U.S. Attorney Requires Drug Tests for AIDS Protesters

Medical marijuana and HIV meds could put a defendant in jail. Sign a petition to end this policy.

February 22, 2012 By Trent Straube

AIDS activists who were arrested during a peaceful protest in Washington, DC, are speaking out against the U.S. Attorney's new policy of drug-testing people charged with nonviolent crimes such as civil disobedience. Specifically, the attorney allows defendants to enter into a deferred prosecution agreement, meaning the charges will be dropped once they meet the conditions of the agreement—such as performing 32 hours of community service in DC and having three consecutive negative drug tests.

The government does not take into consideration whether defendants have a prescription for medical marijuana or whether they take medications that may result in a false positive, as some HIV meds might do.

Antonio Davis, who is living with AIDS, is an activist with ACT UP Philadelphia.
Photo credit: Larry Bryant

Because of the drug testing requirement, at least two AIDS activists now face possible jail time and a criminal record for their nonviolent protest. They are asking the U.S. Attorney to drop the charges.

The requirement of drug tests was added to the deferral process about a year and a half ago, said Mark Goldstone, a lawyer who specializes in defending nonviolent activists. And it covers an array of nonviolent first offender crimes in DC: shoplifting, prostitution, even free-speech actions like nonviolent protests.

As of this year, the attorney once again altered the pretrial deferral agreement conditions: The drug tests no longer look for marijuana, Goldstone said, and if defendants have a negative test result while in initial lockup, they no longer have to produce two other tests.

This is a "slightly more logical but still very onerous" pretrial agreement, Goldstone said. But it won't help some of his clients—a group of AIDS activists—who were arrested last April at Senate

Majority Leader Eric Cantor's office while protesting Republican budget cuts to AIDS funding and a ban on syringe exchange funding in the District of Columbia.

About a dozen people were arrested and charged with unlawful entry. They were given the option to enter the pretrial deferral agreement; defendants who forgo the agreement or fail to meet its terms must either plead guilty or go to trial, facing jail time and a criminal record. Most defendants are complying with the deferral agreement, Goldstone said, but two have come upon roadblocks because of the drug tests. One activist couldn't make it to the DC drug testing site.

The other is Antonio Davis, who is living with AIDS and is an activist with ACT UP Philadelphia. Davis requires medical marijuana for a host of illnesses, including avascular necrosis, AVN, a bone disease.

"The government wouldn't accept any letters from my doctor and didn't even look at my health conditions," Davis said. "They just said, 'Regardless of what it is, you tested positive and you're not getting [into the deferral agreement until] you have a negative test.'"

Davis said he needs the medical marijuana because the alternative, Percoset, left him unable to work. But because he fears that a criminal record will hurt his employment prospects (he is a paralegal) and hinder his chances of adopting a child, Davis went off the marijuana. He also switched meds. Nonetheless, his recent test still came back positive.

"I've been traveling back and forth six times now," he said. "This has put a strain on my mental health as well as physical health. I've lost 20 pounds in the last two months." He added: "I don't understand why they're making a mockery out of me and the protesters. There's just no cause."

Davis and a group of fellow activists, medical experts and legal specialists held a press conference February 8 in DC to draw attention to the issue, particularly in light of the upcoming AIDS 2012 international conference to be held this July in the nation's capital. They are asking U.S. Attorney Ron Machen to drop the charges.

The activists noted that other protesters the same day—including the district's mayor and city council chairman—performed similar nonviolent actions against the Republican budget but were released on a $50 fine.

Goldstone suggested that the difference could lie in the location of the actions: that the DC mayor was on the street while the AIDS protesters were inside a government building. The U.S. Attorney's office confirmed that the two cases had a different set of circumstances. The AIDS protesters' action led to a charge of unlawful conduct on Capitol grounds, a misdemeanor that is prosecuted by the U.S. Attorney's Office. The mayor's case was handled by the District of Columbia Office of the Attorney General.

The U.S. Attorney's Office confirmed that it requires defendants to pass drug tests for diversions, but it declined to elaborate.

Matthew Kavanagh, an activist with Health GAP who was arrested in Cantor's office, said the U.S. Attorney has complicated their deferral process with paperwork snafus that resulted in the activists completing 64 hours of unpaid community service—twice the requirement—which prosecutors now say they won't accept.

"You only treat people like this when you're trying to suppress people from taking non-violent direct action," Kavanagh said. "And in Washington, DC, that's outrageous."

The U.S. Attorney is putting these people through the wringer, Goldstone said, adding that it makes no sense to require drug tests as part of the deferral process because the charges have nothing to do with drugs.

It could serve another purpose: "This drug-testing program has a chilling impact on [people's] interest in participating in an activity that might result in arrest," Goldstone said. He clarified that he wasn't suggesting a link between protesters and drug usage, but rather that some people "don't like the violation of privacy or the constitutional implications of the government testing and giving benefits or rejecting benefits based on whether someone may or may not be using [drugs]. Plus, the government hasn't shown any leniency for someone who is using for medicinal purposes."

"In July 30,000 AIDS activists and experts are coming to Washington, DC, for the International AIDS Conference. Unfairly targeting AIDS activists must stop," said Housing Works president Charles King, speaking at the press conference. "Attorney General Holder and U.S. Attorney Machen should know that this will not stop us—AIDS activists are here, will be here, and will not stop speaking truth to power."

The HIV Prevention Justice Alliance is collecting signatures for a letter that calls on Attorney Machen to drop the charges. Click here to read the letter. For more, visit preventionjustice.org or sign on directly by emailing your name to campbell@housingworks.org.

To sign a petition asking Attorney Machen to drop the charges and end the policy of demanding drug testing for nonviolent activists, click here.

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