

Congress of the United States
Washington, DC 20515

July 30, 2015

The Honorable Michael E. Horowitz
Inspector General
Department of Justice
950 Pennsylvania Avenue, NW
Suite 4706
Washington, DC 20530-0001

Dear Mr. Horowitz:

As you may be aware, the Consolidated and Further Continuing Appropriations Act of 2015 (PL 113-235) contains a section familiarly known as "Rohrabacher-Farr." This provision, Sec. 538, is a prohibition on the Department of Justice from expending any funds to enforce federal laws against the "use, distribution, possession or cultivation of medical marijuana" in those states that have duly enacted laws for this purpose. Nonetheless, since the enactment of Rohrabacher-Farr the Department has continued to pursue and prosecute individuals and businesses for involvement with medical marijuana in states where it is legal despite the clear direction in the law to forswear such activities.

We request that you immediately investigate the Department's expenditure of funds to continue prosecuting these cases, which we believe are in direct violation of the prohibition on such expenditures established by Rohrabacher-Farr. We believe these expenditures violate both the Anti-Deficiency Act and the Rohrabacher-Farr provision of the Consolidated and Further Continuing Appropriations Act of 2015 (PL 113-235) Sec. 538. Accordingly, it is essential that the Inspector General ensure that the Department is maintaining records that document the management decisions made, as well as any fiscal implications of those decisions as they relate to these potential violations, so that the appropriate parties may be held accountable.

The Department of Justice admits that it is currently expending federal funds to prosecute the above-described medical marijuana cases. In an April 2, 2015 report in the *LA Times*, Patrick Rodenbush, a spokesman for the Department, claimed that Sec. 538 did not apply to cases against individuals or organizations, saying instead that it only stopped the department from "impeding the ability of *states* [emphasis added] to carry out their medical marijuana laws..." <http://www.latimes.com/nation/nationnow/la-na-nn-medical-marijuana-abusers-20150401-story.html>.

Mr. Rodenbush's interpretation clearly is a stretch. The implementation of state law is carried out by individuals and businesses as the state authorizes them to do. For DOJ to argue otherwise is a tortuous twisting of the text of Sec. 538 and common sense and the use of federal funds to

prevent these individuals and businesses from acting in accordance with state law is clearly in violation of Rohrabacher-Farr.

Beyond the obvious stretch in Mr. Rodenbush's statement, the Congressional intent of Sec. 538 is clear as delineated in the debate on the provision in Congress. We, the authors of the language, and our many colleagues—including those who opposed the amendment—laid on the record repeatedly that the intent and the language of the provision was to stop DOJ from interacting with anyone legitimately doing business in medical marijuana in accordance with state law. [See *Congressional Record*, May 29, 2014, pp. H4982-H4985, <http://www.gpo.gov/fdsys/pkg/CREC-2014-05-29/html/CREC-2014-05-29-pt1-PgH4968-2.htm>] Any official of the Department who interprets Sec. 538 differently, is doing so knowingly and willfully, without regard for the facts.

Cases such as the Kettle Falls Five case in Washington, asset forfeiture actions against dispensaries in the San Francisco Bay area, or the *Lynch* case now pending in the Court of Appeals for the Ninth Circuit, are all instances of DOJ expending dollars it does not have the legal authority to spend. Consequently, we believe there is sufficient cause for your office to investigate potential violations of the Anti-Deficiency Act by the Department with regard to its prosecution and other enforcement actions against persons and businesses conducting legitimate medical marijuana activities under state law.

We respectfully insist that you investigate the Department's apparent violation of the Anti-Deficiency Act and make recommendations to bring the Department into full compliance with the law, both under the Anti-Deficiency Act and the Rohrabacher-Farr provision of the Consolidated and Further Continuing Appropriations Act of 2015 (PL 113-235).

Sincerely,



REP. SAM FARR
Member of Congress



REP. DANA ROHRABACHER
Member of Congress

cc: Robin C. Ashton
Office of Professional Responsibility

Legal Counsel's Office
Executive Office for U.S. Attorneys