

October 6, 2021

The Honorable Merrick Garland
Attorney General
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Garland:

We write to urge the Department of Justice (DOJ) to decriminalize cannabis using its existing authority to remove the drug from the Federal controlled substances list. Under the Controlled Substances Act of 1970 (CSA), the Attorney General can remove a substance from the CSA's list, in consultation with the Secretary of Health and Human Services (HHS).¹ Decriminalizing cannabis at the federal level via this descheduling process would allow states to regulate cannabis as they see fit, begin to remedy the harm caused by decades of racial disparities in enforcement of cannabis laws, and facilitate valuable medical research. While Congress works to pass comprehensive cannabis reform, you can act now to decriminalize cannabis.

The CSA imposes criminal penalties for the use and distribution of certain drugs that vary in severity according to each drug's "schedule." A Schedule I drug is classified as having "no currently accepted medical use" and "a high potential for abuse."² Currently, the CSA classifies cannabis as a Schedule I substance, alongside substances like heroin and ecstasy.³ In contrast, arguably more harmful substances such as cocaine and OxyContin are classified as Schedule II substances, which are less stringently regulated.⁴

It is far past time to decriminalize the use of cannabis in the United States. On the campaign trail, President Biden promised to "decriminalize the use of cannabis and

¹ 21 U.S.C. 811.

² 8 U.S.C. 812.

³ U.S. Department of Justice and Drug Enforcement Administration, "Drugs of Abuse," 2020, pp. 9, 19, https://www.dea.gov/sites/default/files/2020-04/Drugs%20of%20Abuse%202020-Web%20Version-508%20compliant-4-24-20_0.pdf.

⁴ *Id.* at 26, 27.

automatically expunge all prior cannabis use convictions.”⁵ He declared that “[n]obody should be in jail for smoking marijuana.”⁶ This position is in step with the vast majority of the country: approximately 91% of adults in the United States believe that cannabis should be legal for medical and recreational use, or for medical use only.⁷ To date, thirty-six states, four territories, and the District of Columbia have legalized cannabis for medicinal purposes,⁸ and eighteen states, two territories, and the District of Columbia have legalized cannabis for adult recreational use.⁹ Studies show that state-level legalization has not caused spikes in traffic accidents,¹⁰ violent crime,¹¹ or use by teenagers,¹² paving the way for much needed action at the federal level.

Decriminalizing cannabis is also a critical first step in addressing the racial inequities in cannabis law enforcement. The American Civil Liberties Union found last year that Black Americans are more than three times more likely to be arrested for cannabis possession than white Americans, even though both groups use cannabis at similar rates.¹³ The “widespread collateral damage” from racially disparate marijuana enforcement can include “not only arrests, incarceration, and lifelong criminal convictions, but also the loss of jobs, housing, financial aid eligibility, child custody, and immigration status.”¹⁴ Federal cannabis policy has disproportionately affected the ability of people of color in the United States to vote, to pursue education, and to build intergenerational wealth.¹⁵ You can begin to repair the harm that the criminalization of cannabis has wrought on communities of color by using your statutory and regulatory authority to deschedule this drug.

Moreover, decriminalizing cannabis is a vital step so that Americans seeking cannabis as a medical treatment option for conditions such as chronic pain, post-traumatic stress disorder,

⁵ Biden Harris Democrats, “Lift Every Voice: The Biden Plan for Black America,” <https://joebiden.com/blackamerica/>.

⁶ Civilized. “‘Nobody Should Be in Jail for Smoking Marijuana’; Joe Biden,” May 18, 2019, <https://livecivilized.com/business/policy-regs/nobody-should-be-in-jail-for-smoking-marijuana-joe-biden>.

⁷ Pew Research Center, “Americans overwhelmingly say marijuana should be legal for recreational or medical use,” Ted Van Green, April 16, 2021, <https://www.pewresearch.org/fact-tank/2021/04/16/americans-overwhelmingly-say-marijuana-should-be-legal-for-recreational-or-medical-use/>.

⁸ National Conference of State Legislatures, “State Medical Marijuana Laws,” July 14, 2021, <https://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>.

⁹ National Conference of State Legislatures, “Cannabis Overview,” July 6, 2021, <https://www.ncsl.org/research/civil-and-criminal-justice/marijuana-overview.aspx>.

¹⁰ NBER, “Early Evidence on Recreational Marijuana Legalization and Traffic Fatalities,” pp. 20, Benjamin Hansen, Keaton S. Miller, & Caroline Weber, March 2018, https://www.nber.org/system/files/working_papers/w24417/w24417.pdf?

¹¹ Cato Institute, “The Effect of State Marijuana Legalizations: 2021 Update,” Angela Dills, Sietse Goffard, Jeffrey Miron, and Erin Partin, February 2, 2021, <https://www.cato.org/policy-analysis/effect-state-marijuana-legalizations-2021-update?>

¹² Marijuana Moment, “Youth Marijuana Use Remains Stable Amid Surge of State-Level Legalization, Feds Report,” Kyle Jaeger, December 15, 2020, <https://www.marijuanamoment.net/youth-marijuana-use-remains-stable-amid-surge-of-state-level-legalization-feds-report/>.

¹³ American Civil Liberties Union, “A Tale of Two Countries,” p. 5, April 2020, https://www.aclu.org/sites/default/files/field_document/marijuanareport_03232021.pdf.

¹⁴ *Id.* at 6.

