Bush administration widens reach of federal death penalty

Kate Randall
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The week before the execution of Oklahoma City bomber Timothy McVeigh, Attorney General John Ashcroft issued new guidelines for US attorneys that make it easier to bring capital prosecutions in states which do not have the death penalty.

Presently, 12 states and the District of Columbia do not practice capital punishment. None of the 18 men now on federal death row come from these states, and over the last decade very few capital cases were prosecuted in states without the death penalty.

For more than 200 years in the US, federal prosecution which could result in a death sentence was allowable for a limited range of offenses, including espionage, murder on federal property, murder in the course of a bank robbery, interstate kidnapping and presidential assassination.

The Anti-Drug Abuse Act of 1988 extended the reach of the federal death penalty, allowing it in cases involving drug-related murders. Juan Raul Garza, who was executed on June 19, was tried under this law. Three other men presently on federal death row were prosecuted under the 1998 act.

In 1994 Congress passed the Federal Death Penalty Act, which greatly expanded the number of crimes for which a defendant could be executed. These included killing in the course of another serious offense, a prior criminal history of serious violent offenses, homicide involving planning and premeditation, multiple killings, or endangering the lives of others during the commission of a crime. Non-homicide offenses, such as treason and espionage, are also included. Fifteen men currently on death row received their death sentences as a consequence of this act, passed under the Clinton administration.

Federal law says that when state and federal governments both have jurisdiction to prosecute a crime, the federal government should only take those cases where “substantial federal interest” is involved. Under former Attorney General Janet Reno very few federal capital cases were prosecuted in states that banned the death penalty.

Under Ashcroft’s new guidelines, US attorneys are instructed to consider whether the “appropriate punishment upon conviction” for an offense is available in the state. In other words, if a defendant cannot receive a death sentence under state laws, the federal government can seek jurisdiction to prosecute a crime as a capital case.

These new guidelines seek to circumvent state laws that have outlawed capital punishment, in some cases since the nineteenth century. David I. Bruck of the Federal Death Penalty Resource Counsel Project called the federal move “the nationalization of the death penalty.”

Until the executions of Timothy McVeigh and Juan Garza this month, there had been no federal executions since 1963. By contrast, since the US Supreme Court reinstated the death penalty in 1977, the 38 states that practice capital punishment have put more than 700 people to death. The number of federal prisoners currently facing death sentences—18—is also very small compared to the more than 3,700 condemned inmates on state death rows.

Recent polls show that opposition to capital punishment in the American population is growing, with support for the practice down to as low as 50 percent according to several new studies. The Bush administration, however, is moving to accelerate the process. With the resumption of federal executions this month, the government has opened up a new arena for the death penalty which had been off limits for 38 years.

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