

Congress of the United States
Washington, DC 20515

May 25, 2016

The Honorable Barack Obama
President of the United States
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear President Obama:

In a recent letter your Administration sent to a group of Senators that has been widely covered in the press, the Drug Enforcement Administration disclosed that it intends to make a decision on rescheduling marijuana during the first half of this year. We are pleased that your Administration is contemplating taking action to change federal policy on marijuana and believe action is long past due.

As you are aware, 41 states, as well as Guam and Puerto Rico, have legalized medical cannabis to varying degrees. Four of these states, and the District of Columbia, have fully legalized marijuana for medical *and* recreational purposes. Some 300 million people live in a state or jurisdiction that allows some form of legal use of marijuana, and that number will likely grow by the end of the year. Numerous scientists and health care professionals have exposed the absurdity of cannabis being grouped in Schedule I with substances such as LSD and heroin. The status quo is entirely unjustified, and only serves to hurt our communities, waste taxpayer dollars, fuel organized crime, bog down our criminal justice system, and prevent states from making decisions that should be left up to them. We therefore appreciated your Administration's adjustment in federal marijuana policy laid out in the *Cole Memo of 2013*.

As for next steps at the federal level, we wish to express our desire that your Administration assign marijuana to Schedule III or lower (or consider de-scheduling altogether). In addition, we would like to caution against adopting the assumption that rescheduling alone is the panacea to the difficulties currently facing businesses, practitioners, and consumers. As such, we implore your Administration to investigate additional reforms that may be made administratively. Among other things, we ask your Administration to consider changing policy on the following items:

1. **NIDA Monopoly:**

For many years, the DEA has given the National Institute on Drug Addiction (NIDA) a monopoly on the legal cultivation and supply of marijuana for research purposes. NIDA's inability to provide quality marijuana to the scientific community in an efficient and effective manner has impeded important research on the drug, and without proactive action on the part of the Administration, there is little reason to believe that this monopoly will cease to exist as a direct result of the rescheduling of marijuana. Without the ability to easily conduct research, researchers will be hindered in their efforts to

develop and manufacture new drugs, and the Federal Drug Administration will be restricted in its ability to test such drugs for approval.

Importantly, the DEA's decision to establish the NIDA monopoly in the first place was not at the direction of Congress, but rather upon a dubious interpretation of the 1961 Single Convention on Narcotic Drugs. However, as was pointed out in a letter sent to you earlier this month, "the State Department, other signatories to the Single Convention, and even DEA's own Administrative Law Judge have had less rigid interpretations of the treaty."¹ As such, we ask that you direct your Administration to eliminate the DEA-mandated NIDA monopoly.

2. VA Policy on the Completion of Certain Forms:

In 2011, the Veterans Health Administration issued a directive to healthcare providers limiting their ability to facilitate their patient's participation in a state-legal medical marijuana program. Specifically, the directive explains, among other things, that clinical staff is prohibited from "completing forms for participation in State marijuana programs." Though the directive expired on January 31, 2016, we understand that it remains the de facto policy of the VHA until a new directive on the matter is issued. Language that would reverse this policy was recently included in both the House and Senate's FY 17 Military Construction, Veterans Affairs and Related Agencies (MilCon-VA) appropriations bill. We therefore ask you to ensure that new VHA policy is promulgated that unequivocally establishes the ability of VHA clinical staff to discuss medical marijuana treatment options with patients, as well as their ability to facilitate the patient's participation in such programs, including permission to complete forms for participation in State medical marijuana programs.

3. Financial Institution Reporting Requirements for Suspicious Transactions:

Your Administration issued guidance to prosecutors and regulators in 2014 on how to handle banks that provide financial services to state-legal marijuana businesses. In short, the guidance sets forth new priorities within the Departments of Justice and Treasury to prioritize law enforcement resources on eight areas of primary concern when enforcing the Controlled Substances Act as it applies to marijuana-related behavior.² While the guidance was certainly welcomed, we are concerned that it does not extend to secondary and tertiary businesses (e.g. those who rent space to medical marijuana businesses, or those who manufacture light bulbs that are used to grow marijuana), causing an unnecessary chilling effect on the industry.

Since resources are limited, it is important that all law enforcement agencies prioritize their activities on those threats that pose the greatest risk to the safety and wellbeing of our nation. State-legal medical marijuana businesses, including the businesses that serve

¹ Senator Kristen Gillibrand (D-NY) and 26 other members of Congress sent a letter to President Obama in April, 2016, <http://www.gillibrand.senate.gov/newsroom/press/release/senator-gillibrand-joined-by-bipartisan-group-of-26-senators-and-representatives-urges-president-obama-to-remove-barriers-to-research-on-medical-marijuana> (accessed May 3, 2016).

² James M. Cole, Deputy Attorney General, U.S. Department of Justice, *Memorandum for All United States Attorneys: Guidance Regarding Marijuana Related Financial Crimes* (February 14, 2014).

them, do not fall into that category and should not be treated as such. Therefore, we respectfully request that your Administration issue further guidance that extends to secondary and tertiary businesses.

4. **Rohrabacher-Farr Provision:**

This provision, which has been included in both the fiscal year 2015 and 2016 omnibuses (most recently, in P.L. 114-113, Section 542), is intended to protect from federal prosecution those who are acting in compliance with state medical marijuana laws. Yet, despite being signed into law for the past two years, the Department of Justice has applied the narrowest interpretation possible to the meaning of the provision—so narrow that it virtually renders the provision meaningless. Both Congressional proponents *and* opponents of the provision have argued that the provision’s effect is much broader, and District Judge Charles Breyer recently rebuked the Department of Justice’s interpretation of the amendment as being “tortured” and “at odds with fundamental notions of the rule of law.”³ After initially appealing Judge Breyer’s decision to the 9th Circuit Court of Appeals, the Department of Justice decided to withdraw its motion, presumably because the Department realized that they were pushing a losing argument. In order to respect this Congressional directive and the admonition of the federal judiciary, we ask that you bring your Administration into unambiguous compliance with this provision of law.

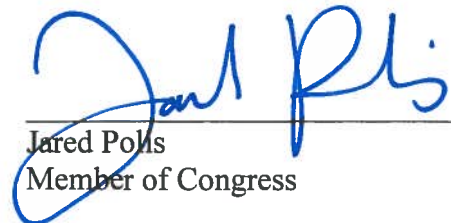
Importantly, the aforementioned items are not intended to provide you with a comprehensive list of potential changes that ought to be made, but are rather included to illustrate some of the many issues of concern that remain unresolved and that we believe your Administration already possesses the authority to address. There are additional areas of federal policy that we believe ought to be addressed, but cannot be achieved without formal Congressional participation. When it comes to these particular issues, we ask that you work with us to change federal law.

During the next few months you have a rare opportunity to move the country forward in a way that will save lives, reallocate precious federal resources, and create an atmosphere in which new jobs and small businesses will be able to thrive. We await your response to our letter and the petitions, and support an approach that respects state law, enables research, and allows for the safe access to state-legal marijuana.

Sincerely,



Dana Rohrabacher
Member of Congress



Jared Polis
Member of Congress

³ *U.S. v. Marin Alliance for Medical Marijuana* (N.D. Calif. 2015)



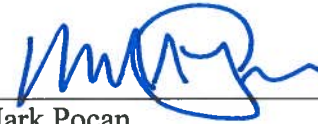
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