



ATTORNEY GENERAL OF COLORADO
John W. Suthers

April 26, 2011

Governor John Hickenlooper
Colorado State Capitol

Members of the Colorado General Assembly
Colorado State Capitol

Re: Federal Enforcement of Marijuana Laws

Dear Governor Hickenlooper and Members of the Colorado General Assembly:

I feel compelled to advise you of recent developments in regard to the federal law enforcement position regarding medical marijuana.

As you are aware, in October of 2009 the U.S. Department of Justice issued a memo to federal law enforcement (the "Ogden memo") indicating that, while manufacturing, possession and distribution of marijuana was a violation of federal law, the department would not employ its resources to pursue individuals acting in strict compliance with state medical marijuana laws.

Since the Ogden memo was issued several states, including Colorado, have enacted medical marijuana regulatory schemes that have resulted in explosive growth in the number of persons claiming to be using marijuana for medical purposes. In Colorado for example, there are now approximately 123,000 registered medical marijuana patients. As a result, the DOJ, through various United States Attorneys, has responded to inquiries in order to clarify the scope of the Ogden memo. I am enclosing copies of several such letters, including a letter to me from John Walsh, the United States Attorney for the District of Colorado. These letters indicate that while the Department of Justice will not focus its limited resources on seriously ill individuals who use marijuana as part of a medically recommended treatment regimen in compliance with state law, it does maintain its full authority to vigorously enforce federal law against individuals and organizations that participate in unlawful manufacturing and distribution activity involving marijuana, *even if such activities are permitted under state law*. Of great concern is the fact that some of the letters make clear the U.S. Attorneys do not consider state employees who conduct activities under state medical marijuana laws to be immune from liability under federal law.

Governor Hickenlooper, General Assembly

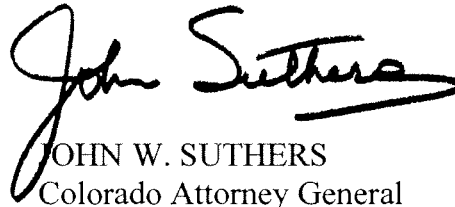
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The letter from U.S. Attorney Walsh, in addition to sharing the viewpoint of the other U.S. Attorneys about the legality of grow operations and dispensaries, elaborates on his specific concerns regarding Colorado House Bill 1043, currently pending in the General Assembly.

Because this clarification of the Ogden memo raises significant issues regarding the medical marijuana regulatory scheme enacted by the Colorado General Assembly in 2010 (which has resulted in widespread manufacture and distribution of medical marijuana in Colorado) and issues regarding currently pending legislation, I wanted to ensure that you were made aware of these developments as soon as possible.

Sincerely,



JOHN W. SUTHERS
Colorado Attorney General

Enclosures

c: Roxy Huber, Executive Director, Department of Revenue
Dr. Christopher E. Urbina, Executive Director, CDPHE



U.S. DEPARTMENT OF JUSTICE

John F. Walsh

*United States Attorney
District of Colorado*

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Denver, Colorado 80202

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303-454-0400

April 26, 2011

John Suthers
Attorney General
State of Colorado
1525 Sherman St., 7th Floor
Denver, CO 80203

Dear Attorney General Suthers:

I am writing in response to your request for clarification of the position of the U.S. Department of Justice (the "Department") with respect to activities that would be licensed or otherwise permitted under the terms of pending House Bill 1043 in the Colorado General Assembly. I have consulted with the Attorney General of the United States and the Deputy Attorney General of the United States about this bill, and write to ensure that there is no confusion as to the Department's views on such activities.

As the Department has noted on many prior occasions, the Congress of the United States has determined that marijuana is a controlled substance, and has placed marijuana on Schedule I of the Controlled Substances Act (CSA). Federal law under Title 21 of the United States Code, Section 841, prohibits the manufacture, distribution or possession with intent to distribute any controlled substance, including marijuana, except as provided under the strict control provisions of the CSA. Title 21, Section 856 makes it a federal crime to lease, rent or maintain a place for the purpose of manufacturing, distributing or using a controlled substance. Title 21, Section 846 makes it a federal crime to conspire to commit that crime, or any other crime under the CSA. Title 18, Section 2 makes it a federal crime to aid and abet the commission of a federal crime. Moreover, federal anti-money laundering statutes, including Title 18, Section 1956, make illegal certain financial transactions designed to promote illegal activities, including drug trafficking, or to conceal or disguise the source of the proceeds of that illegal activity. Title 18, Section 1957, makes it illegal to engage in a financial transaction involving more than \$10,000 in criminal proceeds.

