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MARIJUANA CULTIVATION ON U.S. PUBLIC LANDS

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WEDNESDAY, DECEMBER 7, 2011

United States Senate,
Caucus on International Narcotics Control,
Washington, D.C.

The Caucus met, pursuant to notice, at 2:34 p.m., in
room SD-562, Dirksen Senate Office Building, Hon. Dianne
Feinstein, Chairman of the Caucus, presiding.

Present: Senators Feinstein and Grassley.

1 OPENING STATEMENT OF HON. DIANNE FEINSTEIN, A U.S.
2 SENATOR FROM THE STATE OF CALIFORNIA

3 Chairman Feinstein. We are here today to explore
4 the increasing problem of domestic marijuana cultivation,
5 particularly on United States public lands.

6 Drug production was first discovered in the Southern
7 California National Forests in 1995. Today there is
8 domestic production in 20 states and 67 national forests,
9 believe it or not.

10 Since 2006, 13,843,937 marijuana plants have been
11 eradicated nationally, and over 12 million of these have
12 been in California alone. So California is a huge
13 problem.

14 In 2009, nearly 10 million plants were eradicated
15 from outdoor states nationwide, representing a 153
16 percent increase from 2005. Outdoor marijuana
17 cultivation in California, Hawaii, Oregon and Washington
18 greatly exceeds outdoor cultivation in all other areas of
19 the country combined.

20 Now, there are some emerging trends related to these
21 marijuana grows that are troubling. First, weapons are
22 being found at outdoor marijuana cultivation sites with
23 great frequency. According to the California Bureau of
24 Narcotics Enforcement's campaign against marijuana
25 planting, there have been 62 weapons discovered at

1 California grow sites in 2011 and 87 in 2010.

2 Second, violence continues to increase on these grow
3 sites. In 2011, there were 12 homicides related to
4 marijuana cultivation in California. Of those, six were
5 on public lands and six were related to those growing
6 marijuana under the pretext of medical uses. The
7 violence grows year after year. There were nine
8 shootings on public lands in 2010 in California compared
9 to only one in both 2008 and 2009.

10 Third, a number of state medical marijuana laws have
11 complicated law enforcement efforts against illegal
12 cannabis cultivation. Currently, 16 states and the
13 District of Columbia have state laws that conflict with
14 the Federal Controlled Substances Act, something we ought
15 to think about, Senator.

16 Fourth, in California, large-scale marijuana growers
17 are increasingly moving grows from isolated forests to
18 networks of smaller grows in open backyards and farmland.
19 This is illustrated by the decreasing number of grows on
20 public lands in Fresno County from 2009 to 2011 and the
21 simultaneous increase of grows on farmland. In 2009,
22 there were 70 grows on public lands in Fresno. This went
23 down to 30 in 2010, and, so far, there have only been 10
24 in 2011.

25 But this year, in Fresno County, over 100 multi-acre

1 grows on farmland have been discovered, and authorities
2 have only searched approximately one-third of Fresno
3 County. The sheriff is here, she will testify.

4 One such grow was an astonishing 57 acres. The
5 small size of these gardens and the fact that many
6 cultivators claim that their crops will be used for
7 strictly medical purposes makes action by prosecutors and
8 law enforcement officials difficult.

9 California's Central Valley, in particular, has
10 become a hotspot for marijuana cultivation because of the
11 conditions there--abundant sunlight, irrigation,
12 fertilizer. Experts believe that much of the marijuana
13 grown in farms and backyards in California is transported
14 as far as Texas, Illinois, and Boston.

15 Also troubling is that the marijuana being consumed
16 today -- and I think this is really important -- has
17 become more chemically powerful, with levels of the
18 psychoactive ingredient, THC, more than doubling since
19 1983. According to Tom Lanier, director of the National
20 Marijuana Institute for the National High Intensity Drug
21 Trafficking Program, this is especially true with
22 marijuana grown on public lands and in organized rows.

23 In the 1970s, the THC content of marijuana averaged
24 1 to 2 percent. Now, the quality of THC is up to 18
25 percent for marijuana grown on public lands and averages

1 18 to 20 percent on farmlands and other organized grows.

2 There are a number of issues that I hope we can
3 explore-- how to ensure California maintains robust
4 eradication operations with the elimination of funding
5 for the California Bureau of Narcotics Enforcement in the
6 State's budget, and that funds an important task force in
7 charge of marijuana eradication. So I view that as a
8 real setback.

9 I also continue to be surprised that the total
10 amount of domestically produced marijuana is unknown and
11 there are no reliable estimates, other than using the
12 quantity of cannabis plants eradicated from illegal
13 outdoor grow sites as an indicator.

14 Finally, there is an information gap as to what
15 organizations are responsible for these grows. In
16 particular, the extent of Mexican drug trafficking
17 organization participation in these grows still remains
18 unclear, although everything I have read indicates that
19 it is still the Mexican drug trafficking organizations
20 that have the major hand in this. So all of this needs
21 to be explored.

22 [The prepared statement of Senator Feinstein
23 follows:]

24 Chairman Feinstein. I would like to turn to my
25 distinguished Vice Chairman now for his comments, and

1 then, Mr. Chairman, we will introduce and welcome
2 Congressman Mike Thompson, who I believe has something
3 important to tell us.

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1 OPENING STATEMENT OF HON. CHUCK GRASSLEY, A U.S. SENATOR
2 FROM THE STATE OF IOWA

3 Senator Grassley. Thank you very much, Madam
4 Chairman, for holding this hearing.

5 Last year, our Drug Enforcement Administration
6 destroyed over 10 million marijuana plants and our
7 National Forest Service destroyed over 3.5 million. The
8 efforts to destroy these plants have come at great costs
9 of resources and manpower.

10 Law enforcement officials report that these
11 marijuana grows are becoming much more aggressive in
12 protecting their drug supplies. The National Forest
13 Service reports that nine suspects have been killed this
14 year in fights with law enforcement people.

15 Innocent people are also victims of these growers.
16 A couple of examples. Two men, including a councilman
17 and former mayor of Fort Bragg, California, were shot to
18 death while checking on property near a marijuana grow
19 site. These men apparently got too close for comfort for
20 these marijuana growers and, unfortunately, were killed.

21 These large public marijuana grows are a major
22 problem and begs the question -- how did we get to this
23 point? Law enforcement officials suspect that efforts to
24 legalize marijuana for any purpose is having an impact on
25 the increasing marijuana grow sites.

1 According to a recent article in the *Fresno Bee*, law
2 enforcement officials are often finding medical marijuana
3 recommendation letters from physicians posted at the
4 perimeters of big marijuana grow sites. The article
5 states that narcotics detectives believe drug traffickers
6 are in charge of the grow sites. These growers are
7 abusing California's medical marijuana law to grow their
8 product.

9 Detectives say that growers pay friends and
10 relatives to visit marijuana-friendly doctors to get
11 these recommendation letters in order to grow the
12 marijuana.

13 I am concerned that this Administration has
14 contributed to this problem, and let me tell you how I
15 feel that way. In October 2009, the Department of
16 Justice issued a memorandum to all U.S. attorneys
17 regarding the prosecution of individuals who use or sell
18 marijuana for medical purposes in states that allow it.

19 This policy stated that U.S. attorneys should not
20 expend resources to prosecute individuals who are
21 combined with state laws regarding selling, possession
22 and use of marijuana for medical purposes. These state
23 laws are in direct conflict with long-existing Federal
24 laws.

25 The memorandum also stated that this policy will not

1 alter the department's authority to enforce Federal law.
2 As a result, then, this memorandum led to confusion among
3 U.S. attorneys, causing some to decline prosecuting
4 marijuana cases, while others still aggressively pursue.

5 However, if you are a marijuana grower and you never
6 have to pay a price for your crime, you are not likely to
7 stop your practices. In fact, this memorandum likely
8 threw gasoline on an already white-hot burning fire.

9 I will be interested to learn more about the
10 memorandum's impact on local law enforcement from Sheriff
11 Mims.

12 The Obama Administration seems to have understood
13 the destructiveness of their original memorandum. This
14 past June, then, Deputy Attorney General James Cole
15 issued another memorandum on marijuana prosecutions,
16 seeking to provide much needed clarity for the U.S.
17 attorneys on the 2009 Ogden memorandum. The trouble is
18 it did not get much clarity.

19 This new memorandum almost completely walks us back
20 to the 2009 policy. It acknowledges the fact that there
21 has been a large movement into commercial cultivation,
22 sale and distribution of the product for medical
23 purposes. This memorandum also states that the 2009
24 Ogden memorandum was never intended to shield those who
25 are growing large quantities of marijuana, even if they

1 are in compliance with state law.

2 The memorandum concludes that the people who are
3 growing and selling marijuana are in violation of the
4 Controlled Substances Act and are subject to Federal
5 enforcement action, including prosecution. Since this
6 memorandum has been issued, numerous marijuana
7 dispensaries have faced aggressive DEA enforcement
8 action.

