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THE KINGPIN ACT vs. CALIFORNIA'S COMPASSIONATE USE ACT: THE DUBIOUS BATTLE BETWEEN STATE AND FEDERAL DRUG LAWS

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> An entire consolidation of the States into one complete national sovereignty would imply an entire subordination of the parts; and whatever powers might remain in them, would be altogether dependent on the general will. But as the plan of the convention aims only at a partial union or consolidation, the State governments would clearly retain all the rights of sovereignty which they before had, and which were not, by that act, exclusively delegated to the United States.
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> Alexander Hamilton, THE FEDERALIST No. 32

On February 1, 2011, the United States Department of the Treasury Office of Foreign Assets Control ("OFAC") added four brothers – Daniel, Esteban, Luis, and Miguel Rodriguez Olivera – to its list of specially designated narcotics traffickers.[1] Federal agents dub these individuals as the "Band of Narcotics Trafficking Brothers."[2] These brothers are alleged to be the leaders of the Los Gueros drug trafficking alliance, part of the notorious Sinaloa Cartel.[3] OFAC's designation is essentially an economic death penalty. It freezes all of the brothers' assets, prohibits them from engaging in any transactions within the United States, and prevents them from doing any business with individuals or entities with even the

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1 *See* Press Release, U.S. Dept. of the Treasury, Treasury Designates Band of Drug Trafficking Brothers as Specially Designated Narcotics Traffickers (Feb. 1, 2011), *available at* http://www.treasury.gov/press-center/press-releases/Pages/tg1043.aspx.

2 *Id.*

3 *Id.* Los Gueros' supply route originated in Mexico, stretched into Texas, and branched off to various points within the United States, including South Florida and the New York City metropolitan area. The organization operates by receiving multi-ton shipments of cocaine and other drugs from Colombia along the Gulf coast of Mexico, and transporting them into the United States through ports of entry at Laredo and McAllen, Texas. *See* Press Release, U.S. Dept. of Justice, Alleged Mexican Drug Kingpin Extradited to the United States to Face Drug and Money-Laundering Charges (Mar. 14, 2011), *available at* http://www.justice.gov/opa/pr/2011/March/11-crm-326.html.

most minimal ties to this nation.[4] Around the same time, Sunset Coast Patients Collective held a "Grand Re-Opening" for its new and improved marijuana dispensary in Orange County, California. New and existing patrons of this establishment can now receive a free gram of "Bubba/Master Kush" marijuana, and get it delivered to their doors free of charge.[5]

Both of the above scenarios are governed by the same federal statutory regime, one that makes it illegal to import, manufacture, distribute and possess marijuana for any reason.[6] Thus, the federal government can prosecute both of the above parties to the fullest extent of the law. However, California's Compassionate Use Act legalizes the dispensary's activities – including the local cultivation, possessing and dispensing of marijuana – to registered patients who can demonstrate medical need.[7] Here, the conflict between state and federal drug laws is apparent. The "kingpin" label placed on the Olivera brothers denotes that the government can – and even has a duty to – curtail their narcotics smuggling and distribution network. The "legally registered" local dispensary, however, does not appear to fit the bill enough to justify prosecution under the same set of federal drug laws.

The federal government has been winning the "War on Drugs" on one dubious battlefront – against states seeking to liberalize their own drug laws. *At least on paper.* However, states continue to pass laws that chip away at the federal prohibition on medical marijuana, to the extent that the federal government has ceased to prosecute certain federal drug offenses that are sanctioned under state law.[8] Despite the Supreme Court's decision in *Gonzales v. Raich*,[9] which affirmed Congress' plenary power to establish an outright ban on marijuana, state legalization campaigns continue. The "War on Medical Marijuana" has just begun. This article seeks to shed more light on how state and federal drug laws diverge, and how this conflict can generate new legal precedents that will help create a more holistic drug policy in this country.

