

LAMAR S. SMITH, Texas  
CHAIRMAN

F. JAMES SENSENBRENNER, JR., Wisconsin  
HOWARD COBLE, North Carolina  
ELTON GALLEGLY, California  
BOB GOODLATTE, Virginia  
DANIEL E. LUNGREN, California  
STEVE CHABOT, Ohio  
DARRELL E. ISSA, California  
MIKE PENCE, Indiana  
J. RANDY FORBES, Virginia  
STEVE KING, Iowa  
TRENT FRANKS, Arizona  
LOUIE GOHMERT, Texas  
JIM JORDAN, Ohio  
TED POE, Texas  
JASON CHAFFETZ, Utah  
TOM REED, New York  
TIM GRIFFIN, Arkansas  
TOM MARINO, Pennsylvania  
TREY GOWDY, South Carolina  
DENNIS ROSS, Florida  
SANDY ADAMS, Florida  
BEN QUAYLE, Arizona

ONE HUNDRED TWELFTH CONGRESS

# Congress of the United States House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951

<http://www.house.gov/judiciary>

JOHN CONYERS, JR., Michigan  
RANKING MEMBER

HOWARD L. BERMAN, California  
JERROLD NADLER, New York  
ROBERT C. "BOBBY" SCOTT, Virginia  
MELVIN L. WATT, North Carolina  
ZOE LOFGREN, California  
SHEILA JACKSON LEE, Texas  
MAXINE WATERS, California  
STEVE COHEN, Tennessee  
HENRY C. "HANK" JOHNSON, JR., Georgia  
PEDRO R. PIERLUISI, Puerto Rico  
MIKE QUIGLEY, Illinois  
JUDY CHU, California  
TED DEUTCH, Florida  
LINDA T. SANCHEZ, California  
DEBBIE WASSERMAN SCHULTZ, Florida

June 15, 2011

The Honorable Eric H. Holder, Jr.  
Attorney General  
U.S. Department of Justice  
Washington, D.C. 20530

Dear Attorney General Holder,

We write to express our concerns with conflicting statements from Department officials concerning its enforcement of federal laws that clearly prohibit the manufacture, sale and distribution of marijuana. It has become apparent that the Department's inconsistent approach contributes to ongoing confusion on this important issue.

In October 2009, then-Deputy Attorney General David W. Ogden wrote to selected United States Attorneys in what is now known as "the Ogden Memo":

The prosecution of significant traffickers of illegal drugs, including marijuana, and the disruption of illegal drug manufacturing and trafficking networks continues to be a core priority in the Department's efforts against narcotics and dangerous drugs, and the Department's investigative and prosecutorial resources should be directed towards these objectives. **As a general matter, pursuit of these 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 medical use of marijuana.** For example, prosecution 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. 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. To be sure, claims of compliance with state or local law may mask operations inconsistent with the terms, conditions, or purposes of those laws, and federal law enforcement should

not be deterred by such assertions when otherwise pursuing the Department's core enforcement priorities. (Emphasis supplied).

On April 29, 2011, United States Attorney Peter F. Neronha, District of Rhode Island, stated the following in a letter to the Honorable Lincoln D. Chafee, Governor of Rhode Island:

I now write to ensure that there is no confusion regarding the United States Department of Justice's view of state-sanctioned schemes that purport to regulate the manufacture and distribution of medical marijuana. . . .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.

Substantively identical letters have been sent in 2011 by United States Attorneys in at least eight other districts including the Northern District of California, the District of Arizona, the Western and Eastern Districts of Washington, the District of Montana, the District of Colorado, the District of Hawaii, and the District of Maine.

On May 27, 2011, Arizona Attorney General Tom Horne filed *State of Arizona, et al. vs. United States, et al.*<sup>1</sup> The suit seeks declaratory judgment regarding the legality of the Arizona Medical Marijuana Act (AMMA). The suit states in part, "the federal government's position places the AMMA in conflict with the CSA as well as the policies of the DOJ that have been implemented to enforce the CSA."<sup>2</sup>

During a news conference on June 2, 2011 in Providence, Rhode Island, you were asked to comment on the Department's position on marijuana dispensaries in states with medical marijuana programs. You responded, "[w]e are in the process of working [on] these issues with the U.S. Attorney for Rhode Island and other U.S. Attorneys across the country. My hope is that sometime in the not too distant future ... it will be addressed."

Federal law prohibits the possession, manufacture, and distribution of marijuana, which is listed as a Schedule I drug under the Controlled Substances Act.<sup>3</sup> Schedule I substances have "a high potential for abuse," "no currently accepted medical use in treatment in the United States," and "a lack of accepted safety [standards] for use of the drug ... under medical supervision."<sup>4</sup>

There is currently no consensus of medical evidence that marijuana use is medically beneficial to patients. The Food and Drug Administration (FDA), the federal agency responsible for approving drugs as safe and effective based upon valid scientific data, has not approved smoked marijuana for any condition or disease.

