

Congress of the United States
Washington, DC 20515

September 30, 2016

Honorable Loretta E. Lynch
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Lynch,

We are writing to object to DEA's hasty decision to classify the drug known as Kratom as a Schedule I substance. In particular, we are troubled by the DEA's irregular deviation from its classification procedure in order to list Kratom as a Schedule I substance. We call on you to stay the effective date of this proposed rule.

In order to schedule a drug, the DEA must undertake a rulemaking process, which involves consultation with the FDA, notice of the proposed rule in the Federal Register, and an opportunity for public comment and a hearing. Under this standard process, DEA must consider eight factors as part of its analysis, as listed in 21 U.S.C. § 811(c). However, in its decision to classify Kratom as a Schedule I substance, DEA instead utilized a statutory authority to temporarily bypass the rulemaking process as well as the notice and public comment period. However, under 5 U.S.C. § 705, an agency may postpone the effective date of an action when justice requires it. As the head of the Department of Justice, which oversees the DEA, we ask you to stay the effective date of this rule, so that the appropriate notice and public comment period may take place.

Congress granted DEA this authority in response to the emergence of "designer drugs." Designer drugs are those newly invented or newly produced in laboratories and are designed to mimic the effects of scheduled substances while avoiding federal regulation. Kratom, though relatively new to the United States, does not fit this description. It is a natural substance that has been used in other parts of the world for centuries.

Furthermore, Congress granted DEA this emergency authority "to avoid imminent hazards to public safety." While a recent CDC study does note the number of calls to poison control centers mentioning Kratom use has increased, the data does not indicate that Kratom was solely responsible for the calls. Without more concrete data and analysis, it is difficult to claim Kratom represents an "imminent hazard." Access to improved data and further studies will now be impossible to gather should Kratom be scheduled as Schedule I substance.

We appreciate the DEA's desire to protect Americans from potentially harmful substances. However, in this case DEA has overstepped its authority in a manner that is inconsistent with the intent of the statutory authority it was given by Congress. In effect, the DEA removed any opportunity for the agency to be held accountable for its decision making. If the DEA believes that Kratom is of notable detriment to Americans and wishes for it to be scheduled, it should follow normal procedure and rigorously defend its views to Congress, the FDA and the public. It is for these reasons you should stay the effective date of rule and allow for the appropriate notice and comment period to take place.

We thank you for your consideration and look forward to your timely response.

Sincerely,

A handwritten signature in blue ink, appearing to read "Hank Johnson", written over a horizontal line.

Henry C. "Hank" Johnson, Jr.
Member of Congress

A handwritten signature in blue ink, appearing to read "Mark Pocan", written over a horizontal line.

Mark Pocan
Member of Congress