In October 2009, the Department issued guidance (the "Ogden Memo") to U.S. Attorneys around the country in states with laws authorizing the use of marijuana for medical purposes

under state law. At the time the Ogden Memo issued, Colorado law, and specifically, Amendment 20 to the Colorado Constitution, authorized the possession of only very limited amounts of marijuana for medical purposes by individuals with serious illnesses and those who care for them.¹ As reiterated in the Ogden memo, the prosecution of individuals and organizations involved in the trade of any illegal drugs and the disruption of drug trafficking organizations is a core priority of the Department. This core priority includes prosecution of business enterprises that unlawfully market and sell marijuana. Accordingly, while the Department does not focus its limited resources on seriously ill individuals who use marijuana as part of a medically recommended treatment regimen in compliance with state law as stated in the Ogden Memo, we maintain the authority to enforce the CSA vigorously against individuals and organizations that participate in unlawful manufacturing and distribution activity involving marijuana, even if such activities are permitted under state law. The Department's investigative and prosecutorial resources will continue to be directed toward these objectives.

It is well settled that a State cannot authorize violations of federal law. The United States District Court for the District of Colorado recently reaffirmed this fundamental principle of our federal constitutional system in *United States v. Bartkowitz*, No. 10-cr-00118-PAB (D. Colo. 2010), when it held that Colorado state law on medical marijuana does not and cannot alter federal law's prohibition on the manufacture, distribution or possession of marijuana, or provide a defense to prosecution under federal law for such activities.

The provisions of Colorado House Bill 1043, if enacted, would permit under state law conduct that is contrary to federal law, and would threaten the ability of the United States government to regulate possession, manufacturing and trafficking in controlled substances, including marijuana. First, provisions of a proposed medical marijuana investment fund amendment to H.B. 1043, which ultimately did not pass in the Colorado House but which apparently may be reintroduced as an amendment in the Colorado Senate, appear to contemplate that the State of Colorado would license a marijuana investment fund or funds under which both Colorado and out-of-state investors would invest in commercial marijuana operations. The Department would consider civil and criminal legal remedies regarding those who invest in the production of marijuana, which is in violation of federal law, even if the investment is made in a state-licensed fund of the kind proposed.

Second, the terms of H.B. 1043 would authorize Colorado state licensing of "medical marijuana infused product" facilities with up to 500 marijuana plants, with the possibility of licensing even larger facilities, with no stated number limit, with a state-granted waiver based upon consideration of broad factors such as "business need." Similarly, the Department would consider civil actions and criminal prosecution regarding those who set up marijuana growing facilities and dispensaries, as well as property owners, as they will be acting in violation of federal law.

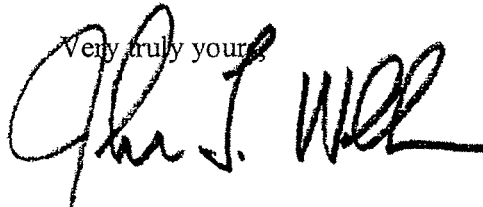
¹ As passed by Colorado voters in 2000, Amendment 20 made lawful under Colorado law the possession by a patient or caregiver of patient of "[n]o more than two ounces of a useable form of marijuana or no more than six marijuana plants with three or fewer being mature, flowering plants producing a usable form of marijuana." Colo. Const. art. XVIII, § 14(4)(a). Within these limits, the Amendment authorized a medical marijuana "affirmative defense" to state criminal prosecution for possession of marijuana. Colo. Const. art. XVIII, § 14(2)(a), (b).

