STATEMENT OF AARON HOUSTON, DIRECTOR OF GOVERNMENT RELATIONS
MARIJUANA POLICY PROJECT
BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES
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Chairman Mollohan, Ranking Member Wolf, and distinguished Members of the Subcommittee, I am Aaron Houston, director of government relations for the Marijuana Policy Project (MPP), the largest marijuana law reform organization in the United States. MPP's mission is to increase public support for non-punitive, non-coercive marijuana policies and to accordingly reduce or eliminate penalties for the medical and non-medical use of marijuana. Because MPP believes the greatest harm associated with marijuana is prison, we focus on removing criminal penalties for marijuana use, with a particular emphasis on making marijuana medically available to seriously ill people who have the approval of their doctors. While MPP requests no specific budgetary line item or amount today, we do urge the Subcommittee to consider possible provisos or report language related to the use of Drug Enforcement Administration (DEA) funding in the FY10 bill in the areas I will outline today.

BACKGROUND: STATE MEDICAL MARIJUANA LAWS

Since 1996, voters and legislatures in 13 states have passed laws providing for the medical use of marijuana under a physician's supervision, but federal law criminalizes marijuana use without exception, even for seriously ill patients with cancer, AIDS, or multiple sclerosis. Under the administration of former President George W. Bush, the DEA targeted persons and entities involved in the sale or production of medical marijuana, even when the targeted persons were in compliance with state laws. MPP opposed these enforcement activities because, notwithstanding other reasons, we believe this is a bad policy; the resources dedicated to these operations by the DEA could surely be put to better use elsewhere. Indeed, our fundamental disagreement with the DEA on this matter was illustrated in a statement by a Department of Justice official concerning a DEA raid that occurred two months after the attacks of September 11, 2001: "The recent enforcement is indicative that we have not lost our priorities in other areas since September 11. The attorney general and the administration have been very clear: we will be aggressive."

Since the passage of California's medical marijuana law in November 1996, federal agents have raided more than 200 medical marijuana locations, mostly marijuana dispensing operations, homes related to them, and large marijuana gardens. Additionally, starting in July 2007, the DEA began issuing letters of notice to landlords leasing space or real property to those involved in activities legal under California's state medical marijuana law, threatening the landlords with forfeiture of property and possible criminal prosecutions. The letters state, in part, "It is not a defense to this crime or to the seizure of the property that the facility operating on the property is providing 'medical marijuana' under California law…"

MPP was pleased that during the most recent presidential campaign, then-Senator Barack Obama repeatedly promised not to waste federal resources interfering in states with laws protecting medical marijuana patients from arrest. Sen. Obama told southern Oregon's *Mail Tribune* editorial board on March 28, 2008, "I'm not going to be using Justice Department

resources to try to circumvent state laws on this issue." On another occasion (June 2, 2007), Obama said, "I don't think that should be a top priority of us, raiding people who are using ... medical marijuana. With all the things we've got to worry about, and our Justice Department should be doing, that probably shouldn't be a high priority."

Accordingly, MPP was encouraged by Attorney General Eric Holder's recent statements indicating that the Department of Justice has altered its policy in this area. Speaking at a February 25 news conference, Attorney General Holder said, "What the President said during the campaign … is consistent with what we will be doing here in law enforcement. He was my boss in the campaign … He is my boss now. What he said in the campaign is now American policy." And on March 18, Attorney General Holder provided further clarity to his earlier statement, saying, "The policy is to go after those people who violate both federal and state law."

While MPP was pleased with the attorney general's pronouncements, especially his statement on March 18 specifying that the DOJ will only pursue federal criminal actions against individuals and entities out of compliance with both state and federal law, more clarity is needed. Indeed, merely one week after the attorney general's most recent statement on the topic, the DEA conducted a raid on a medical marijuana clinic in San Francisco, raising questions about the implementation of the attorney general's stated policy.

Since the DEA has not been forthcoming with details of the raid it conducted on Emmalyn's California Cannabis Clinic on March 25, it is impossible to know what violations of state law may have occurred. For its part, a DEA spokesperson said of the raid, "Based on our investigation, we believe there are not only violations of federal law, but state law as well."

The key questions raised by the raid on the clinic involve the threshold that DEA and DOJ use to determine violations of state law. While the 13 state laws allowing for the use or cultivation of marijuana for *bona fide* patients vary significantly, I will focus on California's law for a moment, since most DEA enforcement operations have been concentrated there.

