AmericansFor SafeAccess
Advancing Legal Medical Marijuana Therapeutics and Research

Areas of Inquiry for "Conflicts between State and Federal Marijuana Laws"

U.S. Senate Judiciary Committee
Hon. Patrick Leahy (D-VT), Chair
Full Committee
DATE: September 10, 2013
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Three Domains of Inquiry

I. Clarification on Department of Justice Policies and U.S. Attorney Actions: The Obama Administration's policy toward state medical marijuana laws has been incoherent and inconsistent. On the one hand, the October 19, 2009 memorandum, "Investigations and Prosecutions in States: Authorizing the Medical Use of Marijuana," (the "Ogden memo") and the August 29, 2013 memorandum "Guidance Regarding Marijuana Enforcement," (the "2013 Cole memo"), have created a perception of tolerance for states to implement their medical marijuana laws. On the other hand, the Obama Administration has spent more money than both of the two previous administrations combined interfering with state medical marijuana laws, including such tactics as paramilitary raids on medical marijuana patients and providers, asset forfeiture proceedings against landlords, and letters to state and local government officials threatening criminal prosecution for implementing state law.

II. Clarification on Department of Justice Compassionate Release and Mandatory Minimum Sentencing Guidelines as they relate to medical marijuana prisoners and defendants: In August 2013, the Department of Justice announced plans to expand its Compassionate Release program and ease rules concerning mandatory minimum sentences, yet it is unclear if these reforms will allow for the release of any of the federal prisoners convicted of federal marijuana crimes who were acting in accordance with their state's medical marijuana laws.

III. Inquiry about the Scheduling of Marijuana: Under the Controlled Substances Act, the U.S. Attorney General has the ability to initiate the rescheduling of substances, including the classification of marijuana as a Schedule I substance.

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I. **Clarification on Department of Justice Policies and U.S. Attorney Actions: The Obama Administration's policy toward state medical marijuana laws has been incoherent and inconsistent. On the one hand, the October 19, 2009 memorandum, "Investigations and Prosecutions in States: Authorizing the Medical Use of Marijuana," (the "Ogden memo") and the August 29, 2013 memorandum "Guidance Regarding Marijuana Enforcement," (the "2013 Cole memo"), have created a perception of tolerance for states to implement their medical marijuana laws. On the other hand, the Obama Administration has spent more money than both of the two previous administrations combined interfering with state medical marijuana laws, including such tactics as paramilitary raids on medical marijuana patients and providers, asset forfeiture proceedings against landlords, and letters to state and local government officials threatening criminal prosecution for implementing state law.**

Background:

When California passed Proposition 215 in 1996 to authorize the use of marijuana for medicinal purposes, it ushered in an era of conflict between state and federal law concerning marijuana. The federal reaction was not to try to resolve this conflict through the courts or legislation but rather to criminally and civilly prosecute individuals protected by state law: qualified patients and their providers (those who cultivate, process, and sell medical marijuana). As more states passed medical marijuana laws during the Bush Administration, the federal crackdown escalated significantly, with over 200 medical marijuana dispensaries raided between 2001 and the end of 2008.[1]

The rhetoric of the Obama White House on state medical marijuana laws has been more conciliatory than previous administrations. The supportive words Obama spoke on the 2008 campaign trail towards medical marijuana were followed by affirming comments from Administration spokespersons and then seemingly formalized by the Department of Justice (referred to herein as "the Department" or "DOJ") in October 2009 via a memo issued to several U.S. Attorneys by then-Deputy Attorney General David Ogden (the "Odgen memo") that stated:

> "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." [2]

With this legal guidance, patient advocates, community members, and officials spent thousands of hours drafting compassionate legislation and strict regulations in at least eleven states. But when legislators and other state and local officials came close to

[1] ASA maintains a database of known medical marijuana raids, available upon request.
[2] Memorandum from Deputy Attorney General David Ogden to Selected U.S. Attorneys, "Investigations and Prosecutions in States: Authorizing the Medical Use of Marijuana," Oct. 19, 2009, (the "Ogden memo").

