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Medical Marijuana Memo: DOJ Cracks Down On Pot Shops

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WASHINGTON – Medical marijuana advocates are pushing back against a new Justice Department threat to raid and prosecute medical pot shops even in states where the drug is legal.

During the 2008 campaign, Obama promised to end such raids, which were commonplace under the Bush administration. Once he took office, the Justice Department, citing that campaign pledge, issued a memo that instructed federal law enforcement officials to back off. If a person was in compliance with state and local laws, the memo instructed, just let them be.

The new memo, from Deputy Attorney General James M. Cole, purports to provide "guidance" on [the previous memo](#), but reads more like a warning shot to medical marijuana shops. The previous memo, Cole writes, "advised that it is likely not an efficient use of federal resources to focus enforcement efforts on individuals with cancer or other serious illnesses who use marijuana as part of a recommended treatment regimen consistent with

applicable state law, or their caregivers."

But it might be an efficient use of resources to target the people who sell medical pot to the very people Cole says should be shielded from federal assault. "The term 'caregiver' as used in the memorandum meant just that: individuals providing care to individuals with cancer or other serious illnesses, not commercial operations cultivating, selling or distributing marijuana," he adds.

Cole's characterization of his new memo as a simple clarification of the original one downplays the radical departure it represents. The original memo clearly attempted to distinguish between pot shops that operated within state laws and those that bent or broke them. "[P]rosecution of individuals with cancer or other serious illnesses who use marijuana as part of a recommended treatment regimen consistent with applicable state law, or those caregivers in clear and unambiguous compliance with existing state law who provide such individuals with marijuana, is unlikely to be an efficient use of limited federal resources," the landmark 2009 memo read. "On the other hand, prosecution of commercial enterprises that unlawfully market and sell marijuana for profit continues to be an enforcement priority of the Department."

Pot shop owners and advocates are apoplectic. "Cancer patients are going to have to grow their own product or buy it on the street somewhere," said Aaron Smith, executive director of the National Cannabis Industry Association, which represents Big Pot in Washington.

Smith said he doubted that any shops would close their doors in the face of the threat. "I don't think anybody's going to close down as a result of the memo. People are nervous, but this industry –

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particularly look at California, which bloomed pretty quickly during the Bush administration, when there were weekly raids."

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Tom Angell, a spokesman for Law Enforcement Against Prohibition, said that "by threatening to raid state-legal and regulated compassion centers, the Obama administration is causing more patients -- and more tax-free money -- to be diverted to the violent black market, where drug cartels and gangs battle it out for profits."

Angell suggested letting cash-strapped states tax the legal sales instead. "Letting states go ahead and enact the compassion centers their lawmakers voted to create means that distribution will be controlled and safer, and plus it means that states can take in new tax revenue to help plug deficit problems," he said. "It is incumbent upon states to stand up to the federal government in the face of this belligerent federal threat letter."

Steve DeAngelo, owner of Harborside [Health Center](#), a medical cannabis shop I profiled in the book "[This Is Your Country On Drugs](#)," said that one consequence of the new memo is the psychological trauma it will cause seriously ill people who wonder where they'll get medical pot if their shop closes down. "When things like this happen, they really send a shock through the patient community, which is vulnerable and shaky," DeAngelo said.

Bad news for patients can be good news for the private prison industry. In its most recent filing with the Securities and Exchange Commission, the Corrections Corporation of America, the nation's largest company devoted to locking people up, informs investors that liberalization of sentencing or drug prohibition laws could damage its share price. "The demand for our facilities and services could be adversely affected by the relaxation of enforcement efforts, leniency in conviction or parole standards and sentencing practices or through the decriminalization of certain activities that are currently proscribed by our criminal laws. For instance, any changes with respect to drugs and controlled substances or illegal immigration could affect the number of persons arrested, convicted, and sentenced, thereby potentially reducing demand for correctional facilities to house them," reads the document, [posted by Naked Capitalism](#).

Over the past 15 years, private prison populations have expanded by more than 300 percent and the corporations have been actively involved in setting criminal justice policy, a new report by the [Justice Policy Institute](#) has found.

DeAngelo pointed to the lost jobs and tax revenue the policy would represent outside the prison industry. A recent report found that the legal marijuana business registered \$1.7 billion in sales the last year. The new policy would cost "tens of thousands of legal jobs, taking away hundreds of millions in tax revenue, giving 1.7 billion dollars to the cartels, and the patients go from situation where they buy tested marijuana from people with a background check, to dealing with people on the street corner," DeAngelo said.