9 Despite these positive actions, this
10 Administration's earlier confusing policy helped create a
11 bigger problem for DEA and local law enforcement.
12 Hopefully, this damage will be fixed in time, but the
13 cost will be much higher than it should have been.

14 We have worked together, Madam Chairman, closely
15 together with many issues, especially when it comes to
16 illegal drugs. I really appreciate your efforts and
17 joining to ensure these dangerous drugs are removed from
18 our society.

19 Thank you.

20 Chairman Feinstein. Thank you very much, Senator.
21 And I like working with you, also. So thank you.

22 Senator Grassley. Thank you.

23 Chairman Feinstein. I would now like to introduce
24 my friend and colleague from my home State of California,
25 Congressman Mike Thompson.

1 Congressman Thompson has represented California's
2 first congressional district, which includes seven
3 counties in northwest California, and he has done that
4 well since 1998. His district includes a number of
5 counties highly impacted by marijuana cultivation on
6 public lands, I am sorry to say, especially Mendocino,
7 which is a particularly beautiful county. It was the top
8 illegal producing county in California for 2010 and 2011.

9 He currently serves on the House Committee on Ways
10 and Means, as well as the House Permanent Select
11 Committee on Intelligence as ranking member of the
12 Subcommittee on Terrorism, Human Intelligence Analysis,
13 and Counterintelligence.

14 Prior to serving in Congress, Mr. Thompson chaired
15 the Budget Committee as a California State senator. He
16 is a Vietnam veteran and winner of the Purple Heart.

17 Welcome, Representative Thompson. Mike, it is good
18 to have you here.

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1 STATEMENT OF HON. MIKE THOMPSON, A U.S. CONGRESSMAN FROM
2 THE STATE OF CALIFORNIA

3 Congressman Thompson. Thank you very much, Madam
4 Chair and Senator Grassley. Thank you for holding this
5 hearing today. It is very important, as you point out,
6 to my home state, our home state, and my district. And I
7 really appreciate the opportunity that you have given me
8 to appear before the committee. This is something I have
9 been working on for a long time, and, Senator Feinstein,
10 you know you and I have partnered on a number of issues
11 relevant to this and have been able to really deliver
12 some national focus to make sure that we address this
13 issue.

14 But, sadly, that national focus notwithstanding, we
15 still have, I believe, a long way to go. And we have got
16 folks, as you both have mentioned, growing illegal
17 marijuana across California, across the country, and we
18 are being held hostage by illegal drug growers on our own
19 property.

20 Our public lands have been taken away from us. That
21 is wrong. I think we need to do something about that.
22 Last year, more than three million marijuana plants were
23 eradicated from 62 national forests. The effect of these
24 illegal drug grows have been profound, leading to
25 unacceptable levels of violence and the devastation of

1 our environment and our natural resources.

2 In August of this year, my very close friend, and
3 Senator Grassley mentioned this, Fort Bragg City
4 Councilman Jere Melo was murdered. He was shot at point-
5 blank range with a military-type assault weapon on
6 private property that he helped manage for a private
7 landowner in Mendocino County.

8 This escalating problem is putting Californian's at
9 risk. Today, the public is faced with using our public
10 forests under threat of armed confrontation. We have
11 come to the point where the U.S. Forest Service has
12 locally issued a printed "be safe" warning to people
13 going into the Mendocino National Forest, with specific
14 instructions on what to do if you come into contact with
15 one of these marijuana growers.

16 Today on the radio in the Town of Sonoma, Senator
17 Feinstein, which you and I both know well, I was informed
18 that a local school had to cancel a hike that they were
19 taking on nearby public property because the Sonoma
20 Sheriff's Department notified them that they would be at
21 risk because of some illegal grows in the area.

22 Law enforcement agents in northern California have
23 been compelled to use lethal force to defend themselves
24 while serving on public land. During a 7-week period in
25 2010, agents killed five suspected marijuana in Mendocino

1 Lake, Nampa, and Santa Clara Counties, and this is
2 something they are going to have to deal with for a long
3 time and it takes a toll. And as the father of a deputy
4 sheriff, this is very, very important to me and I worry a
5 lot about my son and what he is doing.

6 Timber companies report that they have been
7 increasingly forced to eradicate illegal grows. Many
8 times, they have to bring armed security people into the
9 forests with them. This is their private lands that have
10 been taken over by these folks growing illegal drugs.

11 Green Diamond Timer Company, Senator, that you know
12 well, has large land holding in my district. They have
13 discovered an average of 30 marijuana gardens per year on
14 their private property. A single grow site that they
15 found in 2008 had 135 marijuana plants. And aside from
16 the direct threat of violence to those who want to work,
17 recreate, hunt on, or simply enjoy our public lands,
18 these illegal grows are destroying our environment.

19 The chemical contamination, altering the watersheds,
20 diversion of natural water courses, dewatering streams
21 and tributaries, the leaching of dangerous chemicals into
22 our water supply, the elimination of native vegetation,
23 wildfire hazards, and the harmful disposal of non-
24 biodegradable material are degrading our natural
25 resources with far more intensity than we could ever

1 clean up.

2 In many cases, the damage is being done to the same
3 watersheds that we are spending millions of dollars
4 trying to restore habitats for fish and other important
5 species.

6 Recently, a multi-county, multi-agency operation had
7 been deployed to take back our public land. These
8 include Operation Full Court Press in the Mendocino
9 National Forest, located in my district, and Operation
10 Trident in the Sierra Nevada region of California.

11 The interdiction totals from this summer's 3-week
12 Full Court operation were pretty significant. They
13 confiscated 38 weapons. They seized 1,986 pounds of
14 process marijuana, with a street value of almost \$1
15 billion. They eradicated more than 600,000 marijuana
16 plants and made 159 arrests.

17 Now, less publicized, but as concerning, was the
18 fact that they found 5,400 pounds of fertilizer, 260
19 pounds of pesticides, 40 miles of plastic irrigation
20 pipe, 80 propane tanks, and 26 tons of trash that had to
21 be hauled out of these areas.

22 These totals are just a drop in the bucket of what
23 is ending up in our creeks and our waterways across the
24 country. And since being elected to Congress, during my
25 time in the State Senate, I have partnered with you,

1 Senator Feinstein, to help take back our public service,
2 and it is a great partnership, one I am proud to be part
3 of.

4 Two and a half years ago, I convened local
5 representatives and law enforcement throughout northern
6 California to start planning greater regional
7 coordination on this effort. And last year, I hosted a
8 major public lands meeting in Washington, DC so we could
9 bring folks together, so we are all working on the same
10 page to deal with this issue.

11 Thanks to the hard work of Senator Feinstein, the
12 coordination and funding through the High Intensity Drug
13 Trafficking Area Program has focused additional resources
14 on those areas of the country where the problem that we
15 are discussing today is most concentrated, and that is
16 very much appreciated.

17 And I believe our collective efforts are starting to
18 pay off. Recently we saw the elevation of marijuana
19 eradication on public lands as a higher priority within
20 the Office of National Drug Control Policy, and I know
21 that Director Kerlikowske will be able to speak to that
22 with great authority, and his public lands committee that
23 he helped establish within his office has started to
24 focus on and pay attention to the resources that this
25 epidemic needs to have in order to be able to be

1 successful.

2 But I believe that we have a lot of work left if we
3 are going to take back our forestlands. We need to make
4 sure that our national public lands strategy prioritizes
5 investigations and enforcement as much as it focused on
6 plant eradication.

7 Investigations ending with effective prosecutions is
8 important, and that coupled with aggressive civil and
9 criminal forfeiture proceedings must be part of our
10 solution if we are going to be effective.

11 Second, I believe that our law enforcement and
12 intelligence communities must have a coordinated strategy
13 to take back our forests. And thank you, Senator
14 Feinstein, for the work that we were able to do in our
15 respective positions on the two intelligence committees.
16 I think that is going to be important and is going to
17 really pay off.

18 Finally, the Administration must continue to make
19 the financial commitment that ensures Federal land
20 management agencies, like the Bureau of Land Management,
21 the National Park Service, and the Forest Service, have
22 the resources they need to truly confront this issue.

23 Because of the fiscal pressures that we face here in
24 Washington, DC and in state capitols across the country,
25 some very difficult decisions will need to be made in the

1 coming months about how we best spend the limited
2 resources we have in order to address this.

3 However, one thing is clear -- now is not the time
4 to slow down or scale back on the progress that we have
5 made to date. So we must maintain our commitment to
6 taking back our public lands or all is going to be lost.

7 So I cannot tell you how important this hearing is
8 today, and I thank you both very much for convening it
9 and I look forward to working with you and all the folks
10 who we collectively work together with to make sure that
11 we can take back our lands.

12 Thank you.

13 Chairman Feinstein. Thank you very much,
14 Representative Thompson.

15 Can you take a couple of questions from Senator
16 Grassley and myself?

17 Congressman Thompson. Certainly.

18 Chairman Feinstein. First question. Do you think
19 all this thing about medical marijuana and how it is so
20 helpful to people suffering, which I have never really
21 agreed to, but nonetheless, that is -- it is fair to say
22 that is out there -- has had an effect on the growth of
23 this marijuana production, which I assume is all for
24 illegal purposes, not for any legal purpose, any
25 medicinal purpose, by and large?

