

Sessions Rescinds US DOJ Guidance Regarding Marijuana Law Enforcement

On Thursday, January 4th, U.S. Attorney General Jeff Sessions announced the rescission of prior guidance to US attorneys regarding the enforcement of federal marijuana laws. Chief among the rescinded guidance was the 2013 Cole Memo that instructed U.S. attorneys to exercise prosecutorial restraint in states that had legalized marijuana, if the states had sufficiently implemented strong regulatory and enforcement systems. Instead, U.S. attorneys were directed to focus on a number of the Department of Justice's enforcement priorities such as preventing distribution of marijuana to minors, preventing marijuana revenue from reaching gangs and cartels, preventing the diversion from states where marijuana use is legal to other states and preventing marijuana-related violence.

With the repeal of specific guidance regarding the DOJ's priorities in enforcement of federal marijuana laws, US attorneys will be guided by more general prosecution guidelines as to how aggressively to enforce federal marijuana laws. The U.S. Attorneys' Manual directs federal prosecutors to weigh all relevant considerations, including the U.S. Attorney General's enforcement priorities, the seriousness of the crime, the deterrent effects of prosecution and the cumulative impact of particular crimes on the community.

While Sessions' action was not unexpected, and is in line with the Attorney General's stated views on marijuana, the impact of the rescission of the Cole Memo on the U.S. attorneys in states that have legalized some form of marijuana is largely unknown at this time. As one example, Colorado's U.S. attorney, Bob Troyer, was quoted as saying that Sessions' guidance will not impact his office's approach to prosecution, and he will continue to focus on marijuana crimes that "create the greatest safety threats".

We will continue to update our clients on any future developments.

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