

April 20, 2023

President Joseph R. Biden
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

The logo for the Drug Policy Alliance, featuring the text "We are the Drug Policy Alliance." in white and yellow on a red background.

CC:

The Honorable Merrick Garland
Attorney General
950 Pennsylvania Avenue NW
Washington, D.C. 20530

The Honorable Xavier Becerra
Health and Human Services Secretary
200 Independence Ave SW
Washington, DC 20201

The Honorable Anne Milgram
Administrator of Drug Enforcement
8701 Morrisette Drive
Springfield, VA 22152

The Honorable Robert Califf
Commissioner of Food and Drugs
10903 New Hampshire Avenue
Silver Spring, MD 20993

Dear President Biden:

We, the undersigned local, state, and national advocacy organizations, write to acknowledge your October 6, 2022 announcement pardoning simple federal marijuana possession cases for some people, encouraging state governors to also pardon marijuana cases, and initiating the administrative review process for evaluation of marijuana's placement on the Controlled Substances Act (CSA) drug schedule. We share your administration's sentiment that "too many lives have been upended because of our failed approach to marijuana," and are encouraged by these important first steps towards ending and repairing the harms caused by marijuana criminalization and the racist enforcement of marijuana laws.

Nonetheless, these actions alone, will neither fully end future harms of marijuana criminalization nor repair past harms. **Accordingly, we urge you and your administration to take the steps necessary to deschedule marijuana in conjunction with other administrative actions that center Black, Indigenous, and people of color (BIPOC) communities.**¹ Additionally, we implore your administration to support comprehensive marijuana reform legislation in Congress, such as the Cannabis Administration and Opportunity Act (CAOA), a bill that deschedules marijuana, repairs the past harms of prohibition, and provides a regulatory framework for marijuana markets.

¹ See Drug Policy Alliance. (2023, January 18). *Biden Administration – Next Steps re Federal Marijuana Reform*. https://drugpolicy.org/sites/default/files/biden_administration_-_next_steps_re_federal_marijuana_reform_final.pdf

Background

The overwhelming majority of individuals impacted by federal marijuana criminalization were left out of the relief granted by the pardons.² Notably, the pardon announcement did not lead to the release of any individuals from federal incarceration because federal sentencing schemes typically send people to prison for higher-level offenses that are more complex than simple marijuana possession.³ For instance, none of the 8,653 people sentenced for marijuana trafficking offenses from 2017 to 2021 would be eligible for relief under the pardon. These prosecutions often resulted in stiff sentences even for people with little-to-no prior criminal history, with approximately one out of five given sentences for five years or longer despite fewer than 2% being classified as career offenders.⁴ Notably, Black and Hispanic individuals accounted for 80.7% of these federal marijuana trafficking convictions.⁵ These sentences were imposed at a time when dozens of states have already legalized some form of commercial production and distribution of marijuana, with 37 states, the District of Columbia, Guam, Puerto Rico and the U.S. Virgin Islands having done so for medical or adult-use as of 2023.⁶

Additionally, the pardon announcement explicitly excluded a large share of noncitizens, who face mandatory detention, deportation, and other immigration consequences based on minor possession convictions. In fact, since 2003, ICE has deported more than 45,000 immigrants whose most serious offense was marijuana possession.⁷ Even those noncitizens who were included in the announcement should be provided specific assurance from the Administration that pardoned convictions will not be used as a basis for deportation or denial of immigration benefits.

Moreover, noncitizens suffer extreme immigration penalties due to the federal prohibition on marijuana even when they are in compliance with state and local marijuana laws. Although 21 states and the District of Columbia have legalized marijuana for adults 21 and older,⁸ noncitizens are regularly denied green cards and naturalization, and deported, for admitting to conduct that is permitted under state law, such as use of medical or recreational marijuana;

² Lampe, J.R. (2023). *The Controlled Substances Act (CSA): A legal overview for the 118th Congress* (CRS Report No. R45948). Congressional Research Service, 33-34.

