

United States Senate

WASHINGTON, DC 20510

July 6, 2022

The Honorable Joseph R. Biden
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

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

The Honorable Xavier Becerra
Secretary
Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

Dear President Biden, Attorney General Garland, and Secretary Becerra:

We write to follow up on our earlier requests that the Administration use its existing authority to (i) deschedule cannabis and (ii) issue pardons to all individuals convicted of non-violent cannabis-related offenses.

Cannabis Descheduling

On October 6, 2021, we wrote to the Department of Justice (DOJ) requesting that the DOJ use its existing authority under the *Controlled Substances Act of 1970* (CSA) to begin the process of removing cannabis's classification as a Schedule I drug.¹

On April 13, the DOJ responded to our October 6 request for the Administration to begin the descheduling process for cannabis.² The half-page response, which took over six months, was extraordinarily disappointing, noting the Department of Health and Human Services' (HHS) determination that "cannabis has not been proven in scientific studies to be a safe and effective treatment for any disease or condition"³ as the sole rationale for the DOJ's lack of action.

But this assertion ignores the ability of the DOJ and Drug Enforcement Administration to begin the descheduling process and act independently of an HHS determination. As we noted in our October 2021 letter, the CSA empowers the Attorney General to initiate proceedings to

¹ Letter from Senators Warren and Booker to DOJ calling for the decriminalization of cannabis, October 8, 2021, <https://www.warren.senate.gov/newsroom/press-releases/warren-booker-call-on-doj-to-decriminalize-cannabis>; 21 U.S.C. 811; U.S. Drug Enforcement Administration, "Drug Scheduling," <https://www.dea.gov/drug-information/drug-scheduling>.

² Letter from DOJ to Senators Warren and Booker, April 13, 2022, <https://www.warren.senate.gov/imo/media/doc/2022.04.12-Warren-Booker-Decriminalize%20cannabis.pdf>.

³ *Id.*

reschedule or deschedule a drug, either individually or at the request of the HHS Secretary or another interested party.⁴ To do so, the Attorney General can seek 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.⁵ If the Secretary recommends descheduling a drug, that recommendation is binding on the Attorney General.⁶ 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.⁷ Put simply, the DOJ need not wait on any HHS determination to begin this process.

Moreover, it is obvious that cannabis has widely accepted medical benefits, affirmed by medical and scientific communities both here and across the globe. The American Nurses Association, American Public Health Association, American Academy of Family Physicians, and New England Journal of Medicine have all supported legalizing cannabis for medicinal use.⁸ The World Health Organization has also recommended reclassifying cannabis from its most restrictive classification under international drug treaties.⁹ Medical cannabis helps millions across the country deal with chronic pain, seizure disorders, cancer, multiple sclerosis and a variety of other ailments.¹⁰ The therapeutic properties of cannabis caused by the effects of both the tetrahydrocannabinol-alpha (THC) and cannabidiol (CBD) components make it an excellent alternative to highly addictive opiates for pain relief.¹¹ In line with the clear medical benefits of cannabis, 37 states, three territories, and the District of Columbia have legalized the use of cannabis for medicinal purposes.¹²

There is widespread public support for cannabis legalization, with around two thirds of the public supporting the legalization of cannabis.¹³ Currently, 19 states and the District of Columbia have legalized cannabis for recreational use for adults over the age of 18.¹⁴ A number

⁴ 21 U.S.C. 811.

⁵ 21 U.S.C. 811.

⁶ *Id.*

⁷ *Id.*

⁸ NORML, "Health Organizations Endorsements," <https://norml.org/marijuana/library/health-organizations-endorsements/>.

⁹ Forbes, "World Health Organization Recommends Reclassifying Marijuana Under International Treaties," Tom Angell, February 1, 2019, <https://www.forbes.com/sites/tomangell/2019/02/01/world-health-organization-recommends-rescheduling-marijuana-under-international-treaties/?sh=3977925d6bcc>.

¹⁰ Harvard Health Blog, "Medical Marijuana," Peter Grinspoon, MD, April 10, 2020, <https://www.health.harvard.edu/blog/medical-marijuana-2018011513085>.

¹¹ Systematic Reviews, "Medical cannabis for the reduction of opioid dosage in the treatment of non-cancer chronic pain: a systematic review," Babasola O. Okusanya, Ibitola O. Asaolu, John E. Ehiri, et al., July 28, 2020, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7388229/>.

¹² ProCon.org, "State-by-State Medical Marijuana Laws," June 6, 2022, <https://medicalmarijuana.procon.org/legal-medical-marijuana-states-and-dc/>; Pew Research Center, "6 facts about Americans and marijuana," Katherine Schaeffer, April 26, 2021, <https://www.pewresearch.org/fact-tank/2021/04/26/facts-about-marijuana/>.

¹³ Pew Research Center, "Two-Thirds of Americans Support Marijuana Legalization," Andrew Daniller, November 14, 2019, <https://www.pewresearch.org/fact-tank/2019/11/14/americans-support-marijuana-legalization/>.