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As the Attorney General has repeatedly stated, the Department of Justice remains firmly committed to enforcing the federal law and the Controlled Substances Act in all states. Thus, if the provisions of H.B. 1043 are enacted and become law, the Department will continue to carefully consider all appropriate civil and criminal legal remedies to prevent manufacture and distribution of marijuana and other associated violations of federal law, including injunctive actions; civil penalties; criminal prosecution; and the forfeiture of any property used to facilitate a violation of federal law, including the Controlled Substances Act.

I hope this letter provides the clarification you have requested, and assists the State of Colorado and its potential licensees in making informed decisions regarding the cultivation, manufacture, and distribution of marijuana, as well as related financial transactions.

Very truly yours,

A handwritten signature in black ink, appearing to read "John F. Walsh". The signature is written in a cursive, flowing style with a large initial "J".

JOHN F. WALSH
United States Attorney
District of Colorado

cc: Eric Holder, Attorney General of the United States
James Cole, Deputy Attorney General of the United States



U.S. Department of Justice

*United States Attorney
Northern District of California*

Melinda Haag
United States Attorney

11th Floor, Federal Building
450 Golden Gate Avenue, Box 36055
San Francisco, California 94102-3495

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FAX:(415) 436-7234

February 1, 2011

John A. Russo, Esq.
Oakland City Attorney
1 Frank Ogawa Plaza, 6th Floor
Oakland, California 94612

Dear Mr. Russo:

I write in response to your letter dated January 14, 2011 seeking guidance from the Attorney General regarding the City of Oakland Medical Cannabis Cultivation Ordinance. The U.S. Department of Justice is familiar with the City's solicitation of applications for permits to operate "industrial cannabis cultivation and manufacturing facilities" pursuant to Oakland Ordinance No. 13033 (Oakland Ordinance). I have consulted with the Attorney General and the Deputy Attorney General about the Oakland Ordinance. This letter is written to ensure there is no confusion regarding the Department of Justice's view of such facilities.

As the Department has stated on many occasions, Congress has determined that marijuana is a controlled substance. Congress placed marijuana in Schedule I of the Controlled Substances Act (CSA) and, as such, growing, distributing, and possessing marijuana in any capacity, other than as part of a federally authorized research program, is a violation of federal law regardless of state laws permitting such activities.

The prosecution of individuals and organizations involved in the trade of any illegal drugs and the disruption of drug trafficking organizations is a core priority of the Department. This core priority includes prosecution of business enterprises that unlawfully market and sell marijuana. Accordingly, while the Department does not focus its limited resources on seriously ill individuals who use marijuana as part of a medically recommended treatment regimen in compliance with state law as stated in the October 2009 Ogden Memorandum, we will enforce the CSA vigorously against individuals and organizations that participate in unlawful manufacturing and distribution activity involving marijuana, even if such activities are permitted under state law. The Department's investigative and prosecutorial resources will continue to be directed toward these objectives.

Consistent with federal law, the Department maintains the authority to pursue criminal or civil actions for any CSA violations whenever the Department determines that such legal action is warranted. This includes, but is not limited to, actions to enforce the criminal provisions of the CSA such as Title 21 Section 841 making it illegal to manufacture, distribute, or possess with intent to distribute any controlled substance including marijuana; Title 21 Section 856 making it

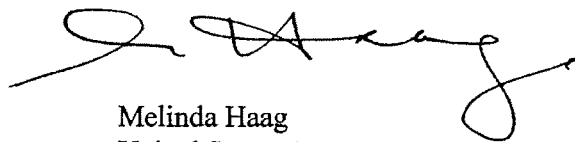
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unlawful to knowingly open, lease, rent, maintain, or use property for the manufacturing, storing, or distribution of controlled substances; and Title 21 Section 846 making it illegal to conspire to commit any of the crimes set forth in the CSA. Federal money laundering and related statutes which prohibit a variety of different types of financial activity involving the movement of drug proceeds may likewise be utilized. The government may also pursue civil injunctions, and the forfeiture of drug proceeds, property traceable to such proceeds, and property used to facilitate drug violations.