<https://crsreports.congress.gov/product/pdf/R/R45948>

³ National Criminal Justice Association, Arizona State University, & Crime Justice Journalists. (2023, January 11). *No Federal Inmates Are In Prison Only For Marijuana Possession*.

<https://www.ncja.org/crimeandjusticeneeds/no-federal-inmates-are-in-prison-only-for-marijuana-possession>

⁴ United States Sentencing Commission. (2022, July). *Quick Facts on Marijuana Trafficking Offenses*.

https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Marijuana_FY21.pdf

⁵ Id.

⁶ National Conference of State Legislatures. (2022, September 12). *State Medical Cannabis Laws*.

<https://www.ncsl.org/health/state-medical-cannabis-laws>

⁷ Ocasio-Cortez, A., Omar, I., & Garcia, J.G. (2022, November, 15). *Letter on Extending the Pardon*.

<https://omar.house.gov/media/press-releases/ocasio-cortez-omar-and-jesus-g-chuy-garcia-lead-letter-calling-president>; Modine, H. (2022, October 6). *What Biden's Pardon For Marijuana Convictions Means For Immigrants*. Transactional Records Access Clearinghouse at Syracuse University.

<https://trac.syr.edu/tracatwork/detail/A5133.html>

⁸ National Conference of State Legislatures. (2022, September 12). *State Medical Cannabis Laws*.

<https://www.ncsl.org/health/state-medical-cannabis-laws>

working legally in the marijuana industry; or for old convictions that are “expunged” or sometimes even vacated, because the Department of Homeland Security does not always give effect to state post-conviction relief.⁹

Further, the pardon announcement leaves *everyone* at risk for future federal marijuana arrests, even for simple possession. Given the impact that a marijuana possession charge can have on future sentences as well as the racial disparities in marijuana arrests, the continuation of marijuana criminalization will allow for continued arrests, and only exacerbate racial injustice in criminal sentencing.¹⁰ Marijuana legalization is popular on both sides of the aisle, with 68% of those polled supporting marijuana legalization, including majorities from both Democrats and Republicans.¹¹ To end and repair the harms of criminalization, it is essential that the federal government “deschedule” (remove) marijuana from the CSA.

We urge you and your administration to take bold action to bring about marijuana descheduling and comprehensive reform rooted in equity. Such reforms should automatically expunge federal marijuana cases, provide pathways to resentencing and release, and ensure that noncitizens will not be arrested, detained, deported, denied immigration status or otherwise face immigration consequences for federal or state marijuana law violations, including for working in state-legal marijuana industries. Importantly, legal relief for marijuana offenses must be applied retroactively in order for formerly incarcerated individuals to have a chance at rebuilding their lives and for noncitizens to live free of the fear of deportation for old offenses or prior marijuana industry work history.

Beyond these criminal justice reforms, the federal government must take a comprehensive approach to reform that centers BIPOC communities that have suffered disproportionate and immeasurable social and economic harms from targeted marijuana criminalization. In order to account for these harms marijuana descheduling must be coupled with an equitable regulatory framework that makes certain the economic benefit of the regulated marijuana industry flows to those who are most impacted by the war on drugs and disproportionately targeted by racially biased enforcement of marijuana laws.

Currently, a person in the U.S. is arrested for marijuana every 90 seconds, with Black, Latinx, and Indigenous individuals being disproportionately targeted despite similar usage rates as their

⁹ U.S. Citizenship and Immigration Services. *Policy Manual, Volume 12, Chapter 5, Part C.2, “Conditional GMC Bar Applies Regardless of State Law Decriminalizing Marijuana.”* U.S. Dept. of Justice. <https://www.uscis.gov/policy-manual/volume-12-part-f-chapter-5>

¹⁰ United States Sentencing Commission. (2023, January). *Weighing the Impact of Simple Possession of Marijuana: Trends and Sentencing in the Federal System.* https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2023/20230110_Marijuana-Possession.pdf

¹¹ Jones, J.M. (2022, November 15). *Marijuana Views Linked to Ideology, Religiosity, Age.* Gallup. <https://news.gallup.com/poll/405086/marijuana-views-linked-ideology-religiosity-age.aspx>

white counterparts.^{12 13} While most of these arrests are made by state and local law enforcement, federal criminalization of marijuana is highly influential and discourages states from undertaking comprehensive marijuana reform.¹⁴ What is more, people with state law convictions are still subject to federal collateral consequences, including immigration consequences, and their record at the state level can still block them from accessing housing, jobs, and could complicate keeping families together. To end the hundreds of thousands of marijuana arrests and collateral consequences that take place every year, we must deschedule marijuana from the CSA.

