



# **Department of Justice**

---

**STATEMENT OF**

**JAMES M. COLE  
DEPUTY ATTORNEY GENERAL**

**BEFORE THE**

**COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE**

**FOR A HEARING ENTITLED**

**“CONFLICTS BETWEEN STATE AND FEDERAL MARIJUANA LAWS”**

**PRESENTED ON**

**SEPTEMBER 10, 2013**

**Testimony of James M. Cole**  
**Deputy Attorney General**  
**United States Department of Justice**  
**Before the United States Senate Committee on the Judiciary**  
**September 10, 2013**

Good afternoon Chairman Leahy, Ranking Member Grassley, and distinguished Members of the Committee. I am pleased to speak with you about the guidance that the Department recently issued to all United States Attorneys regarding marijuana enforcement efforts. That guidance instructs our prosecutors to continue to enforce federal priorities, such as preventing sales of marijuana by criminal enterprises, preventing violence and the use of firearms in the cultivation and distribution of marijuana, preventing distribution to minors, and preventing the cultivation of marijuana on public lands – priorities that we historically have focused on for many years – and also notes that we will continue to rely on state and local authorities to effectively enforce their own drug laws as we work together to protect our communities.

**I. Introduction**

As you know, the relevant federal statute, the Controlled Substances Act of 1970 (CSA), among other prohibitions, makes it a federal crime to possess, grow, or distribute marijuana, and to open, rent, or maintain a place of business for any of these purposes.

For many years, all 50 states have enacted uniform drug control laws or similar provisions that mirrored the CSA with respect to their treatment of marijuana and made the possession, cultivation, and distribution of marijuana a state criminal offense. With such overlapping statutory authorities, the federal government and the states traditionally worked as partners in the field of drug enforcement. Federal law enforcement historically has targeted sophisticated drug traffickers and organizations, while state and local authorities generally have focused their enforcement efforts, under their state laws, on more localized and lower-level drug activity.

Starting with California in 1996, several states have authorized the cultivation, distribution, possession, and use of marijuana for medical purposes, under state law. Today, twenty-one states and the District of Columbia legalize marijuana use for medical purposes under state law, including six states that enacted medical marijuana legislation in 2013.

Throughout this time period, the Department of Justice has continued to work with its state and local partners, but focused its own efforts and resources on priorities that are particularly important to the federal government. The priorities that have guided our efforts are:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

Examples of our efforts have included cases against individuals and organizations who were using the state laws as a pretext to engage in large-scale trafficking of marijuana to other states; enforcement against those who were operating marijuana businesses near schools, parks, and playgrounds; and enforcement against those who were wreaking environmental damage by growing marijuana on our public lands. On the other hand, the Department has not historically devoted our finite resources to prosecuting individuals whose conduct is limited to possession of marijuana for personal use on private property.

## **II. The Department's Updated Marijuana Enforcement Guidance**

In November 2012, voters in Colorado and Washington State passed ballot initiatives that legalized, under state law, the possession of small amounts of marijuana, and made Colorado and Washington the first states to provide for the regulation of marijuana production, processing, and sale for recreational purposes. The Department of Justice has reviewed these ballot initiatives in the context of our enforcement priorities.

On August 29, 2013, the Department notified the Governors of Colorado and Washington that we were not at this time seeking to preempt their states' ballot initiatives. We advised the Governors that we expected their states to implement strong and effective regulatory and enforcement systems to fully protect against the public health and safety harms that are the focus

of our marijuana enforcement priorities, and that the Department would continue to investigate and prosecute cases in Colorado and Washington in which the underlying conduct implicated our federal interests. The Department reserved its right to challenge the state laws at a later time, in the event any of the stated harms do materialize – either in spite of a strict regulatory scheme, or because of the lack of one.

That same day, the Department issued a guidance memorandum to all United States Attorneys directing our prosecutors to continue to fully investigate and prosecute marijuana cases that implicate any one of our eight federal enforcement priorities. This memorandum applies to our prosecutors in all 50 states and guides the exercise of prosecutorial discretion against individuals and organizations who violate any of our stated federal interests, no matter where they live or what the laws in their states may permit. Outside of these enforcement priorities, however, the Department will continue to rely on state and local authorities to address marijuana activity through enforcement of their own drug laws. This updated guidance is consistent with our efforts to maximize our investigative and prosecutorial resources during this time of budget challenges, and with the more general message the Attorney General delivered last month to all federal prosecutors, emphasizing the importance of quality priorities for all cases we bring, with an eye toward promoting public safety, deterrence, and fairness.

Our updated guidance also makes one overarching point clear: the Department of Justice expects that states and local governments that have enacted laws authorizing marijuana-related conduct will implement effective regulatory and enforcement systems to protect federal priorities and the health and safety of every citizen. As the guidance explains, a jurisdiction’s regulatory scheme must be tough in practice, not just on paper. It must include strong enforcement efforts, backed by adequate funding.

We are emphasizing comprehensive regulation and well-funded state enforcement because such a system will complement the continued enforcement of state drug laws by state and local enforcement officials, in a manner that should allay the threat that a state-sanctioned marijuana operation might otherwise pose to federal enforcement interests. Indeed, a robust system may affirmatively address those federal priorities by, for example, implementing effective measures to prevent diversion of marijuana outside of the regulated system and to other states, prohibiting access to marijuana by minors, and replacing an illicit marijuana trade that funds criminal enterprises with a tightly regulated market in which revenues are tracked and accounted for. In those circumstances, consistent with the traditional allocation of federal-state efforts in this area, enforcement of state law by state and local law enforcement and regulatory bodies should remain a necessary part of addressing marijuana-related activity.

### **III. Conclusion**

The Department of Justice is committed to enforcing the CSA in all states, and we are grateful for the dedicated work of our Drug Enforcement Administration agents, our federal prosecutors, and our state and local partners in protecting our communities from the dangers of illegal drug trafficking. The Administration also remains committed to minimizing the public health and safety consequences of marijuana use, focusing on prevention, treatment, and support for recovery.

As our updated guidance reflects, we are continuing our practice of targeting conduct that implicates federal priorities and causes harm, regardless of state law. We expect our state and local partners to continue to do so as well. In those jurisdictions that have enacted laws that legalize and seek to regulate marijuana for some purposes, this means that strong and effective regulatory and enforcement systems must address the threat those state laws could pose to public safety, public health, and other law enforcement interests.

I look forward to taking your questions.