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POLITICS

Merrick Garland Raises the Bar for Death Penalty

Attorney general's approach marks shift away from Trump administration



Merrick Garland has expressed concerns about what he described as arbitrariness in the application of capital punishment.

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WASHINGTON—More than a year after halting federal executions, Attorney General Merrick Garland is authorizing prosecutors to seek the death penalty in some brutal cases while withdrawing it in many others, drilling down on the circumstances surrounding even the most heinous crimes before making the final call.

The approach has effectively raised the bar for the federal government's use of the ultimate punishment after a flurry of executions during the Trump administration.

Mr. Garland, for example, decided not to pursue capital punishment in the case of Patrick Crusius, who killed 23 people in a racist massacre at an El Paso, Texas, Walmart in 2019. In doing so, people familiar with the matter said, Mr. Garland rejected the recommendation of prosecutors who suggested seeking execution. The attorney general noted concerns about Crusius's mental illness, in deliberations that haven't been previously reported. Crusius pleaded guilty and will spend the rest of his life behind bars in the federal case.

In contrast, federal prosecutors in New York this week had Mr. Garland's approval to urge jurors to impose a death sentence in the case of a convicted

terrorist who in 2017 intentionally struck and killed eight people on a crowded Manhattan bike path.

Assistant U.S. Attorney Amanda Houle argued that the man, Sayfullo Saipov, had shown no remorse and remains dangerous even while jailed, telling the jury that he hasn't abandoned his jihad. It was the first time under the Biden administration that a federal prosecutor has pushed for death before a jury.

The push for Saipov's death comes even after Mr. Garland in July 2021 put a moratorium on federal executions while officials review the procedures of the Trump administration, which reactivated the federal death chamber after a 16-year hiatus, putting 13 inmates to death in its final months, the highest rate of federal executions in over a century.

William Barr, then-attorney general, said at the time that he believed the Justice Department "owed it to victims to carry out the sentence imposed by the justice system."

Shifting away from that stance, Mr. Garland has without explanation withdrawn the death penalty against at least 25 defendants in cases he inherited, including murders of witnesses, gang homicides with multiple victims, and the killing of a sheriff's deputy, according to court records. Most recently, the department in December took death off the table for Nicholas Tartaglione, a former police officer charged with murdering four people north of New York City.



Timothy McVeigh, who blew up the Alfred P. Murrah Federal Building in Oklahoma City, was escorted by police and FBI agents from the Perry, Okla., courthouse in 1995.

PHOTO: RALF-FINN HESTOFT/CORBIS/GETTY IMAGES

"The government never told us why they decided to seek the death penalty, and they never told us why they withdrew it," Bruce Barket, a lawyer for Mr. Tartaglione said. Mr. Tartaglione has pleaded not guilty, and his lawyers argued the death penalty is unconstitutional.

Deputy Attorney General Lisa Monaco outlined the individualized approach in a Jan. 30 memo to prosecutors produced as part of Mr. Garland's death-penalty review.

"The determination of whether to pursue a capital prosecution is among the most momentous decisions prosecutors must make and carries deeply profound consequences for the accused and victims' families," she wrote.

In updated department policy, she told prosecutors they can recommend death for "crimes causing the most harm to the nation, including through widespread impact to the community," while noting that each case should be evaluated "on its own merits and on its own terms."

The decision of whether someone should die for his crimes is among the most difficult for any attorney general. It is particularly weighty for Mr. Garland, who was part of the Justice Department team that successfully sought the death penalty for Timothy McVeigh, who blew up the Alfred P. Murrah Federal Building in Oklahoma City in 1995, killing 168 people.

Mr. Garland has said that while he doesn't regret that outcome, he has since grown concerned about what he described as arbitrariness in the application of capital punishment, its disparate impact on minorities and a "troubling number of exonerations."

Mr. Garland told senators during his confirmation hearing that he "supported the death penalty at that time for McVeigh, in that individual case."

The attorney general has also taken note of bipartisan criticism of capital punishment. His own boss, President Biden, supported the death penalty as a senator but campaigned in 2020 on a promise to seek an end to the practice. Since taking office, he has been largely silent on the matter.



Payton Gendron, in glasses, who killed 10 people in a racist massacre at a supermarket in Buffalo, N.Y., last year, was sentenced to life in prison this week.

PHOTO: DEREK GEE/ASSOCIATED PRESS

Legislation would be required to abolish the penalty entirely and wouldn't pass in a divided Congress. That has left Mr. Garland and the Justice Department to navigate the issue.

Ten states have abolished the death penalty since the turn of the 21st century, most recently Virginia in 2021. It remains on the books in 27 states but its

application is concentrated in a handful of jurisdictions, principally Texas and Oklahoma. Roughly 2,400 people are on death row across the country, a number that has decreased for 20 straight years, according to federal statistics. About 44 of them are inmates on federal death row.

Within the Justice Department, longstanding policies govern decisions in capital cases. The painstaking process can take years and includes input from prosecutors. The attorney general has the final say on when to pursue—or withdraw—death as a possible punishment.

Under Mr. Garland, officials have sought to reserve death for crimes they believe caused the greatest harm to the federal interest, such as hate crimes and terrorism.

Mr. Garland, a deliberative former federal appeals court judge, has been examining the facts of each case in making his calls, people familiar with those decisions said. In the Walmart massacre, a prosecutor said in court that Crusius has schizoaffective disorder. Texas state prosecutors are pursuing their own separate case that could result in a death sentence.

While Mr. Garland hasn't authorized U.S. attorneys to seek death in any new cases, the department is continuing to pursue it in seven cases that began before he took office. One of those is Robert Bowers, who is scheduled to stand trial in April on federal hate-crimes charges stemming from a 2018 shooting rampage that killed 11 people at Pittsburgh's Tree of Life Synagogue.

Earlier this week, David Stern, a lawyer for Saipov, told the jury that sentencing his client to life would send him to a federal supermax prison in Colorado, where he would spend at least 23 hours of every day in a tiny cell with a cement bed.

"He will die on a prison gurney in the execution chamber or, if given life in prison, on a small cement bed alone, with no one he cares about to say goodbye to him," Mr. Stern said.

Some advocates said Mr. Garland's approach is inconsistent and sends a confusing message to victims' families about how the department metes out justice, since no federal death sentence would be carried out under his current moratorium.

"You're going after a sentence that you never plan to enforce," said Michael Rushford, founder of the Criminal Justice Legal Foundation, which supports capital punishment. "It doesn't make sense."

Mr. Garland will soon be called upon to decide whether to seek the execution of the man who killed 10 people in a racist shooting last year at a supermarket in Buffalo, N.Y. The white gunman, Payton Gendron, 19, is charged federally with hate crimes offenses. While his federal case hasn't gone to trial, Mr. Gendron pleaded guilty to 15 counts brought by state prosecutors and was sentenced this

week to life in prison without parole, stemming from the attack at Tops Friendly Markets in a predominantly Black neighborhood.

Mr. Garland met with the victims' families shortly after the attack, telling them that bringing the killer to justice was of top importance but not indicating where he stood on a sentence, said Terrence Connors, who represents several of the victims' families. Only some of them want to see Mr. Gendron executed, he said.

"It's likely going to be a close call," Mr. Connors said.

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