Administrative Descheduling: Necessary But Insufficient

Marijuana must be fully removed from the CSA and descheduled. Rescheduling marijuana to a less restrictive schedule in the CSA would do little to address the harms of federal criminalization. As long as marijuana remains *anywhere* in the CSA, the majority of the problems associated with its criminalization will persist. Rescheduling would not bring the marijuana industry into compliance with existing federal laws and regulations outside of the CSA, such as the Food, Drug, and Cosmetic Act. The criminal penalties in the CSA are not tied to schedule status, meaning rescheduling would not stop future arrests, reduce sentences, or provide a pathway for resentencing, and it would continue to imperil noncitizens. Workers in the state-legal marijuana industry would continue to be denied the protections of the National Labor Relations Act (NLRA) and the Fair Labor Standards Act (FLSA) that are available to laborers in other industries. Small marijuana businesses and social equity entrepreneurs would continue to be denied access to Small Business Administration (SBA) funds, meaning large white-owned corporations would be able to further expand their economic advantage to profit off of the sales of a substance for which BIPOC individuals have been disproportionately prosecuted and remain incarcerated. Marijuana research would continue to face regulatory hindrances. Veterans would continue to be denied access to medical marijuana programs through their Veterans Administration doctors. Banks would continue to be hesitant to offer commercial loans to marijuana businesses, even if a safe-harbor bill is passed in the interim.

¹² Published arrest data from 2020 is still the most current reliable due to inconsistencies in the FBI's reported marijuana arrest data for 2021.

Jaeger, K. (2021, September 27). *Marijuana Arrests Dropped Sharply In 2020 As Both COVID And Legalization Spread, FBI Data Shows*. Marijuana Moment. <https://www.marijuanamoment.net/marijuana-arrests-dropped-sharply-in-2020-as-both-covid-and-legalization-spread-fbi-data-shows/>; Jaeger, K. (2022, October 5). *New FBI Marijuana Arrest Data Riddled With Inconsistencies As Agency Touts Changes To Reporting System*. Marijuana Moment. <https://www.marijuanamoment.net/new-fbi-marijuana-arrest-data-riddled-with-inconsistencies-as-agency-touts-changes-to-reporting-system/>

¹³ American Civil Liberties Union. (2020, April 20). *A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform*. <https://www.aclu.org/report/tale-two-countries-racially-targeted-arrests-era-marijuana-reform>

¹⁴ Lampe, J.R. (2023). *The Controlled Substances Act (CSA): A legal overview for the 118th Congress* (CRS Report No. R45948). Congressional Research Service, 9. <https://crsreports.congress.gov/product/pdf/R/R45948>

These are just some of the many consequences that can come from keeping marijuana in the CSA.¹⁵ Therefore, it is imperative that you and your administration take the steps necessary to deschedule marijuana, couple this with other administration actions that center BIPOC communities, and support comprehensive marijuana legislation in Congress.¹⁶

We understand that the POTUS cannot unilaterally end federal marijuana criminalization with the stroke of a pen. According to the Congressional Research Service, substances “may be added to or removed from a schedule or moved to a different schedule through agency action or by legislation.”¹⁷ While you have taken the bold first step toward administrative review, it remains unclear whether enough research has been conducted that will satisfy the way Health and Human Services (HHS) has traditionally applied the 8-factor analysis required by 21 U.S.C. § 811. Ironically, the primary reason for the lack of “well-controlled, well-designed, well-conducted, and well-documented scientific studies, including studies performed in a large number of patients” is due to the restrictions imposed by Schedule 1 on conducting large-scale clinical research on marijuana.¹⁸

