

Federal Government Changes Policy on Marijuana Prosecutions

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ATTORNEYS

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The United States Justice Department has announced a new – and potentially more restrictive – policy regarding federal prosecution of marijuana activity. Last week, Attorney General Sessions rescinded several Obama-era policies related to marijuana enforcement under the federal Controlled Substances Act (the “CSA”), including a memorandum issued by former Deputy Attorney General Cole in 2013 (the “Cole Memo”). The Cole Memo directed federal prosecutors to focus their resources and efforts on marijuana-related conduct that interferes with Justice Department priorities such as: the distribution of marijuana to minors; the financing of criminal enterprises with revenue from the sale of marijuana; and the diversion of marijuana from states where it is legal under state law to states where it is prohibited by state law. The Cole Memo provided marijuana businesses with some level of assurance that they were unlikely to be prosecuted by the federal government for violating the CSA so long as they operated in compliance with state law. In rescinding the Cole Memo and related policies, Attorney General Sessions explained that federal “statutes reflect Congress’s determination that marijuana is a dangerous drug and that marijuana activity is a serious crime” and that prosecutors should follow “well-established principles that govern all federal prosecutions” in determining which crimes to prosecute.

The federal government’s discretion to prosecute marijuana-related conduct may further expand when the current appropriations bill – and the Rohrabacher-Blumenauer Amendment contained therein – expires on January 19, 2018. The Rohrabacher-Blumenauer Amendment prohibits the Justice Department from spending funds to prosecute individuals for the use, distribution, possession or cultivation of medical marijuana in a state that has made medical marijuana legal under state law. It remains uncertain whether Congress will include this amendment in the next appropriations bill.

If you have any questions about marijuana-related activities please contact **Maricela Marroquin** or **Brendan Kearns**.