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4 *See, e.g.,* Al Haramain Islamic Foundation, Inc. v. U.S. Dept. of Treasury, 585 F. Supp. 2d 1233, 1256 (D. Or. 2008). *See generally* Federal Narcotics Kingpin Designation Act, codified at 21 U.S.C. §§1901-1908 and 8 U.S.C. §1182 [hereinafter Kingpin Act].

5 *See* Sunset Coast Patients Collective, http://www.sunsetcoastmeds.org/ (last visited Apr. 24, 2010).

6 *See generally* Controlled Substances Act, 21 U.S.C. §§ 801-971 (1970).

7 *See* Compassionate Use Act of 1996, CAL. HEALTH & SAFETY CODE ANN. § 11362.5 (West Supp. 2001).

8 *See* Memorandum for Selected United States Attorneys, David W. Ogden, Deputy Attorney General, U.S. Dept. of Justice, at pp. 1-2 (Oct. 19, 2009) [hereinafter Memorandum] (stating that "[a]s a general matter, pursuit of these priorities should not focus federal resources in your States on individuals whose actions are in *clear and unambiguous compliance with existing state laws providing for the medical use of marijuana*") (emphasis added).

9 Gonzales v. Raich, 545 U.S. 1 (2005).

I. DRUG LEGISLATION IN THE UNITED STATES

Questions about the scope of the federal government's power to enact and enforce drug legislation arose in the early 1970s, in the aftermath of President Nixon's declaration of the "War on Drugs" and Congress' passage of the Controlled Substances Act ("CSA").[10] Federalism and substantive due process concerns have plagued this "war" from the outset. This is especially true when stricter federal drug laws butted heads with more lenient and permissive state legislation.[11] Nowhere is this otherwise purely technical debate more revealing to the public consciousness than in assessing the legality of the cultivation, possession, and use of marijuana for medicinal purposes, when these activities are unequivocally sanctioned by state law.[12]

The CSA classifies all controlled substances into five schedules based on their accepted medical uses, their potential for abuse, and their psychological and physical effects on the human body.[13] Marijuana is classified as a "Schedule I" substance, based on "its high potential for abuse, no accepted medical use, and no accepted safety for use in medically supervised treatment."[14] Such a classification "makes it unlawful to manufacture, distribute, or possess marijuana."[15] The Commerce Clause enables Congress, through legislation such as the CSA, to prohibit the intrastate cultivation and distribution of marijuana.[16] Through the Commerce Clause, Congress is also empowered to regulate and protect the instrumentalities of interstate commerce, as well as the interests of those engaged

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10 *See generally supra* note 6; *see also* Gary Fields, *White House Czar Calls for End to 'War on Drugs,'* WALL ST. J., May 14, 2009, *available at* http://online.wsj.com/article/SB124225891527617397.html.

11 *See, e.g.,* U.S. v. Oakland Cannabis Buyers' Co-op., 532 U.S. 483, 494-95 (2001) (holding that "medical necessity is not a defense to manufacturing and distributing marijuana," despite the Respondent's reliance on contrary provisions of California's Compassionate Use Act of 1996 which creates an exception to state laws prohibiting the possession, use, and cultivation of marijuana); *contra* People v. Mower, 49 P.3d 1067, 1071 n.2 (Cal. 2002) (qualifying *Oakland Cannabis Buyers' Co-op* by finding that the Supreme Court's decision "involves the interpretation of federal law, [and] has no bearing on the questions before us, which involve state law alone"). *See also Raich*, 545 U.S. 1, 29 (2005) (holding that the Commerce Clause grants Congress plenary power to regulate – and prohibit – purely local activities that are part of the economic class of activities that have a substantial effect on interstate commerce, including Californians' use of medical marijuana that is otherwise sanctioned by state law); *cf.* Wickard v. Filburn, 317 U.S. 111, 124-25 (1942) (holding that Congress can regulate purely local, non-commercial activities "if it exerts a substantial economic effect on interstate commerce, and this irrespective of whether such effect is what might at some earlier time have been defined as 'direct' or 'indirect.'").