The Department is concerned about the Oakland Ordinance's creation of a licensing scheme that permits large-scale industrial marijuana cultivation and manufacturing as it authorizes conduct contrary to federal law and threatens the federal government's efforts to regulate the possession, manufacturing, and trafficking of controlled substances. Accordingly, the Department is carefully considering civil and criminal legal remedies regarding those who seek to set up industrial marijuana growing warehouses in Oakland pursuant to licenses issued by the City of Oakland. Individuals who elect to operate "industrial cannabis cultivation and manufacturing facilities" 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. Potential actions the Department is considering 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. As the Attorney General has repeatedly stated, the Department of Justice remains firmly committed to enforcing the CSA in all states.

I hope this letter assists the City of Oakland and potential licensees in making informed decisions regarding the cultivation, manufacture, and distribution of marijuana.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Melinda Haag', with a long horizontal line extending to the left and a large loop at the end.

Melinda Haag
United States Attorney
Northern District of California

cc: Kamala D. Harris, Attorney General of the State of California
Nancy E. O'Malley, Alameda County District Attorney



U.S. Department of Justice

United States Attorney
District of Hawaii

PJJK Federal Building
300 Ala Moana Blvd., Room 6-100
Honolulu, Hawaii 96850

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FAX (808) 541-2958

April 12, 2011

Jodie F. Maesaka-Hirata, Director
Department of Public Safety
State of Hawaii
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

Re: SENATE BILL 1458 SD2, HD2

Dear Ms. Maesaka-Hirata:

This replies to your letter dated April 6, 2011, seeking guidance from the Attorney General and my office with regards to S.B. No. 1458, which if enacted, would establish in each County of this State for a five year test period at least one "medical marijuana compassion center" for the manufacture and distribution of marijuana. Under this bill, such marijuana distribution centers licensed by the State Department of Public Safety, would be authorized to sell marijuana within the respective counties in which they are located. In addition, the Bill also authorizes the sale of marijuana to other caregivers and non-resident patients visiting from other states. This letter is written to ensure there is no confusion regarding the Department of Justice's view of such distribution centers.

As the Department has said on many prior occasions, Congress has determined that marijuana is a controlled substance. Congress placed marijuana in Schedule I of the Controlled Substances Act, 21 U.S.C. § 801 et. seq. ("CSA") and as such, growing, distributing, and possessing marijuana in any capacity, other than as part of a Federally authorized research program, is a violation of Federal law regardless of state laws permitting such activities.

As a way of emphasizing the foregoing, the CSA's penalties for felony marijuana offenses (manufacture,

Jodie F. Maesaka-Hirata
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distribution, possession with intent to distribute) should be considered:

-1,000 or more marijuana plants, or 1,000 kilograms: 10 years - life imprisonment;

-100 or more marijuana plants, or 100 kilograms: 5 - 40 years imprisonment;

-50 marijuana plants or more, or more than 50 kilograms: up to 20 years imprisonment; and

-Less than 50 marijuana plants, or less than 50 kilograms: up to 5 years imprisonment.

The prosecution of individuals and organizations involved in the trade of any illegal drugs and the disruption of drug trafficking organizations is a core priority of the Department. This core priority includes prosecutions of business enterprises that unlawfully market and sell marijuana. Accordingly, while the Department does not focus its limited resources on seriously ill individuals who use marijuana as part of a medically recommended treatment regimen in compliance with state law, we maintain the authority to enforce the CSA vigorously against individuals and organizations that participate in unlawful manufacturing and distribution activity of controlled substances, including marijuana, even if such activities are permitted under state law.

Consistent with federal law, the Department maintains the authority to pursue criminal or civil actions for any CSA violations whenever the Department determines that such legal action is warranted. This includes, but is not limited to, actions to enforce the criminal provisions of the CSA such as:

-21 U.S.C. § 841 (making it illegal to manufacture, distribute, or possess with intent to distribute any controlled substance including marijuana);

-21 U.S.C. § 856 (making it unlawful to knowingly open, lease, rent, maintain, or use property for the manufacturing, storing, or distribution of controlled substances);

Jodie F. Maesaka-Hirata
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-21 U.S.C. § 860 (making it unlawful to distribute or manufacture controlled substances within 1,000 feet of schools, colleges, playgrounds, and public housing facilities, and within 100 feet of any youth centers, public swimming pools, and video arcade facilities);

-21 U.S.C. § 843 (making it unlawful to use any communication facility to commit felony violations of the CSA); and

-21 U.S.C. § 846 (making it illegal to conspire to commit any of the crimes set forth in the CSA).