We urge HHS and the Drug Enforcement Administration (DEA) to interpret the statutory requirements in a way that better reflects the political and scientific realities of marijuana. If the available science is generally as limited and interpreted as it was in the 2016 marijuana schedule status decision, there is a reasonable probability marijuana could remain in Schedule 1 despite it obviously not belonging there.¹⁹ While we must take science into account, we must also recognize that until very recently, marijuana had significantly more research barriers compared to other Schedule 1 substances.²⁰ While the *Medical Marijuana and Cannabidiol*

¹⁵ Reference the scheduling memo to learn about other implications.
Drug Policy Alliance. (2023). *Potential Implications of President Biden’s Scheduling Review Order*.
https://drugpolicy.org/sites/default/files/marijuana_scheduling_memo.docx_.pdf

¹⁶ Reference the letter to the Biden Administration to see next steps.
Drug Policy Alliance. (2023, January 18). *Biden Administration – Next Steps re Federal Marijuana Reform*.
https://drugpolicy.org/sites/default/files/biden_administration_-_next_steps_re_federal_marijuana_reform_final.pdf

¹⁷ Lampe, J.R. (2023). *The Controlled Substances Act (CSA): A legal overview for the 118th Congress* (CRS Report No. R45948). Congressional Research Service, 9.
<https://crsreports.congress.gov/product/pdf/R/R45948>

¹⁸ United States Court of Appeals for the District of Columbia Circuit. (2013, January 21). *11-1265 - Americans for Safe Access, et al v. DEA*. [Government]. Administrative Office of the United States Courts.
<https://www.govinfo.gov/app/details/USCOURTS-caDC-11-01265>; United States Court of Appeals for the District of Columbia Circuit. (1994, February 18). *Alliance for Cannabis Therapeutics v. DEA*. [Government]. 15 F. 3d 1131.

¹⁹ “Marijuana, in its natural form, is one of the safest therapeutically active substances known. The evidence in this record clearly shows that marijuana has been accepted as capable of relieving the distress of great numbers of very ill people, and doing so with safety under medical supervision. It would be unreasonable, arbitrary, and capricious for DEA to continue to stand between those sufferers and the benefits of this substance in light of the evidence in this record.” US Dept of Justice, Drug Enforcement Agency. *In the Matter of Marijuana Rescheduling Petition*. Docket 86-22. September 6, 1988, p 68.

²⁰ National Academies of Sciences, Engineering, and Medicine; Health and Medicine Division; Board on Population Health and Public Health Practice; Committee on the Health Effects of Marijuana: An Evidence Review and Research Agenda. (2017, January 12). Challenges and Barriers in Conducting Cannabis Research. *The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and*

Research Expansion Act you signed into law last year lifted many of these barriers, it will be many years, if not decades, until that bill results in completed research. This means it will be years before marijuana can be reviewed evenly compared to other substances which are easier to research. Given the vast harms caused by marijuana's placement in the CSA, we cannot afford to maintain federal marijuana criminalization while waiting for new research to become available.

Additionally, we urge you to form a task force to explore the appropriate schedule status of marijuana that takes into account factors that cannot be considered by HHS or DOJ agencies during the formal scheduling review. For example, medical studies conducted outside of the U.S. will not be considered under the 8-factor analysis but it would be a disservice for your administration not to take such studies into account. Groundbreaking marijuana research has been conducted in Israel and Europe but these will not be reviewed under the formal schedule status evaluation. Additionally, the political and social implications of marijuana's Schedule 1 status and the impacts of descheduling could be evaluated by such a task force. At a minimum, this task force should be composed of individuals who have been directly impacted by the racially disproportionate enforcement of marijuana criminalization, immigration advocates, social equity entrepreneurs, doctors, patients, researchers, veterans, and marijuana labor representatives.

