



January 18, 2022

President Joseph R. Biden  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500

Dear President Biden:

We applaud your decision to grant federal pardons to individuals convicted of marijuana possession, to urge governors to do the same with state offenses, and to call for a review of how marijuana is scheduled. The importance of your acknowledgment that the criminalization of marijuana is a failure, that the enforcement of marijuana laws disproportionately impacts Black and Brown communities, and that the harms of enforcement include collateral consequences that needlessly upend too many lives is profound.

The Drug Policy Alliance (DPA) is a national organization that advocates for drug policies that are grounded in science, compassion, health, and human rights, with a core mission to reduce the harms associated with drug use and punitive drug laws. Our organization has been at the forefront of legalizing marijuana in states and at the federal level in Congress, most recently leading the effort to pass the Marijuana Opportunity and Reinvestment Act (MORE Act) (H.R. 3617) in the House in April of last year.

Marijuana reform is, at its core, a racial justice issue. Discrimination in marijuana law enforcement is pervasive and well-documented<sup>1</sup> and infects housing, education, employment, immigration, and family law with racial bias. It is critical to understand that the federal collateral consequences resulting from the enforcement of state laws can be devastating.

The actions you took on October 6, 2022 are important steps that no previous Administration has had the courage to take. However, there is more the Administration can do now to eliminate the federal consequences of state convictions and to advance racial justice and equity. We outline several of these actions below.

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<sup>1</sup> See "A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform," ACLU Report <https://www.aclu.org/report/tale-two-countries-racially-targeted-arrests-era-marijuana-reform>.

## **Require the Office of National Drug Control Policy to Comply with Executive Order 13985**

**Problem:** The Office of National Drug Control Policy (ONDCP) is not in compliance with [Executive Order 13985](#), which established that “affirmatively advancing equity, civil rights, racial justice, and equal opportunity is the responsibility of the whole of our government.” The agency primarily responsible for leading and coordinating the nation's drug control policy does not have a plan to advance equity in federal marijuana policy.<sup>2</sup>

**Solution:** The Administration should instruct ONDCP to specifically assess whether, and to what extent, the federal government’s marijuana-related programs and policies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups. As required by Executive Order 13895, this assessment should evaluate equitable outcomes and include comprehensively collecting, analyzing and reporting marijuana-related data and related racial disparities, and begin to develop a roadmap or plan for an equitable, health-based approach to marijuana policy at the federal level.

## **Establish DOJ Enforcement Guidance for States that Addresses Equity**

**Problem:** The Department of Justice (DOJ) does not currently have formal enforcement guidance for states with medical or adult use marijuana regulatory programs. The Obama Administration established a series of guidance memos that were revoked in 2018 by then-Attorney General Jeff Sessions. The DOJ has not issued new enforcement guidance. This leaves states with uncertainty, and leaves state equity programs, and Black and Brown individuals engaged in lawful state marijuana activity, particularly vulnerable due to their heightened risk of arrest.

**Solution:** The Administration should work with advocates, including directly impacted individuals, to develop new DOJ guidelines rooted in equity that protect state marijuana programs and clarify federal enforcement priorities, including issuing joint guidance with the Bureau of Indian Affairs to discourage enforcement against state-legal marijuana conduct on tribal lands.

## **Establish Guidance for Financial Services that Addresses Equity**

**Problem:** The Obama Administration adopted guidance for financial institutions to clarify how they could provide services to marijuana-related businesses that were lawful under state law. Since the issuance of these guidelines, several hundred banks have offered limited transactional services to marijuana businesses; however, many state-licensed marijuana

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<sup>2</sup> The ONDCP Equity Action Report written in response to Executive order 13895 does not mention marijuana even once despite this Administration’s recent and repeated acknowledgements of the specific harms and barriers disproportionately experienced by Black communities due to the failure of drug policy generally, and marijuana criminalization specifically, and the fact that the very [public comments](#) that were [solicited by ONDCP to inform their equity efforts related to Executive Order 13895](#) mentioned “marijuana” or “cannabis” more than 200 times.

businesses have had their bank accounts terminated without further explanation, leaving the industry as a whole underbanked. Without appropriate measures in place, the racially discriminatory practices that are commonplace in traditional financial services, including commercial lending are likely to continue or worsen in cannabis banking.<sup>3</sup>

**Solution:** The Administration should direct the Treasury to simplify the Suspicious Activity Report and Currency Transaction Report processes for Marijuana-Related Businesses and to provide greater clarity for any termination of accounts for such businesses. Additionally, equity-centered provisions should be included in subsequent FinCEN guidance, including collecting demographic data relevant for assessing discriminatory practices, identifying best practices to achieve racial equity in financial services, and clarifying that marijuana criminal records are not a barrier to financial services.

