

United States Senate

WASHINGTON, DC 20510

November 25, 2024

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

The Honorable Kamala D. Harris
Vice President of the United States
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Biden and Vice President Harris:

We commend the historic steps the Biden-Harris Administration has taken to lessen the harms of marijuana criminalization. In particular, we applaud your pardons for individuals convicted of simple marijuana possession and your administration's progress to remove marijuana from Schedule I of the Controlled Substances Act (CSA) and place it in Schedule III, recognizing marijuana's accepted medical uses.

Moving marijuana to Schedule III represents progress, and we urge the Drug Enforcement Administration to complete that process as soon as possible. But it will not end federal criminalization, resolve its harms, or meaningfully address the gap between federal and state cannabis policy. Possession and use of recreational marijuana — and much state-legal medical marijuana¹ — will continue to be a violation of federal law.

The Biden Administration has the opportunity to further reduce the harms of marijuana's criminalization before the end of this Administration by issuing another round of clemency and an updated memorandum on prosecutorial discretion for marijuana offenses.

First, we urge you to promptly expand clemency for individuals with marijuana-related convictions. In 2022 and 2023, President Biden issued pardons for individuals convicted under federal law of simple possession of marijuana, attempted simple possession, and use of marijuana.² Consequently, pardoned individuals have been relieved of some collateral consequences that flowed from their marijuana convictions, such as barriers to voting and jury service (though eliminating many other practical consequences would require expungements to remove the offenses from criminal records altogether). However, the pardons have resulted in virtually no releases from prison, because few individuals were in federal prisons for these low-

¹ Letter from Senator Elizabeth Warren to Department of Justice and Drug Enforcement Administration, January 29, 2024, pp. 7-8, <https://www.warren.senate.gov/imo/media/doc/2024.01.29%20Letter%20to%20DEA%20on%20descheduling%20marijuana.pdf>; Congressional Research Service, "The Federal Status of Marijuana and the Policy Gap with States," Sacco, Lampe, & Sheikh, Updated May 2, 2024, <https://crsreports.congress.gov/product/pdf/IF/IF12270>.

² White House Briefing Room, "A Proclamation on Granting Pardon for the Offense of Simple Possession of Marijuana, Attempted Simple Possession of Marijuana, or Use of Marijuana," December 22, 2023, <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/12/22/a-proclamation-on-granting-pardon-for-the-offense-of-simple-possession-of-marijuana-attempted-simple-possession-of-marijuana-or-use-of-marijuana/>.

level offenses.³ Meanwhile, it is estimated that at least 3,000 individuals still remain in federal prison for other marijuana-related offenses.⁴ President Biden should issue broader clemency — including another round of pardons and commutations to reduce sentences or end terms of incarceration — for individuals convicted of other cannabis-related offenses. Additionally, the President should again urge state governors to expand marijuana clemency and decriminalize low-level marijuana conduct under state law.⁵

Second, we urge you to issue a memorandum that would deprioritize seizing marijuana and prosecuting individuals and businesses for state-legal marijuana activity. Today, federal sentences for marijuana possession are rare, with only 13 individuals sentenced for simple marijuana possession in 2023, compared to over 2,000 in 2015.⁶ Still, the *threat* of a federal conviction persists. Of the almost 700,000 drug possession arrests each year, one-third are for marijuana possession,⁷ and Black Americans are almost four times more likely than white Americans to be arrested for marijuana possession.⁸ Seizures of cannabis also persist; the Drug Enforcement Administration (DEA) continues to raid marijuana businesses and seize marijuana plants,⁹ and DHS’s Customs and Border Patrol (CBP) recently seized large amounts of state-legal cannabis at border patrol checkpoints, even dozens of miles into the interior of the country.¹⁰

³ Congressional Research Service, “Recent Developments in Marijuana Law,” Joanna R. Lampe, December 6, 2023, p. 3, <https://crsreports.congress.gov/product/pdf/LSB/LSB10859>.

⁴ Recidiviz, “Ending Federal Prison Sentences for Marijuana Offenses,” December 2, 2021, https://assets.website-files.com/5e7ff048d75a9b3c5df52463/61abf4d36aefde8dec64a000_FED_SRA_final_12.2.21.pdf; Last Prisoner Project, “A Time to Heal”, 2021, p. 15, <https://static1.squarespace.com/static/6036cd385bb23f02d19f48d6/t/6040126fc7f3402e9750658d/1614811760899/LPP+Federal+Clemency+Campaign.pdf>.

⁵ White House Briefing Room, “Statement from President Joe Biden on Clemency Actions,” December 22, 2023, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/12/22/statement-from-president-joe-biden-on-clemency-actions/#:~:text=Just%20as%20no%20one%20should,who%20have%20since%20taken%20action>.

⁶ United States Sentencing Commission, Interactive Data Analyzer, <https://ida.ussc.gov/analytics/saw.dll?Dashboard>; United States Sentencing Commission, “Weighing the Impact of Simple Possession of Marijuana,” Vera M. Kachnowski, Christine Kitchens, and Cassandra Syckes, January 10, 2023, <https://www.ussc.gov/research/research-reports/weighing-impact-simple-possession-marijuana>.