In the meantime, there are other steps the administration can take in order to end the harms of criminalization, such as directing agencies to stop using state law marijuana convictions as a basis to deny federal benefits or as triggers for deportation. The Department of Justice could also issue a guidance memo to stop the prosecution of people for low-level marijuana offenses.²¹ The administration can also roll back the Reagan-era executive action that spurred pervasive drug testing for federal employees.

As you acknowledged in your October 6, 2022 statement, individuals with a previous marijuana conviction "may be denied employment, housing, or educational opportunities as a result."²² Therefore, we urge you to direct agencies such as the Department of Agriculture, Housing and Urban Development, Education, Homeland Security, and the Veterans Administration to adopt policies to lessen the collateral consequences of a marijuana conviction with respect to accessing federal benefits. Additionally, the Veterans Administration could take steps to make it easier for veterans to find relief from their battle wounds such as post traumatic stress disorder, traumatic brain injury, and chronic pain through the use of medical marijuana. In making these

Recommendations for Research. National Academies Press. 15.

<https://www.ncbi.nlm.nih.gov/books/NBK425757/>

²¹ See our letter to the Biden Administration for more ideas.

Drug Policy Alliance. (2023, January 18). *Biden Administration – Next Steps re Federal Marijuana Reform*.

https://drugpolicy.org/sites/default/files/biden_administration_-_next_steps_re_federal_marijuana_reform_final.pdf

²² Biden, J.R. (2022, October 6). *Statement from President Biden on Marijuana Reform*. The White House Briefing Room.

<https://www.whitehouse.gov/briefing-room/statements-releases/2022/10/06/statement-from-president-biden-on-marijuana-reform/>

reforms, it is crucial to meet with advocacy groups and stakeholders, particularly individuals who have been directly and negatively impacted by these agencies for marijuana conduct. These are a few of many actions the administration can take to end the current harms of marijuana prohibition and criminalization, including reducing the harms of state law convictions which account for the vast majority of low-level marijuana convictions in the U.S.²³

The administrative descheduling of marijuana, coupled with other administrative actions, would be a huge step forward on criminal justice reform and would lay the cornerstone upon which additional components of comprehensive marijuana reform could be built. However, administrative descheduling in the absence of a comprehensive regulatory framework could potentially have some adverse consequences in the form of unregulated interstate commerce, which could wipe out many small marijuana businesses and social equity license holders without proper regulatory controls. Additionally, administrative descheduling would not be applied retroactively, nor would descheduling expunge federal marijuana arrests, seal records, or protect noncitizens from detention or deportation for marijuana conduct. This means the White House must work with Congress to pass comprehensive descheduling legislation.

Comprehensive Marijuana Legislation Must Accompany Descheduling

Descheduling marijuana through comprehensive Congressional legislation is the preferred path to end and repair the harms caused by criminalization. The House of Representatives has twice passed comprehensive descheduling legislation, the Marijuana Opportunity Reinvestment and Expungement (MORE) Act, in 2020 and 2022, that contained automatic expungement, retroactive relief, and dedicated marijuana tax revenue to reinvest in communities harmed by discriminatory enforcement of criminalization. More recently, Senate Majority Leader Schumer along with Senators Booker and Wyden introduced the Cannabis Administration and Opportunity Act (CAOA) in the 117th Congress. This bill builds off of the MORE Act and includes enhanced criminal justice reform, stronger protections for noncitizens, and a more robust regulatory framework. We urge you to use your influence to encourage Congress to pass comprehensive marijuana descheduling legislation that includes a well-thought-out plan for federal regulation and for implementing interstate commerce that is rooted in equity.

You have already taken an important initial step toward ending the failed policy of federal marijuana prohibition. Taking the additional actions outlined in this letter would have an exponentially greater impact than the first step alone. To end and repair the harms of decades of racially discriminatory enforcement of marijuana laws, we need complete and comprehensive legislative reform. This is not only the right thing to do, it is the popular thing as well, as a Data

²³ See our letter to the Biden Administration for more ideas. Drug Policy Alliance. (2023, January 18). *Biden Administration – Next Steps re Federal Marijuana Reform*. https://drugpolicy.org/sites/default/files/biden_administration_-_next_steps_re_federal_marijuana_reform_final.pdf

For Progress poll found even in states where marijuana remains criminalized, bipartisan majorities support ending marijuana criminalization for personal use and sales.²⁴

We implore you to take whatever steps are necessary to make sure marijuana is descheduled and encourage Congress to pass comprehensive legislation that includes criminal justice reform, repairing and centering communities most harmed by prohibition and criminalization, and a regulatory framework that is rooted in equity, justice, and public health.

