



U. S. Department of Justice
Drug Enforcement Administration
Office of the Administrator

Washington, D.C. 20537

SEP 30 2002

The Honorable Bill Lockyer
Attorney General
State of California
1300 I Street, Suite 1740
Sacramento, California 95814

Dear Mr. Lockyer:

Thank you for your letter dated September 6, 2002. I am always grateful when differences are addressed. I would like to take this opportunity to explain DEA's perspective and to provide you information on the events and issues you mention in your letter.

Marijuana remains a schedule I controlled substance under the Federal Controlled Substances Act (CSA). DEA is mandated to enforce the provisions of this and other Federal laws relating to controlled drugs for the public health and safety. Until Congress decides otherwise, the law mandates that all schedule I controlled substances possessed in violation of the CSA "shall be deemed contraband and seized and summarily forfeited to the United States." 21 U.S.C. § 881(f)(1); *see also*, 21 U.S.C. § 881(g). In other words, when marijuana is observed in the ordinary course of law enforcement duties, DEA is legally mandated to seize it, even if no prosecution results.

The United States Supreme Court recently affirmed that marijuana has no accepted medical use under Federal law and stated that the CSA "reflects a determination that marijuana has no medical benefits worthy of an exception (outside the confines of a Government-approved research project)." *United States v. Oakland Cannabis Buyers' Cooperative*, 532 U.S. 483, 491 (2001). The Court held "that medical necessity is not a defense to manufacturing and distributing marijuana." *Id.* at 494. The Court went on to explain that "[l]est there be any confusion, we clarify that nothing in our analysis, or the statute, suggests that a distinction should be drawn between prohibitions on manufacturing and distributing and the other prohibitions in the Controlled Substances Act." *Id.* at 495, n. 7. Thus, cultivation, distribution, use, and possession of marijuana remain unlawful regardless of any "medical" justification under state law. Moreover, state "medical" marijuana laws—including those in California—are being abused to facilitate traditional illegal marijuana trafficking and associated crime.

2745

The Honorable Bill Lockyer

Page 2

Your repeated references to "medical" or "medicinal" marijuana illustrates a common misperception that marijuana is safe and effective medicine. The scientific community has never determined this to be the case. The Institute of Medicine concluded that "if there is any future for marijuana as medicine, it lies in its isolated components, the cannabinoids," not in its smoked form.

Tetrahydrocannabinol (THC), the psychoactive ingredient in marijuana, has proven to have some medical value. That is why the Food and Drug Administration (FDA) approved the drug under the trade name Marinol™. The FDA regulates the contents of the drug, and it is available by prescription from licensed physicians. Unfortunately, marijuana distributed by dealers at clubs can not offer the same safety guarantees. Just as the medical community regulates morphine, rather than recommending patients smoke opium, so Marinol™ seems the better choice for ill persons, as opposed to smoking marijuana, as you espouse.

Under the CSA, the Health and Human Services Department (HHS), in particular FDA, and DEA have the responsibility to thoroughly analyze the relevant medical, scientific, and abuse data on marijuana. This process concluded that marijuana continues to meet the legally mandated criteria for placement in schedule I, i.e., a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of acceptable safety, even under medical supervision.

The placement of marijuana in schedule I has been affirmed on judicial review. In upholding DEA's continued placement of marijuana in schedule I in 1994, the United States Circuit Court of Appeals for the District of Columbia stated that:

our review of the record convinces us that the [DEA] Administrator's findings are supported by substantial evidence. . . . The Final Order [retaining marijuana on schedule I] canvasses the record at length. It recites the testimony of numerous experts that marijuana's medicinal value has never been proven in sound scientific studies. The Administrator reasonably accorded more weight to the opinions of these experts than to the anecdotal testimony of laymen and doctors on which petitioners relied. . . . These findings are consistent with the view that rigorous scientific proof can satisfy the CSA's "currently accepted medical use requirement."

Alliance for Cannabis Therapeutics v. Drug Enforcement Administration, 15 F.3d 1131, 1137 (D.C. Cir. 1994) [internal citations omitted].

The Honorable Bill Lockyer

Page 3

In 2001, DEA again examined the scientific evidence regarding marijuana in consultation with the FDA. After extensive review of the medical and scientific literature, FDA advised DEA that marijuana continued to meet the criteria for placement in schedule I--that it is a drug with high potential for abuse, and no proven medical value. I invite you to review HHS' scientific and medical evaluation and DEA's justification for leaving marijuana in schedule I in the Federal Register at 66 Fed. Reg. 20,038 (April 18, 2001).

Utilizing the process required by law, the Federal Government has and will continue to approve scientific research to study whether and in what form marijuana should be approved for medical use. As a result of this process, drugs sold lawfully in the United States are the safest in the world. This is precisely because our nation, through its laws, has insisted on careful and scientific deliberation before allowing drugs to be approved for marketing for human consumption. The current FDA approval process has protected the public for decades and serves as the model for many other nations. Surely you are not recommending we sidestep our country's long standing practice of rigorous scientific research before declaring a potentially harmful drug to be medicine. The FDA has never in the past approved medicine by popular referendum, and I believe it would be ill advised to set the precedent now.