⁷ Federal Bureau of Investigation, Crime Data Explorer, <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/arrest>. Note that this data has been critiqued as incomplete because not all law enforcement agencies report their data to the FBI. See NORML, “FBI: Police Make Over a Quarter Million Marijuana Arrests in 2022,” October 18, 2023, <https://norml.org/blog/2023/10/18/fbi-police-make-over-a-quarter-million-marijuana-arrests-in-2022/#:~:text=According%20to%20the%20online%20database.total%20of%20219%2C489%20marijuana%20arrests>.

⁸ American Civil Liberties Union, “A Tale of Two Countries Racially Targeted Arrests in the Era of Marijuana Reform,” March 23, 2021, https://www.aclu.org/wp-content/uploads/publications/marijuanareport_03232021.pdf.

⁹ Washington Post, “D.C. legalized weed. A marijuana delivery service was indicted anyway,” Salvador Rizzo, May 23, 2023, <https://www.washingtonpost.com/dc-md-va/2023/05/23/dc-marijuana-delivery-service-federal-prosecution/>; Drug Enforcement Agency, Domestic Cannabis Suppression / Eradication Program, <https://www.dea.gov/operations/eradication-program>; Marijuana Moment, “DEA Destroyed 5.7 Million Marijuana Plants Last Year, But Arrests Continue To Decline, Report Shows,” Kyle Jaeger, March 26, 2023, <https://www.marijuanamoment.net/dea-destroyed-5-7-million-marijuana-plants-last-year-but-arrests-continue-to-decline-report-shows/>.

¹⁰ Politico, “‘Seize all cannabis’: Inside the surprising federal crackdown on New Mexico weed farmers,” Natalie Fertig, May 1, 2024, <https://www.politico.com/news/2024/05/01/federal-crackdown-new-mexico-weed-farmers-00155624>.

This memorandum should direct federal law enforcement to deprioritize prosecutions of any future marijuana offenses that have been the basis of prior federal pardons, and deprioritize prosecutions of personal cannabis activities and cannabis activities that comply with state or Tribal law. Already, Congress has directed DOJ to not block states from permitting medical marijuana use,¹¹ and DOJ’s policy should be to not prosecute *any* personal marijuana activity or marijuana activity that is legal under the law of the state or Tribal jurisdiction where it occurred. This policy would build on the Obama administration’s 2013 “Cole Memo” and 2014 “Wilkinson Memo” that directed prosecutors to deprioritize certain marijuana activity that complied with state or Tribal law.¹² During the Biden Administration, DOJ has assured that an updated Cole Memo is forthcoming,¹³ yet one has not yet been issued. DOJ should promptly issue updated Cole and Wilkinson Memos. The new memos should expand the scope of marijuana acts that federal prosecutors and law enforcement officers are directed to deprioritize and make prevention of racial disparities in enforcement and prosecutions an explicit priority.

Rescheduling marijuana and the prior round of pardons must not be the end of this Administration’s historic work to use its executive authority to undo the damage of federal marijuana policy. As we continue to work toward legislation to end the federal criminalization of marijuana and to regulate it responsibly and equitably, we urge prompt administrative action to tackle the harms of criminalization — particularly for the benefit of communities most harmed by the War on Drugs. Thank you for your attention to this important matter.

Sincerely,



Elizabeth Warren
United States Senator

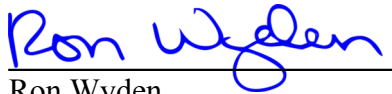


Barbara Lee
Member of Congress

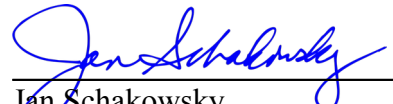
¹¹ Congressional Research Service, “Funding Limits on Federal Prosecutions of State-Legal Medical Marijuana,” May 14, 2024, Joanna R. Lampe, <https://crsreports.congress.gov/product/pdf/LSB/LSB10694>.

¹² U. S. Department of Justice, Memorandum from Attorney General Jefferson B. Sessions to All United States Attorneys re. Marijuana Enforcement, <https://www.justice.gov/opa/press-release/file/1022196/dl>; U. S. Department of Justice, Memorandum from Director Monty Wilkinson to All United States Attorneys, First Assistants of U. S. Attorneys, Criminal Chiefs, Appellate Chiefs, OCDETF Coordinators, and Tribal Liaisons re. Policy Statement Regarding Marijuana Issues in Indian Country, October 28, 2014, <https://www.justice.gov/sites/default/files/tribal/pages/attachments/2014/12/11/policystatementregardingmarijuanaissuesinindiancountry2.pdf>; U. S. Department of Justice, Memorandum for All U. S. Attorneys from Deputy Attorney General James M. Cole re. Guidance Regarding Marijuana Enforcement, August 29, 2013, <https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>.

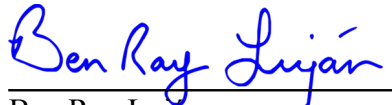
¹³ U.S. Senate Committee on the Judiciary, “Hearing: Oversight of the Department of Justice,” March 1, 2023, 3:03:10-3:03:42, <https://www.judiciary.senate.gov/committee-activity/hearings/02/22/2023/oversight-of-the-department-of-justice>.



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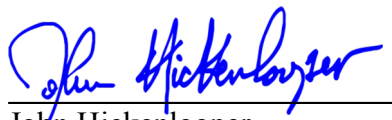
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