passing or implementing these laws, they received nearly identical threatening letters from U.S. Attorneys, containing language such as this:[3]

> "The Washington legislative proposals will create a licensing scheme that permits large-scale marijuana cultivation and distribution. This would authorize conduct contrary to federal law and thus, would undermine the federal government's efforts to regulate possession, manufacturing, and trafficking of controlled substances. Accordingly, the Department could consider civil and criminal legal remedies regarding those who set up marijuana growing facilities and dispensaries, as they will be doing so in violation of federal law. Others who knowingly facilitate the actions of the licensees, including property owners, landlords, and financiers should also know that their conduct violates federal law. In addition, state employees who conducted activities mandated by the Washington legislative proposals would not be immune from liability under the [Controlled Substances Act]. Potential actions the Department could consider include injunctive actions to prevent cultivation and distribution of marijuana and other associated violations of the CSA; civil fines; criminal prosecution; and the forfeiture of any property used to facilitate a violation of the CSA."
> -excerpt from letter to former Washington Governor Christine Gregoire from U.S. Attorney Durkan and Michael Ormsby, April 14, 2009
>
> "If the City of Eureka were to proceed, this office would consider injunctive actions, civil fines, criminal prosecution, and the forfeiture of any property used to facilitate a violation of [federal law]."
> -excerpt from letter to Eureka City Council from U.S. Attorney Melinda Haag on August 15, 2011.

The impact of threats made by U.S. Attorneys against public officials was the suspension or derailment of medical marijuana laws in the states of Arizona, California, Delaware, Hawaii, Montana, Rhode Island, and Washington, as well as municipalities across California. The letters were followed by an intense campaign of raids, threats to landlords, and asset forfeiture lawsuits. Since these actions contradicted the 2009 Ogden memo, the Department issued a memorandum on June 29, 2011 from Deputy Attorney General James Cole to authorize the raids and threat letters *after* the fact of their occurrence.[4] To date, not a single state or local government official has been indicted or prosecuted for attempting to implement a medical marijuana law, which raises the question of whether or not there is a legal basis or seriousness of intent behind these threat letters. Regardless, the result has not been a resolution of the state-federal conflict but an exacerbation.

[3] Copies of U.S. Attorney threat letters to state and local officials can be found at http://safeaccessnow.org/downloads/DOJ_Threat_Letters.pdf

[4] Memorandum from Deputy Attorney General James Cole to U.S. Attorneys, "Guidance Regarding the Ogden Memo in Jurisdictions Seeking to Authorize Marijuana for Medical Use," June 29, 2011, (the " 2011 Cole memo").

In addition to attempts at intimidating local officials, the U.S. Attorneys from California announced a campaign to undermine the state's production and distribution system, using raids, criminal prosecutions and asset forfeiture against state-compliant medical marijuana operations. As part of this ongoing campaign, U.S. Attorneys are currently threatening landlords of medical marijuana businesses with criminal and civil action if they do not evict their tenants.[5] U.S. Attorneys in California have also begun forfeiture proceedings against a handful of property owners.

Taken together, this attack on the medical cannabis community is unprecedented in its scope, undermining state laws and coercing local lawmakers. In less than four and a half years into President Obama's command, the federal crackdown on state medical marijuana programs has generated more raids than under eight years of President Bush. According to ASA's calculations, the Department's war on medical marijuana eclipsed **$500 million** dollars, with over **$300 million** being spent during the Obama Administration. Based on ASA's estimates, the Drug Enforcement Administration ("DEA") has spent approximately 4% of its budget in 2011 and 2012 on the medical marijuana crackdown.[6] These costly raids, the investigations that lead up to them, and the prosecutions and imprisonment that follow them have strained the limited resources of the Department and ripped families apart to fight a fruitless war that 70-85% of Americans have opposed for well over a decade.