¹⁴ Business Insider, "Marijuana legalization is sweeping the US. See every state where cannabis is legal," Jeremy Berke, Shayanne Gal, and Yeji Jesse Lee, May 27, 2022, <https://www.businessinsider.com/legal-marijuana-states->

of tribal governments have also legalized cannabis use for various purposes.¹⁵ In communities where cannabis has been legalized, there have been widespread economic, racial-justice, public-safety, and health benefits.¹⁶ During the presidential campaign, President Biden committed to decriminalize the use of cannabis and automatically expunge all prior cannabis use convictions,¹⁷ and he also acknowledged the importance of removing cannabis from its current classification under the CSA as a Schedule I substance.¹⁸

Cannabis Pardons

On November 9, 2021, we called on President Biden to use his authority “to pardon all individuals convicted of non-violent cannabis offenses, whether formerly or currently incarcerated.”¹⁹ To date, we have not received a response to this letter.

We commend President Biden’s recent pardons and commutations of 78 people, including nine with non-violent cannabis related offenses.²⁰ However, much more has to be done to address the racist and harmful legacy of cannabis policies on Black and Brown communities. The legacy of the war on drugs is pervasive. It is estimated that over 40,000 individuals are still incarcerated for cannabis related offenses.²¹ A report released by the American Civil Liberties Union in 2020 found that Black individuals were nearly four times as likely to be arrested for cannabis possession even with comparable usage rates amongst individuals of all races.²² In some states Black individuals were almost 10 times more likely to be arrested for cannabis possession.²³

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¹⁵ National Law Review, “New Administration Could Provide Ideal Backdrop for Tribes Entering Cannabis Industry,” Robert A. Conrad and Laura E. Jones, December 17, 2020, <https://www.natlawreview.com/article/new-administration-could-provide-ideal-backdrop-tribes-entering-cannabis-industry>.

¹⁶ Brookings, “State cannabis reform is putting social justice front and center,” Sabina Morris, John Hudak, and Christine Stenglein, April 16, 2021, <https://www.brookings.edu/blog/fixgov/2021/04/16/state-cannabis-reform-is-putting-social-justice-front-and-center/>.

¹⁷ Biden Harris Democrats, “Lift Every Voice: The Biden Plan for Black America,” <https://joebiden.com/blackamerica/>.

¹⁸ CNN Politics, “Joe Biden supports decriminalizing marijuana, stops short of calling for legalization,” Arlette Saenz, May 16, 2019, <https://www.cnn.com/2019/05/16/politics/joe-biden-marijuana-decriminalization/index.html>.

¹⁹ Letter from Senator Warren and colleagues to President Biden, November 10, 2021, <https://www.warren.senate.gov/oversight/letters/warren-markey-and-merkley-urge-biden-to-issue-blanket-cannabis-pardons>.

²⁰ The White House, “Clemency Recipient List,” April 26, 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/26/clemency-recipient-list/>.

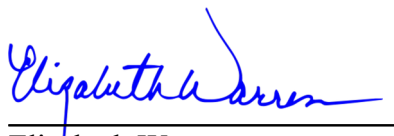
²¹ Forbes, “With 40,000 Americans Incarcerated For Marijuana Offenses, The Cannabis Industry Needs To Step Up, Activists Said This Week,” Joan Oleck, June 26, 2020, <https://www.forbes.com/sites/joanoleck/2020/06/26/with-40000-americans-incarcerated-for-marijuana-offenses-the-cannabis-industry-needs-to-step-up-activists-said-this-week/?sh=421b0a5fc16f>.

²² American Civil Liberties Union, “A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform,” April 2020, p. 7, https://www.aclu.org/sites/default/files/field_document/marijuanareport_03232021.pdf.

²³ *Id.* p. 8.

The Administration's failure to coordinate a timely review of its cannabis policy is harming thousands of Americans, slowing research, and depriving Americans of their ability to use marijuana for medical or other purposes. We ask that the Biden Administration act quickly to rectify this decade long injustice harming individuals, especially Black and Brown communities. Thank you for your attention to this important matter.

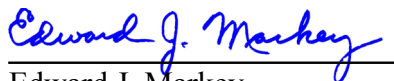
Sincerely,



Elizabeth Warren
United States Senator



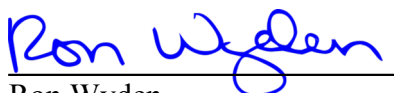
Bernard Sanders
United States Senator



Edward J. Markey
United States Senator



Kirsten Gillibrand
United States Senator



Ron Wyden
United States Senator



Cory A. Booker
United States Senator



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Elizabeth Warren
United States Senate
Washington, DC 20510

The Honorable Cory A. Booker
United States Senate
Washington, DC 20510

Dear Senator Warren and Senator Booker:

This responds to your letter to the Department of Justice (Department) dated October 6, 2021, requesting that it decriminalize cannabis using its existing authority to remove the drug from the Federal controlled substance list. As your letter acknowledges, the Department does not have the authority to unilaterally change the schedule of a controlled substance; the administrative scheduling process requires participation by the public and other agencies.

Cannabis is a Schedule I controlled substance under the Controlled Substances Act (CSA). This is—in part—due to HHS’s determination that cannabis has not been proven in scientific studies to be a safe and effective treatment for any disease or condition. The Department recognizes that cannabis-related drugs might, in the future, be proven to be a safe and effective treatment of certain conditions and strongly supports legitimate research using marijuana and its derivatives. The Drug Enforcement Administration (DEA) continues to work to increase the availability of marijuana to researchers. To that end, on December 18, 2020, the DEA published a final rule in the Federal Register entitled, *Controls To Enhance the Cultivation of Marijuana for Research in the United States* (85 FR 82333). The publication discusses the process for “any person who seeks to plant, cultivate, grow, or harvest [marijuana] to supply researchers.”

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

Peter S. Hyun
Acting Assistant Attorney General