1 Congressman Thompson. Well, I can tell you this. I
2 think if someone is gravely ill and they are suffering
3 from -- you name the tragic disease that they have -- and
4 if they and their medical professional, their doctor,
5 believes that the use of marijuana is something that is
6 going to help, I am all for it.

7 But I think that we need to be very, very careful in
8 how we draw the laws that govern how this is used, how it
9 is sold, and how it is grown. I can tell you that if we
10 were to have -- if we are going to discuss the issue of
11 medical marijuana and how it is grown in California, you
12 had better set aside another hearing date, because I can
13 take you up to my district and show you problems that are
14 unimaginable.

15 And the idea that someone can grow anything with
16 complete disregard for the environment -- I grow grapes
17 and I grow olives, and I cannot grow my products the way
18 that some of these guys are growing their medical
19 marijuana, and because of -- and Senator Grassley alluded
20 to this -- the Federal Government not recognizing the law
21 that the California voters put on the books, local
22 governments find it very, very difficult to craft the
23 proper ordinance that would provide for growing this
24 particular crop in a lawful way that is not a danger to
25 our environment.

1 I can show you roads that as a grape-grower I could
2 never put in. I can show you water impoundments as an
3 olive-grower I would never be allowed to put in. But yet
4 they are there. They are hurting the environment. They
5 are hurting different species that, Senator, you and I
6 have worked to try and bring back, and it is not right.

7 Chairman Feinstein. I agree with you.

8 Senator Grassley?

9 Senator Grassley. Well, I have no questions,
10 Congressman. Thank you for coming.

11 Congressman Thompson. Thank you both very much.

12 Chairman Feinstein. Thank you very much, Mike. And
13 I look forward to working with you and I know Senator
14 Grassley does, too.

15 Because there is a split constituency in this, the
16 sort of way it has been is hands off, and that provides
17 no leadership to law enforcement either. So it becomes
18 very difficult to enforce the law. And then if you cut
19 out a lot of law enforcement, it makes it even more
20 difficult. And I am concerned, because I know one
21 college out of Oakland where they tell you how to do this
22 and they sell marijuana on the internet and on
23 prescription.

24 Senator Grassley. You need to let us know if there
25 is anything the two of us can do to work with you in the

1 other body to accomplish a mutual goal.

2 Congressman Thompson. I would very much like to do
3 that, and I will extend to both of you -- easier for
4 Senator Feinstein probably -- but if you want to see any
5 of this firsthand, please let me know.

6 Chairman Feinstein. Thank you.

7 Congressman Thompson. Because it is right there, it
8 is visible, it is flagrant the way some of this is done.
9 And as I say, law-abiding farmers and ranchers cannot do
10 their operation like that and it is very demoralizing.

11 Chairman Feinstein. I appreciate that. I will take
12 you up on the offer.

13 Congressman Thompson. Thank you.

14 Chairman Feinstein. Thank you. Thank you very
15 much.

16 I now would like to welcome our distinguished
17 witnesses from the Federal Government on the first panel.

18 Gil Kerlikowske is the director of the Office of
19 National Drug Control Policy, meaning that he is
20 President Obama's top counternarcotics official.
21 Director Kerlikowske coordinates all aspects of Federal
22 drug control programs and implementation of the
23 President's national drug control strategy.

24 He brings 37 years of law enforcement and drug
25 policy experience to the position. Prior to his position

1 as director, he served for 9 years as the chief of police
2 in Seattle, Washington. When he left Seattle, crime was
3 at its lowest point in 40 years.

4 Congratulations, Director.

5 David Ferrell is the director of the Law Enforcement
6 and Investigations Program for the United States Forest
7 Service. He is responsible for public safety and
8 resource protection on over 193 million acres of national
9 forests and grasslands throughout the country.

10 Prior to this, he served for over 6 years as deputy
11 director of the Forest Service's law enforcement and
12 investigations program.

13 Mr. Ferrell first joined the Forest Service in 1984.

14 And in 1993, he began his career with the agency's law
15 enforcement branch. He has served as a law enforcement
16 officer, criminal investigator, and special agent on
17 national forestlands across the country.

18 Welcome, gentlemen.

19 Mr. Kerlikowske, may we begin with you?

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1 STATEMENT OF GIL KERLIKOWSKE, DIRECTOR, OFFICE OF
2 NATIONAL DRUG CONTROL POLICY, WASHINGTON, DC
3 Mr. Kerlikowske. Chairman Feinstein and Vice
4 Chairman Grassley, thank you very much for this
5 opportunity to be here today.

6 As you know, the Office of National Drug Control
7 Policy was established by Congress with the principal
8 purpose of reducing illicit drug use, manufacturing, and
9 trafficking, drug-related crime and violence, and drug-
10 related health consequences. And as the director of the
11 office and the chief advisor to the President on drug
12 policy efforts, it is my job to raise public awareness
13 and to take action on drug issues affecting our nation.

14 Our efforts, we believe, are balanced and
15 incorporate new research, evidence-based approaches to
16 address drug use and its consequences here in the United
17 States.

18 I am here to testify about domestic marijuana
19 cultivation and, specifically, this cultivation on public
20 lands. And threat of marijuana cultivation on these
21 lands results in serious damage to our environment and to
22 the safety and security of the American people who use
23 these lands.

24 In the Administration's inaugural national drug
25 control strategy, we addressed the threat of marijuana on

1 public lands, and the Administration has continued to
2 raise awareness of the public safety issue and highlight
3 the coordinated efforts that take place among Federal,
4 state, local and tribal entities.

5 Unfortunately, as was just mentioned by the
6 Congressman, there is evidence of increased domestic
7 marijuana cultivation over the past several years. In
8 2006, 5.2 million plants were eradicated in the U.S.; 4
9 years later, more than 10.3 million plants.

10 While marijuana cultivation can occur both indoor
11 and in outdoor grow sites, the vast majority of marijuana
12 produced in the United States does come from outdoor
13 cultivation. While the overall number of plants
14 eradicated from indoor grow sites has remained stable, in
15 2010, about 95.5 percent of the marijuana eradicated was
16 from the outdoor sites.

17 Nearly 60 percent of outdoor marijuana plants
18 eradicated in 2010 were eradicated from public and tribal
19 lands, and these were primarily concentrated in western
20 states, particularly California, Oregon and Washington.
21 And outdoor grow sites are located in remote areas. They
22 facilitate these large-scale cultivation operations and
23 they reduce the chance of law enforcement detection.

24 There have also been reports of increased
25 exploitation of Indian reservations to cultivate

1 marijuana in Washington and Oregon. That is why in
2 Oregon, Oregon's high intensity drug trafficking grantee
3 now includes a fully designated tribal partner, the Warm
4 Springs Indian Reservation, and that assists law
5 enforcement in the efforts to deal with the problem on
6 the tribal lands.

7 We know the human costs and those involved in
8 illegal marijuana cultivation are often armed and
9 dangerous. They frequently protect their crops through
10 the use of force and intimidation. And in 2010, law
11 enforcement authorities in California and Oregon reported
12 at least 11 incidents of armed confrontations or officer-
13 involved shootings. Seven of these resulted in the death
14 of the grower after they aimed or fired their weapons
15 toward law enforcement.

16 Outdoor cultivation has negative environmental
17 effects, and these grow sites affect wildlife,
18 vegetation, water, soil, other natural resources, and the
19 use of chemicals, fertilizers, kerosene and poaching just
20 adds a further detriment.

21 The toxic chemicals enter and contaminate
22 groundwater. They pollute watersheds, kill fish and
23 other wildlife. Law enforcement officials are
24 increasingly encountering dump sites of toxic
25 insecticides, chemical repellents and poisons, some of

1 which are banned in the United States. And in addition,
2 site workers often create wildfire hazards by clearing
3 land for planting.

4 In addition to the environmental damage, the cost to
5 rehabilitate the land damaged by the grows is
6 prohibitive. Full cleanup and restoration can cost as
7 much as \$17,700 per acre. Federal agencies are working
8 more closely than ever to address the challenge.

9 ONDCP, along with the Department of Interior and
10 through the public lands drug control committee, we
11 collaborate closely with DEA, the Federal public lands
12 agencies, the National Drug Intelligence Center, the
13 National Guard Bureau, and Federal agencies provide
14 critical assistance and funding, helicopter support, and
15 intelligence analysis.

16 Agencies have increased their joint investigative
17 and enforcement efforts with state and local agency
18 partners. A good example of that is Operation Full Court
19 Press. I believe the Congressman mentioned a little bit
20 about Full Court Press and Operation Trident.

21 These operations depend on a really holistic
22 approach involving the coalition of agencies and programs
23 to eradicate the plants, to reclaim the public lands, to
24 conduct aggressive education and demand reduction
25 programs, and investigate the organizations to support

1 these successful prosecutions.