When asked on June 7, 2012 by the House Judiciary Committee to explain the Administration's escalating enforcement activity, Attorney General Eric Holder testified:

> " We limit our enforcement efforts… to those acting out of conformity with state law."[7]

In the second memo by Deputy Attorney General Cole, issued on Thursday, August 28 2013, the Department seems to return to the spirit of the 2009 Ogden memo:

> "As explained above, however, both the existence of a strong and effective state regulatory system and an operation's compliance with such a system may allay the threat that an operation's size poses to federal enforcement interests."[8]

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[5] Partially redacted to medical marijuana dispensary landlord sent by Melinda Haag, U.S. Attorney for Northern California, September 28, 2011, available at http://americansforsafeaccess.org/downloads/US_Attorney_Landlord_Letter.pdf.

[6] Numbers are based upon the calculations in ASA's June 2013 report, *What's the Cost?*, plus the calculated average of $180,000 per day spent since the report was issued. Report available at http://americansforsafeaccess.org/downloads/WhatsTheCost.pdf, Cost estimates available at: http://www.americansforsafeaccess.org/whatsthecostreportestimates.

[7] *Oversight of the United States Department of Justice: Before the H. Comm. on the Judiciary*, 112th Congress (2012) (statement by Eric Holder, U.S. Attorney General).

[8] Memorandum from Deputy Attorney General David Ogden to U.S. Attorneys, "Guidance Regarding Marijuana Enforcement," Aug. 29, 2013, (the "2013 Cole memo").

Yet, following the issuance of this memo, U.S. Attorney for Western Washington Jenny Durkan said in a statement that this new guidance changed nothing about her so-far aggressive response to medical marijuana in her state:

> "[C]ontinued operation and proliferation of unregulated, for-profit entities outside of the state's regulatory and licensing scheme is not tenable and violates both state and federal law."[9]

Similarly, the Office of the Northern District of California U.S. Attorney responded:

> "At this time the U.S. Attorney is not releasing any public statements. The office is evaluating the new guidelines and for the most part it appears that the cases that have been brought in this district are already in compliance with the guidelines. Therefore, we do not expect a significant change."[10]

The gulf between the rhetoric and the actions of the Obama Administration's policy towards state medical marijuana laws is striking. Absent further concrete action, it seems likely that there will still be hostilities initiated by the Department against states with medical marijuana laws.

Questions:

1. Is the Department aware of the series of letters sent by U.S. Attorneys to elected officials between February 1, 2011 and May 16, 2011 designed to block the passage of state medical marijuana laws?
2. Is the sentiment in these threat letters still the opinion of the Department?
3. Given that U.S. Attorneys continued to block states from implementing medical marijuana legislation and regulation following the 2009 Odgen memo by sending threat letters to public officials, do you anticipate U.S. Attorneys to continue to do so?
4. If not, what will the Department of Justice do to communicate with policy makers threatened in this series of letters that they are free to pass laws that comply with the new DOJ policy?
5. Can you explain the constitutional basis for the Department to take legal action against state and local officials for passing or implementing their own marijuana laws? If such a basis can be articulated, will there be Departmental oversight to make sure that U.S. Attorneys are applying the CSA in a consistent fashion from state to state?
6. It has been estimated that the Department of Justice has now spent over half a billion dollars cracking down on medical marijuana patients and providers in

[9] *Prosecutor: Wash. medical pot system 'not tenable'*, San Francisco Chronicle, Aug 29, 2013, available at http://www.sfgate.com/news/article/Prosecutor-Wash-medical-pot-system-not-tenable-4771750.php

[10] *US Attorney Melinda Haag to Continue Crackdown Despite White House Directive*, East Bay Express, Aug. 30, 2013, available at, http://www.eastbayexpress.com/LegalizationNation/archives/2013/08/30/us-attorney-melinda-haag-to-continue-crackdown-despite-white-house-directive.

states that have authorized medical use since 1996, and that more than $300 million has been spent by the current administration. Can the Department accurately account for how much it has spent investigating and prosecuting medical marijuana conduct in these states? If not, how can the Department explain whether or not it is using resources against these parties in a manner consistent with prosecutorial guidelines provided by the Department?

