



Press Release

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ACLU Calls On Holder To Make Clear DOJ Will Not Prosecute People Complying With State Medical Marijuana Laws Recent Letters Issued By U.S. Attorneys Threaten Prosecution

NEW YORK and MISSOULA – The American Civil Liberties Union has called on U.S. Attorney General Eric Holder to make clear that the Department of Justice (DOJ) will not prioritize prosecution of people who comply with state medical marijuana laws, in keeping with previous DOJ policy.

In a letter sent Monday, the ACLU expresses deep concern about recent letters from several U.S. attorneys from across the country, including Montana, that threaten people who comply with state medical marijuana laws, including state employees and state licensed providers of medical marijuana, with federal prosecution.

"Patients, providers and legislatures need clear guidance from DOJ so they can proceed in confidence that state law will be respected," said Jay Rorty, Director of the ACLU Criminal Law Reform Project and one of the authors of the ACLU's letter. "Patients who suffer from serious medical conditions need safe and reliable access to their medicine without the fear of federal prosecution."

U.S. attorneys in Washington, Montana, Colorado, Arizona, Rhode Island and Vermont have in recent weeks issued letters that diverge widely from what was previously understood as DOJ policy to not use federal resources to prosecute those who are clearly complying with state medical marijuana laws.

When Montana Senate President Jim Peterson and Montana Speaker of the House of Representatives Mike Milburn wrote to United States Attorney for the District of Montana Michael Cotter, seeking guidance as they worked to craft medical marijuana reform legislation, Cotter responded that the Department of Justice maintains the authority to uphold the federal Controlled Substances Act and to prosecute "individuals and organizations that participate in unlawful manufacturing and distribution activity involving marijuana, even if such activities are permitted under state law."

That directly contradicts a 2009 memo issued to all U.S. attorneys, in which then-Deputy Attorney General David Ogden wrote, "As a general matter, pursuit of [DOJ drug enforcement] priorities should not focus federal resources in your States on individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the use of medical marijuana." And in a subsequent 2009 statement, Holder said, "For those organizations that are [possessing and distributing medical marijuana] sanctioned by state law and do it in a way

that is consistent with state law, and given the limited resources that we have, that will not be an emphasis for this administration.”

But in a *New York Times* story Sunday, a Justice Department spokesman says the recent letters issued by the U.S. attorneys are “a reiteration of the guidance that was handed down in 2009 by the Deputy Attorney General,” a glaring inconsistency the ACLU says in its letter “requires clarification and an unambiguous statement from [Holder] that the prosecution of those complying with state law is not a priority for the department.”

According to the ACLU’s letter, the recent efforts by U.S. attorneys to dissuade states from enacting and implementing medical marijuana laws through threats of prosecution is an abuse of their role as impartial prosecutors and creates the appearance that the DOJ is attempting to undermine the outcome of lengthy and public legislative processes by various sovereign states.

In Montana, federal law enforcement raids of medical marijuana caregiver businesses were conducted the same morning as the Senate Judiciary committee was voting on whether or not to repeal Montana’s medical marijuana law. The raids cast a pall over state legislators’ debate on how to responsibly reform our current laws.

“To me the timing of these raids was certainly suspect,” said ACLU of Montana Executive Director Scott Crichton. “It definitely appears that federal authorities were attempting to influence Montana legislative actions, and undermine the state’s medical marijuana act.”

The ACLU says in its letter that the recent U.S. Attorneys’ letters conflict with a DOJ representation to a federal court that the Ogden memo represented a significant policy shift, under which those individuals and entities that use or distribute medical marijuana in full compliance with state medical marijuana laws would no longer be targeted by federal law enforcement. Based on that representation, the ACLU in 2009 voluntarily dismissed a lawsuit against the federal government arising from a 2002 DEA raid of a California medical marijuana garden, in which the ACLU represents a group of plaintiffs including Santa Cruz, Calif. city and county officials, which sanctioned the garden. The federal court had previously upheld the ACLU’s 10th Amendment claim alleging the federal government had selectively enforced federal marijuana laws in an improper federal attempt to undermine and disable the functioning of state medical marijuana laws.

“If, contrary to the assurances its attorneys provided the court in the Santa Cruz case, the federal government’s enforcement policies now include ‘vigorously enforcing’ federal drug laws against individuals and entities who manufacture and distribute marijuana on a completely non-profit basis and in full compliance with state medical marijuana laws, it marks a significant departure from the federal government’s position in the Santa Cruz litigation and could lead to that case being reinstated in its October 2009 posture with discovery proceeding as originally planned,” the ACLU’s letter reads.

A copy of the ACLU’s letter is available online at: www.aclu.org/drug-law-reform/aclu-letter-holder-demanding-clarification-prosecuting-people-complying-state-medica