### **Prevent Discrimination and Bias in the Enforcement of Immigration Laws**

**Problem:** All noncitizens need protection from harsh immigration consequences based on minor state marijuana law violations. Most marijuana arrests and convictions are carried out by state and local law enforcement, but the immigration consequences of these arrests, which disproportionately affect Black and Brown people, are federal.

**Solution:** The Administration should 1) stop immigration enforcement against people with state law marijuana convictions, including for offenses beyond simple possession, or who work legally in the marijuana industry or use marijuana in accordance with state law; 2) ensure that pardons granted to noncitizens contain explicit protections to prohibit any federal agency from considering the pardoned offense in an immigration proceeding or applications for benefits; and 3) stop denying applications for benefits based on employment or admissions relating to marijuana.

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<sup>3</sup> For example, a 2017 study from the Federal Reserve Banks of Cleveland and Atlanta found that Black-owned businesses were 2.5 times more likely to be discouraged from completing loan application forms than white-owned businesses and that approved minority-owned businesses only received 40% of the amount requested compared to 67% for white-owned applicants. <https://www.clevelandfed.org/collections/press-releases/2017/pr-20171108-atlanta-and-cleveland-feds>. The Federal Reserve published a report in 2020 that found that Black and Brown-owned businesses with good credit were approved at about the same rate as white-owned businesses with fair credit, and overall, Black and Brown-owned businesses were rejected twice as often as white-owned businesses. <https://www.fedsmallbusiness.org/survey/2021/2021-report-on-firms-owned-by-people-of-color>.

See also Not a SAFE Bet: Equitable Access to Cannabis Banking, An Analysis of the SAFE Banking Act authored by the Cannabis Regulators of Color Coalition. [https://papers.ssrn.com/sol3/Data\\_Integrity\\_Notice.cfm?abid=4188072](https://papers.ssrn.com/sol3/Data_Integrity_Notice.cfm?abid=4188072).

## **Provide for the Automatic Expungement of Federal Marijuana Possession Cases**

**Problem:** A federal pardon can remove some of the legal disabilities and stigma that come with federal convictions. Removing the active penalties associated with a federal conviction can help people access things like employment, licensing, housing, and federal benefits. However, people with federal pardons still have conviction records that hamper their ability to lead productive lives. To eliminate those records, there needs to be federal expungement.

**Solution:** President Biden should encourage federal judges to take advantage of their ability to expunge marijuana convictions, while the DOJ should develop a process to swiftly and automatically expunge the conviction records of people with federal marijuana convictions to be able to quickly implement such a process following Congressional authorizing legislation.

## **Stop Seeking Lengthy Sentences for Minor Marijuana Offenses**

**Problem:** The DOJ's broad use of 21 USC § 848 to seek sentencing enhancements has led to lengthy sentences for individuals, disproportionately Black and Brown people, who were the not high-level actors the statute was intended to be applied against

**Solution:** The DOJ should stop seeking sentencing enhancements for marijuana under 21 USC § 848, especially in cases where individuals do not hold high-level leadership roles in an alleged marijuana operation.

## **Protect Housing for Black and Brown Families**

**Problem:** While we commend the Department of Housing and Urban Development (HUD) for issuing guidance that encourages the use of Emergency Housing Vouchers for individuals returning from incarceration,<sup>4</sup> HUD is still permitted to terminate housing assistance to individuals who are engaged in marijuana industry that is legal under state law.

**Solution:** The Administration should direct HUD to adopt a discretionary policy that discourages the eviction of individuals and families solely based on marijuana conduct that is legal under state law.

## **Protect Nutritional Assistance for Black and Brown Families**

**Problem:** The Temporary Assistance for Needy Families (TANF) block grant and the Supplemental Nutrition Assistance Program (SNAP) provide financial stability and nutritional assistance to vulnerable families and individuals. But federal law imposes a lifetime ban on

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<sup>4</sup> See "Eliminating Barriers that May Unnecessarily Prevent Individuals with Criminal Histories from Participating in HUD Programs" HUD Memorandum.  
[https://www.hud.gov/sites/dfiles/Main/documents/Memo\\_on\\_Criminal\\_Records.pdf](https://www.hud.gov/sites/dfiles/Main/documents/Memo_on_Criminal_Records.pdf)

eligibility for these programs for anyone with a previous felony drug conviction.<sup>5</sup> Despite the ability to grant eligibility on a discretionary basis, many states still exclude TANF and SNAP eligibility for individuals with previous felony convictions.