7. In jurisdictions where local public officials received threat letters and have been intimidated into not implementing their own laws, how does the Department justify U.S. Attorneys prosecuting current and future cases for conduct outside of the strict guidelines of the 2013 Cole memo? If the Department is sincere about not prosecuting conduct that is supposedly permissible by the new guidelines, will states such as California and Washington be allowed a period of time to bring their current laws into compliance with the Department guidelines?
8. How does the new Cole memo impact current federal cases such as the asset forfeiture proceedings on properties leased to regulated medical marijuana dispensaries in Northern California?
9. U.S. Attorneys shut down over 300 dispensaries in Colorado and over 200 in California which were following state law, citing 1,000 foot proximity to schools as a reason, despite the fact that states have the right to set these proximities for all other matters. Why does the 2013 Cole memo continue to include this is a basis for enforcement?
10. During the 2011 raid of the Oaksterdam facility in Oakland, California, the Department failed to coordinate in advance with local law enforcement, and as a result, local law enforcement were unable to rapidly respond to a mass shooting at a college campus that occurred nearby at the same time. More generally, by preventing medical marijuana businesses from being able to use bank and credit services, the Department forces these business to operate using cash, while simultaneously threatening armed guard services from providing service to these business, which makes potentially makes them targets of criminals. What steps does the Department take with respect to local public safety when enforcing the CSA in states that have authorized medical marijuana conduct?
11. The August 2013 Cole memo cites eights areas of enforcement priority. It appears federal banking and money laundering statutes could still be enforced against those who act in accordance with a state marijuana law that meets the new guidelines. Will the Department prosecute or send threat letters to banks or businesses that engage in medical marijuana conduct permitted in such states?
12. The memo seems to state that U.S. Attorneys will not go after businesses that are following state laws that meet the eight guidelines, yet in federal courts, juries are not allowed to see any evidence of a defendant's compliance with state medical marijuana laws. If U.S. Attorneys are now to be arbiters of state laws as well as federal law, why are defendants denied the right to present evidence of compliance with state law?
13. Although the 2013 Cole memo states that size alone will not be a determinative factor in whether or not to investigate or prosecute a marijuana business, what assurances can states and providers have that the Department will not go after

such businesses in light of the fact that Department is still prosecuting the Harborside case?

14. Would the Department use resources to oppose Congressional legislation that allows states to fully implement their own medical marijuana laws?
15. Given that U.S. Attorneys currently have broad discretionary power to carry out or ignore the guidance offered in the 2013 Cole memo, what in your opinion would be the necessary Congressional action that would need to take place in order to make sure that U.S. Attorneys do not ignore the guidance?

Requests:

1. Have the Department instruct U.S. Attorneys to send retraction letters to legislative offices that received threat letters.
2. Have the Department instruct banking institutions that they will not be prosecuted for doing business with state-sanctioned medical marijuana businesses.
3. Provide communication between U.S. Attorneys and the DEA as it relates to medical marijuana enforcement starting January 2009.

II. Clarification on Department of Justice Compassionate Release and Mandatory Minimum Sentencing Guidelines as they relate to medical marijuana prisoners and defendants: In August 2013, the Department of Justice announced plans to expand its Compassionate Release program and ease rules concerning mandatory minimum sentences, yet it unclear if these reforms will allow for the release of any federal prisoners convicted of federal marijuana crimes who were acting in accordance with their state's medical marijuana laws.

Background

On August 12, 2013, Attorney General Eric Holder gave a speech to the American Bar Association in which he outlined reforms to the Department's policies on mandatory minimum sentencing and compassionate release. While the Attorney General never spoke directly about the state-federal conflict on medical marijuana, a number of his statements gave rise to questions about how the new sentencing and compassionate release guidelines pertain to those federal marijuana prisoners who were acting in accordance with their state laws, as well as those who are currently being prosecuted or under investigation. For example, when discussing the Department's limited financial resources, he said:

> "This means that federal prosecutors cannot – and should not – bring every case or charge every defendant who stands accused of violating federal law. Some issues are best handled at the state or local level."[11]

While the August 2013 memo from Deputy Attorney General Cole James Cole seems to set forth the guidelines on prosecuting marijuana violations, the memo does not resolve the state-federal conflict in a meaningful way because multiple U.S. Attorneys in medical marijuana states have announced they will continue efforts to shut down the state-approved programs in their states.

