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 descheduling process for cannabis.\(^1\)

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

\(^3\) Id.
reschedule or deschedule a drug, either individually or at the request of the HHS Secretary or another interested party. 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. If the Secretary recommends descheduling a drug, that recommendation is binding on the Attorney General. 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. 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. The World Health Organization has also recommended reclassifying cannabis from its most restrictive classification under international drug treaties. Medical cannabis helps millions across the country deal with chronic pain, seizure disorders, cancer, multiple sclerosis and a variety of other ailments. 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. 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.

There is widespread public support for cannabis legalization, with around two thirds of the public supporting the legalization of cannabis. Currently, 19 states and the District of Columbia have legalized cannabis for recreational use for adults over the age of 18. A number

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

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.” 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. 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. 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. In some states Black individuals were almost 10 times more likely to be arrested for cannabis possession.

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2018-1.


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