12 *See Raich*, 545 U.S. at 48 (O'Connor, J., dissenting).

13 *See, e.g.,* 21 U.S.C. §§ 811-12; *see also id.* at 2.

14 21 U.S.C. §812(c); *see also Raich*, 545 U.S. at 14.

15 *Raich*, 545 U.S. at 13 (citing 21 U.S.C. §§ 841(a)(1), 844(a)).

16 *See* U.S. CONST. art. I, § 8, cl. 3 ("The Congress shall have power to . . . regulate commerce with foreign nations, and among the several states . . .").

in interstate commerce.[17] Congress also has the authority to regulate exclusively local activities that are part of an economic "class of activities" that have a "substantial effect on interstate commerce."[18]

II. THE CATEGORICAL PROHIBITION ON MARIJUANA

Congress has exercised its Commerce Clause authority to categorically ban marijuana. The Supreme Court has upheld this plenary prohibition.[19] In *Gonzales v. Raich,* a divided Court held that the Commerce Clause enables Congress to prohibit the local cultivation and use of marijuana, despite more permissive regulations under California law.[20] Writing for the majority, Justice Stevens found that precedent "firmly established" Congress' power under the Commerce Clause to regulate purely local activities that have a substantial effect on interstate commerce.[21] The *Raich* majority held that Congress can prohibit local marijuana cultivation and use, because it was part of a "class of activities" constituting the national black market for marijuana.[22] The Court reasoned that local cultivation and use, even for limited medical purposes, affected supply and demand in the national black market, making regulation over local use "essential" to undermining the broader underground industry nationwide.[23] The majority distinguished *Raich* from earlier precedent that circumscribed Congress' Commerce Clause power, finding that those earlier cases involved statutes that regulated purely non-economic activities, while this one aims to nullify a particular application of a valid statutory scheme.[24]

The Supreme Court's decision in *Raich* echoes the general rule, not the exception. Multiple federal courts have long held the CSA's regulation of local marijuana growth and consumption to be constitutional, even in light of countervailing state laws.[25] In *U.S. v. Visman*, for example, a California marijuana grower appealed his conviction under the CSA by arguing that "there is no reasonable basis to assume that plants rooted in the soil affect interstate com-

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17 *See, e.g.,* Perez v. U.S., 402 U.S. 146, 150 (1971); *see also* NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1, 37 (1937).

18 *Raich*, 545 U.S. at 17.

19 *Id.* at 29 ("[S]tate action cannot circumscribe Congress' plenary commerce power [under the CSA].").

20 *Id.*

21 *Id.* at 17 (finding that "case law firmly establishes Congress' power to regulate purely local activities that are part of an economic 'class of activities' that have a substantial effect on interstate commerce").

22 *Id.* at 32.

23 *Raich*, 545 U.S. at 8-9.

24 *See id.* at 23.

25 *See, e.g.,* Perason v. McCaffrey, 139 F. Supp. 2d 113, 124-125 (D.D.C. 2001) (denying an application for a preliminary injunction against federal officials from regulation of those involved in the medical use of marijuana pursuant to state laws); U.S. v. Visman, 919 F.2d 1390 (9th Cir,. 1990).

merce," and that "Congress does not have the authority to regulate intrastate illegal conduct that affects interstate commerce."[26] Here, the Ninth Circuit upheld the federal regulations, holding that Congress had set forth specific findings and declarations when it passed the CSA to identify the "nexus between marijuana and interstate commerce," and that "federal control of the intrastate incidents of the traffic in controlled substances is essential to the effective control of the interstate incidents of such traffic."[27] Finding that "[t]he Supreme Court has instructed that Congress may regulate those wholly intrastate activities which have an effect upon interstate commerce," the Ninth Circuit held that "[w]here the class of activities is regulated and that class is within the reach of federal power, the courts have no power 'to excise, as trivial, individual instances of the class.'"[28]