2 Efforts to disrupt the marijuana market, like
3 Operation Full Court Press, are really vital to protect
4 both public health and safety.

5 Thank you very much for the opportunity to testify.

6 I look forward to your questions.

7 Chairman Feinstein. Thank you very much.

8 Senator Grassley?

9 Senator Grassley. Are we going to have both?

10 Chairman Feinstein. I beg your pardon. Director
11 Ferrell, I did not mean to overlook you. Please go
12 ahead.

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1 STATEMENT OF DAVID FERRELL, DIRECTOR, LAW ENFORCEMENT AND
2 INVESTIGATIONS PROGRAM, U.S. FOREST SERVICE

3 Mr. Ferrell. Madam Chairman, Mr. Vice Chairman,
4 members of the Caucus, I am David Ferrell, director of
5 Law Enforcement and Investigations for the USDA Forest
6 Service. Thank you for the opportunity to testify on the
7 problem of domestic marijuana cultivation.

8 Drug trafficking organizations are exploiting
9 national forest system lands. Often these marijuana grow
10 sites are guarded 24 hours a day by armed individuals,
11 primarily undocumented aliens, which poses a significant
12 threat to the public and Forest Service employees.

13 The Forest Service's goal is to identify, disrupt
14 and dismantle DTOs on NFS lands. A collaborative effort
15 with our law enforcement counterparts is crucial as DTOs
16 continue to expand. This strategic, multi-agency
17 approach targeting DTOs, with a focus on investigations,
18 eradication, sharing of intelligence, prosecution and
19 reclamation, will enable the Forest Service to
20 successfully address this threat.

21 The Forest Service works with other Federal, state,
22 local and tribal partners to establish coordinated
23 responses to this threat.

24 Here are a few examples of the threat. In 2010, a
25 father and son, while bow hunting on the San Bernardino

1 National Forest, reported they were met by three Hispanic
2 males who attempted to keep them from an area known as
3 Horse Canyon. The father and son exited the area
4 unharmed. Our officers and cooperating agencies
5 eradicated over 4,100 marijuana plants.

6 In 2011, Forest Service research employees were
7 conducting field surveys on the Humboldt-Toiyabe National
8 Forest. As the employees hiked into the area, they
9 observed black irrigation tubing running along the
10 ground, which may have been to a marijuana grow site.
11 They were immediately contacted by two Hispanic males.

12 One of the growers tried to lure them further into
13 the grow site. The employees reported the incident to
14 Forest Service officers. Our officers and cooperating
15 agencies eradicated over 8,500 marijuana plants.

16 In 2010, there was a lethal force incident which
17 occurred when an interagency drug task force raided a
18 grow site on the Sequoia National Forest. One suspect
19 pointed a rifle at the officers. A shootout followed.
20 Fortunately, no officers were hit by the suspect's
21 gunfire. The suspect was wounded. Forest service
22 officers and cooperating agencies arrested five
23 undocumented aliens and eradicated over 3,500 marijuana
24 plants.

25 Marijuana cultivation also poses a severe

1 environmental threat. Growers clear native vegetation,
2 divert large volumes of water from creeks for irrigation,
3 and use herbicides and pesticides which kills competing
4 native vegetation and wildlife.

5 This activity creates severe soil erosions and
6 causes poison, human waste, and trash to Washington
7 streams and rivers, including congressionally-designated
8 wild and scenic rivers. To address the environmental
9 damage, cleaning up marijuana grow sites on NFS lands
10 requires a coordinated effort. The typical cleanup
11 involves numerous Forest Service staff areas and
12 assistance from our partners.

13 It is important for marijuana grow sites to be
14 restored for environmental reasons and to deter the reuse
15 of the area for marijuana cultivation.

16 In 2010, 77 percent of marijuana grown on Federal
17 public lands were grown on national forests; 88 percent
18 of all DTO activities on NFS lands occurred in
19 California. Since 2006, over 16 million marijuana plants
20 have been eradicated nationally, with a value of over \$40
21 billion.

22 Our nation's national forest lands are under attack
23 by sophisticated drug trafficking organizations. DTOs
24 have been found on 67 national forests in 20 states.
25 Individuals and criminal organizations must be held

1 responsible for this illegal activity.

2 Madam Chairman, Mr. Vice Chairman, this concludes my
3 statement. I will be happy to answer any questions you
4 may have.

5 Chairman Feinstein. Thank you very much.

6 Mr. Kerlikowske, let me begin with you. Tomorrow in
7 the Judiciary Committee, on which my colleague is the
8 ranking member and I am a member, Senator Kyl and I have
9 a bill having to do with border tunnels. And as you
10 know, there is a rash of tunnels now being built under
11 the border, the southwest border.

12 The biggest tunnel ever, complete with hydraulic
13 lifts, just had 32 tons of marijuana on the Mexican side
14 waiting to come across.

15 I want to ask you questions about Mexican drug
16 trafficking organizations. We have received information
17 provided by the Central Valley HIDTA that indicates that
18 members of the Mexican La Familia Michoacana drug
19 trafficking organization were seeking growers with no
20 criminal background to obtain medical marijuana
21 recommendations and licenses to grow marijuana in
22 California under the pretense of medical marijuana.

23 La Familia Michoacana would then ship the marijuana
24 to Oregon, Washington, Nevada and other western states.

25 How broad is this? What is the Mexican drug

1 trafficking organization involvement in this?

2 Mr. Kerlikowske. Senator, I would tell you that we
3 received exactly the same information, also, from the
4 Central Valley HIDTA, and I believe that information is
5 very accurate.

6 But let me expand on that by just a moment, and that
7 is that when we look at the number of cases that have
8 been followed up -- and I could not take more pride or
9 pleasure in the work that the Forest Service, local law
10 enforcement, particularly my colleague, Sheriff Mims,
11 have done in moving beyond what had been traditional
12 eradication cases and seizing X number of tonnage --
13 amount of tonnage of plants and moving into
14 investigations.

15 Where is the money going? How is this being
16 transported? Who is it, the heads of these
17 organizations?

18 We know from the intelligence and we know from the
19 investigations that have been completed that Mexican drug
20 trafficking organizations are very disproportionately
21 represented in the organized cultivation on these public
22 lands.

23 Whether it is through direct command and control
24 from Mexico, I think, is a question that is not answered,
25 but the number of undocumented aliens and the number of

1 those involved in the DTOs, drug trafficking
2 organizations, is high.

3 Chairman Feinstein. When you call them undocumented
4 aliens, they are Mexican nationals, essentially, that are
5 running these places and they are armed and they are
6 dangerous.

7 So it seems to me that we ought to go after them in
8 a major way.

9 Mr. Kerlikowske. I could not agree more, Senator.
10 And I think that the fact that they are taking these
11 investigations to a further level than has been done in
12 the past and having had that experience in Washington
13 State and having been on the executive board of that
14 HIDTA, I know that these are more time-consuming, these
15 are more expensive investigations than just seizing a
16 certain number of plants.

17 But in the long run, these are the kinds of things
18 that actually cut the head off the snake.

19 Chairman Feinstein. So nothing to do with medical
20 marijuana. My point is medical marijuana is being used
21 as an excuse, and it is not an excuse and it happens to
22 be a haphazard program. It is not well run. There are
23 not doctors' prescriptions in the main, and it is highly
24 problematic.

25 But at the same time, you had this huge infusion --

1 that is the 32 tons coming through the tunnel. That is
2 La Familia Michoacana, a DTO, in there running these
3 marijuana factories on public land and sending the stuff
4 out to other states.

5 We need to stop it.

6 Mr. Kerlikowske. I could not agree more, and I am
7 pleased to be with the colleagues and to have these
8 public lands committed, that is, taking these issues on
9 at, I believe, not only a higher level and given it more
10 attention, but a more holistic level in stopping this.

11 Chairman Feinstein. I do not know what holistic is.

12 Mr. Kerlikowske. The holistic part is -- and this
13 was mentioned, again, by the Congressman -- for instance,
14 a little over just now 2 years ago, when we were talking
15 about warning people about going onto these lands, there
16 was a bit of a belief that, well, do people need to know
17 this information or should they be told by the
18 government.

19 Well, we warn people now about going into public
20 lands, about things like snakes and poison ivy. This is
21 a very real fact and for --

22 Chairman Feinstein. You can get shot.

23 Mr. Kerlikowske. And for all of us to come together
24 and to recognize that we not only have to warn the
25 public, because they can, also, of course, be effective

1 witnesses. But the fact that DEA and other agencies,
2 formerly, the Bureau of Narcotics in California, going to
3 the different production sites where the tubing is sold,
4 the irrigation tubing, gathering information about the
5 groups that may be coming and purchasing some of these
6 things, that just really has taken it, I think, to a
7 whole different level of enforcement in just bringing out
8 a lot of marijuana and burning it every year at the end
9 of the eradication.