Mandatory Minimums

Federal medical marijuana defendants often receive harsh mandatory minimum sentences when they are convicted in federal court. Very few federal medical marijuana defendants take their cases to trial because they are not allowed to enter into evidence anything about their conduct being in compliance with state medical marijuana law, and prosecutors typically bring charges with long mandatory sentences to pressure defendants into accepting plea deals. Most take the deals to limit their sentences.

The announced reforms on mandatory minimum sentences are encouraging rhetoric, but unfortunately do not appear to bring relief to those federal marijuana prisoners who were acting in accordance with their states' laws. This is because the Attorney General limited

[11] *Attorney General Eric Holder Delivers Remarks at the Annual Meeting of the American Bar Association's House of Delegates*, Aug. 12, 2013, http://www.justice.gov/iso/opa/ag/speeches/2013/ag-speech-130812.html

the eligibility to "low-level, nonviolent drug offenders who have no ties to large-scale organizations, gangs, or cartels."[12] Considering that many state-complaint medical marijuana providers are charged with amounts that are well above so-called "personal use" amounts, it would appear that these providers would be excluded from eligibility, even if the state permits conduct that is above what the Department deems as "low level." Moreover, because the Department has systematically prevented providers from being able to use secure financial services, such as credit and armored guards, they have senselessly forced providers to become cash-only companies who have little choice but to arm themselves, leading to enhanced sentencing upon conviction. The situation is even worse for providers when taking into account the 2013 Cole memo, which calls for federal prosecution for "the use of firearms in the cultivation and distribution of marijuana." [13]

Unless the Department explicitly expands the rules concerning mandatory minimums to those who were acting in conformity with their state's medical marijuana laws, they are unlikely to receive sentences that deviate from the mandatory minimums.

Compassionate Release

There are at least two dozen federal marijuana prisoners who were acting in accordance with their state's medical marijuana laws, many serving lengthy mandatory minimum sentences.[14] While Attorney General Holder's speech to the American Bar Association called for an expansion of eligibility for compassionate release, these patients and providers do not appear eligible to be released any sooner, as the expansion is limited to elderly (age 65 or older) who have served more 50-75% of their sentence (depending on their health), are terminally ill, or are confined to bed or wheelchair at least 50% of their waking hours. [15]

One federal medical marijuana prisoner with a serious medical condition who should be considered is Jerry Duval. At age 54, Mr. Duval began serving a 10-year mandatory minimum sentence for conduct allowed under the Michigan medical marijuana law. A dual kidney and pancreas transplant recipient, Mr. Duval also suffers from glaucoma and neuropathy. The Bureau of Prisons estimates that the average cost to incarcerate a patient at a Federal Medical Center is $51,430 annually.[16] However, in the case of Mr. Duval, it is likely double that amount, as the cost for his kidney and pancreas medicines alone is over $100,000 per year.[17] As a result, U.S. taxpayers will spend over $1.2 million to imprison Mr. Duval for acting in accordance with Michigan law. Because of Mr. Duval's

[12] Id.
[13] The 2013 Cole memo.
[14] A listing of currently incarcerated federal marijuana prisoners can be found at http://www.safeaccessnow.org/article.php?id=624.
[15] Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. §§ 3582(c)(1)(A) and 4205(g), Federal Bureau of Prisons, Aug. 12, 2013, available at http://www.bop.gov/policy/progstat/5050_049.pdf.
[16] Federal Prison System, Cost Per Capita, Fiscal Year 2012, Federal Bureau of Prisons, available at http://www.bop.gov/foia/fy12_per_capita_costs.pdf.
[17] Letter for compassionate release from Gerald Lee Duval, Jr. to Warden J. Grondolsky, FMC Devens, May 28, 2013, available at http://safeaccessnow.org/downloads/Compassionate_Release_Request_Duval.pdf.

age, he will be ineligible to obtain compassionate release through the elderly criteria, and because he is ambulatory without a terminal diagnosis, he is too healthy to meet the other criteria, in spite of his severe medical condition. Without an expansion of the compassionate release program, Mr. Duval will likely serve his full mandatory minimum sentence.

