



ROBERT HOBAN, MANAGING PARTNER
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October 13, 2016

Honorable Barack H. Obama
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Re: An executive order incorporating the terms of the 2013 Cole Memorandum

Mr. President:

I am the founder and Managing Partner of Hoban Law Group, a national law firm specializing in the civil law of cannabis.¹ I am writing to you to share my thoughts, based on years of personal experience working as a cannabis lawyer in a state that has for three years experienced the effects of a regulated and taxed cannabis market, about what more you can do in the next few months to continue the progress of the rational and humanitarian drug policies we have seen over the course of your second administration.

The Memorandum for all United States Attorneys captioned “Guidance Regarding Marijuana of Assistant U.S. Attorneys” by Deputy Attorney General James Cole, dated August 29, 2013 (the “Cole Memorandum”), enumerates a set of priorities for United States Attorneys and other federal law enforcement agents with regard to cannabis law offenses. Those enumerated federal enforcement priorities are:

- Preventing the distribution of cannabis to minors;
- Preventing revenue from the sale of cannabis from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of cannabis from states where it is legal under state law to other states where it may or may not also be legal under state law;
- Preventing state-authorized cannabis 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 cannabis;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with cannabis use;

¹ “Marijuana” is the term used in federal law to refer to the cannabis plant, its seed and flowers. In light of the longstanding historical use of the term cannabis prior to the introduction of the term “marijuana” into common parlance in the early 20th Century, this letter will use the term cannabis in place of “marijuana.”



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- Preventing the growing of cannabis on public lands and the attendant safety and environmental dangers posed by cannabis production on public lands and;
Preventing cannabis possession or use on federal property.

The Cole Memorandum is “guidance” to US Attorneys and law enforcement to focus their enforcement and efforts on persons or organizations whose conduct interferes with the foregoing priorities.

In essence, the Cole Memorandum declares that a state-level regulatory and enforcement system governing the cultivation, distribution, sale and possession of cannabis can be sufficiently strong and effective that the legal market it creates can operate in compliance with the enumerated federal enforcement priorities. It states further that a tightly-regulated market that tracks and accounts for revenues can even affirmatively address the enumerated federal enforcement priorities.

In the year before the Cole Memorandum was issued, voters in Colorado and Washington voted to legalize adult use of cannabis. These votes moved the state-federal conflict in cannabis law beyond simply the question of whether markets for only medical use of cannabis could be consistent with the enumerated federal enforcement priorities. Addressing the new legal environment, the Cole Memorandum states that enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing cannabis-related activity but that if a state law system is unable to operate in compliance with the enumerated federal enforcement priorities the federal government retains the power to challenge the regulatory structure of the system.

The Cole Memorandum reaches the conclusion that conflict with one of the enumerated federal enforcement priorities should be the primary question in all cases relating to a legal cannabis market and in all jurisdictions. In particular:

Prosecutors should not consider the size or commercial nature of a cannabis operation alone as a proxy for assessing whether cannabis trafficking implicates the enumerated federal enforcement priorities.

Prosecutors should review cannabis cases on a case-by-case basis and weigh all available information and evidence including but not limited to whether the operation is demonstrably in compliance with a strong and effective state regulatory system and whether the operation’s scale or for-profit nature undermines one of the enumerated federal enforcement priorities.



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The Cole Memorandum closes by saying, among other things, that it does not provide a legal defense to a violation of federal law, does not create any rights, substantive or procedural, enforceable by anyone in any civil or criminal matter, and does not provide defendants or subjects of enforcement action with a basis for reconsideration of any pending civil or criminal prosecution.

Mr. President: in light of the demonstrable consequences of the Cole Memorandum for my state, Colorado, since 2012, I request that you consider issuing an executive order that will, in essence, adopt the terms of the Cole Memorandum and direct US Attorneys and federal law enforcement personnel to:

- (a) Limit their investigation and prosecution of cannabis market activity to persons and organizations that interfere with the enumerated federal enforcement priorities and;
- (b) Take action against other cannabis market participants in their respective districts only after
 - (i) Consultation with the executive branch of the respective state, territory, possession or other United States jurisdiction in which their districts are located, and
 - (ii) A reasoned determination that state authorities are unable to safeguard the public health and safety from the effects of the cannabis market.

Your legacy includes empowering the states to choose their own path in self-government concerning drug laws and regulations. We know that with the upcoming election, the White House's legacy of sensible drug policy is more important than ever to the upcoming generation of electorate.² Please consider an executive order incorporating the terms of the Cole Memorandum to be a continuation of that legacy.

Very truly yours,

Robert T. Hoban, Esq.
Managing Partner
Hoban Law Group³

² See: https://www.washingtonpost.com/news/wonk/wp/2016/09/30/one-surefire-way-for-hillary-clinton-to-shore-up-support-among-young-voters/?postshare=3071475679772393&tid=ss_fb

³ With contributions from Noah Potter, Esq., Of Counsel, in Hoban Law Group's New York City office.