It could have political consequences too, said DeAngelo, noting Colorado's importance to Obama's reelection. The state has a popular and booming medical marijuana trade.

Colorado, California, New Mexico and Maine have state-regulated medical marijuana shops that the memo appears to target. Oregon, Washington, Montana, Nevada and Michigan operate in more of a grey area but boast medical pot shops. Other states and the District of Columbia are in the process of writing regulations to allow dispensaries.

DeAngelo said that he raised money for Obama in 2008, but was thinking of voting for a Republican such as Ron Paul in 2012. Either way, he said, he's not closing Harborside. "We made our decision five years ago when we opened our doors, come hell or high water," he said. "They can come close me down, but I will not do it voluntarily under any circumstances whatsoever."

Read the full memo:

June 29, 2011

MEMORANDUM FOR UNITED STATES ATTORNEYS

FROM: James M. Cole Deputy Attorney General

SUBJECT: Guidance Regarding the Ogden Memo in Jurisdictions Seeking to Authorize Marijuana for Medical Use

Over the last several months some of you have requested the Department's assistance in responding to inquiries from State and local governments seeking guidance about the Department's position on enforcement of the Controlled Substances Act (CSA) in jurisdictions that have under consideration, or have implemented, legislation that would sanction and regulate the commercial cultivation and distribution of marijuana purportedly for medical use. Some of these jurisdictions have considered approving the cultivation of large quantities of marijuana, or broadening the regulation and taxation of the substance. You may have seen letters responding to these inquiries by several United States Attorneys. Those letters are entirely consistent with the October 2009 memorandum issued by Deputy Attorney General David Ogden to federal prosecutors in States that have enacted laws authorizing the medical use of marijuana (the "Ogden Memo").

The Department of Justice is committed to the enforcement of the Controlled Substances Act in all States. Congress has determined that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large scale criminal enterprises, gangs, and cartels. The Ogden Memorandum provides guidance to you in deploying your resources to enforce the CSA as part of the exercise of the broad discretion you are given to address federal criminal matters within your districts.

A number of states have enacted some form of legislation relating to the medical use of

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marijuana. Accordingly, the Ogden Memo reiterated to you that prosecution of significant traffickers of illegal drugs, including marijuana, remains a core priority, but advised that it is likely not an efficient use of federal resources to focus enforcement efforts on individuals with cancer or other serious illnesses who use marijuana as part of a recommended treatment regimen consistent with applicable state law, or their caregivers. The term "caregiver" as used in the memorandum meant just that: individuals providing care to individuals with cancer or other serious illnesses, not commercial operations cultivating, selling or distributing marijuana.

The Department's view of the efficient use of limited federal resources as articulated in the Ogden Memorandum has not changed. There has, however, been an increase in the scope of commercial cultivation, sale, distribution and use of marijuana for purported medical purposes. For example, within the past 12 months, several jurisdictions have considered or enacted legislation to authorize multiple large-scale, privately-operated industrial marijuana cultivation centers. Some of these planned facilities have revenue projections of millions of dollars based on the planned cultivation of tens of thousands of cannabis plants.

The Ogden Memorandum was never intended to shield such activities from federal enforcement action and prosecution, even where those activities purport to comply with state law. Persons who are in the business of cultivating, selling or distributing marijuana, and those who knowingly facilitate such activities, are in violation of the Controlled Substances Act, regardless of state law. Consistent with resource constraints and the discretion you may exercise in your district, such persons are subject to federal enforcement action, including potential prosecution. State laws or local ordinances are not a defense to civil or criminal enforcement of federal law with respect to such conduct, including enforcement of the CSA. Those who engage in transactions involving the proceeds of such activity may also be in violation of federal money laundering statutes and other federal financial laws.

The Department of Justice is tasked with enforcing existing federal criminal laws in all states, and enforcement of the CSA has long been and remains a core priority.

cc: Lanny A. Breuer Assistant Attorney General, Criminal Division
B. Todd Jones United States Attorney District of Minnesota Chair, AGAC
Michele M. Leonhart Administrator Drug Enforcement Administration
H. Marshall Jarrett Director Executive Office for United States Attorneys
Kevin L. Perkins Assistant Director Criminal Investigative Division Federal Bureau of Investigations

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