One federal medical marijuana prisoner who may have been eligible under the new compassionate release rules was Richard Flor. At age 67, Mr. Flor was given a 5-year mandatory minimum sentence for conduct permitted under Montana's medical marijuana law. Mr Flor, who suffered from dementia, diabetes, hepatitis C, and osteoporosis, was incarcerated in a non-medical facility where a fall further injured his ribs and vertebrae. While at the awaiting transfer to a medical facility, Mr. Flor suffered two heart attacks experienced renal failure and kidney failure, and died shortly after. While the severity of Mr. Flor's conditions would have made him eligible for compassionate release, the new release criteria excludes "inmates who were age 60 or older at the time they were sentenced," for certain crimes, such as violations of the Controlled Substances Act.[18]

For the aforementioned reasons, it appears that the Department's revisions to mandatory minimums and compassionate release will not apply to any federal marijuana prisoners who acted in accordance with state law, regardless of their age or medical condition.

Questions:

1. During Attorney General Eric Holder's August 12, 2013 speech to the American Bar Association concerning mandatory minimums and compassionate release, he said, "certain low-level, nonviolent drug offenders who have no ties to large-scale organizations, gangs, or cartels will no longer be charged with offenses that impose draconian mandatory minimum sentences." In light of the new Department prosecutorial guidelines, large-scale state-compliant medical marijuana providers are no longer to be considered enforcement priorities. Will the Department order the expansion of compassionate release to alleged "large-scale" federal inmates who were acting in accordance with their state's medical marijuana law?
2. Given that it costs significantly more to imprison a seriously ill person, does the Department consider it a good use of resources to impose a mandatory 10-year sentence on a seriously ill kidney transplant recipient who was acting in accordance with his state's medical marijuana law?

Request:

1. Revise compassionate release and mandatory minimums to include federal offenders who were in compliance with the medical marijuana laws of their states.

[18] Federal Bureau of Prisons, Program Statement, Categorization of Offenses, March 16, 2009, available at http://www.bop.gov/policy/progstat/5050_049.pdf.

III. Inquiry about the Scheduling of Marijuana: Under the Controlled Substances Act, the U.S. Attorney General has the ability to initiate the rescheduling of substances, including the classification of marijuana as a Schedule I substance.

Background:

According to the federal Controlled Substance Act (CSA), items placed in Schedule I, such as marijuana, have "no currently accepted medical use in treatment in the United States." Yet, 20 states and the District of Columbia have authorized marijuana as a therapeutic treatment option that physicians can recommend to their patients. The over one million medical marijuana patients who have received recommendations from their physicians to treat their conditions is a manifestation of the fact that marijuana has true accepted use in the medical community. These doctors are not recommending the medical use of marijuana without any scientific basis. To date, there have been over 300 scientific studies on marijuana's therapeutic value.[19] In fact, one of President Obama's original choices for US Surgeon General, Dr. Sanjay Gupta, a former opponent of medical marijuana, recently issued a public apology in which he said he now believes there is great medicinal value to marijuana.

Many have sought to reclassify marijuana under the CSA through the petition process, but thus far, none of these efforts have been successful. One such attempt has been undertaken by Americans for Safe Access, resulting in the case of ASA vs. DEA. The petition charges that the DEA position on marijuana's accepted medical use has been "arbitrary and capricious as a matter of law, as it conflicts with the language and legislative history of the CSA."[20] More recently, the governors of the states of Washington, Rhode Island and Vermont filed their own rescheduling petition, while Governor Hickenlooper of Colorado filed a separate rescheduling petition on behalf of his state.

Regardless of the specific merits of each of these rescheduling efforts, the CSA authorizes the Attorney General to reschedule any substance through an internal review process. This process is described in detail in 21 USC § 811. The Attorney General "may by rule" transfer a drug or other substance between schedules if he finds that such drug or other substance has a potential for abuse, and may then make a decision under the rules subsection (b) of Section 812 as to the schedule in which such substance is to be placed. The criteria for how to evaluate a substance's placement is in section (c) of Section 811.

