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SENIOR WHIP

Congress of the United States
House of Representatives
Washington, DC 20515-2101

April 15, 2009

The Honorable David W. Ogden
Deputy Attorney General
United States Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

Dear Deputy Attorney General Ogden:

Congratulations on your nomination and confirmation as U.S. Deputy Attorney General.

We are writing to request that the Department of Justice take immediate action to prevent Bush Administration DEA appointees from effectuating an 11th-hour agency ruling with significant implications for the new Administration's medical marijuana and scientific integrity policies. Specifically, we urge you to instruct the DEA Deputy Administrator to adopt DEA Administrative Law Judge (ALJ) Mary Ellen Bittner's February 12, 2007 Opinion and Recommended Ruling in the matter of University of Massachusetts at Amherst Professor Lyle Craker, PhD, Docket No. 05-16. In the alternative, we request that you take steps to ensure that no decision in this matter is finalized by the agency until the President's DEA appointments are in office and can independently review the Craker matter.

After years of delay and less than one week before the change in Presidential Administrations, DEA Deputy Administrator Leonhart published in the Federal Register a Final Order rejecting the ALJ recommendation by denying Professor Craker's application to produce research-grade cannabis (marijuana) for use in federally-approved clinical trials. [See Denial of Cracker Application, No. 05-16 (published Jan. 14, 2009), 74 Fed. Reg. 2101-03.] Currently, if no further action is taken by DEA, the Final Order will go into effect on May 1, 2009.

We are concerned that DEA's recent actions in this matter violate the spirit of the January 20, 2009, memorandum from President Obama's Chief of Staff to the heads of all executive departments and agencies [See Memorandum for the Heads of Executive Departments and Agencies, by Rahm Emanuel, Jan. 20, 2009, available at <http://ombwatch.org/reg/midnightregfreezememo.pdf>].

We are also concerned that DEA's actions in this matter are squarely at odds with President Obama's commitment to evidence-based health and science policies. As a

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result of decades-long obstruction by DEA and the National Institute on Drug Abuse (NIDA) of marijuana drug development research, 13 states have resorted to state-law mechanisms to protect patients who use cannabis for legitimate medical purposes. The result has been an inconsistent patchwork of medical marijuana laws across the country and repeated dangerous law-enforcement confrontations over the conflict between states' and federal laws. While President Obama has indicated his support for the rights of states to make this choice, he has also stated that cannabis should be made available by prescription like other medications. Professor Craker's case is currently the focal point of the struggle to allow science to resolve the controversy over medical marijuana, by finally allowing the evidence to be presented to the FDA in the context of its new drug review and approval process.

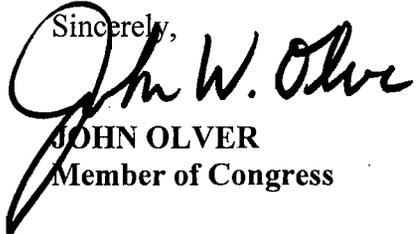
Further, we are dismayed that the DEA relied upon new evidence in the Final Order that was not part of the administrative record in this matter. If no other action is immediately possible to grant Professor Craker's application or reverse DEA's Final Order, at the very least we urge you to take immediate action to order DEA to grant the enclosed *Respondent's Supplemental Brief in Support of Request Under 5 U.S.C. § 556(e) To Respond to New Officially Noticed Evidence and Motion for Reconsideration*. Professor Craker has requested that the administrative hearing in his case be reopened so he may present live testimony and argument refuting and in opposition to new evidence the DEA relied upon in its Final Order. Fundamentally, what Professor Craker seeks in the attached Brief is an essential component of due process: an adequate opportunity to respond to, refute, and show the contrary of material new evidence that does not appear in the record of this proceeding, but which was nonetheless officially noticed by DEA in issuing its published Order denying Professor Craker's application.

As you know, the University of Massachusetts-Amherst is one of the nation's distinguished research universities. Since 2001, Professor Craker, an experienced botanist of medicinal plants and soils, has been attempting to obtain a DEA license for a privately-funded facility located at the University of Massachusetts to grow cannabis exclusively for FDA-approved research protocols designed to evaluate its potential medical value. Forty-five members of the House of Representatives and Senators Edward Kennedy and John Kerry, as well as a broad range of scientific, medical and public health organizations including the Lymphoma Foundation of America, the National Association for Public Health Policy, and the Multiple Sclerosis Foundation, have all written to DEA in support of Professor Craker's efforts. Professor Craker is represented in the DEA proceedings by the ACLU and attorney Julie Carpenter of Jenner & Block.

On February 12, 2007, after nine days of testimony from expert witnesses and administration officials, DEA's Administrative Law Judge Mary Ellen Bittner issued an 87-page *Opinion and Recommended Ruling* which concluded that the current sole-supply of cannabis by NIDA was insufficient for the level of research that cannabis deserves and that facilitating advanced clinical research was "in the public interest." The ALJ decision left no doubt that Professor Craker and the University of Massachusetts-Amherst are highly qualified to manufacture cannabis for legitimate medical and research purposes with effective controls against diversion.

We are very concerned that DEA's last-minute actions in this matter, following many years of delay, evince an attempt to impose the medical marijuana policies of the prior administration upon the new President and his appointees. We look forward to working with you and your staff to support policies that respect due process and advance scientific integrity.

Sincerely,



JOHN OLVER
Member of Congress



SAM FARR
Member of Congress