

Congress of the United States
Washington, DC 20515

The Honorable Eric H. Holder, Jr
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

June 20, 2011

Dear Attorney General Holder:

We write to express the importance of a clarification of the administration's policy on medical marijuana in light of recent letters from United States Attorneys to state officials which seem to us to contradict the administration's stated position on this issue. We strongly encourage you to restate the current policy, which was formally announced in a memorandum issued by Deputy Attorney General David W. Ogden to selected United States Attorneys on October 19, 2009.

The Ogden memo distinguished activities that are legal under state medical marijuana laws from illegal drug trafficking.

"[T]he disruption of illegal drug manufacturing and trafficking networks continues to be a core priority in the Department's efforts against narcotics and dangerous drugs, and the Department's investigative and prosecutorial resources should be directed towards these objectives. *As a general matter, pursuit of these priorities should not focus federal resources in your States on individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana.*" [emphasis added]

The memo was clearly intended to apply to a broader group of people than medical marijuana patients exclusively. First off, it directly referenced "caregivers in clear and unambiguous compliance with existing state law." More importantly, it detailed the kinds of activities that would place an individual in the realm of "potential federal interest":

"Typically, when any of the following characteristics is present, the conduct will not be in clear and unambiguous compliance with applicable state law and may indicate illegal drug trafficking activity of potential federal interest:

- * unlawful possession or unlawful use of firearms;
- * violence;
- * sales to minors;
- * financial and marketing activities inconsistent with the terms, conditions, or purposes of state law, including evidence of money laundering activity and/or financial gains or excessive amounts of cash inconsistent with purported compliance with state or local law;
- * amounts of marijuana inconsistent with purported compliance with state or local law;
- * illegal possession or sale of other controlled substances; or
- * ties to other criminal enterprises."

These characteristics clearly demonstrate that your Department contemplated sales of medical marijuana that would, appropriately, not be a prosecutorial priority for United States Attorneys. The memo mentions "sales to minors" and "sale of other controlled substances" as acts of potential federal interest. It would not have been necessary to include these two specifications if sales of medical marijuana to adults were encompassed in the same category. Another characteristic listed in the memo, "financial and marketing activities inconsistent with the terms, conditions or purposes of state law," clearly implies that there exist financial and marketing activities consistent with state law that should not rise to the level of potential federal interest. This is a wise standard, as states are quite capable of establishing regulations to govern medical marijuana providers.

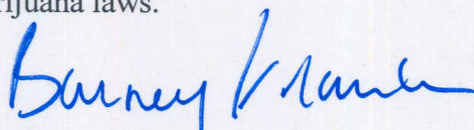
We believe it is important that your office restates the Ogden memo for two reasons. The first was stated in the original memo: "The Department is also committed to making efficient and rational use of its limited investigative and prosecutorial resources." This need is no less pressing today. Directing these limited resources toward individuals who are providing medicine to patients in compliance with state law also harms the people whose major goal is to seek relief from pain wholly caused by illness.

There are now hundreds of thousands of medical marijuana patients in states where the medication is legal. These patients will either purchase medical marijuana safely at state-regulated entities or seek it through unregulated channels: in the criminal market or by growing it themselves. It does not make sense to use federal resources to bolster the criminal market at the expense of a state-regulated system.

Recent actions by United States Attorneys across the country have prompted states to deny patients safe and reliable access to their medicine. By issuing letters to state officials conveying sentiments wholly inconsistent with the Ogden memo, they have inspired a veto of legislation in Washington state and a delay of administrative procedures in Rhode Island. In Arizona, the governor and attorney general have cited these U.S. Attorney letters as a reason to halt full implementation of their state's medical marijuana program and have filed a lawsuit in federal court to achieve clarity in this matter.

By contrast, states like Colorado, New Mexico and Maine have demonstrated that statewide regulations of medical marijuana benefit patients. In other states, like California, it is evident that state-issued guidance backed by local regulations offers similar advantages. Restating the policy contained in the Ogden memo will allow more people to enjoy these benefits by empowering state officials to implement medical marijuana laws they feel will best serve the health and public safety of their citizens.

Thank you for considering our concerns as you clarify the Department position on state medical marijuana laws.


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