For any questions about anything in this letter, or to discuss these objectives, please contact Maritza Perez Medina, Director of Federal Affairs at the Drug Policy Alliance, at mperez@drugpolicy.org. Thank you for your attention to this letter.

Sincerely,

2nd Chance Clemency Project
Advancement Project
AIDS Alabama
AIDS Foundation Chicago
AIDS United
American Atheists
American Civil Liberties Union
American Friends Service Committee
American Humanist Association
Better Organizing to Win Legalization
CAN-DO Foundation
Cannabis Equity IL Coalition
Cannabis Regulators of Color Coalition
Center for American Progress
Center for Housing & Health
Center for Policing Equity
Center for Popular Democracy
Chief Defenders Association of New York
Clergy for a New Drug Policy
Color Of Change
DC Justice Lab
Doctors for Cannabis Regulation
Dream.org
Drug Policy Alliance
Enact Consulting
Equal Justice USA
Fair and Just Prosecution

²⁴ Data for Progress. (2020, August 19). *Memo: The Case for Comprehensive Marijuana Reform - Policies & Public Opinion*. <https://www.dataforprogress.org/memos/case-for-comprehensive-marijuana-reform>

Hip Hop Caucus
Human Rights Watch
Immigrant Defense Project
Immigrant Legal Resource Center (ILRC)
Indivisible Marin
Justice Roundtable
Justice Strategies
JustLeadershipUSA
Kansas Cannabis Coalition, Inc
LACAN (Los Angeles Community Action Network)
Last Prisoner Project
LatinoJustice PRLDEF
Law Enforcement Action Partnership
Law Offices of Omar Figueroa
Marijuana Policy Project
Minorities for Medical Marijuana
Multidisciplinary Association for Psychedelic Studies (MAPS)
National Association of Criminal Defense Lawyers
National Council on Alcoholism and Drug Dependence-Maryland Chapter
National Immigration Project (NIPNLG)
National Organization for the Reform of Marijuana Laws (NORML)
National Organization for Women
National Pain Advocacy Center
NETWORK Lobby for Catholic Social Justice
OpioidSettlementTracker.com
Parabola Center for Law and Policy
People's Action
Planted Association of Kansas
progressivefl.org
Rights & Democracy NH & VT
RootsAction.org
Sojourners
Students for Sensible Drug Policy (SSDP)
Students for Sensible Drug Policy, Adler University Chapter
Students for Sensible Drug Policy, American University Chapter
Students for Sensible Drug Policy, Arizona State University Chapter
Students for Sensible Drug Policy, Bloomington, Indiana Chapter
Students for Sensible Drug Policy, George Washington University
Students for Sensible Drug Policy, Joliet Ambassador
Students for Sensible Drug Policy, McHenry, Illinois
Students for Sensible Drug Policy, Pittsburgh Community Chapter
Students for Sensible Drug Policy, University of Houston Chapter
Students for Sensible Drug Policy, University of Illinois Urbana-Champaign Chapter
Students for Sensible Drug Policy, University of Maryland Chapter

Students for Sensible Drug Policy, University of North Texas Chapter
Students for Sensible Drug Policy, Virginia Tech Chapter
Sunita Jain Anti-Trafficking Initiative, Loyola Law School
Texans for Responsible Marijuana Policy
The Center for Constitutional Rights
The Hood Incubator
The National Council for Incarcerated and Formerly Incarcerated Women and Girls
The Porchlight Collective SAP
The Taifa Group
The Weldon Project
United Food and Commercial Workers International Union (UFCW)
Useful Strategies
Veterans Cannabis Coalition
VOCAL-WA