



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

OCT 22 2021

The Honorable Ted Cruz  
United States Senate  
Washington, D.C. 20510

Dear Senator Cruz:

This letter responds to your letter to the Department of Justice (Department) dated June 7, 2021. We are sending identical responses to the other Members who joined your letter.

Americans have a fundamental right to engage in lawful, peaceful protest, and the Department will vigorously safeguard that right. But as courts have observed and a growing number of criminal convictions reflect, what transpired at the Capitol on January 6th was neither lawful nor peaceful. The D.C. Circuit has noted that “the violent breach of the Capitol on January 6th was a grave danger to our democracy.”<sup>1</sup> The events of that day included efforts to interfere with a foundational element of our democracy—the peaceful transfer of power.

The Department has dedicated investigative and prosecutorial resources commensurate with the significance of these events. The Department’s investigation and prosecution of cases related to this matter are ongoing, and longstanding policy and practice across Administrations has been not to disclose non-public information related to pending matters.<sup>2</sup> We therefore would direct you to the public information that is available about the charged cases.

Last year, during a period of widespread civil unrest in various parts of the country, many individuals were charged in connection with alleged federal, state, and local crimes. Department law enforcement worked to enforce federal criminal law and protect federal personnel, property and operations during the civil unrest. As appropriate, the Department has and will continue to aggressively pursue those who engage in criminal activity such as the destruction of property and violent assaults on law enforcement. The Department also assisted state and local law enforcement in addressing violent and unlawful activity that endangered the lawful exercise of citizens’ First Amendment right to protest.

The Department assesses, investigates, and prosecutes its cases without regard to ideology of the potential defendant, on the facts and evidence applied to the law in each individual matter. Charging decisions are guided by the principles of prosecution set forth in the

<sup>1</sup> *United States v. Munchel*, 991 F.3d 1273, 1284 (D.C. Cir. 2021).

<sup>2</sup> Letter from Assistant Attorney General Robert Raben, Office of Legislative Affairs, Department of Justice, to Chairman John Linder, House Committee on Rules, Subcommittee on Rules and Organization of the House (Jan. 27, 2000).

Justice Manual. Charging decisions are based on the facts of each case, the applicable law, and other considerations set forth in the Department's *Principles of Federal Prosecution, Justice Manual, 9-27.000*.<sup>3</sup> When defendants are charged with criminal offenses, they receive due process, including a prompt hearing in which the judge determines whether the individual should be released pending further proceedings in the case. Department positions regarding release and detention in criminal cases are set forth in *Release and Detention Pending Judicial Proceedings, Justice Manual 9-6.000* and the statutory provisions and case law cited therein.<sup>4</sup> Decisions on pretrial detention are made by federal judges after an opportunity to evaluate the Department's position and any arguments offered by the defendant.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joe Gaeta", with a long horizontal flourish extending to the right.

Joe Gaeta

Deputy Assistant Attorney General

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<sup>3</sup> See Principles of Federal Prosecution, <https://www.justice.gov/jm/jm-9-27000-principles-federal-prosecution#9-27.220>.

<sup>4</sup> The Bail Reform Act places limits on when federal prosecutors are permitted to ask for a detention hearing. See 18 U.S.C § 3141(f).