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HEADLINE: Bowing to an Extradition Deal, U.S. Will Forgo Death Penalty

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BODY:

The Justice Department said yesterday that it would not seek the death penalty against a Dominican man being held in Brooklyn after a judge suggested that the government was violating international law by considering capital punishment.

In a preliminary memo on the case, the judge, Jack B. Weinstein, of Federal District Court in Brooklyn, referred to remarks made by a federal prosecutor. The prosecutor told the judge on Thursday that Justice Department officials in Washington had said that an order of a Dominican judge who had extradited the man on the condition that he not be executed was "not binding."

Judge Weinstein wrote that his preliminary view was "that when a person is extradited with the limitation imposed by the extraditing state that a conviction will not result in the death penalty, federal courts will honor the limitations."

Experts on the death penalty and international law said yesterday that the prosecutor's comments might indicate a major policy shift by the United States on the contentious international issue of the death penalty. Many countries in Europe and elsewhere permit extraditions only after assurances that capital punishment will not be imposed. The experts said that they could recall no case in which American officials had considered breaching those conditions.

"It would be unprecedented if assurances were given and the Justice Department decided to renege," said Richard J. Wilson, an international law expert at American University's law school in Washington. Some experts said such a policy shift would have wide repercussions because compliance with extradition conditions is a central principle of international law.

At 4:10 p.m. yesterday, just hours after the judge had filed his opinion, the federal prosecutors faxed a letter to his chambers saying that the Justice Department had decided not to seek the death penalty against the Dominican man, Alejandro De Asa Sanchez.

Judge Weinstein's order suggested that he was planning to demand that the Justice Department explain its assertion that it was not bound by the Dominican judge's order. He directed that lawyers for both sides submit briefs on the issue promptly and said Mr. Sanchez's scheduled Aug. 30 trial would not be delayed.

In a statement, a Justice Department spokeswoman, Monica Goodling, said yesterday that "as a matter of procedure" all federal death penalty decisions are reviewed by department officials in Washington and that "in this specific case" officials had decided not to seek death.

The statement did not address why the officials had said the no-death condition set by the Dominican judge was not binding. But the statement said, "The Department has yet to seek the death penalty when a foreign nation has requested that an individual extradited to the U.S. not face the death penalty."

Some death penalty experts said yesterday that the indication that the Justice Department might no longer feel bound by extradition orders directing it not to seek death could have broad effects.

"If the countries of the world are to be left in doubt on this point," said Eric M. Freedman, a Hofstra University law professor, "I would expect you are not going to see extraditions until that doubt is removed."

The remarks of the assistant United States attorney in Brooklyn, John Buretta, came at a hearing in a racketeering case against Mr. Sanchez, 38, who is charged with two murders and running a drug ring in Bushwick, Brooklyn, in the 1990's with his two brothers.

He was in his native Dominican Republic when the federal prosecutors began pursuing him. The Dominican judge approved the extradition in February.

Mr. Sanchez's lawyer, Thomas F.X. Dunn, said yesterday that he had been shocked by Mr. Buretta's comments on Thursday because all the lawyers involved in the case had assumed for months that the case involved a maximum penalty of life in prison.

As recounted by the judge's order yesterday, Mr. Buretta first acknowledged that the United States attorney's office in Brooklyn "had previously been under the impression" that the American government had agreed not to seek the death penalty for Mr. Sanchez.

He said the Brooklyn prosecutors had recently been informed by Justice Department officials that "despite the extradition order, that is not binding."

Mr. Buretta said that the Justice Department officials had insisted that they review the decision about whether to seek death. Attorney General John Ashcroft has often overruled the recommendations of local United States attorneys and insisted that they seek execution.

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