In addition, Federal money laundering and related statutes which prohibit a variety of different types of financial activity involving the movement of drug proceeds may likewise be utilized. The Government may also pursue civil injunctions, and the forfeiture of drug proceeds, property traceable to such proceeds, and property used to facilitate drug violations.

This Bill would create a State licensing scheme which permits the marijuana distribution center in each county to support unlimited numbers of resident caregivers and patients and non-resident patients visiting from other states. As such, this scheme would authorize large-scale marijuana manufacture and sales, which is contrary to Federal law and threatens the Federal government's efforts to regulate the possession, manufacturing, and trafficking of controlled substances. Accordingly, the Department is carefully considering civil and criminal legal remedies if this Bill is enacted and becomes law, with respect to those who seek to create such marijuana distribution centers pursuant thereto. Individuals who elect to operate such marijuana centers will be doing so in violation of Federal law. Others who knowingly facilitate and assist the actions of the licensees (including property owners, landlords, and financiers) should also know that their conduct violates Federal law. Potential actions the Department may 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. As the Attorney General has repeatedly stated, the Department of Justice remains firmly committed to enforcing the CSA in all states.

Jodie F. Maesaka-Hirata
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I hope this letter assists the State of Hawaii and potential licensees in making informed decisions regarding the cultivation, manufacture, and distribution of marijuana.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Florence T. Nakakuni".

FLORENCE T. NAKAKUNI
United States Attorney



U.S. Department of Justice

United States Attorney

Eastern District of Washington

*Suite 340 Thomas S. Foley U. S. Courthouse (509) 353-2767
P. O. Box 1494 Fax (509) 353-2766
Spokane, Washington 99210-1494*

Honorable Christine Gregoire
Washington State Governor
P.O. Box 40002
Olympia, Washington 98504-0002

April 14, 2011

Re: Medical Marijuana Legislative Proposals

Dear Honorable Governor Gregoire:

We write in response to your letter dated April 13, 2011, seeking guidance from the Attorney General and our two offices concerning the practical effect of the legislation currently being considered by the Washington State Legislature concerning medical marijuana. We understand that the proposals being considered by the Legislature would establish a licensing scheme for marijuana growers and dispensaries, and for processors of marijuana-infused foods among other provisions. We have consulted with the Attorney General and the Deputy Attorney General about the proposed legislation. This letter is written to ensure there is no confusion regarding the Department of Justice's view of such a licensing scheme.

As the Department has stated on many occasions, Congress has determined that marijuana is a controlled substance. Congress placed marijuana in Schedule I of the Controlled Substances Act (CSA) and, as such, growing, distributing, and possessing marijuana in any capacity, other than as part of a federally authorized research program, is a violation of federal law regardless of state laws permitting such activities.

The prosecution of individuals and organizations involved in the trade of any illegal drugs and the disruption of drug trafficking organizations is a core priority of the Department. This core priority includes prosecution of business enterprises that unlawfully market and sell marijuana. Accordingly, while the Department does not focus its limited resources on seriously ill individuals who use marijuana as part of a medically recommended treatment regimen in compliance with state law as stated in the October 2009 Ogden Memorandum, we maintain the authority to enforce the CSA vigorously against individuals and organizations that participate in unlawful manufacturing and distribution activity involving marijuana, even if such activities are permitted under state law. The Department's investigative and prosecutorial resources will continue to be directed toward these objectives.

Consistent with federal law, the Department maintains the authority to pursue criminal or civil actions for any CSA violations whenever the Department determines that such legal action is warranted. This includes, but is not limited to, actions to enforce the criminal provisions of the CSA such as:

- 21 U.S.C. § 841 (making it illegal to manufacture, distribute, or possess with intent to distribute any controlled substance including marijuana);
- 21 U.S.C. § 856 (making it unlawful to knowingly open, lease, rent, maintain, or use property for the manufacturing, storing, or distribution of controlled substances);
- 21 U.S.C. § 860 (making it unlawful to distribute or manufacture controlled substances within 1,000 feet of schools, colleges, playgrounds, and public housing facilities, and within 100 feet of any youth centers, public swimming pools, and video arcade facilities);
- 21 U.S.C. § 843 (making it unlawful to use any communication facility to commit felony violations of the CSA); and
- 21 U.S.C. § 846 (making it illegal to conspire to commit any of the crimes set forth in the CSA).

