



Officers
Chair
Judith L. Lichtman
National Partnership for
Women & Families
Vice Chairs
Margaret Huang
Southern Poverty Law Center
Derrick Johnson
NAACP
Thomas A. Saenz
Mexican American Legal
Defense and Educational Fund
Secretary
Fatima Goss Graves
National Women's Law Center
Treasurer
Lee A. Saunders
American Federation of State,
County and Municipal Employees

Board of Directors
Abed Ayoub
American-Arab
Anti-Discrimination Committee
Gloria L. Blackwell
AAUW
Shawn Fain
International Union, UAW
Jocelyn Frye
National Partnership for
Women & Families
Jonathan Greenblatt
Anti-Defamation League
Mary Kay Henry
Service Employees International Union
Damon Hewitt
Lawyers' Committee for
Civil Rights Under Law
David H. Inoue
Japanese American Citizens League
Virginia Kase Solomon
League of Women Voters of the
United States
Marc Morial
National Urban League
Janet Murguía
UnidosUS
Svante Myrick
People For the American Way
Janai Nelson
NAACP Legal Defense and
Educational Fund, Inc.
Christian F. Nunes
National Organization for Women
Rabbi Jonah Pesner
Religious Action Center
of Reform Judaism
Rebecca Pringle
National Education Association
Lisa Rice
National Fair Housing Alliance
Kelley Robinson
Human Rights Campaign
Anthony Romero
American Civil Liberties Union
Liz Shuler
AFL-CIO
Fawn Sharp
National Congress of American Indians
Maria Town
American Association of
People with Disabilities
Randi Weingarten
American Federation of Teachers
John C. Yang
Asian Americans Advancing Justice |
AAJC

President and CEO
Maya Wiley

July 22, 2024

The Honorable Anne Milgram
Administrator
Drug Enforcement Administration
700 Army Navy Drive
Arlington, VA 22202

**RE: Request for Public Comment on Schedules of Controlled Substances:
Rescheduling of Marijuana (89 FR 44597)**

Dear Administrator Milgram,

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 240 national organizations to promote and protect the civil and human rights of all persons in the United States, we write to comment on the Drug Enforcement Administration's (DEA) proposed rule on the scheduling classification of marijuana under the Controlled Substances Act (CSA). The DEA's proposed rule would move marijuana from Schedule I classification to Schedule III classification.¹ While this reclassification will lessen the restrictions imposed on marijuana use and attendant federal penalties, it will not alleviate the carceral impact and need for comprehensive reforms for justice-impacted individuals and communities.² Instead of being rescheduled, marijuana should be completely removed from the CSA.

Maintaining marijuana as a federally controlled substance under the CSA is insufficient to achieve comprehensive reform for communities impacted by the "war on drugs."³ The war on drugs has wrought decades-long harm on marginalized communities through decades of punitive punishments and mass incarceration for marijuana-related drug offenses. Over the past 50 years, criminal penalties for drug possession and certain trafficking offenses have

¹ Drug Enforcement Administration. "Schedules of Controlled Substances: Rescheduling of Marijuana." *Department of Justice*. May, 21, 2024.

<https://www.federalregister.gov/documents/2024/05/21/2024-11137/schedules-of-controlled-substances-rescheduling-of-marijuana>.

² "Drug Scheduling." *U.S. Drug Enforcement Administration*. July 10, 2018.

<https://www.dea.gov/drug-information/drug-scheduling> ("Schedule III drugs, substances, or chemicals are defined as drugs with a moderate to low potential for physical and psychological dependence. Schedule III drugs abuse potential is less than Schedule I and Schedule II drugs but more than Schedule IV. Some examples of Schedule III drugs are: products containing less than 90 milligrams of codeine per dosage unit (Tylenol with codeine), ketamine, anabolic steroids, testosterone").

³ "Drug War History." *Drug Policy Alliance*. Accessed July 15, 2024. <https://drugpolicy.org/drug-war-history/>.

caused an explosion in the incarcerated population.⁴ Despite similar usage rates, Black people are approximately four times as likely to be arrested for marijuana possession than White people.⁵ Nearly 75 percent of people in federal prison and nearly 55 percent of people in state prison for drug offenses are Black or Latino.⁶ Under current federal law, marijuana-related offenses can subject people to additional penalties including immigration consequences and ineligibility for federal housing, federal employment and military service, causing targeted communities to face disproportionate, broad-ranging and long-lasting consequences for offenses.⁷ At the same time, federal funds have supported ineffective harm reduction policies and used punitive approaches to drug treatment.⁸

While modifying the classification of marijuana from Schedule I to Schedule III is a step in the right direction, comprehensive reform requires full marijuana decriminalization. Schedule I substances are defined as “drugs with no current accepted medical use and a high potential for abuse.”⁹ Marijuana was classified as a Schedule I controlled substance in 1970, with attendant criminal penalties, at the very advent of mass federal drug criminalization.¹⁰ In addition, marijuana has unique minimum sentencing requirements under the CSA that would not be modified if it were to be rescheduled.¹¹ Even as a Schedule III substance, mandatory minimums attached to marijuana under 21 U.S.C. § 841 would not change. Mandatory minimums imposed under this statute would still be imposed on individuals for certain quantity violations.¹² The continued criminalization of marijuana under rescheduling is unacceptable. The DEA should instead deschedule marijuana in order to end these unjust criminal consequences.