In regard to the Campaign Against Marijuana Planting (CAMP) program, I am pleased that you consider it a priority, but I am surprised that you are unaware of DEA's support for the program. DEA's San Francisco Field Division coordinates the statewide Domestic Cannabis Eradication/Suppression Program (DCE/SP). The number of plants eradicated and assets seized represent the largest totals in California history. As a result of DCE/SP funded operations, during calendar year (CY) 2001, a total of 1,199,818 plants were eradicated from indoor/outdoor cultivation operations. Of this total, CAMP eradicated 313,776 marijuana plants. In total, 938 cultivators were arrested, and the value of assets seized was \$7,600,660.

During CY 2001, DCE/SP grants totaled \$1,038,000, including \$325,000 directed to the State of California Bureau of Narcotic Enforcement (BNE). It also included distribution of the remaining \$713,000 among 27 California counties, which funded non-CAMP eradication efforts for local agencies. A DEA Assistant Special Agent in Charge and the Marijuana Enforcement Group Supervisor from our San Francisco Field Division are part of the CAMP steering committee. Each year DEA cosponsors, funds, and teaches Aerial Operations, Marijuana Investigations, and Short-Term Airborne Operations, all of which are required for law enforcement officers to participate in CAMP operations. In addition, DEA Agents frequently participate in CAMP eradication operations. Thus, DEA is already making a significant contribution in the State of California to marijuana eradication efforts in general, as well as the CAMP program in particular.

The Honorable Bill Lockyer

Page 4

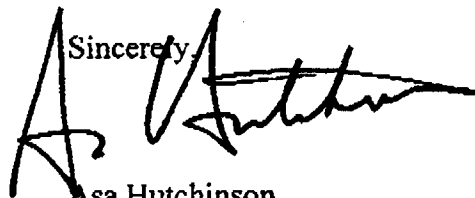
The reference in your letter to a "DEA-initiated raid" for six marijuana plants is inaccurate. In fact, DEA has not "initiated any raids for as few as six marijuana plants." Last month, a DEA Special Agent from our Sacramento Office was participating with local officers in Butte County when they executed a *state* search warrant relating to a larger on-going investigation. The DEA Agent was present at the invitation of the local officers. These officers were executing a warrant based on probable cause that the residents of this location were criminally involved in a 1,000 marijuana plant seizure at another site. When the officers searched the property, the six marijuana plants in question were discovered. Because the residents said they possessed the marijuana pursuant to a local "medical marijuana" policy, the local officers declined to seize the plants. Fulfilling his duty under Federal law and DEA policy, the DEA Agent at the scene seized the six plants. Thus, DEA did not "initiate" a raid to seize six marijuana plants.

DEA focuses its enforcement priorities on immobilizing and dismantling major drug trafficking organizations. All of our investigative efforts are coordinated with the appropriate United States Attorney's Office, or the local District Attorney's Office. As long as marijuana remains a schedule I controlled substance, DEA will continue in its enforcement efforts targeting groups and individuals involved in its distribution.

DEA continues to enjoy an excellent and productive working relationship with BNE and local law enforcement officials in California. We continue to work hand-in-hand with our state and local counterparts in all types of investigations. These cases include large-scale Organized Crime Drug Enforcement Task Force investigations targeting cocaine, heroin, methamphetamine, and marijuana. DEA is mindful of the need to maintain an effective, cooperative, and productive working relationship with our state and local counterparts. We will continue to maintain these partnerships.

Your letter closes with an invitation to meet with you and other California state and local law enforcement leaders to further discuss these issues. I am happy to meet with you at a mutually convenient time and place. We must strive to work together in a spirit of mutual respect and cooperation to achieve our mission to enhance public safety and quality of life. I look forward to a continuing dialogue to accomplish these common goals.

Sincerely,



Asa Hutchinson
Administrator

The Honorable Bill Lockyer

Page 5

**cc: Debra Yang, U.S. Attorney, Central District of California
(Via Facsimile (213) 894-0141 & First-Class U.S. Mail)**

**John Vincent, U.S. Attorney, Eastern District of California
(Via Facsimile (916) 554-2874 & First-Class U.S. Mail)**

**Kevin Ryan, U.S. Attorney, Northern District of California
(Via Facsimile (415) 436-7234 & First-Class U.S. Mail)**

**Carol Lam, U.S. Attorney, Southern District of California
(Via Facsimile (619) 557-5782 & First-Class U.S. Mail)**

**Stephen C. Delgado, SAC, DEA – San Francisco Division
(Via Facsimile (415) 436-7810 & First-Class U.S. Mail)**

**Michele M. Leonhart, SAC, DEA – Los Angeles Division
(Via Facsimile (213) 894-0157 & First-Class U.S. Mail)**

**Jack Hook, Acting SAC, DEA – San Diego Division
(Via Facsimile (858) 616-4240 & First-Class U.S. Mail)**

California District Attorney's Association

California Peace Officers' Association

California Police Chiefs' Association

California State Sheriffs' Association

California Narcotics Officers' Association