case of a defendant who was charged before the policy's issuance, but who has not pleaded guilty or been convicted, prosecutors should apply the new policy and pursue an appropriate disposition consistent with the policy's section, "Timing and Plea Agreements." Application of the policy also may require a motion to withdraw an information previously filed under 21 U.S.C. § 851.

In applying the policy, prosecutors should consider all of the facts and circumstances of a case. In particular, in determining whether a defendant has a "significant" criminal history, prosecutors should evaluate the facts beyond the number of criminal history points. While a significant criminal history is normally evidenced by three or more criminal history points, that is not a mechanical test. A criminal history involving three or more points may not be significant for purposes of the policy if, for example, a conviction is remote in time, aberrational, or for conduct that itself represents non-violent, low-level drug activity.

