
LAW

COMMENTARY

How Trump's DOJ Can Start Enforcing Federal Marijuana Law

[Cully Stimson](#) / [@cullystimson](#) / February 27, 2017 / [comments](#)



Eight U.S. states have legalized the use of recreational marijuana, despite federal law that prohibits it. (Photo: iStock Photos)

COMMENTARY BY



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On Thursday last week, White House press secretary Sean Spicer [said](#) he “believe[s] that we will see greater enforcement” of the federal laws against recreational marijuana.

While he acknowledged that the question to which he was responding was better directed to the Department of Justice, Spicer [said](#) that state legalization of recreational marijuana “is something the Department of Justice, I think, will be further looking into.”

Spicer’s comments are welcome news for those advocating commonsense drug policy.

Scientists agree that marijuana is a dangerous drug, and no major national medical organization advocates legalization. Whether you agree with that or not, marijuana remains illegal for good reason.

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Thorough scientific reviews by President Barack Obama’s Food and Drug Administration and Drug Enforcement Administration—as well as drug classification reviews by federal judges—have affirmed that marijuana should remain a [Schedule 1 drug](#). Such drugs are defined as having “no currently accepted medical use and a high potential for abuse.”

As I have written [here](#) and [here](#), the predictable consequences of marijuana legalization are beginning to emerge in states like Colorado and Washington. [Annual reports](#) from the Rocky Mountain High Intensity Drug Trafficking Area, [Smart Approaches to Marijuana](#), and the [Colorado Department of Public Safety](#) have analyzed the negative impact that marijuana legalization has had on health and public safety in Colorado.

With such research finally emerging, the Trump administration and the Department of Justice are in a strong position to enforce federal law and take appropriate and aggressive action in crafting a commonsense drug enforcement policy for marijuana.

The Trump administration should consider the following actions:

1. **Reaffirm support for the law.** Issue a statement affirming the incoming administration’s commitment to the Controlled Substances Act with the goal of reducing, not expanding, the use of marijuana in the nation.
2. **Coordinate with lower-level officials.** Have the new attorney general prioritize reaching out to governors and key law enforcement officials in states that have legalized marijuana to work with them on enforcement of federal marijuana laws.
3. **Reassert America’s drug position on the world stage.** The White House should make clear that the United States continues to support the three international drug conventions, and that it intends to change its domestic policy to reflect that support.
4. **Up the profile of key drug enforcement personnel.** Restore to Cabinet-level status the position of the director of the Office of National Drug Control Policy, and adequately fund the office so that it can be effective.
5. **Rescind and replace the August 2013 memorandum from then-Deputy Attorney General James M. Cole—i.e. the “[Cole Memo](#).”** The Department of Justice could do this by reiterating that marijuana cultivation, distribution,

and sale are against federal law and that while states may decriminalize possession of marijuana, they may not issue licenses to sell it or commercialize it. Reiterate that the federal government is not locking up people for smoking marijuana, and that state employees are not going to be arrested, but that the Department of Justice fully expects states to not permit commercialized marijuana production and sale.

6. **Select marijuana businesses to prosecute.** Find a handful of cases in which large, well-funded marijuana businesses are in violation of both state and federal marijuana laws and prosecute both their management/operators and financiers. A real threat of prosecution will raise the cost of capital in the industry significantly, and seriously impede any operations above the cottage-level. Moreover, selection of unsympathetic defendants in violation of both state and federal law will (1) minimize political pushback, (2) avoid conflict with congressional appropriations provisions, and (3) clearly demonstrate the failure of the Cole Memo.
 7. **[Rescind the Financial Crimes Enforcement Network's guidance for banks](#) and oppose efforts to expand banking services to the marijuana industry.** One of the principal brakes on the expansion of the marijuana industry is its lack of access to banking. Once pot businesses have regular, unimpeded access to institutional capital, their ability to scale up will expand significantly—and the financial sector will begin to lobby in favor of expanded sales of the drug.
 8. **Support state attorneys general in nonlegalized states.** Nonlegalized states have suffered significantly from illegal diversion of marijuana from legalized states, and from the apparent uptick in sophisticated cartel activity there. Support could include entering as an amicus to support the [merits](#) of the suit Nebraska and Oklahoma filed against Colorado.
 9. **Prosecute those dealing in marijuana—which is illegal under federal law—using the Racketeer Influenced and Corrupt Organizations Act (RICO).** Those who engage in a pattern of racketeering activity through a corporation or other enterprise are liable for three times the economic harm they cause. RICO gives federal courts the power to order racketeering enterprises and their co-conspirators to cease their unlawful operations.
 10. **Prosecute those who provide financing for marijuana operations.** Federal anti-money laundering statutes make it illegal to engage in financial transactions designed to promote illegal activities, including drug trafficking. Start with one major marijuana financier and successfully prosecute it.
 11. **Empower the FDA to take action to regulate marijuana in order to protect patients and the public.** Marijuana legalization poses a public health problem, and the FDA should be tasked with investigating marijuana for chemical contamination and pesticides. Marijuana should also be subject to the standards of the rigorous criteria of the FDA approval process, which has been carefully constructed to protect consumer and patient health and safety.
- None of these recommendations advocate criminal prosecution for simple possession of marijuana. Enforcing federal marijuana laws should not be

about putting people in jail. In fact, that is not the current state of federal marijuana enforcement.

As Kevin Sabet writes in his book "[Reefer Sanity: Seven Great Myths About Marijuana](#)," according to the Justice Department's Bureau of Justice Statistics,

[O]nly one-tenth of 1 percent of people in state prisons are serving sentences for first-time marijuana possession. Just three-tenths of 1 percent of people in state prisons are serving time for marijuana possession if they have prior offenses, and only 1.4 percent of people are in jail for offenses involving only marijuana-related crimes ... Unless it is in the context of a parole or probation violation, virtually no one is serving prison time for using small amounts of marijuana.

Thus, it has not been the case and should not be the case that people are criminally prosecuted and jailed for simple possession of small quantities of marijuana.

However, the recommendations listed above provide a targeted approach to marijuana enforcement that focuses on protection, not punishment. These recommendations should be part of any commonsense approach that is consistent with an interest in public health and safety.