Department of Justice

JOINT STATEMENT OF

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BEFORE THE

COMMITTEE ON OVERSIGHT & GOVERNMENT REFORM
SUBCOMMITTEE ON GOVERNMENT OPERATIONS
U.S. HOUSE OF REPRESENTATIVES

FOR A HEARING EXAMINING

THE DEPARTMENT OF JUSTICE'S STRATEGY
TO ENFORCE AND PROSECUTE CERTAIN MARIJUANA RELATED CRIMES

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Joint Statement of
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and
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United States Department of Justice
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Subcommittee on Government Operations
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Good afternoon Chairman Mica, Ranking Member Connolly, and distinguished Members of the Committee. We are pleased to speak with you about the guidance that the Department issued to all United States Attorneys regarding marijuana enforcement efforts and the guidance that the Department recently issued to all United States Attorneys regarding marijuana-related financial crimes. The marijuana enforcement guidance issued on August 29, 2013 (August 29th memorandum), advises federal prosecutors in the exercise of their prosecutorial discretion to focus on and continue enforcement of federal priorities, such as preventing sales of marijuana by criminal enterprises, preventing violence and the use of firearms in the cultivation and distribution of marijuana, preventing distribution to minors, and preventing the cultivation of marijuana on public lands – priorities that we historically have focused on for many years – and also notes that we will continue to rely on state and local authorities to effectively enforce their own drug laws as we work together to protect our communities. The recent guidance regarding marijuana-related financial crimes, issued by the Department on February 14, 2014 (February 14th memorandum), addresses public safety issues posed by these state-licensed and regulated cash driven businesses.

I. Introduction

As you know, the relevant federal statute, the Controlled Substances Act of 1970 (CSA), among other prohibitions, makes it a federal crime to possess, grow, or distribute marijuana, and to open, rent, or maintain a place of business for any of these purposes. Financial transactions involving proceeds generated by marijuana-related conduct can form the basis for prosecution under money laundering statutes, the unlicensed money remitter statute, and the Bank Secrecy Act (BSA).

For many years, all 50 states had uniform drug control laws or similar provisions that mirrored the CSA with respect to their treatment of marijuana and made the possession, cultivation, and distribution of marijuana a state criminal offense. With such overlapping statutory authorities, the federal government and the states have worked as partners in the field of drug enforcement. Federal law enforcement has targeted large-scale drug traffickers and organizations, while state and local authorities generally have focused their enforcement efforts, under their state laws, on more localized and localized drug activity.

Starting with California in 1996, several states have authorized the cultivation, distribution, possession, and use of marijuana for medical purposes, under state law. Colorado authorized the use of marijuana for medical purposes in 2000. Today, twenty-one states and the District of Columbia legalize marijuana use for medical purposes under state law, including six states that enacted medical marijuana legislation in 2013. And in 2012, voters in Colorado and Washington approved state constitutional changes legalizing recreational marijuana under state law and establishing state regulatory systems for recreational marijuana.

Throughout this time period, the Department of Justice has continued to work with its state and local partners, but focused its own efforts and resources on priorities that are particularly important to the federal government. The priorities that have guided our efforts are:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana 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 marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

Examples of our efforts have included cases against individuals and organizations that were using the state laws as a pretext to engage in large-scale trafficking of marijuana to other states; enforcement against those who were operating marijuana businesses near schools, parks, and playgrounds; and enforcement against those who were wreaking environmental damage by growing marijuana on our public lands. In the District of Colorado, the U.S. Attorney's Office has targeted enforcement actions against marijuana businesses and residential grow sites near schools. The U.S. Attorney's Office warned these businesses through a letter campaign that their actions violated federal law. Every business that received a letter closed or relocated voluntarily. In one criminal action, a defendant was convicted in 2011 for creating a residential grow house of over 200 marijuana plants within 1000 feet of a public elementary school. In addition, we have actively investigated and prosecuted cases involving international smuggling and interstate shipment of marijuana, marijuana growing operations where firearms and violence are involved, marijuana cultivation on public lands, and cases with potential organized crime involvement in

marijuana businesses. In these instances and historically, the Department has not devoted our finite resources to prosecuting individuals whose conduct is limited to possession of marijuana for personal use on private property.

As these enforcement efforts reflect, the Department is committed to enforcing the Controlled Substances Act by focusing its resources on these key federal priorities and by working closely with our state and local law enforcement partners. Marijuana is the most widely available and commonly abused illicit drug in the United States. According to the 2014 National Drug Threat Survey, 80 percent of responding agencies reported that marijuana availability was high in their jurisdictions. Availability increases are due to large-scale marijuana importation from Mexico and Canada, as well as increasing domestic indoor grows and marijuana cultivation in states that have legalized marijuana or passed medical marijuana initiatives. Abuse among adolescents is increasing and the medical consequences of marijuana abuse are rising. Further, marijuana concentrates, produced with new and dangerous extraction methods that elevate their THC content, are an increasing concern to law enforcement and public health officials.