**Solution:** The Administration should direct the USDA to issue guidance to states to expand TANF and SNAP eligibility to individuals with previous felony drug convictions.

### **Ensure Fair Treatment for Federal Employees**

**Problem:** Federal employees who consume marijuana off-duty in a way that does not impact their work performance risk termination. This leads to loss of employment and income that can disproportionately harm Black and Brown families.

**Solution:** The Administration should amend the Reagan-era executive order on federal employee drug testing, such that it does not allow for termination of employment for off-duty marijuana use that does not impact job performance.<sup>6</sup>

### **Allow Veterans to Access Medical Marijuana**

**Problem:** The therapeutic use of marijuana can help treat conditions that disproportionately affect veterans, including Post-Traumatic Stress Disorder, traumatic brain injury, and chronic pain. However, veterans cannot obtain recommendations for medical marijuana from Veterans Health Administration (VHA) physicians. While the Department of Veteran Affairs has issued a directive that allows veterans to discuss medical cannabis therapy with their VHA physician, the directive explicitly prohibits these doctors from filling out the forms necessary for veterans to access the state programs.<sup>7</sup> As a result, veterans are forced to pay for a private physician, go without this medical option, or risk arrest to obtain marijuana illegally.

**Solution:** The Administration should direct the VHA to update its directive to allow physicians to fill out medical marijuana recommendation forms in accordance with their professional medical judgment and state law.

### **Collect Data to Ensure Accountability and Equitable Outcomes**

**Problem:** We currently lack solid, comprehensive demographic data to expose racial disparities and injustices in marijuana-related federal programs and policies.

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<sup>5</sup> See “No More Double Punishments: Lifting the Ban on SNAP and TANF for People with Prior Felony Drug Convictions” CLASP Report.

<https://www.clasp.org/publications/report/brief/no-more-double-punishments/>

<sup>6</sup> Executive order 12564 claims that [illegal drug use, whether on or off duty, impacts work performance](#) and creates a health and safety threat for themselves and other employees. Any federal employee found to use such drugs can face discipline or removal from service, regardless of whether the use has affected their productivity or occurred outside of the workplace.

<sup>7</sup> See “Access to VHA Clinical Programs For Veterans Participating in State-Approved Marijuana Programs” VHA Directive 1315.

[https://www.va.gov/vhapublications/ViewPublication.asp?pub\\_ID=5711](https://www.va.gov/vhapublications/ViewPublication.asp?pub_ID=5711)

**Solution:** The Administration should direct each federal agency to collect and publicly report demographic data related to all marijuana-related programs to inform policy revisions to address equity in a meaningful way. This will equip agencies to identify what approaches are working and which policies need further revisions to ensure harmful disparities in marijuana policies are ultimately eliminated.

## **Conclusion**

It is our hope that this Administration's existing efforts to end the failures of marijuana criminalization pave the way for a holistic approach that includes both the immediate and urgent actions set out above, as well as setting the agenda for broader Congressional reform.

All federal agencies should be adopting marijuana policies that reflect the current landscape of state-legal activity and similarly preparing for future federal legalization and regulation. Agencies should work with state regulators to respect state laws, protect health and public safety, and advance racial justice and equity. Simultaneously, the Administration should work with Congress to pass comprehensive and equitable federal marijuana reform, and begin to build the infrastructure within the federal government to implement comprehensive regulation justly.

We appreciate the opportunity to share our position and recommendations and offer our full and ongoing support of this Administration's commitment to advance equity in drug policy reform. We would be delighted to speak to your team about anything in this memo. Please reach out to Cat Packer ([cpacker@drugpolicy.org](mailto:cpacker@drugpolicy.org)), Director of Drug Markets and Legal Regulation at DPA, and Maritza Perez Medina ([mperez@drugpolicy.org](mailto:mperez@drugpolicy.org)), Director of Federal Affairs at DPA, for any questions or comments concerning this letter.

Sincerely,

Drug Policy Alliance