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Attorney General Holder Announces Significant Policy Shift Concerning Electronic Recording of Statements

New Guidelines Create Presumption That Interviews of Federally Detained Persons Will Be Electronically Recorded

WASHINGTON—Following a collaborative and thorough review, Attorney General Eric Holder on Thursday announced a new policy for the Department of Justice that creates a presumption that statements made by individuals in federal custody, following arrest but prior to their first appearance in court, will be electronically recorded. Attorney General Holder said that the new policy will help to ensure accountability and promote public confidence in the institutions and processes that guide the nation's law enforcement efforts.

"Creating an electronic record will ensure that we have an objective account of key investigations and interactions with people who are held in federal custody," Attorney General Holder said. "It will allow us to document that detained individuals are afforded their constitutionally-protected rights. And it will also provide federal law enforcement officials with a backstop, so that they have clear and indisputable records of important statements and confessions made by individuals who have been detained."

The new policy was formally spelled out in a memorandum to U.S. Attorneys signed by Deputy Attorney General James M. Cole.

Beginning on July 11, 2014, the new policy establishes a presumption that the FBI, the Drug Enforcement Administration (DEA), the Bureau of Alcohol, Tobacco, Firearms, and Explosive (ATF), and the United States Marshals Service (USMS) will electronically record interviews occurring in a place of detention with suitable recording equipment.

According to the policy, prosecutors and agents are directed to use video recording to satisfy the presumption whenever possible. If video recording equipment considered suitable under agency policy is not available, audio equipment may be substituted. The policy applies broadly to all statements of persons in federal custody of the FBI, DEA, ATF or USMS after arrest, but prior to initial appearance.

The policy applies to all places of detention where persons are held in connection with federal criminal charges and can be interviewed. Importantly, any electronic recording equipment used for these purposes must capture the entirety of the interview.

The Attorney General, in an effort to expeditiously implement the sweeping new policy, has directed U.S. Attorney's and field offices across the country to perform district-wide joint training for agents and prosecutors. These trainings will instruct agents and prosecutors on best practices associated with the

electronic recording of interviews. Additionally, investigative agencies are expected to utilize recording equipment in sufficient numbers to meet anticipated needs for recording of such interviews.

The complete text of the Attorney General's video message is below:

"Every day, in big cities and small towns across the country, hardworking prosecutors, agents, and investigators perform exceptional work in order to combat violent crime and other threats to the public. They approach this high-stakes work with the utmost integrity and dedication.

"The professionalism of our personnel gives us the confidence to be as transparent as possible about how we perform our work. We at the Department of Justice are committed to ensuring accountability and promoting public confidence in the institutions and processes that guide our law enforcement efforts. Doing so not only strengthens the rule of law; it also enhances public safety – by building trust and fostering community engagement.

"That's why we are announcing a new step to raise our already high standards of accountability. The Department of Justice is instituting a sweeping new policy pertaining to interviews of individuals in law enforcement custody. This new policy, which will take effect on July 11th, creates a presumption that statements made by individuals in federal custody, after they have been arrested but before their initial appearance, will be electronically recorded. The policy applies in a place of detention that has suitable recording equipment, and it encourages video recording whenever possible and audio recording when video is unavailable. The policy also encourages agents and prosecutors to consider electronic recording in investigative or other circumstances not covered by the presumption.

"This presumption in favor of recording applies to statements made by individuals in the custody of the FBI, the DEA, the ATF, and the United States Marshals Service. It allows for certain exceptions—such as when the interviewee requests that the recording not occur or when recording is not practicable.

"Creating an electronic record will ensure that we have an objective account of key investigations and interactions with people who are held in federal custody. It will allow us to document that detained individuals are afforded their constitutionally-protected rights. And it will also provide federal law enforcement officials with a backstop, so that they have clear and indisputable records of important statements and confessions made by individuals who have been detained.

"This policy will not – in any way – compromise our ability to hold accountable those who break the law. Nor will it impair our national security efforts. On the contrary: it will reduce uncertainty in even the most sensitive cases, prevent unnecessary disputes, and improve our ability to see that justice can be served.

"Federal agents and prosecutors throughout the nation are firmly committed to due process in their rigorous and evenhanded enforcement of the law. This new recording policy not only reaffirms our steadfast commitment to these ideals – it will provide verifiable evidence that our words are matched by our deeds. And it will help to strengthen the robust and fair system of justice upon which all Americans depend – and which every American deserves."

The full video message is available at <http://www.justice.gov/agwa.php>.

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