---

<sup>1</sup> Case No. 2:2011cv01072, U.S. District Court, District of Arizona.

<sup>2</sup> *Id.* at paragraph 166.

<sup>3</sup> P.L. 91-513, Oct. 27, 1970, § 202(c), 84 Stat. 1242, 21 U.S.C. §812(c).

<sup>4</sup> Sec. 202(b)(1), 84 Stat. 1247, 21 U.S.C. §812(b)(1).

The FDA noted in 2006 that “there is currently sound evidence that smoked marijuana is harmful,” and “that no sound scientific studies supported medical use of marijuana for treatment in the United States, and no animal or human data supported the safety or efficacy of marijuana for general medical use.”<sup>5</sup> Despite this finding, the FDA has approved two drugs, Marinol and Cesamet “for therapeutic uses in the U.S., which contain active ingredients that are present in botanical marijuana.”<sup>6</sup>

Notwithstanding the FDA’s findings and the federal prohibition on marijuana, 16 states and the District of Columbia have enacted laws approving the sale and use of marijuana for medicinal purposes. Another ten states have legislation pending to legalize medical marijuana. We strongly disapproved of the Department’s 2009 guidelines directing federal prosecutors not to bring charges against dispensaries operating in compliance with these state laws. To do so is a blatant disregard of Congress’ mandate in the Controlled Substances Act, the Supreme Court’s holding in *Gonzales v. Raich*,<sup>7</sup> the Supremacy Clause of the United States Constitution,<sup>8</sup> and the constitutional requirement that the President faithfully execute the laws of the United States.<sup>9</sup>

Given your public statements, combined with the Department’s inconsistent enforcement of the CSA and its contradictory directives to states with medical marijuana laws, we ask that you respond to each of the questions below:

1. What is the Department’s position regarding state-sanctioned schemes that purport to regulate the manufacture and distribution of medical marijuana? Who is subject to investigation and arrest in the course of marijuana use, from manufacture, distribution and licensure through wholesale and retail sale and ultimate possession and consumption?
2. Based on your public statements, what issues is the Department working on with U.S. Attorneys, in Rhode Island and elsewhere, as it relates to the use, manufacture and distribution of medical marijuana and enforcement of the CSA? What do you hope to address in the not too distant future?
3. Despite state law, does the use, manufacture or distribution of medical marijuana violate the Controlled Substances Act or any other federal law?

---

<sup>5</sup> *Inter-Agency Advisory Regarding Claims That Smoked Marijuana Is a Medicine*, FOOD AND DRUG ADMIN., U.S. DEPT. OF HEALTH & HUMAN SERVICES, Apr. 20, 2006, available at <http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/2006/ucm108643.htm>.

<sup>6</sup> Statement of Robert J. Meyer, M.D., Director, Office of Drug Evaluation II, Center for Drug Evaluation and Research, Food and Drug Admin., U.S. Dept. of Health and Human Services, before the Subcommittee on Criminal Justice, Drug Policy, and Human Resources, House Committee on Government Reform, Apr. 1, 2004, available at <http://www.fda.gov/NewsEvents/Testimony/ucm114741.htm>.

<sup>7</sup> 545 U.S. 1 (2005).

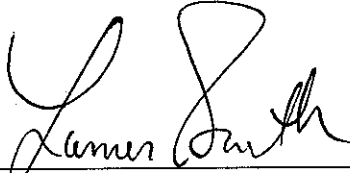
<sup>8</sup> U.S. Const. art. VI, Clause 2. “[The] Constitution, and the Laws of the United States which shall be made in pursuance thereof; ... shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.”

<sup>9</sup> U.S. Const. art. II, § 3.

The Hon. Eric H. Holder, Jr.  
June 15, 2011  
Page 4

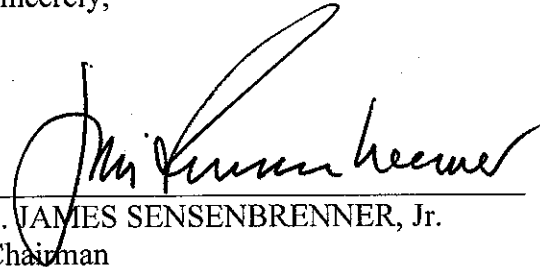
Thank you for your attention to this matter, and we look forward to your prompt reply before July 1, 2011.

Sincerely,



---

LAMAR SMITH  
Chairman  
House Judiciary Committee



---

F. JAMES SENSENBRENNER, Jr.  
Chairman  
Subcommittee on Crime, Terrorism and  
Homeland Security

cc: The Hon. Michele M. Leonhart, Administrator, Drug Enforcement Administration  
The Hon. R. Gil Kerlikowske, Director, Office of National Drug Control Policy  
The Hon. John Conyers, Jr.