In addition, Federal money laundering and related statutes which prohibit a variety of different types of financial activity involving the movement of drug proceeds may likewise be utilized. The Government may also pursue civil injunctions, and the forfeiture of drug proceeds, property traceable to such proceeds, and property used to facilitate drug violations.

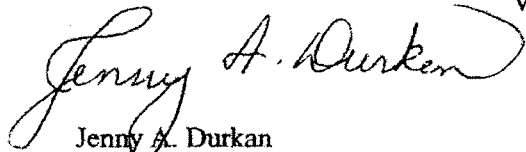
The Washington legislative proposals will create a licensing scheme that permits large-scale marijuana cultivation and distribution. This would authorize conduct contrary to federal law and thus, would undermine the federal government's efforts to regulate the possession, manufacturing, and trafficking 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 CSA. 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

Honorable Christine Gregoire
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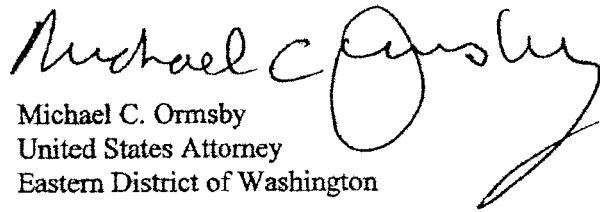
property used to facilitate a violation of the CSA. As the Attorney General has repeatedly stated, the Department of Justice remains firmly committed to enforcing the CSA in all states.

We hope this letter assists the State of Washington and potential licensees in making informed decisions regarding the cultivation, manufacture, and distribution of marijuana.

Very truly yours,



Jenny A. Durkan
United States Attorney
Western District of Washington



Michael C. Ormsby
United States Attorney
Eastern District of Washington



U.S. Department of Justice

***United States Attorney
District of Montana***

MICHAEL W. COTTER
United States Attorney

901 Front Street, Suite 1100
Helena, Montana 59626

406-467-5120

April 20, 2011

Senator Jim Peterson, Senate President
Representative Mike Milburn,
Speaker of the House of Representatives
PO Box 200500
Helena, Montana 59620-0500

Gentlemen:

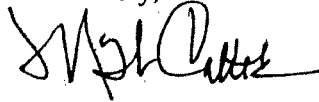
This acknowledges receipt of your letter dated April 18, 2011, requesting Department of Justice guidance concerning a proposed regulatory scheme by the Montana Legislature for the use of marijuana and marijuana infused products for therapeutic purposes. While the Department of Justice has not reviewed the specific legislative proposal for licensing and regulating medical marijuana that you indicate is being finalized, the Department has stated on many occasions that Congress placed marijuana in Schedule I of the Controlled Substances Act (CSA) and, as such, growing, distributing, and possessing marijuana in any capacity, other than as part of a federally authorized research program, is a violation of federal law regardless of state laws that purport to permit such activities.

The prosecution of individuals and organizations involved in the trade of any illegal drugs and the disruption of drug trafficking organizations is a core priority of the Department. This core priority includes prosecution of business enterprises that unlawfully market and sell marijuana. While the Department generally does not focus its limited resources on seriously ill individuals who use marijuana as part of a medically recommended treatment regimen consistent with applicable state law, as stated in the October 2009 Ogden Memorandum, we maintain the authority to enforce the CSA against individuals and organizations that participate in unlawful manufacturing and distribution activity involving marijuana, even if such activities are permitted under state law. The Department's investigative and prosecutorial resources will continue to be directed toward these objectives.

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Hopefully this letter assists the Montana Legislature in making its decisions regarding the cultivation, manufacture and distribution of marijuana.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael W. Cotter". The signature is written in a cursive style with a long horizontal stroke at the end.

Michael W. Cotter
United States Attorney