II. The Department's Updated Marijuana Enforcement Guidance

In November 2012, voters in Colorado and Washington State passed ballot initiatives that legalized, under state law, the possession of small amounts of marijuana, and made Colorado and Washington the first states to provide for the regulation of marijuana production, processing, and sale for recreational purposes. The Department of Justice has reviewed these laws in the context of our enforcement priorities.

On August 29, 2013, the Department notified the Governors of Colorado and Washington that we were not at this time seeking to preempt their states' laws. We advised the Governors that we expected their states to implement strong and effective regulatory and enforcement systems to fully protect against the public health and safety harms that are the focus of our marijuana enforcement priorities, and that the Department would continue to investigate and prosecute cases in Colorado and Washington in which the underlying conduct implicated our federal interests. The Department reserved its right to challenge the state laws at a later time, in the event any of the stated harms do materialize – either in spite of a strict regulatory scheme, or because of the lack of one.

That same day, the Department issued a guidance memorandum to all United States Attorneys directing our prosecutors to continue to fully investigate and prosecute marijuana cases that implicate any one of our eight federal enforcement priorities. This memorandum applies to all of our federal prosecutors and guides the exercise of prosecutorial discretion against individuals and organizations that violate any of our stated federal interests, no matter where they live or what the laws in their states may permit. Outside of these enforcement

priorities, however, the Department will continue to rely on state and local authorities to address marijuana activity through enforcement of their own drug laws. This updated guidance is consistent with our efforts to maximize our investigative and prosecutorial resources, and with the more general message the Attorney General has delivered to all federal prosecutors, emphasizing the importance of quality priorities for all cases we bring, with an eye toward promoting public safety, deterrence, and fairness.

The August 29th memorandum itself did not expressly discuss what impact it would have on marijuana-related financial crimes. The February 14th memorandum states clearly that the provisions of the money laundering statutes, the unlicensed money remitter statute, and the Bank Secrecy Act (BSA) remain in effect with respect to marijuana-related conduct. The guidance advises federal prosecutors to assess marijuana financial crimes under the eight federal enforcement priorities laid out in the August 29th memorandum. The guidance also advises that financial institutions that service marijuana-related businesses, but are in clear compliance with Treasury Department's Financial Crimes Enforcement Network (FinCEN) regulations and FinCEN's February 14 guidance memo, are not likely to implicate the eight federal enforcement priorities. The Department expects financial institutions to continue to apply appropriate risk-based anti-money laundering policies, procedures, and controls sufficient to address the risks posed by these customers. This includes conducting customer due diligence consistent with any guidance issued by FinCEN.

The Department's guidance also makes one overarching point clear: the Department of Justice expects that states and local governments that have enacted laws authorizing marijuana-related conduct will implement effective regulatory and enforcement systems to protect federal priorities and the health and safety of every citizen. As the Department's guidance explains, a jurisdiction's regulatory scheme must be tough in practice, not just on paper. It must include strong enforcement efforts, backed by adequate funding. Consequently, financial institutions and individuals choosing to service marijuana-related businesses that are not compliant with such state regulatory and enforcement systems, or that operate in states lacking a clear and robust regulatory scheme, are more likely to risk entanglement with conduct that implicates the eight federal enforcement priorities.

We emphasize comprehensive regulation and well-funded state enforcement because such a system will complement the continued enforcement of state drug laws by state and local enforcement officials, in a manner that should allay the threat that a state-sanctioned marijuana operation might otherwise pose to federal enforcement interests. Indeed, a robust system may affirmatively address those federal priorities by, for example, implementing effective measures to prevent diversion of marijuana outside of the regulated system and to other states, prohibiting access to marijuana by minors, and replacing an illicit marijuana trade that funds criminal enterprises with a tightly regulated market in which revenues are tracked and accounted for. In

those circumstances, consistent with the traditional allocation of federal-state efforts in this area, enforcement of state law by state and local law enforcement and regulatory bodies should remain a necessary part of addressing marijuana-related activity.

For that reason, we in federal law enforcement in Colorado and Washington are working hard with our state and local enforcement partners to ensure that our efforts are mutually supportive. For the overall regulation of marijuana to be effective and public safety to be protected, state, local and federal law enforcement need to cooperate and work together. That's the message we have been sending, and will continue to send – and to implement.

III. Conclusion

The Department of Justice is committed to enforcing the CSA in all states, and we are grateful for the dedicated work of our Drug Enforcement Administration agents, our federal prosecutors, and our state and local partners in protecting our communities from the dangers of illegal drug trafficking. In Colorado, the U.S. Attorney's Office and DEA work hand-and-hand in this effort, and work closely with state and local law enforcement in this area as well. Our goal is to ensure by that cooperation that we are effectively focused on the eight federal enforcement priorities outlined in the August 2013 and February 2014 guidance from the Department. And as a final note, the Department also remains committed to minimizing the public health and safety consequences of marijuana use, including support for prevention, treatment, and recovery programs.

As our guidance reflects, we continue to target conduct that implicates federal priorities and causes harm, regardless of state law. We expect our state and local partners to continue to do so as well. In those jurisdictions that have enacted laws that legalize and seek to regulate marijuana for some purposes, this means that strong and effective regulatory and enforcement systems must address the threat those state laws could pose to public safety, public health, and other law enforcement interests.

We look forward to taking your questions.