10 But it takes greater resources at the state and the
11 local and the Federal level to do that.

12 Chairman Feinstein. Well, any way I can help, I
13 would be very pleased to do it, so please. I think we
14 have to do more. I think we are just getting inundated
15 with this stuff.

16 California is now the state that is spawning it all
17 every other place.

18 Mr. Kerlikowske. Yes.

19 Chairman Feinstein. It is terrible.

20 Senator Grassley?

21 Senator Grassley. Director, in response to
22 questions from me as part of your confirmation, you said
23 that you would work with the attorney general and the DEA
24 to review, quote, "Federal law, science and medicine and
25 thoughtfully balance the many competing considerations to

1 refine the Administration's marijuana enforcement
2 policy," end of quote.

3 You also publicly supported the 2009 Department of
4 Justice memo issued by Deputy Attorney General Ogden that
5 encouraged U.S. attorneys to not prosecute individuals
6 for complying with state laws regarding selling,
7 possession and use of marijuana for medical purposes.

8 First question. The 2009 Ogden memo is now
9 superseded by the 2011 Cole memorandum, walking back the
10 policy of not prosecuting those in compliance with state
11 medical marijuana laws.

12 Do you still support the Ogden memo?

13 Mr. Kerlikowske. I support the fact that both memos
14 -- and I think there is not a lot of distance between
15 those two memos. When I looked at the issue,
16 particularly having been in a state that had recently,
17 before I became police chief, passed the medical
18 marijuana issue, U.S. attorneys in all of these different
19 states were left without particular guidance about how to
20 deal with this phenomena where states were actually
21 passing laws about medical marijuana.

22 So all of us had finite resources, whether it was at
23 the Federal level or the local level, and I supported the
24 memorandum that then Deputy Attorney General Ogden
25 issued.

1 I think that the medical marijuana community and the
2 legalization community took it far greater than what was
3 ever intended, which was guidance to those U.S. attorneys
4 about finite resources. I think the Cole memo adds
5 clarity to it, and I think the recent actions by United
6 States attorneys, particularly in California, clearly
7 shows that enforcement, both civilly and enforcement
8 through criminal prosecutions, is being done at a robust
9 level.

10 Senator Grassley. Did you urge the Administration
11 to issue a clarification to the Ogden memo this past
12 June; in other words, the Cole memo?

13 Mr. Kerlikowske. I reviewed the original memos from
14 Deputy Attorney General Ogden. I do not remember any
15 involvement at all really in the Cole memo. But I think
16 that because the circumstances, as has been testified to,
17 these large-scale marijuana grows, I supported the Cole
18 memo strongly.

19 Senator Grassley. According to the national survey
20 put out by HHS, marijuana use has continually increased
21 among 12 to 17-year-olds since the issuance of the Ogden
22 memo. Do you believe the Ogden memo helped contribute to
23 the increase in marijuana use among 12 to 17-year-olds?

24 The increase was from 6.7 percent in 2008 to 7.4
25 percent in 2010.

1 Mr. Kerlikowske. So I cannot answer whether the
2 Ogden memo affected that increase, but what I can tell
3 you is that we know from prior research that as young
4 people perceive marijuana to be less dangerous or less
5 hazardous, that those perceptions usually within 2 years
6 result in an increase in marijuana use.

7 So around 2007 we began to see the perception in the
8 survey instruments. Young people just did not think it
9 was that dangerous, and that concerned. And lo and
10 behold, we should not be surprised that within the next 2
11 years, 2009, we started to see and continue to see an
12 uptick in use.

13 I will also tell you that I believe that we are
14 sending young people the absolute wrong message when we
15 call marijuana medicine, when we say it is given out of a
16 dispensary, when we say it is being given to patients.

17 We have a world renowned process for putting
18 medicine in the hands of the American public. The ballot
19 box is not part of that process.

20 Senator Grassley. I know you said that you did not
21 see a conflict between Ogden and Cole, but would you
22 support a formal withdrawal of the Ogden memo? And why
23 would you or why not would you?

24 Mr. Kerlikowske. I would stand by my original
25 statement that I believe U.S. attorneys needed and

1 appreciated, to a great extent, having guidance, because
2 so many different U.S. attorneys were in so many
3 different states with different laws, and I think that is
4 particularly helpful.

5 I also think that these U.S. attorneys have shown a
6 great deal of fortitude in moving forward on what clearly
7 is not only illegal, but, also, a clear abuse of what the
8 intent was when we talked about patients and truly sick
9 people who, in a limited way, could use marijuana under a
10 recommendation from a physician.

11 Senator Grassley. Do you support efforts to
12 decriminalize marijuana?

13 Mr. Kerlikowske. No.

14 Senator Grassley. Thank you. While you are here,
15 could I ask you some questions about Fast and Furious,
16 because that involves the drug trade?

17 First of all, I thank you for your response to my
18 October 31 letter. My staff reviewed the documents that
19 were provided, and most covered the briefing provided to
20 your office by former ATF Special Agent in Charge William
21 Newell.

22 This briefing occurred May 13, 2010. I understand
23 this briefing covered ATF's effort to combat drug
24 trafficking on our southwest border, and your response
25 indicated there was no mention of Fast and Furious at

1 that briefing.

2 Was there any communication about or were you aware
3 of a large gun trafficking case going on in Arizona
4 either at the time of the briefing or another time?

5 Mr. Kerlikowske. Senator, I was aware of gun
6 trafficking investigations, nothing with any specificity
7 around the tactics. As you know, my office -- and I am
8 responsible for writing the southwest border strategy,
9 which is to bring all of the DHS, DOD and Department of
10 Justice assets together to combat, in a very
11 comprehensive way, the issues around the southwest
12 border, and then including reducing the amount of guns
13 that were flowing into Mexico.

14 Any details about how those investigations were
15 being done I was not privy to.

16 Senator Grassley. Who was in attendance at that
17 briefing on May 13, 2010?

18 Mr. Kerlikowske. Senator, I have -- I know that we
19 responded with a lot of information back to your office.
20 I have not reviewed that for this particular hearing. I
21 would be happy to answer any questions in the most
22 appropriate manner that you send to me, but I do not
23 remember who happened to be there.

24 Senator Grassley. Then let me accept that offer by
25 you, but let me tell you kind of -- so you can think

1 about what I am interested in getting at -- the people
2 that were in attendance, whether White House staffer
3 Kevin O'Reilly was present at the briefing. Were
4 briefing papers and talking points presented by William
5 Newell, used during Mexican President Calderon's State
6 visit that occurred on May 19?

7 Then I would also like to have you allow us to
8 interview your staff about these meetings.

9 Mr. Kerlikowske. Senator, we will be happy to
10 respond.

11 Senator Grassley. Thank you.

12 Chairman Feinstein. Interesting, what you are
13 doing.

14 Senator Grassley. A lot of people do not agree with
15 you.

16 Chairman Feinstein. Well, you are sleuthing.

17 [Laughter.]

18 Chairman Feinstein. Mr. Ferrell, with the
19 elimination of funding from the California Bureau of
20 Narcotics Enforcement in the state budget, a lead task
21 force in charge of marijuana eradication known as CAMP --
22 that is the acronym -- law enforcement is now seeking to
23 find an alternative leader to this program.

24 Knowing that a majority of marijuana grows on public
25 lands, and that is within the United States Forest

1 Service jurisdiction, many in law enforcement are hoping
2 the Forest Service will take the lead to assist with
3 eradication.

4 So here is the question. What role will the Forest
5 Service take to ensure California maintains robust
6 eradication operations in the absence of CAMP?

7 Mr. Ferrell. Madam Chairman, first, I guess I want
8 to say that we have been really pleased with the efforts
9 from BNE in California in CAMP. They have been a
10 tremendous partner for us, and we are certainly concerned
11 about the loss of that resource.

12 Actually, tomorrow we are having a meeting that
13 includes the Forest Service, Department of Interior, DEA,
14 and ONDCP to talk about how to strategize and go forward
15 with the planning so that we all have the necessary
16 resources to go forward and to make sure in our efforts
17 to combat drug trafficking organizations.

18 Chairman Feinstein. Well, this afternoon at 3:30,
19 how do you feel about taking the lead?

20 [Laughter.]

21 Mr. Ferrell. I am not exactly sure how I feel about
22 taking the lead, Senator. But what I would --

23 Chairman Feinstein. That is what I call a duck.

24 [Laughter.]

25 Mr. Ferrell. I know it. But what I will tell you

1 is that we are very interested in having the same types
2 of resources and commitment to the support that CAMP had
3 provided us and our partners in the past.

4 Chairman Feinstein. Well, you heard Representative
5 Thompson and you hear from me, and we have a big problem
6 and it is not going down, it is going up, and it is a
7 confused problem.

8 You have got this medical marijuana thing going on
9 and then you have got the drug trafficking organizations
10 in there. You have got huge amounts. I mean, look, 32
11 tons is going to be brought into San Diego from Mexico,
12 plus everything that is grown in the national parks,
13 farms, forests, et cetera.

