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Harvey et al.
CR 13-24-FVS

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February 26, 2014

Attorney General Eric Holder
Department of Justice
950 Pennsylvania Ave. NW
Washington, D.C. 20530-0001

Dear Mr. Holder,

We, the undersigned attorneys, are writing to express our concern regarding the current charging decisions of the United States Attorney's Office (USAO) in the Eastern District of Washington. We strongly believe that the USAO is acting outside the boundaries of guidelines handed down by the Department of Justicefor cases involving state legal marijuana cultivation. Contrary to DOJ policy and without consideration for state law, the USAO has filed numerous indictments against legitimate medical cannabis patients who were obeying Washington's law, including the clients we are representing in Harvey et al.

As recently as August 29, 2013 in a memorandum from Deputy Attorney General James Cole, the DOJreiterated that individuals in compliance with state marijuana laws willnot be subject to federal prosecution. A similar policy has been in effect since October 19, 2009 when then Deputy Attorney General David Ogden first issued instruction on this topic. Mr. Cole later released a statement in June 2011 that was intended to clarify the original Ogden memo. If theUSAO applies the standards set forth in any of these DOJ directives, the Harvey et al. indictment would be summarily dismissed.

In a meeting with the United States Attorney in late 2012, a member of the defense team went to painstaking lengths to explain the exact nature of the defendants' medical marijuana usage. A dual-board certified doctor who is internationally recognized as being an expert witness on cannabis as medicine described in detail how the amount and various forms of marijuana seizedisclearly indicative of patient consumption. Unfortunately, the USAOinsists on proceeding with this unnecessary indictment at great expense to taxpayers and against the DOJ's direct orders.

Out of five defendants charged, four are members of the same family; a mother and father, their son and daughter in law, plus a close family friend. All of the patients involved had a valid recommendation from a Washington state physician that authorizes the use of medical marijuana. If this case were tried in any other court of law with jurisdiction over this issue, we would be able to present a complete and provable defense that would inevitably lead to full exoneration of our clients. In line with these facts, two months after the federal raid of the Harvey property and in the weeks immediately leading up to Initiative 502 taking effect in Washington, Stevens County Prosecutor Tim Rasmussen submitted a column to the local newspaper announcing that he was joining other prosecutors in Washington's most populated counties in dropping all marijuana cases consistent with state law.

That is where the United States Attorney apparently decided to pick up where Mr. Rasmussen left off. With the defendants clearly abiding by the rest of the priorities laid out in the latest Cole memo, the lone deciding factor in this case seems to be the Harvey family's enthusiasm for hunting and need to protect themselves from an assortment of wild animals that often frequent themountainous rural area where their 34-acre property is located.

Larry Harvey is nearly 70 years old and recently retired after 30 years as a commercial truck driver. Having encountered black bears, cougars and coyotes at their front door on several occasions, a loaded handgun was stored in the dresser of the master bedroom, just in case his wife, Rhonda, needed to protect herself while Larry was away for work. Limited to social security for income, the Harvey's pride themselves on cutting corners in every way imaginable– down to burning wood to save money on electricityand hunting wild game to keep their family fed throughout the year. Rhonda also tends a garden full of vegetables next to the house.

Further down the road out of sight, about a quarter-mile away and roughly a thousand vertical feet into rocky, uneven terrain is the field where a few dozen cannabis plants were spotted from an aircraft overhead. You cannot see the Harvey's home from the area where the plants were growing nor can you see the field from the immediate vicinity of the house. This information is crucial when considering the Government's theory that the defendants werein possession of a firearm in furtherance of a drug trafficking crime. The only thing more flimsy than the ties between the guns in this case and the medical marijuana in question is the assertion that these defendants are run-of-the-mill drug traffickers.

There are a few basic facts that make the sale and distribution of cannabis highly improbable in this case. First, federal agents confiscated 45 plants, roughly five pounds of raw cannabis and a freezer full of butter, cookies and marijuana-infused teas. This is not the kind of spectacular haul that the DEA is typically called in for. Just the opposite, the evidence seized is consistent with the type of strict medical dosage that occurs with a doctor's supervision.

Furthermore, the existence of an outdoor-only garden anywhere near the Canadian Border - without so much as a greenhouse for cover - is an overt indicator that production was limited to one harvest per year. Bearing in mind, of course, that a single annual crop was designed to serve the collective needs of four family members and a close friend, all of them legal Washington state medical marijuana patients.If the immature cannabis plants that were confiscated had actually made it to harvest, the total weight of the dried flowers would have likely limited each patient to a supply of no more than five ounces per month. Considering one to two ounces are needed to make a pound of butter, it's easy to understand how a cookie at night and some tea in the morning could quickly diminish one's supply. The point being, of course, that there would be no cannabis left over to sell or distribute because these patients needed all of it and then some to properly treat their medical conditions.