Other federal courts of appeal have followed *Visman*'s reasoning.[29] In *Proyect v. U.S.*, the Second Circuit rejected a claim that the CSA, "by criminalizing the act of growing marijuana solely for personal consumption, is unconstitutional," and held that these provisions of the CSA "represents a valid exercise of the commerce power."[30] Similarly, in *U.S. v. Leshuk*, the Fourth Circuit rejected a challenge to the constitutionality of § 841(a)(1), determining that "effective control of the interstate problems [associated with marijuana] requires the regulation of both intrastate and interstate activities."[31] As such, the Court concluded that "Congress may regulate intrastate drug activities under the Commerce Clause."[32] At the trial court level, federal district court decisions have been equally consistent in upholding the constitutionality of CSA provisions that categorically ban the use and cultivation of marijuana.[33]

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26 *Visman*, 919 F.2d. at 1392.

27 *Id.* (citing 21 U.S.C. § 801(6)).

28 *Id.* at 1392-93 (quoting in part Maryland v. Wirtz, 392 U.S. 183, 193 (1968)).

29 *See, e.g.,* Proyect v. U.S., 101 F.3d 11, 14 (2d Cir. 1996); U.S. v. Leshuk, 65 F.3d 1105, 1112 (4th Cir. 1995); *see also* U.S. v. Bramble, 103 F.3d 1475, 1479 (9th Cir. 1996); U.S. v. Tisor, 96 F.3d 370, 375 (9th Cir. 1996); U.S. v. Kim, 94 F.3d 1247, 1249-50 (9th Cir. 1996).

30 *Proyect*, 101 F.3d at 14 (citing 21 U.S.C. § 841(a)(1)).

31 *Leshuk*, 65 F.3d at 1112.

32 *Id.*

33 See, e.g., U.S. v. Correa, No. 97-20010-01, 1999 WL 155967, at *2 (D. Kan. Jan. 14, 1999) (holding that "Congress can properly regulate intrastate drug activities pursuant to its powers under the Commerce Clause"); Kuromiya v. U.S., 37 F. Supp. 2d 717, 724 (E.D. Pa. 1999) (holding that "the CSA, specifically as it pertains to marijuana, has a connection with interstate commerce sufficient to invoke federal power . . . [and] this conclusion would be no different even if plaintiffs could demonstrate the marijuana in individual cases did not travel across state lines"); U.S. v. Smith, 920 F.Supp. 245, 247-48 (D. Me. 1996) (holding that "even as applied to a defendant who did not engage in interstate commerce, the constitutionality of [§ 841(a)(1)] does not depend upon whether the particular defendant engaged in interstate commerce," and that § 841(a)(1) constitutes "a constitutional use of Congress' power to regulate commerce").

With multiple federal courts in support, the Supreme Court's 2006 ruling in *Gonzales v. Raich* was supposed to end the discussion, making the constitutionality of federal laws prohibiting the cultivation and use of medical marijuana a "dead issue."[34] Yet, as Justice Thomas poignantly stated in dissent:

> One searches the Court's opinion in vain for any hint of what aspect of American life is reserved to the States. Yet this Court knows that '[t]he Constitution created a Federal Government of limited powers.' That is why today's decision will add no measure of stability to our Commerce Clause jurisprudence: This Court is willing neither to enforce limits on federal power, nor to declare the Tenth Amendment a dead letter.[35]

Both Justice Thomas's and O'Connor's dissents in *Raich* echo a familiar and deeply-rooted dilemma underlying our system of joint sovereignty – reconciling Congress' duty to promote national interests with the Constitution's limit on federal power. Indeed, the deceptively intricate task has always been "to identify a mode of analysis that allows Congress to regulate more than nothing (by declining to reduce each case to its litigants) and less than everything (by declining to let Congress set the terms of analysis)."[36]