14 What I do not want to see is everybody's burden
15 shifting, and that is a problem. There needs to be
16 Federal leadership. We all know what the Federal law is.

17 Mr. Ferrell. I do not disagree, Senator.

18 Chairman Feinstein. So we will leave it at that.

19 Mr. Ferrell. Absolutely.

20 Chairman Feinstein. And would you let me know what
21 happens after tomorrow?

22 Mr. Ferrell. Yes, I can.

23 Chairman Feinstein. Thank you very much.

24 Mr. Ferrell. I can let you know what -- I do not
25 know if we are going to have some finalized answer, but

1 we are certainly working toward a way to offset the loss
2 of those resources.

3 Chairman Feinstein. Thank you very much.

4 Gentlemen, I think that --

5 Senator Grassley. Could I ask him some questions?

6 Chairman Feinstein. I beg your pardon. Of course
7 you can.

8 Senator Grassley. Mr. Ferrell, I hope you can
9 answer these questions, but if you cannot, that kind of
10 answers the questions anyway.

11 What percentage of these marijuana grows on public
12 lands are operated by foreign nationals? And if you have
13 an answer to that, do you have some solid evidence that
14 supports your answer?

15 Mr. Ferrell. Based on our statistical data, over
16 the last 4 to 5 years, about 80 percent of the arrests or
17 more that we have made, the folks that were involved in
18 the production of the marijuana on our lands, were
19 undocumented aliens in the country illegally from Mexico.

20 Senator Grassley. And I assume I could extrapolate
21 from that answer that maybe 80 percent of the people --
22 even 80 percent of the people you do not catch are of
23 foreign origin.

24 Mr. Ferrell. Yes, I think you could. To give an
25 example, Congressman Thompson talked about Operation Full

1 Court Press, and we made 159 arrests. Ninety-five
2 percent of the people arrested were in the country
3 illegally.

4 Senator Grassley. Do you have any idea where the
5 marijuana grown on these lands is distributed and/or
6 sold?

7 Mr. Ferrell. We do not have definitive evidence of
8 where it is distributed and/or sold. But what we are
9 doing is moving forward with comprehensive and complex
10 investigations to identify those.

11 Up until 2010, most of our efforts and our partners'
12 efforts had been in eradication. We are wanting to
13 emphasize investigations as our primary efforts in order
14 to have a better sense of where the distribution is
15 happening and who are the leadership of these
16 organizations.

17 Senator Grassley. I think you have just answered my
18 last question just now, but let me see if this is what
19 you were saying. You are attempting to track marijuana
20 and you are following it from growers to determine what
21 markets it is going to. Is that what you just said?

22 Mr. Ferrell. Starting in 2010, that is our
23 initiation of our new strategy is to do exactly that.

24 Senator Grassley. This may be what you are trying
25 to find out, but let me ask the question anyway.

1 Is there any evidence that this may be sold in so-
2 called medical marijuana dispensaries, and, if so, do you
3 have evidence that it is sold there or is this what you
4 are trying to do when you track it?

5 Mr. Ferrell. Senator, at this point, we do not have
6 any direct evidence that marijuana grown on national
7 forest system lands has been distributed --

8 Senator Grassley. Have U.S. Forest -- I am sorry.

9 Mr. Ferrell. Yes.

10 Senator Grassley. Did I interrupt you?

11 Mr. Ferrell. No. I am good.

12 Senator Grassley. Have U.S. Forest Service agents
13 or other personnel encountered more dangerous situations
14 as a result of increasing grow sites? Have any been
15 injured or killed as a result?

16 Mr. Ferrell. We have not had, over the last 5
17 years, any of our officers that have been seriously
18 injured, but they have been engaged in gunfire and, as
19 Congressman Thompson discussed, that where individuals
20 that are growing marijuana have been fatally wounded.

21 We have had instances where our visitors to our
22 national forests have been approached with people that
23 are guarding these grow sites with firearms, that they
24 have been shot at. We have had a father with two sons in
25 a grow site where the father and one of his sons was shot

1 with a shotgun blast.

2 So we have had injury to the public. We have had
3 employees that have been held hostage by growers at grow
4 sites, and our visiting public, as well. So we take
5 seriously the impacts of this illegal activity on our
6 public lands.

7 Senator Grassley. I have just one or two more
8 questions. To what extent do you believe that these
9 state laws allowing medical marijuana have contributed to
10 the problem of illegal marijuana grow sites?

11 Mr. Ferrell. I do not know the extent. I certainly
12 agree with Director Kerlikowske that the mere fact that
13 medical marijuana is seen as -- the whole term of medical
14 marijuana makes it to the point where people feel like it
15 is okay to utilize marijuana. But the effects on our
16 lands --

17 Senator Grassley. Has your Forest Service personnel
18 encountered any resistance from local law enforcement or
19 other officials in carrying out its mission to combat
20 grow sites because of state laws?

21 Mr. Ferrell. No, we have not.

22 Senator Grassley. Have you had any problems with
23 getting U.S. attorneys to take cases seeking to prosecute
24 those on public lands growing marijuana?

25 Mr. Ferrell. We have had instances where -- we work

1 with the U.S. attorneys' offices and state attorneys'
2 offices and determine what is the best approach to do
3 prosecution.

4 In areas where we have had what I would call minor
5 disagreements, we have been able to work through those
6 and come to successful agreements in our adjudication of
7 cases.

8 Senator Grassley. Thank you, Director Ferrell. And
9 I want to thank Director Kerlikowske, as well, for your
10 good faith promise to work with my staff on answering
11 these.

12 Maybe asking you questions might not seem as
13 important as the questions I am asking the Justice
14 Department, but I think there are some things that can
15 fit in with my investigation, and I appreciate your
16 cooperation.

17 Chairman Feinstein. Thank you. And let me thank
18 you both, as well. My interest is to see really vigorous
19 law enforcement and I know everybody is strapped for
20 funds, but any way we can help to make that possible, I
21 think we would both be willing to do that.

22 Senator?

23 Senator Grassley. If we do not help with that, we
24 cannot accomplish our goals here of the Caucus.

25 Chairman Feinstein. That is right. That is right.

1 So thank you both very, very much for coming. It is
2 muchly appreciated.

3 We now have one additional panel, and she is a most
4 distinguished citizen law enforcement officer, and I
5 would like to introduce her.

6 Margaret Mims is the sheriff of Fresno County in my
7 home state. Sheriff Mims started her career in law
8 enforcement in January of 1980, when she was hired as the
9 first female law enforcement officer in the City of
10 Kerman.

11 In 1983, she became a deputy sheriff for Fresno
12 County and has since progressed up through the ranks. As
13 a female officer, she has accomplished many firsts,
14 including the first female sergeant to supervise field
15 patrol units, the first female to attain the rank of
16 lieutenant, then captain, finally assistant sheriff, and
17 now is the first female sheriff of Fresno.

18 Sheriff Mims led two of the largest California
19 marijuana eradication operations between local, state and
20 Federal agencies on public and private lands in 2009 and
21 2010.

22 Operation Save Our Sierras and Operation Trident
23 eradicated a combined total of almost 900,000 marijuana
24 plants valued at \$3.5 billion, arrested 179 individuals,
25 and seized an additional 809 pounds of processed

1 marijuana.

2 In 2009, Fresno County eradicated almost 400,000
3 plants, putting them fourth out of the five top producing
4 counties in California. As a result of her hard work and
5 vigilance, Sheriff Mims has seen a decrease in grow sites
6 on public lands in her county.

7 So, Senator, I am just delighted that she has come
8 back from this. She is a very good sheriff and has done
9 a very good job.

10 Senator Grassley. Welcome.

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1 STATEMENT OF MARGARET MIMS, SHERIFF, FRESNO
2 COUNTY, CALIFORNIA

3 Ms. Mims. Thank you, Senators, for giving me the
4 opportunity. It is not often that local law enforcement
5 gets to send a message at this level regarding our local
6 challenges.

7 Our public lands are being encroached upon by
8 illicit, large-scale marijuana cultivation operations
9 that ravage the environment, destroying natural
10 resources, and threaten public safety.

11 Marijuana-related shootings and homicides occur at
12 an alarming rate. Just within the last 3-month period,
13 there have been at least seven reported shootings,
14 including fatal incidents, involving marijuana-related
15 activities in California.

16 Marijuana cultivation is a lucrative crop, a crop
17 that is protected using extreme and violent measures.
18 Cultivators have demonstrated a propensity to arm
19 themselves with a range of firearms, as well as hidden
20 traps designed to maim and kill. These traps are set to
21 injure indiscriminately not just law enforcement
22 personnel or would-be thieves, but, also, hikers,
23 campers, and innocent passersby.

24 Examples include fish hooks strung in trees and
25 bushes at eye level. And this year, devices discovered

1 in a grow site in Kern County, California were improvised
2 from a rat trap, a shotgun shell, and a tripwire. In
3 addition, this year there have been nine known marijuana-
4 related homicides that appear to be connected to
5 cultivation activities.