¹⁵ Brookings, “Reversing the War on Drugs: A five-point plan,” John Hudak, July 7, 2021, <https://www.brookings.edu/research/reversing-the-war-on-drugs-a-five-point-plan/>.

and terminal illness can legally use the drug. The National Institute on Drug Abuse has acknowledged that tetrahydrocannabinol (THC), which is derived from cannabis, “has proven medical benefits in particular formulations.”¹⁶ The Food and Drug Administration has approved THC synthetics as medications for patients with AIDS and patients undergoing chemotherapy for cancer¹⁷ and has also approved a cannabis plant-derived cannabidiol (CBD) medication for pediatric patients suffering from epilepsy.¹⁸ Your office formally descheduled the latter pharmaceutical.¹⁹ Cannabis’s Schedule I classification is a significant barrier to further medical research because researchers are severely limited in their ability to access the substance.²⁰ We appreciate the Drug Enforcement Administration’s (DEA) May 2021 announcement that it will begin issuing additional cannabis manufacturing licenses for research purposes,²¹ but DOJ can and should do more. Decriminalizing cannabis is crucial to facilitating scientific research and would be invaluable to doctors and patients across the nation.

The executive branch has the authority to initiate the process of cannabis descheduling. The CSA empowers the Attorney General to initiate proceedings to reschedule or deschedule a drug, either individually or at the request of the HHS Secretary or another interested party.²² The Attorney General then seeks a scientific and medical evaluation from the HHS Secretary, including the Secretary’s recommendations as to the appropriate scheduling for the drug or whether the drug should be descheduled.²³ If the Secretary recommends descheduling a drug, that recommendation is binding on the Attorney General.²⁴ However, if the Secretary recommends retaining a drug in the same schedule or moving it to a different schedule, that recommendation is not binding and the Attorney General may still choose to initiate a rulemaking procedure to deschedule or reschedule the drug.²⁵

The executive branch last considered petitions to reschedule cannabis in 2016.²⁶ The DEA denied the petitions, partly because the U.S. is a signatory to an international treaty

¹⁶ National Institute on Drug Abuse, “Is marijuana safe and effective as medicine?,” July 2020, <https://www.drugabuse.gov/publications/research-reports/marijuana/marijuana-safe-effective-medicine>.

¹⁷ *Id.*

¹⁸ U.S. Food and Drug Administration, “FDA Approves First Drug Comprised of an Active Ingredient Derived from Marijuana to Treat Rare, Severe Forms of Epilepsy,” press release, June 25, 2018, <https://www.fda.gov/news-events/press-announcements/fda-approves-first-drug-comprised-active-ingredient-derived-marijuana-treat-rare-severe-forms>.

¹⁹ Cannabis Law Blog, “DEA Deschedules Cannabinol-Containing Epidiolex,” Allison Fulton & Whitney Hodges, April 10, 2020, <https://www.cannabislawblog.com/2020/04/dea-deschedules-cannabinol-containing-epidiolex/>.

²⁰ Nature, “Regulators need to rethink restrictions on cannabis research,” Jahan Marcu, August 28, 2019, <https://www.nature.com/articles/d41586-019-02531-6>.

²¹ U.S. Drug Enforcement Administration, “DEA Continues to Prioritize Efforts to Expand Access to Marijuana for Research in the United States,” May 14, 2021, <https://www.dea.gov/stories/2021/2021-05/2021-05-14/dea-continues-prioritize-efforts-expand-access-marijuana-research>.

²² 21 U.S.C. 811.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ U.S. Drug Enforcement Administration, Federal Register, “Denial of Petition to Initiate Proceedings to Reschedule Marijuana,” August 12, 2016, <https://www.federalregister.gov/documents/2016/08/12/2016-17954/denial-of-petition-to-initiate-proceedings-to-reschedule-marijuana>; U.S. Drug Enforcement Administration, Federal Register,

regulating cannabis.²⁷ But the United Nations voted last December to reduce restrictions on cannabis under the treaty,²⁸ and some signatories of the treaty, such as Canada and Uruguay, have legalized cannabis completely.²⁹

We urge the DOJ to initiate the process to decriminalize cannabis. Doing so would be an important first step in the broader tasks of remedying the harmful racial impact of our nation's enforcement of cannabis laws and ensuring that states can effectively regulate the growing cannabis industry, including by assisting small business owners and those most harmed by our historical enforcement of cannabis laws. We respectfully request, no later than Wednesday, October 20, 2021, a response as to whether your office intends to order a review of the classification of cannabis under the CSA.

Thank you for your attention to this important matter.

Sincerely,



Elizabeth Warren
United States Senator



Cory A. Booker
United States Senator

CC: The Honorable Xavier Becerra, Secretary, Department of Health and Human Services

²⁷ “Denial of Petition to Initiate Proceedings to Reschedule Marijuana,” August 12, 2016, <https://www.federalregister.gov/documents/2016/08/12/2016-17960/denial-of-petition-to-initiate-proceedings-to-reschedule-marijuana>.

²⁷ *Id.*

²⁸ United Nations, “UN commission reclassifies cannabis, yet still considered harmful,” December 2, 2020, <https://news.un.org/en/story/2020/12/1079132>; JD Supra, “UN Relaxes International Control of Cannabis, Signaling Big Changes on the Horizon,” Jessica DiPietro, Marwa Hassoun, and Emily Leongini, December 11, 2020, <https://www.jdsupra.com/legalnews/un-relaxes-international-control-of-56020>.

²⁹ Harris Bricken, “The United Nations is FINALLY Taking a Hard Look at Cannabis,” Vince Sliwoski, August 17, 2018, <https://harrisbricken.com/cannalawblog/the-united-nations-is-finally-taking-a-hard-look-at-cannabis/>.