California voters passed Proposition 215 in November 1996, making it the first state to enact an effective medical marijuana law. One major unresolved issue that the initial law failed to contemplate adequately was supply for patients who do not produce their own marijuana. To help address this problem and the inconsistencies among jurisdictions in enforcing California's medical marijuana law, the California Legislature and governor enacted a law in 2003 that set limits on the amount of marijuana that certain parties may possess and also mandated the creation of a voluntary statewide identification card and registry system. And, in August 2008, the Office of the Attorney General in California issued "guidelines for the security and non-diversion of marijuana grown for medical use."

Cities and counties across California are moving toward properly regulating and licensing medical marijuana facilities. For example, in Los Angeles, home to most of California's dispensing collectives, city government officials have been working for more than two years with stakeholders on a plan to regulate these facilities. The existing facilities are currently operating under the ambit of an interim ordinance while the city develops its permitting process. Since DEA raids only impede the development of local regulations, Los Angeles officials have made numerous pleas with the DEA to stop the raids, including a resolution passed by the Los Angeles City Council in 2007.

RECOMMENDATION: FOCUS ON THE REAL PROBLEMS/RESPECT SCIENCE

Recognizing that federal law enforcement resources are limited, MPP respectfully requests that the Subcommittee urge the DOJ — via report language attached to the FY2010 appropriations act — to: (1) clarify its policy related to raids on those involved in medical marijuana-related activities in a state in the manner outlined below; (2) suspend its ongoing practice of sending asset forfeiture notices to real property owners leasing space to medical marijuana collectives; and (3) grant access to marijuana for use in FDA-approved clinical trials.

(1) Clarifying Attorney General Holder's policy on DEA raids: MPP believes the most recent raid on March 25 not only highlights the urgent need for a clearly articulated policy surrounding the definition of a "violation of state law," but also raises the need for stricter guidelines related to DOJ efforts to ascertain what constitutes a violation of state law, particularly by working with state regulators and law enforcement personnel. For example, in cases where an entity the DEA wishes to target has been duly licensed by a state government (or municipal government, where applicable), MPP believes there should be a presumption of compliance, and any suspected violations of state law should be reported to the state or local law enforcement personnel and state or municipal regulators, who would then presumably use the information received from the DEA to either revoke or suspend a state-issued license, or pursue state criminal charges against the entity suspected of the violation. In cases where state or municipal licensing is not available or possible, the DEA should still defer responsibility for enforcing state law to state or local law enforcement authorities except in egregious cases. In other words, whether or not a license has been issued to a medical marijuana selling or growing operation in (the currently 13) states where medical marijuana is legal, the DEA should not conduct any raids unless and until it receives confirmation from local or state law enforcement or regulatory authorities that state law has been violated.

(2) Suspending asset forfeiture threats against property owners leasing space to medical marijuana clinics: Congress created asset forfeiture laws intending to target large-scale narcotics trafficking operations. Property owners receiving these threats from the DEA merely lease space to medical marijuana collectives and have committed no state-level criminal offense in doing so. These threats against landlords have fueled speculation that the DEA's threats are largely ideological (in the sense that they ostensibly undermine California's medical marijuana law) rather than a legitimate law enforcement activity. The Obama administration should immediately halt issuance of these threat letters and any subsequent action taken to seize the assets of the individuals in question.

(3) Grant access to marijuana for use in FDA-approved clinical trials: The lack of FDA approval of marijuana as a prescription medicine is due largely to the systematic hindrance of scientific research by governmental agencies over the last several decades (e.g., the federal government, through the National Institute on Drug Abuse, maintains a monopoly on the supply of marijuana for research). In order to facilitate FDA-approved studies of marijuana, MPP recommends that DOJ leadership: (1) direct the DEA administrator to accept DEA Administrative Law Judge Mary Ellen Bittner's recommendation to grant Professor Lyle E. Craker's (University of Massachusetts at Amherst) application to be registered as a bulk manufacturer of marijuana and (2) halt the unreasonable delays that have plagued applicants seeking to import marijuana from abroad for research purposes (for example, from the Dutch Office of Medicinal Cannabis).

CONCLUSION

As I stated earlier, DOJ resources could clearly be better spent on more serious challenges than misguided raids on medical marijuana clinics. The most recent estimates indicate that Mexican drug cartels are now operating in some form in 230 American cities. Moreover, recent testimony before another Subcommittee of this distinguished Committee indicates that federal law enforcement authorities are so overwhelmed in one sector of the Mexico-U.S. border that persons caught crossing the border with up to 500 pounds of marijuana are unlikely to face prosecution.

Chairman Mollohan, Ranking Member Wolf, and distinguished Members of the Subcommittee, on behalf of medical marijuana patients, their caregivers, and their family members, I urge you to seek greater clarity on these policies so that people who are simply following their doctors' orders and abiding by state law can sleep better at night knowing their government is using scarce resources to protect them, not target them.