6 Over the last 5 consecutive years, multiple law
7 enforcement, criminal justice, and military organizations
8 within some of the state's most affected areas have
9 engaged in multiagency focused operations that target
10 these grows and those responsible, predominantly Mexican
11 drug trafficking organizations.

12 In January, I will celebrate 31 years in law
13 enforcement. For all of those years, we have been
14 involved in eradicating marijuana on public lands. It
15 became apparent to me when I took office as sheriff we
16 needed to do business differently. We were not catching
17 the bad guys.

18 So we did. We changed the way we did business with
19 Operation SOS. These operations were conducted by
20 combining local, state and Federal agencies. The basic
21 structure of these operations generally consisted of a
22 holistic approach of demand reduction, identifying
23 organizations, eradication, highway interdiction,
24 arrests, and reclamation.

25 A considerable array of factors and strategies has

1 proven effective in these operations, the vast majority
2 of which would not have been available to the same degree
3 or for the same duration were it not for the considerable
4 resources afforded by the Federal Government.

5 These strategies include HIDTA participation,
6 Federal prosecutions, and National Guard involvement.
7 The assistance provided by the National Guard has been
8 incalculable. National Guard contributions are extensive
9 and include air assets, significant staffing and
10 planning, logistics, and intelligence support.

11 The success is measurable, as commented on by
12 Senator Feinstein, in the reduction of our public land
13 grow sites. Success must be sustained and we must
14 persevere.

15 As law enforcement continues to battle illegal
16 activity on public lands, a new trend has emerged in the
17 Central Valley. In 2010, a conspicuous shift in illicit
18 marijuana cultivation and trafficking tactics
19 materialized.

20 Marijuana cultivators began a notable transition
21 from, figuratively, the backwoods to our backyards.
22 Marijuana cultivators began growing massive exclusively
23 marijuana crops on the same private lands that have
24 served as the foundation and sustained legacy of the
25 Central Valley's national agricultural preeminence.

1 These cultivators now openly grow marijuana under
2 the guise of the state medical marijuana laws --
3 haphazardly built structures, including elevated
4 platforms that serve as lookout towers, on which armed
5 gunmen have been observed guarding the marijuana.

6 In 2010, 36 multi-acre marijuana cultivation sites
7 were identified on the valley floor in Fresno County,
8 consisting of thousands of plants, in some instances,
9 within close proximity to elementary schools.

10 In 2011, there have been 121 of these grows, an
11 increase of over 300 percent. A significant number of
12 people identified as being involved in these operations
13 have prior criminal histories for involvement in drug
14 trafficking, violence, and organized crime. Numerous
15 investigations and sources of information have revealed
16 that the professed medical premise for cultivating this
17 marijuana is predominantly a rouse.

18 Marijuana grown in these quantities is largely
19 intended for distribution and sales, often to out-of-
20 state destinations. Investigations have already
21 identified so-called medical marijuana from Fresno County
22 being transported across our nation and winding up in
23 Texas, Utah, Illinois, Arkansas, Florida, Colorado,
24 Tennessee, Washington, DC, Massachusetts, Maryland, and
25 Wisconsin.

1 Chairman Feinstein. Excuse me, because Senator
2 Grassley. Would you repeat that sentence and the string
3 of states to which this marijuana has gone right out of
4 your county?

5 Ms. Mims. Yes. This all comes from medical
6 marijuana grows in Fresno County. Investigations have
7 already identified that so-called medical marijuana from
8 Fresno County being transported across our nation and
9 winding up in Texas, Utah, Illinois, Arkansas, Florida,
10 Colorado, Tennessee, Washington, DC, Massachusetts,
11 Maryland, and Wisconsin.

12 The costs associated with the grows are relatively
13 minimal, while the prices that harvested marijuana can
14 garner, particularly outside of California, are
15 substantial.

16 Illicit marijuana cultivation operations in
17 California on both public and private lands increasingly
18 pose risks to the environment, natural resources,
19 wildlife, agriculture, and public safety. The dedication
20 and determination demonstrated by local and Federal law
21 enforcement agencies in California targeting these
22 illegal marijuana cultivation operations must be
23 unwavering now more than ever.

24 The depletion of our natural resources, the
25 devastation of our lands, the destruction of our

1 wildlife, the pollution of our water sources, and the
2 deterioration of our public safety are unacceptable. It
3 is critical that we continue to work together as we
4 preserve our land and protect our citizens.

5 Chairman Feinstein. Let me ask you this. Do you
6 have any problems with your U.S. attorneys or state
7 people prosecuting? Do they go ahead and prosecute?

8 Ms. Mims. On public lands, our U.S. attorneys have
9 been fantastic, where we were deeply involved from the
10 very beginning, and I think that was the secret, getting
11 them involved in the beginning on the public lands
12 issues.

13 We are still working through the private lands
14 issues because of the medical marijuana laws in
15 California. However, Senator, the 57-acre grow that you
16 mentioned in your opening comments is obviously outside
17 the bounds of the Federal law.

18 Chairman Feinstein. What do you mean when you say
19 that, obviously out of the bounds? That it is all for
20 medical marijuana?

21 Ms. Mims. Oh, no. It is all for distribution,
22 illegal distribution.

23 Chairman Feinstein. Right, which I would think.

24 Ms. Mims. Absolutely. Illegal distribution. And
25 as you described, what we find, the conundrum for local

1 law enforcement is it creates confusion in what can we
2 do, what can we not do. We do know without a doubt that
3 marijuana is illegal federally. And so we try and use
4 those Federal resources as much as we possibly can.

5 Local prosecutors are in a bad situation. Marijuana
6 is not legal in California. The law provides a defense
7 for those who have a marijuana recommendation.

8 However, when it comes to local or state
9 prosecutions, that law makes it very hard to prosecute
10 locally.

11 Chairman Feinstein. What additional penalties, if
12 any, do you think are needed for marijuana cultivation on
13 public land and related environmental degradation?

14 Ms. Mims. The penalties are already significant,
15 Senator.

16 Chairman Feinstein. So you think they are adequate.

17 Ms. Mims. The penalties are significant. It is
18 working through that. For instance, the investigation
19 where we followed the medical marijuana on private land
20 back to Boston required significant resources from local
21 law enforcement. For 2 weeks, we had to have
22 surveillance on that location 24/7 to follow it from the
23 field to storage areas, and then as they transported it
24 across the nation.

25 And what we found out is that was their tenth trip

1 -- tenth trip -- delivering medical marijuana.

2 Chairman Feinstein. How much did they move a trip?

3 Ms. Mims. Several thousand pounds. Several
4 thousand pounds. In California, a pound of marijuana is
5 about \$1,000. In Massachusetts, they were selling it for
6 over \$3,000.

7 Chairman Feinstein. That sort of tells you the
8 economics of it very well.

9 Do you have some questions?

10 Senator Grassley. Yes, just a few. Thank you for
11 coming a long ways to testify. By the way, this is kind
12 of a political question just for my own understanding.

13 I assume, like in Iowa, you are elected to office.
14 Do these issues come up as you seek election or
15 reelection?

16 Ms. Mims. These issues do come up, Senator, and,
17 yes, I am elected. All 58 sheriffs in the State of
18 California --

19 Senator Grassley. Do you feel like this marijuana
20 issue has had a positive or negative impact on you
21 getting elected or reelected?

22 Ms. Mims. It was not a factor. I ran unopposed
23 last time, so that is the way to do it.

24 [Laughter.]

25 Chairman Feinstein. Do we not all wish?

1 Ms. Mims. I believe it creates -- with different
2 constituencies in California, it does create issues for
3 sheriffs in different areas in the state. In Fresno
4 County, as far as the medical marijuana issue, it did not
5 pass. In fact, overwhelmingly, the voters in Fresno
6 County rejected the medical marijuana law.

7 Senator Grassley. Let me ask and answer the first
8 question. I assume, from what your statement is, that
9 you believe that California's medical marijuana law is
10 having a big impact on a number of grow sites in your
11 county. Is that right?

12 Ms. Mims. Yes, sir. Yes. In 2010 it started. In
13 2011, it just grew. And my position is we need to get a
14 handle on it quickly, find out through intelligence-led
15 investigations who is responsible, and have prosecutions.

16 Senator Grassley. In a conversation with our staff
17 prior to the hearing, you discussed a 54-acre marijuana
18 grow in agricultural lands. You mentioned that DEA took
19 over the case and seized the marijuana, but the U.S.
20 attorney did not prosecute the case.

21 Could you explain why there was no criminal
22 prosecution?

23 Ms. Mims. I cannot speak for the U.S. attorney,
24 sir. However, I can tell you that our belief going into
25 that investigation right up until that day is that there

1 were going to be arrests and prosecutions.

2 Chairman Feinstein. And they did not prosecute.

3 Ms. Mims. And they did not prosecute.

4 Chairman Feinstein. Do you have a sense -- excuse
5 me.

6 Senator Grassley. Go ahead.

7 Chairman Feinstein. Do you have a sense of why?

8 Ms. Mims. The information that I received from the
9 U.S. attorney's office was that they were not going to
10 concentrate prosecutions on those working in the fields
11 that had the medical marijuana cards. They wanted to try
12 and find out who was responsible -- who was responsible
13 for the overall operation.