Bringing the conversation back to the latest Cole Memo issued by the DOJ, there are no allegations about distribution to minors and no money ever changed hands, so there are no funds to give to criminal enterprises, gangs or cartels. Likewise, there was little incentive to divert the crop elsewhere, especially out of state and there is no indication of any other illegal activities. No one was driving impaired and there were no adverse public health consequences or environmental dangers. There is not one shred of proof that these defendants are perceived to be violent in any way. On the contrary, as explained above, the use of firearms had absolutely nothing to do with the cultivation of cannabis, even if there had been any leftover product to distribute. Simply put, this is a mom and pop on a family homestead near a National Wildlife Refuge in the Northeastern corner of Washington, where the nearest town is 10 miles in any direction.

In the Western District of Washington, meanwhile, both the geographic and political terrain stand in stark contrast to what we just described. While the United States Attorney for Eastern Washington is zealously pursuing cases involving as little as 15 plants, his counterpart in Western Washington has taken a "hands off" approach, allowing a commercial industry to develop. Where defendants in Eastern Washington are being systematically deprived of a defense due to the charging decisions of the USAO, similarly situated individuals in Western Washington have been given a green light of sorts, with the United States Attorney for Western Washington yet to charge a single case where a valid medical marijuana defense would apply in state court. Where commercial outlets are largely permitted in Western Washington,the USAO in Eastern Washington is subjecting individual patients to mandatory minimum prison sentences for private cultivation. This creates an equal protection problem of epic proportions, as does the recent passage of Initiative 502 by Washington voters.

U.S. District Judge James K. Bredar cited the passage of legalization initiatives in both Washington and Colorado in his decision to hand down lighter sentences related to a large-scale marijuana distribution ring in Maryland. Most notably, Bredar pointedly referred to “equal justice” concerns created by the federal government’s decision to not pursue criminal cases against dispensaries and others in accordance with state law. In his precedent-setting ruling, Bredar went on to say, “it’s indisputable that the offense is not regarded with the same seriousness it was 20 or 30 years ago, when the sentencing guidelines…which are still in use, were promulgated.”

Like Bredar points out, Washington provides a prime example of the equal justice disparity created by federal drug laws that are grossly out of line with shifting public opinions on cannabis. Here you have a single family facing a combined 60 years in mandatory minimum sentences for medical marijuana in the same state that plans to allow cannabis distribution on a scale unlike anyone has seen before. In the very city where the Harvey family is set to stand trial, an ordinance was recently passed to establish groundbreaking licensing requirements for aspiring entrepreneurs in the existing medical marijuana field, as well as those planning to enter the emerging I-502 marketplace. These conflicting realities cannot co-exist without the sort of equal protection quandary that Bredar warns about.

The present-day dichotomy in Washington is so troubling that Congress is calling for a better solution. When inviting you and Mr. Cole to testify at a Senate Judiciary hearing in September, Committee Chairman Patrick Leahy said “it is important, especially at a time of budget constraints, to determine whether it is the best use of federal resources to prosecute the personal or medicinal use of marijuana in states that have made such consumption legal.” Adding fuel to the fire, 18 members of Congress penned a letter to President Obama this month, calling on him to reschedule marijuana.

Likewise, the unintended consequences of federal drug laws have become a hot topic on Capitol Hill. With the Bureau of Prisons consistently at 140 percent capacity due to a swelling population of non-violent drug offenders, a bipartisan coalition is poised to pass sweeping criminal justice reforms that limit the use of mandatory minimum sentences. Your office has also responded accordingly, urging prosecutors to avoid triggering automatic prison terms in cases like Harvey et al. by electing not to list the quantity of drugs seized when filing federal charges. This is one of many bold, new approaches unveiled as part of the DOJ’s “Smart on Crime” initiative that deserve a round of applause.

Equally commendable are your remarks at the annual meeting of the American Bar Association in San Francisco, where you publicly admitted, “we must face the reality that, as it stands, our system is in too many respects broken. The course we are on is far from sustainable. And it is our time – and our duty – to identify those areas we can improve in order to better advance the cause of justice for all Americans.”

Of equal importance in this discussion is President Obama’s recent callout for clemency applicants. If the goal is to greatly reduce the number of non-violent drug offenders in federal prison, why is the USAO in Eastern Washington so eager to prosecute the Harvey family and other law-abiding citizens, with the ultimate consequence being a mandatory minimum prison sentence?

In conclusion, we ask you to consider whether the Harvey et al. indictment truly advances the cause of justice. When deferring to prosecutorial discretion in recent policy memos, is this the outcome you had in mind? Please encourage the United States Attorney for Eastern Washington to carefully consider all of the options before him and whether there are more appropriate solutions available for resolving this case.

Respectfully,

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