

Elliot R. Peters
(415) 676-2273
epeters@kvn.com

January 3, 2013

VIA FEDERAL EXPRESS

Honorable Eric H. Holder, Jr.
Attorney General of the United States
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Re: *United States v. Davies*, case no. 2:12-cr-0255-GEB (E.D. Cal.)

Dear Mr. Attorney General:

I write regarding my client Matt Davies, a 34-year-old married father of two with no criminal record who is being threatened with more than ten years in federal prison for furnishing medical marijuana to qualified patients licensed to procure, possess, and consume it under California law.

President Obama recently declared that federal authorities have “bigger fish to fry” than prosecuting *recreational* marijuana users in Washington and Colorado where voters approved such use, yet by prosecuting Mr. Davies, the federal government is going after someone who made marijuana accessible to persons expressly licensed by the state to use it as medicine, based on a doctor’s recommendation. Mr. Davies tried his best to adhere to California’s Compassionate Use Act, which became law in 1996 when voters overwhelmingly approved medical use of marijuana, believes he *was* following state law, and worked to create a legitimate source of *medical* marijuana free from involvement by Mexican drug cartels or other criminal syndicates.

This is not a case of an illicit drug ring under the guise of medical marijuana. Here, marijuana was provided to qualified adult patients with a medical recommendation from a licensed physician. Records were kept, proceeds were tracked, payroll and sales taxes were duly paid. Indeed, dispensary operations adhered to municipal regulations and, where applicable, permits to operate marijuana dispensaries were sought. Attached is part of the extensive Medical Marijuana Dispensary Application for Mr. Davies’ Sacramento dispensary that was submitted to the city pursuant to municipal regulations. These papers include a City of Sacramento Business Operations Tax Certificate and a California State Board of Equalization Seller’s Permit that were issued to the dispensary.

Matt Davies tried to do things right by openly operating well-run dispensaries that provided organic, unadulterated medical marijuana to persons suffering from cancer, AIDS, and other serious health conditions. Before medical marijuana was legal in California, Mr. Davies saw his grandfather suffer immensely and waste away from a cancer that ultimately took his life. Motivated to provide the help that was unavailable to his own relative, Mr. Davies continually lowered prices for the medicine to help patients and to take the criminal element out of medical marijuana. He consulted with attorneys to ensure his activities complied with regulations, and believed that he was in compliance with California law. He also relied on the Obama Administration's assurances that its enforcement priorities lay elsewhere. He reasonably believed that Washington, D.C. would not seek to overturn the will of the California people and would not undermine efforts by cities such as Sacramento and Stockton to work with good people like Matt to foster a peaceful, safe, and clean source of medical cannabis free from the criminal element.

In sum, Mr. Davies is exactly the sort of person for whom the Department of Justice declared in the October 19, 2009 memorandum from Deputy Attorney General David W. Ogden that "a federal prosecution may be unwarranted." The Department emphasized that "limited federal resources" should focus on cases involving "unlawful possession or unlawful use of firearms; violence; sales to minors; ...excessive amounts of cash inconsistent with purported compliance with state or local law; illegal possession or sale of other controlled substances; or ties to other criminal enterprises." *None* of these factors exist here. No guns. No violence. No other controlled substances or criminal enterprises. Indeed, Mr. Davies was doing just the opposite—he was creating a legitimate source of medical marijuana that did not rely on secret grows in federal forests under armed guard or cash-only enterprises that evade payroll and sales taxes.

As you may know, Stockton and many other cities in California suffer from high unemployment and endure critical shortages of police officers. Taxes from medical marijuana sales can provide sorely-needed income for these municipalities. Also, many Californians believe that the "limited federal resources" that are available to aid local authorities should tackle real problems—fry the big fish of violent crime, illegal narcotics smuggling, and gang activity—not go after people who adhere to state law that happens to conflict with a federal statute.

Despite all this, United States Attorney Benjamin Wagner has chosen to charge Mr. Davies with counts that carry a five year statutory mandatory minimum sentence. This charging decision means that a judge would have no discretion to sentence Mr. Davies to anything less even if he or she believed that such a long sentence was grossly unjust. Not content with sending Mr. Davies to prison for half a decade, prosecutors now threaten that unless he volunteers to spend *seven years* of his life behind bars, the government will file a new indictment with charges that carry a mandatory minimum sentence of ten years, and will seek enhancements of many more years on top of that. Thus, a judge would have no discretion and would have to incarcerate Mr. Davies for at least a decade.

If the Obama Administration can prosecute Mr. Davies for his activities, it can go after *any* medical marijuana dispensary in California. And, of course, it can also prosecute any user of

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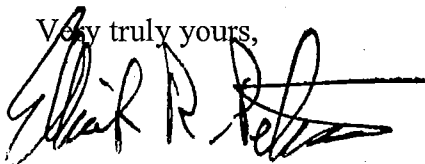
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marijuana in Washington and Colorado. This is so fundamentally at odds with the President's recent statement, the Department's prior guidance, and your own March 2009 assurance that federal policy "is to go after those people who violate both federal and state law," that we must ask: Does this mean that the federal government will be prosecuting individuals throughout California, Washington, Colorado, and elsewhere who comply with state law permitting marijuana use, or is the Davies case merely a rogue prosecutor out of step with Administration and Department policy? We come to you only after our appeal to Mr. Wagner was summarily rebuffed (see attached correspondence).

We ask you to please review this matter and permit us to demonstrate why it would be a grave injustice to send this good, law-abiding man to prison at all—much less for a mandatory minimum sentence which would constitute the remainder of his daughters' childhoods. I am confident that once you learn all of the facts of this case you will agree that the prosecution of Matt Davies is unjust, unwise, and counterproductive to efforts to reign in abuse in the medical marijuana market.

Thank you for considering this letter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Elliot R. Peters". The signature is stylized and somewhat cursive, with a long horizontal stroke at the end.

ELLIOT R. PETERS

ERP:dbm

cc: Lanny A. Breuer, Assistant Attorney General for the Criminal Division
James Cole, Deputy Attorney General
Kamala D. Harris, California Attorney General

Enclosures