14 Chairman Feinstein. Well, that is an interesting
15 problem, because if everybody followed that, you would
16 have marijuana growing all over the place, because no one
17 would have any fear of being prosecuted.

18 Ms. Mims. Our investigators and DEA worked very
19 hard on that. In fact, from the growers in the field, we
20 received statements that, yes, they, in fact, were there
21 growing marijuana to sell for profit.

22 Senator Grassley. Do you believe that the 2009
23 Ogden memorandum of the Justice Department had an impact
24 on Federal marijuana prosecutions in California?

25 Ms. Mims. On Federal prosecutions?

1 Senator Grassley. Yes. No, I am sorry. On any
2 marijuana prosecution. Well, let me ask the question
3 again. I am sorry.

4 Do you believe the 2009 Ogden memorandum of the
5 Justice Department had any impact on Federal marijuana
6 prosecutions in California?

7 Ms. Mims. I do not think I could, again, speak for
8 the U.S. attorney's office, sir. I can tell you this,
9 that as a result of that memo, it was confusing and there
10 were several meetings that I attended where U.S.
11 attorneys explained, from their perspective, what that
12 memo meant.

13 My other feeling is I believe that the pro-marijuana
14 communities took that memo and made it more than what it
15 really seemed to be. They spun their own message from
16 that memo.

17 Senator Grassley. Let me ask you this. You said
18 that each one of these U.S. attorneys gave you their
19 perspective. Was there kind of a uniformity of opinion
20 among the U.S. attorneys of how the Ogden memo should be
21 used or interpreted, carried out?

22 Ms. Mims. I heard from one U.S. attorney and a
23 couple of assistant U.S. attorneys, and they listed a
24 menu of items of where they would prosecute and they were
25 not going to focus on medical marijuana individuals,

1 users.

2 Chairman Feinstein. Wait a minute. May I?

3 Senator Grassley. Go ahead. Yes.

4 Chairman Feinstein. Do you mean an individual who
5 was buying medical marijuana in a supposed legal way,
6 that they are not going to go after them, or do you mean
7 they are just going to assume that all these grows are
8 medical marijuana?

9 Ms. Mims. No. From the U.S. attorneys, what I
10 understand is they are not going to prosecute those that
11 we find working in the fields producing this medical
12 marijuana, and most of them actually have medical
13 marijuana recommendations posted in those fields.

14 Chairman Feinstein. Well, that is a big mistake.
15 What is a medical marijuana recommendation?

16 Ms. Mims. The California law allows those who have
17 the recommendation from a doctor -- it is not a
18 prescription. It is a recommendation that because of
19 whatever medical problem that they have, the doctor feels
20 that marijuana can help them with that issue.

21 Chairman Feinstein. You mean someone working a grow
22 has that.

23 Ms. Mims. Yes.

24 Chairman Feinstein. So they are working, let us
25 say, 50-100 acres and they have this little piece of

1 paper, which nobody knows what it is really, as I
2 understand it -- they are very sloppy. Then they are
3 exempt from prosecution.

4 Ms. Mims. They have a defense. It is worse than
5 that, Senator. For instance, this year, we took an
6 aggressive stand against dispensaries in Fresno County.
7 My belief is that even under California law, dispensaries
8 or storefronts are not allowed, and we served search
9 warrants, with the assistance of the DEA, and we have
10 some Federal prosecutions out of that.

11 Senator, I was there that day. What I saw as far as
12 the medical marijuana patients were young men in their
13 early 20s, maybe early 30s, coming up to these
14 dispensaries on their skateboards and on their bicycles
15 wanting their medicine.

16 I believe that the California law was a bill of
17 goods. So the public was sold a bill of goods. It was
18 not for catastrophic illnesses, as the voting public
19 felt.

20 I have seen recommendations anywhere from sore back,
21 insomnia, menstrual cramps, and a sore knee. So these
22 are not the catastrophic illnesses that I believe the
23 voters thought that they were voting for.

24 Chairman Feinstein. Thank you for telling it like
25 it is. Appreciate it.

1 Go ahead, Senator.

2 Senator Grassley. Do you think it would be
3 beneficial for us to get the Ogden memo withdrawn? Your
4 opinion. You cannot do anything about it. But would
5 that be helpful if the Ogden memo did not exist?

6 Ms. Mims. Senator, as a leader of an organization,
7 I think it is important to provide clear direction to
8 those that work for you. I believe the U.S. attorneys
9 need clear direction. And so I think the memo provided
10 some direction. I am not sure how clear it was.

11 However, I would just encourage that clear direction
12 be given so that the confusion goes away. It is hard
13 enough, especially in California with our state law, to
14 try and work our way through the criminal investigations
15 and then the prosecutions.

16 So in my opinion, those who work under a leader need
17 clear direction.

18 Senator Grassley. What impact -- this may be too
19 general of a question, but you ought to be able to tell
20 us, from your perspective, living right there in Fresno
21 County, what impact has medical marijuana had on the
22 quality of life of citizens in Fresno County?

23 Ms. Mims. I mentioned earlier about our search
24 warrants with our storefronts or dispensaries. I receive
25 numerous complaints from those living in those areas

1 around those dispensaries about traffic issues,
2 vandalism, even people urinating on front yards, those
3 kinds of -- it was a big quality of life issue. And,
4 also, our local supervisor who represents those areas
5 received the same complaints.

6 Senator Grassley. What percentage of arrests would
7 you say consist of marijuana-related crimes in your
8 county?

9 Ms. Mims. Would you repeat that, please?

10 Senator Grassley. What percentage of arrests would
11 you say consist of marijuana-related crimes in Fresno
12 County?

13 Ms. Mims. It was a small -- I would say it is a
14 small number of arrests for marijuana. When you look at
15 it overall, to give an idea --

16 Senator Grassley. That would be just maybe a
17 violation of the marijuana law itself. But I think my
18 question implies, too, that marijuana may be involved in
19 leading to other crimes.

20 Ms. Mims. Yes.

21 Senator Grassley. So it is kind of marijuana-
22 related crimes or crimes committed where maybe marijuana
23 was a factor.

24 Ms. Mims. In Fresno County, we have over 43,000
25 bookings a year into our local jail. Very few of those

1 would be for marijuana only. There will be other charges
2 usually.

3 Senator Grassley. In other words, other charges
4 plus marijuana being involved in those other charges.

5 Ms. Mims. Yes. For instance --

6 Senator Grassley. Then could you give a percentage
7 of that class?

8 Ms. Mims. I cannot give you a percent. I did not
9 do the research on that. However, I can give you some
10 real examples. For instance, gangs are involved in
11 distributing and growing marijuana. And so they might be
12 arrested for assault with a deadly weapon or something
13 like that, but marijuana is an underlying issue in the
14 crime.

15 So that is an example of how marijuana might be
16 involved in other crimes.

17 Senator Grassley. Would you describe just a few
18 cases or maybe one or two examples of where innocent
19 people were harmed as a result of grow sites?

20 Ms. Mims. I do not have examples of innocent people
21 being -- most of the violence that I cited in my
22 testimony were people trying to steal marijuana from the
23 growers or the growers themselves being injured by those
24 who were wanting to steal the crop.

25 Senator Grassley. I thank you very much, Sheriff,

1 for coming way out here to help us.

2 Chairman Feinstein. Yes. Thank you very much. It
3 was excellent testimony. It is much appreciated. Thank
4 you very much, Sheriff.

5 Senator Grassley. It sounds to me like you have got
6 a tough job.

7 Chairman Feinstein. Yes, but she can handle it.
8 She is terrific.

9 Senator Grassley. Thank you very much. And before
10 you go, because of this -- you heard me say in my opening
11 statement, I think, that there is conflicting signals
12 being sent by the Ogden memo versus the --

13 Chairman Feinstein. Yes.

14 Senator Grassley. And since we did not have Justice
15 here, I would like to send -- well, I am going to send a
16 letter. I would like to ask you to join me, but you
17 would have to read it before you said yes or no.

18 Chairman Feinstein. Right.

19 Senator Grassley. But I would like to have you look
20 at a letter I want to send to --

21 Chairman Feinstein. Sure. I would be happy to.

22 Senator Grassley. To see if we can bring
23 information out about that and see a problem and see if
24 we can get the -- because we have had evidence from other
25 people that this sends conflicting signals.

1 Chairman Feinstein. I think it is a memo that tries
2 to -- I just saw it for the first time this afternoon.
3 It is a memo that walks both sides of the track, and I
4 think that is hard to do.

5 So let me read it more thoroughly when someone is
6 not testifying, and I would like to look at your letter.

7 Senator Grassley. Yes. I will give you a copy of
8 it. Thank you.

9 Chairman Feinstein. Thank you. And the hearing is
10 adjourned.

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