Both O'Connor and Thomas believe that Congress cannot use its Commerce Clause authority "to contravene the principle of state sovereignty embodied in the Tenth Amendment."[37] Congress must instead use this authority "in a manner consistent with the notion of enumerated powers – a structural principle that is as much part of the Constitution as the Tenth Amendment's explicit textural command."[38] In 1788, James Madison had advised the People of New York that "[t]he powers delegated by the proposed Constitution to the federal government are few and defined," while "[t]hose which are to remain in the State governments are numerous and indefinite . . . ."[39] Therefore, "[t]he powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State."[40] Indeed, "[o]ne of federalism's chief virtues . . . is that it promotes innovation by allowing for the possibility that 'a single courageous State may, if its citizens choose, serve as a laboratory;

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34 Jason Krause, *Ideas from the Front, Growing Practices, A New Crop of Lawyers Has Created a Niche Representing Medical Marijuana Clinics*, 92-May A.B.A. J. 22 (May 2006).

35 *Raich*, 545 U.S. at 70 (Thomas, J., dissenting) (citations omitted).

36 *Raich*, at 47-48 (O'Connor, J., dissenting).

37 *Id.* at 52; *see also id.* at 70.

38 *Id.* at 52 (concluding that "something more than mere assertion is required when Congress purports to have power over local activity whose connection to an interstate market is not self-evident").

39 THE FEDERALIST No. 45, pp. 292-93 (C. Rossiter ed. 1961).

40 *Id.* at 93.

and try novel social and economic experiments without risk to the rest of the country.'"[41]

In a similar vein, Justice O'Connor warned in her dissent that "the Court's definition of economic activity for purposes of Commerce Clause jurisprudence threatens to sweep all of productive human activity into federal regulatory reach."[42] State sovereignty cannot coexist with an overbroad reading of the Commerce Clause. According to O'Connor, the majority's decision in *Raich* upsets this tenuous balance by defining "as economic any activity involving the production, distribution, and consumption of commodities."[43] This cannot reconcile with well-recognized precedents established by *U.S. v. Morrison* and *U.S. v. Lopez*, under which the ambit of congressional regulation can only reach those economic activities that are infused with some commercial character.[44] In contrast, O'Connor pointed out that "[t]he homegrown cultivation and personal possession and use of marijuana for medicinal purposes has no apparent commercial character."[45] The fine line between "what is national and what is local" cannot be given meaningful character if, according to O'Connor, "Congress may regulate noncommercial activity simply because it may have an effect on the demand for commercial goods, or because the noncommercial endeavor can, in some sense, substitute for commercial activity."[46]

The *Raich* majority relied heavily on the Court's 1942 decision in *Wickard v. Filburn*, construing that case to have established federal regulatory power over any home consumption of a commodity (e.g. wheat, marijuana, etc.) for which a broad national market exists.[47] *Raich*, however, is distinguishable from *Wickard*. "In contrast to the CSA's limitless assertion of power, Congress provided an exemption within the [Agricultural Adjustment Act of 1938] for small producers" who planted less than a certain acreage.[48] As such, *Wickard* "did not extend Commerce Clause authority to something as modest as the home cook's herb garden."[49] Accordingly, *Wickard* should not be construed to hold or imply that

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41 *Raich*, 545 U.S. at 42 (quoting in part New State Ice Co. v. Liebmann, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting)).

42 *Id.* at 49 (O'Connor, J., dissenting).

43 *Id.*

44 *See* U.S. v. Morrison, 529 U.S. 598, 611, n. 4 (finding that Congress' power to regulate intrastate activities have been confined to those "of an apparent commercial character"); *see also* U.S. v. Lopez, 514 U.S. 549, 561 (holding the Gun-Free School Zones Act of 1990 unconstitutional because it regulates activities that do not "arise out of or are connected with a commercial transaction").

45 *Raich*, 545 U.S. at 50 (O'Connor, J., dissenting) (adding that "[m]arijuana is highly unusual among the substances subject to the CSA in that it can be cultivated without any materials that have traveled in interstate commerce").

46 *Raich*, 545 U.S. at 49 (internal citation omitted).