Among the eight listed criteria is § 811(c)(3), which includes a review of the "state of current scientific knowledge regarding the drug or other substance." The Department's

[19] A database of over 300 scientific studies on the medical value of marijuana with brief descriptions of each study can be found at http://www.cannabis-med.org/studies/study.php.
[20] Petition for Review of a final order of the Drug Enforcement Administration, *Americans for Safe Access vs. Drug Enforcement Administration*, available at http://safeaccessnow.org/downloads/ASA_v_DEA_Reply_Brief.pdf

current evaluation process is a five-prong test; however, the Department has employed narrow reasoning that makes it impossible for marijuana to be rescheduled. The test requires that there be large-scale FDA studies (Phase 2 and 3 trials) affirming the medical efficacy of a substance. Yet the Department systematically works to block any and all attempts at Phase 2 and 3 trials through its rules concerning the National Institute on Drug Abuse's ("NIDA") monopoly on the marijuana available for such studies. The Department has even rejected a 2007 DEA administrative law ruling that found the licensing of more production of marijuana for research is in the public interest.[21]

Moreover, the federal government's own National Cancer Institute ("NCI") has a Physician Data Query ("PDQ") on the medical value of marijuana. The PDQ acknowledges that "that physicians caring for cancer patients in the United States who recommend medicinal *Cannabis* predominantly do so for symptom management."[22] The original version of the PDQ contained passages affirming the tumor-fighting properties of marijuana, though the NCI removed that information from its website shortly after it was posted. Emails between the parties involved obtained via the Freedom of Information Act make clear the information was removed for political rather than scientific reasons.[23]

U.S. Attorney for Western Washington, Jenny Durkin, recently said that her state's medical marijuana program was "untenable." If there is anything untenable about medical marijuana in the United States, it is its placement as Schedule I substance with "no accepted medical use." Maintaining the placement of marijuana in Schedule I undermines the scientific integrity of the entire CSA.

Questions:

1. The Controlled Substances Act grants the Attorney General the authority to reschedule marijuana or any substance if certain determinations are made. Given the growing body of evidence that demonstrates marijuana has at least some medical value, including the National Cancer Institute's Physician Data Query, marijuana's placement in Schedule I is increasingly suspect. What steps is the Department taking with respect to examining marijuana's placement in the schedule under the authority granted by 21 USC § 811?
2. More specifically, 21 USC § 811(c)(3) calls for a review of "the state of current scientific knowledge regarding the drug or other substance." How does the Department evaluate the scientific knowledge concerning marijuana, and:
   a. What studies have been reviewed?
   b. Does the Department examine scientific knowledge that has been gained from studies conducted outside of approval by the National Institute on Drug Abuse?
   c. What is the Department's current opinion of the current scientific knowledge?

[21] In the Matter of Lyle Craker-Opinion and Recommended Ruling. DEA Administrative Law Judge Mary Ellen Bittner, February 12, 2007. https://www.aclu.org/files/images/asset_upload_file116_28341.pdf.
[22] National Cancer Institute, Physcian Data Quiery, Cannabis and Cannabinoids, last updated August 2, 2013, available at, http://www.cancer.gov/cancertopics/pdq/cam/cannabis/healthprofessional/page2
[23] Freedom of Information Act Request, National Cancer Institute's Cannabis and Cannabinoids PDQ, available at: https://www.muckrock.com/foi/united-states-of-america-10/national-cancer-institutes-cannabis-and-cannabinoids-pdq-502/

d. Will the Department direct the DEA to eliminate rules that inhibit research into the medicinal value of marijuana so that more studies can be conducted using marijuana grown from state-approved sources?

Request:

1. Provide resources for a comprehensive Department review of the current scientific knowledge, including studies about the medical benefit of marijuana and not merely those confined by NIDA's mission to explore substance abuse and addiction.

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