Rescheduling is insufficient to repair the harms caused by the war on drugs or to initiate restorative policies including access to government benefits and protection from employment discrimination for formerly-incarcerated individuals, or reallocation of resources to communities that have been impacted by drug related over-policing. Devoting more resources to providing community necessities, such as high-quality health services, well-resourced schools, good-paying jobs, affordable housing, is what will keep

⁴ Taifa, Nkechi. “Race, mass incarceration, and the disastrous war on drugs.” *Brennan Center for Justice*. May 10, 2021. <https://www.brennancenter.org/our-work/analysis-opinion/race-mass-incarceration-and-disastrous-war-drugs>.

⁵ “A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform.” *American Civil Liberties Union*. April 16, 2020. <https://www.aclu.org/publications/tale-two-countries-racially-targeted-arrests-era-marijuana-reform>; see also “Racial Disparity in Marijuana Arrests.” *NORML*. Accessed July 15, 2024. <https://norml.org/marijuana/fact-sheets/racial-disparity-in-marijuana-arrests/>.

⁶ Carson, E. Ann. “Prisoners in 2019.” *Bureau of Justice Statistics*. Oct. 2020. <https://bjs.ojp.gov/content/pub/pdf/p19.pdf>.

⁷ “The Federal Status of Marijuana and the Policy Gap with States.” *Congressional Research Service*. May 2, 2024. <https://crsreports.congress.gov/product/pdf/IF/IF12270>.

⁸ Gaines, Lee V., & Cohen, Nicole. “‘Just say no’ didn’t actually protect students from drugs. Here’s what could.” *National Public Radio*. <https://www.npr.org/2023/11/09/1211217460/fentanyl-drug-education-dare>.

⁹ U.S. Drug Enforcement Administration. “Drug Scheduling.” July 10, 2018. <https://www.dea.gov/drug-information/drug-scheduling>.

¹⁰ “Legal Consequences of Rescheduling Marijuana.” *Congressional Research Service*. May 1, 2024. <https://crsreports.congress.gov/product/pdf/LSB/LSB11105>.

¹¹ *Ibid.*

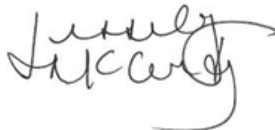
¹² *Ibid.*; 21 U.S.C. § 841 (1970).

communities safe.¹³ Maintaining CSA scheduling will also prevent reparative steps like expungements for marijuana-related criminal consequences.

In 2022, President Biden announced pardons for all prior federal offenses for simple marijuana possession.¹⁴ Building on this progress, more action is needed to prevent racially discriminatory collateral consequences that persist if marijuana remains a CSA-controlled substance. The DEA has the rulemaking and interpretative power to deschedule marijuana under the CSA, and Congress could charge the Food and Drug Administration with appropriately regulating marijuana for health and safety.¹⁵ Without full removal of marijuana from CSA scheduling, the inequitable harms generated by marijuana criminalization will continue.¹⁶ Fully descheduling marijuana is the only remedy that removes the collateral human cost to federal marijuana regulation.

In summary, given the historic failures of the federal war on drugs and its harmful consequences, particularly for Black and Brown communities, comprehensive reforms to drug scheduling are needed. At this juncture, policymakers must look to scientific evidence to inform policy decisions. Enforcement-based responses do not serve the public and only entrench racial disparities in the criminal legal system without serving community health and wellness objectives.¹⁷ Thank you for the opportunity to submit comments on the proposal and for taking the time to consider our views. Please do not hesitate to reach out with any questions to Chloé White, senior policy counsel, justice, at white@civilrights.org.

Sincerely,



Jesselyn McCurdy
Executive Vice President of Government Affairs

¹³ See “Vision for Justice.” *The Leadership Conference on Civil and Human Rights*. 2024. <https://www.visionforjustice.org/>;

¹⁴ “Statement from President Biden on Marijuana Reform.” *The White House*. Oct. 6, 2022. <https://www.whitehouse.gov/briefing-room/statements-releases/2022/10/06/statement-from-president-biden-on-marijuana-reform/>; “Biden’s Marijuana Reform Is a Step Toward Changing Lives.” *The Leadership Conference on Civil and Human Rights*. (October 6, 2022). <https://civilrights.org/2022/10/06/bidens-marijuana-reform-is-a-step-toward-changing-lives/>.

¹⁵ Lampe, Joanna. “The Controlled Substances Act (CSA): A Legal Overview for the 118th Congress.” *Congressional Research Service*. Jan. 19, 2023. https://crsreports.congress.gov/product/pdf/R/R45948#_Toc125038005.

¹⁶ See, e.g., Sheehan, Brynn E., Grucza, Richard A., & Plunk, Andrew D. “Association of Racial Disparity of Cannabis Possession Arrests Among Adults and Youths With Statewide Cannabis Decriminalization and Legalization.” *JAMA Health Forum*. Oct. 29, 2021. <https://doi.org/10.1001/jamahealthforum.2021.3435>.

¹⁷ See “Classwide Scheduling Letter of Opposition.” *The Leadership Conference on Civil and Human Rights*. Aug. 24, 2021. <https://civilrights.org/resource/classwide-scheduling-letter-of-opposition/>; Franklin, Danny. “Overwhelming Majority Say War on Drugs Has Failed, Support New Approach.” *American Civil Liberties Union*. June 9, 2020. <https://www.aclu.org/documents/poll-results-american-attitudes-toward-war-drugs>.