47 *See id.* at 17-18 (adding that *Wickard* "is of particular relevance," and that "[t]he similarities between this case and *Wickard* are striking"); *see also Wickard*, 317 U.S. at 128-29.

48 *Raich*, 545 U.S. at 51 (O'Connor, J., dissenting).

49 *Id.*

"small-scale production of commodities is always economic, and automatically within Congress' reach."[50]

A plain reading of the Commerce Clause casts no doubt on the federal government's power to curtail narcotics trafficking when the "product" touches U.S. soil from a foreign source, or is domestically grown but distributed across state lines. *Raich*'s holding casts the CSA's shadow over both notorious international drug cartels and home growers of medical marijuana. The dichotomy between the activities that Congress can now prohibit under the same statutory authority is striking. While Congress continues to use the CSA to seek prosecution of those involved in purely intrastate cultivation and use of medical marijuana, it is also using the same statute to pass laws and regulations aimed at inhibiting drug traffickers' ability to profit from their sale and distribution of marijuana.

III. THE KINGPIN ACT: THE OTHER END OF THE ENFORCEMENT SPECTRUM

The Office of Foreign Assets Control, a division of the U.S. Department of the Treasury, contributes to the "War on Drugs" on the financial front.[51] In performing its functions, OFAC relies primarily on its broad delegated powers under the Trading with the Enemy Act[52] and the International Emergency Economic Powers Act.[53] OFAC's sanction program stems from two major sources. The first is the President's creation of a list of Specially Designated Narcotics Traffickers ("SDNTs") in 1995. The second is the Foreign Narcotics Kingpin Designation Act ("Kingpin Act"), which President Clinton signed into law in 1999.

The Kingpin Act[54] targets the activities of foreign narcotics traffickers, their related industry and business, and their access to the U.S. economic and financial system. The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President.[55] Under the Kingpin Act, the President may take immediate action to freeze all accounts held by these traffickers and prohibit

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50 *Id.* (adding that "[t]his is not to say that Congress may never regulate small quantities of commodities possessed or produced for personal use, or to deny that it sometimes needs to enact a zero tolerance regime for such commodities").

51 U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC), http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx (last visited April 30, 2011) ("The Office of Foreign Assets Control (OFAC) of the US Department of the Treasury administers and enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries and regimes, terrorists, *international narcotics traffickers*, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States.) (emphasis added).

52 *See* 50 U.S.C. §§ 1-44.

53 *See* 50 U.S.C. §§ 1701-1706.

54 *See* Kingpin Act, *supra* note 4.

55 *See generally* Kingpin Act, *supra* note 4.

trade and transactions between these traffickers and U.S. companies or individuals. The objective is to deny their businesses and agents access to the U.S. financial system and the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act punishes individuals who are found to be: "(1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking."[56] Violators of the Kingpin Act are subject to criminal penalties of up to ten years in prison and/or monetary fines of up to ten million dollars.[57]

In line with the CSA, the Kingpin Act acts as yet another piece of Federal legislation that advances the government's vendetta against "Woodstock Nation"[58] through America's "War on Drugs." The Kingpin Act, and the continued enforcement of the Act, also highlights the federal government's continued vigilance in its efforts to eradicate the illegal drug market in the United States. At this time, there has been no clear shift in Federal policy to recognize or respect state medical marijuana laws. Under current federal laws such as the Kingpin Act and the CSA, the federal government remains empowered to enforce stringent federal drug policy in all U.S. jurisdictions, notwithstanding contrary state laws.

As O'Connor alluded to throughout her dissent in *Raich*,[59] the federal government's conflict with states' inherent "police powers" in the war on drugs is obvious. And states are utilizing this power to its fullest extent. States are freely passing medical marijuana laws that exempt individuals from criminal liability under state law.[60] Notably, O'Connor acquiesced that the powers reserved to the states include the power to decide what is criminal and what is not under state law.[61] This confuses the average citizen, who is oftentimes led to believe that what is permitted by state law is necessarily legal. Indeed, according to U.S. Deputy Attorney General W. Ogden, U.S. Attorneys serving in states that have

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56 U.S. Departments of the Treasury Office of Foreign Assets Control, Narcotics, *What You Need To Know About U.S. Sanctions Against Drug Traffickers*, *available at* http://www.treasury.gov/resource-center/sanctions/Programs/Documents/drugs.pdf.

