



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 16, 2010

The Honorable Patrick Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Chairman Leahy:

This letter provides the Department of Justice's views in support of S. 3218, the "Drug Trafficking Safe Harbor Elimination Act." This legislation seeks to amend the Controlled Substances Act (CSA) to clarify that persons located in the United States who enter into a conspiracy within the United States to engage in drug trafficking abroad, or who aid and abet drug trafficking abroad, may be criminally prosecuted in the United States.

A recent federal case illustrated a loophole in current federal law that allows persons located in the United States to facilitate international drug trafficking without being subject to criminal liability in this country. In *United States v. Lopez-Vanegas*, 493 F.3d 1305 (11<sup>th</sup> Cir. 2007), the defendants conspired with members of a large-scale Medellin, Colombia cocaine trafficking organization, which had previously exported at least 50 tons of cocaine throughout Europe and North America. In this particular case, the federal prosecution was based on meetings the defendants held in Miami (among other locations), during which they conspired to transport cocaine from Venezuela to France. Specifically, while in Miami, they arranged to purchase cocaine in Colombia, and ship the cocaine from Venezuela to Paris for distribution in Europe. Subsequently, French authorities seized over 800 kilograms of cocaine that were distributed pursuant to this conspiracy.

The defendants were convicted in federal district court in the Southern District of Florida of drug trafficking and conspiracy in violation of 21 U.S.C. §§ 841(a)(1) and 846. However, the U.S. Court of Appeals for the Eleventh Circuit reversed the conviction, ruling that where the object of a conspiracy was to possess controlled substances outside the United States with the intent to distribute outside the United States, there is no violation of U.S. law, even though the conspiracy (meetings, negotiations, etc.) occurred on U.S. soil. The court stated that the conspiracy provision of the CSA (21 U.S.C. § 846) relied upon by federal prosecutors could not be extended to conspiracies to act outside of the United States because Congress had not expressed its intention for the statute to be applied in such a manner.

S. 3218 would close this loophole in the CSA that may allow drug traffickers under these circumstances to operate with impunity in the United States. Amendments to the CSA contained in this legislation will clarify that conspiracies conducted within the United States may be

The Honorable Patrick Leahy  
Page 2

Thank you for the opportunity to present our views. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to the submission of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read 'R Weich', written in a cursive style.

Ronald Weich  
Assistant Attorney General

cc: The Honorable Jeff Sessions  
Ranking Minority Member