



# **Department of Justice**

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**STATEMENT OF**

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CRIMINAL DIVISION  
UNITED STATES DEPARTMENT OF JUSTICE**

**BEFORE THE**

**COMMITTEE ON OVERSIGHT & GOVERNMENT REFORM  
SUBCOMMITTEE ON GOVERNMENT OPERATIONS  
U.S. HOUSE OF REPRESENTATIVES**

**FOR A HEARING EXAMINING**

**THE ENFORCEMENT OF FEDERAL MARIJUANA LAWS AND  
DECRIMINALIZATION EFFORTS IN THE DISTRICT OF COLUMBIA**

**PRESENTED ON**

**MAY 8, 2014**

**Statement of David A. O'Neil**  
**Acting Assistant Attorney General for the Criminal Division**  
**Before the Committee on Oversight & Government Reform**  
**Subcommittee on Government Operations**  
**May 8, 2014**

Good afternoon Chairman Mica, Ranking Member Connolly, and distinguished Members of the Committee. I am pleased to speak with you about the guidance that the Department has issued to all United States Attorneys regarding marijuana enforcement efforts and marijuana-related financial crimes. The marijuana enforcement guidance issued on August 29, 2013 (August 29th memorandum) advises federal prosecutors in the exercise of their prosecutorial discretion to focus on and continue enforcement of eight 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, preventing marijuana possession or use on federal property, and preventing the cultivation of marijuana on public lands. These are the same priorities that have guided federal enforcement efforts for many years. The guidance also notes that, as we have historically done, 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. The Department also issued recent guidance regarding marijuana-related financial crimes on February 14, 2014 (February 14th memorandum).

In the U.S. Attorney's Office for the District of Columbia, the Criminal Division of the U.S. Attorney's Office represents the United States government in federal criminal matters before the U.S. District Court for the District of Columbia. The Superior Court Division of the U.S. Attorney's Office prosecutes violations of the District of Columbia Code, including drug offenses, in the Superior Court for the District of Columbia.

**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. Financial transactions involving proceeds generated by marijuana-related conduct can form the basis for prosecution under money laundering statutes, the unlicensed money remitter statute, and the Bank Secrecy Act (BSA).

For many years, all 50 states and the District of Columbia had uniform drug control laws or similar provisions that reflected the CSA with respect to the treatment of marijuana and made the possession, cultivation, and distribution of marijuana a state criminal offense. With such overlapping statutory authorities, the federal government, the states, and the District of Columbia have worked as partners in the field of drug enforcement. Federal law enforcement has targeted large-scale drug traffickers and organizations, while state and local authorities generally have focused their enforcement efforts, under their state or local laws, on more localized 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. In 2010, the

Council of the District of Columbia authorized the use of marijuana for medical purposes, and following Congressional review of that legislation, it became law in the District of Columbia. The Council of the District of Columbia recently enacted broader decriminalization legislation, which is currently under Congressional review. Seventeen states have currently decriminalized marijuana to some degree. Typically, decriminalization replaces criminal penalties with a monetary fine for first-time offenders who possess marijuana in a quantity below a specified amount. The legislation passed by the D.C. Council would remove criminal penalties for possession of up to an ounce of marijuana and replace them with a civil fine of \$25. In addition to decriminalization, today, twenty-one states and the District of Columbia have authorized marijuana use for medical purposes under state law. And in 2012, voters in Colorado and Washington approved state ballot initiatives legalizing marijuana use under state law and establishing state regulatory systems for marijuana use.

Throughout this period, the Department of Justice has continued to work with its state and local law enforcement partners, and also has continued its own efforts on the same priorities that have always been particularly important to the federal government's role in protecting the public. The eight 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 that use the state laws as a pretext to engage in large-scale trafficking of marijuana to other states; enforcement against those who operate marijuana businesses near schools, parks, and playgrounds; and enforcement against those who wreak environmental damage by growing marijuana on our public lands. In these instances and historically, the Department has not devoted our finite resources to prosecuting individuals in federal court whose conduct is limited to possession of marijuana for personal use on private property.

The Department is committed to enforcing the Controlled Substances Act by focusing its resources on the key federal priorities noted above and by working closely with our state and local law enforcement partners. The Department does not take a position on the merits of the bill but the Administration supports home rule generally. The Administration will treat D.C. in the same manner as every other jurisdiction with respect to the enforcement of federal marijuana

laws. In the District of Columbia, the U.S. Attorney's Office will also continue to enforce drug offenses under the D.C. Code.

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

On August 29, 2013, 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 all of our federal prosecutors and guides the exercise of prosecutorial discretion against individuals and organizations that 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, or additional circumstances where investigation and prosecution otherwise serves an important federal interest, the Department will continue to rely on state and local authorities to address marijuana activity through enforcement of their own drug laws. The updated guidance is consistent with our efforts to maximize our investigative and prosecutorial resources and with the more general message the Attorney General has delivered 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.

## **III. Conclusion**

The Department of Justice is committed to enforcing the CSA in all states and the District of Columbia, and we are grateful for the dedicated work of our Drug Enforcement Administration and Federal Bureau of Investigation agents, our federal prosecutors, and our state and local partners in protecting our communities from the dangers of illegal drug trafficking. Our goal is to ensure that we are effectively focused on the eight federal enforcement priorities outlined in the August 2013 and February 2014 guidance from the Department. Ultimately, the achievement of that goal requires cooperation among law enforcement agencies at every level.

I look forward to taking your questions.



David A. O'Neil was appointed Acting Assistant Attorney General for the Criminal Division on March 21, 2014.

As head of the Criminal Division, Mr. O'Neil oversees nearly 600 attorneys who prosecute federal criminal cases across the country and help develop the criminal law. He also works closely with the nation's 93 United States Attorneys in connection with the investigation and prosecution of criminal matters in their districts.

Mr. O'Neil started his Department of Justice career as a federal prosecutor in the Southern District of New York, where he tried a number of cases, focusing on international investigations and fraud on the government and financial institutions. In 2009, he moved to the Solicitor General's Office. There, Mr. O'Neil argued three cases in the Supreme Court, including a significant case on the required content of the Miranda warnings and a highly publicized suit involving the strip search of a middle school student. He also briefed the government's defense in the Supreme Court of the convictions of Jeffrey Skilling arising from the Enron collapse and of Joseph Nacchio resulting from the \$3 billion accounting fraud at Qwest Communications.

From 2009 to 2010, Mr. O'Neil served as Associate Deputy Attorney General, concentrating on criminal and national security matters. He helped to develop policies on questioning suspects in cross-border investigations and oversaw the department's national security investigations and prosecutions.

A year later, Mr. O'Neil was promoted to Chief of Staff to the Deputy Attorney General, the second-in-command at the Justice Department who supervises all of the department's criminal and civil litigation. In that role, Mr. O'Neil has focused on criminal and white collar matters, as well as sensitive national security issues.

Before joining the department, Mr. O'Neil worked at the law firm of WilmerHale, where his practice involved white collar criminal defense, internal investigations, and government-facing litigation. Mr. O'Neil clerked for Justice Ruth Bader Ginsburg and the Honorable Robert D. Sack of the U.S. Court of Appeals for the Second Circuit. He earned his juris doctorate from Harvard Law School and his bachelor of arts from Princeton University.