57 Commentary, *Overview of the Foreign Narcotics Kingpin Designation Act*, WASH. REV., *available at* http://traceyricksfoster.wordpress.com/2009/04/15/the-obama-administration-announces-the-kingpin-act-the-war-on-drug-traffickers-has-intensified/.

58 *See* Blog Message Board, Drug Policy Reform, Shroomery, Magic Mushrooms Demystified, http://www.shroomery.org/forums/showflat.php/Number/9533093 (last accessed on April 30, 2011).

59 545 U.S. at 50.

60 *See* Gonzales v. Oregon, 546 U.S. 243, 270 (2006) (noting that "[the] structure and limitations of federalism . . . allow the States 'great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort and quiet of all persons.' (citation omitted)).

61 *See Raich*, 545 U.S. at 42 (2005) (O'Connor, J., dissenting).

passed medical marijuana laws should "not focus federal resources in [those] States on individuals in clear and unambiguous compliance with state laws provided for the medical use of marijuana."[62]

Ogden's words, however, are in conflict with the direction recently provided by U.S. Attorney for the Northern District of California, Melinda Haag.[63] At the beginning of this year, Haag stated that "[the federal government] will enforce the CSA vigorously against individuals and organizations that participate in unlawful . . . activity involving marijuana, even if such activities are permitted under state law."[64] This is not the first time this seemingly convoluted opinion has been stated. Attorney General Eric Holder previously declared that the Federal government will "vigorously enforce the CSA against those individuals and organizations that possess, manufacture or distribute marijuana for recreational use, even if such activities are permitted under state law."[65] These contradicting directives further illustrate the conflict that resides at the core of the underlying federalism debate.

CONCLUSION

The dubious battle between state and federal marijuana policy continues. While a new "smoke shop" opens in Laguna Beach, California, OFAC is designating another Specially Designated Narcotics Trafficker pursuant to the Kingpin Act. The Federal government continues to dispel any doubts about the constitutionality of the ban on marijuana by aggressively pursuing those individuals who violate CSA or the Kingpin Act provisions. Nonetheless, as states implement their own legislation – seemingly cutting Federal laws at the knee – individuals are feeling less threatened by the once all-powerful Federal ban on marijuana. The divergence between the Federal and state regulatory regimes continues to occupy the forefront of our national debate on the constitutionality of certain federal drug legislation. This divergence continues to threaten the efficacy of national drug policies, cause public confusion, and jeopardize the rights of average citizens untutored on the complexities of constitutional law. At this time, however, there is no end in sight for the discourse over medical marijuana. The Kingpin Act will continue to target and immobilize drug traffickers who violate our Federal drug laws.

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62 *See* Memorandum, *supra* note 8 at pp. 1-2.

63 Press Release, The United States Attorney's Office [of the] Easter District of Michigan, Marijuana Stores Violate Federal Law (Apr. 6, 2011), *available at* http://www.justice.gov/usao/wae/news/2011/ 2011_04_06_Marijuana_Enforcement.html (noting that "many of these stores are conducting a high volume, high dollar business, far from the allegations of the operators that they are furnishing marijuana to "patients" with debilitating medical conditions").

64 *Id.*

65 *See* Memorandum, *supra* note 8 at p. 2.

At the same time, certain states will continue to protect medical marijuana users who use, possess, and cultivate the drug. This nation's highest court should draw a fine line between the two extremes. Congress should also implement a more holistic drug policy that enables states to become what they have always supposed to be – laboratories for innovation and sovereigns in and of themselves. But for now, the dubious battle continues.