



Potential Implications of President Biden’s Scheduling Review Order

Introduction

The October 6, 2022 announcement from President Biden, [Statement from President Biden on Marijuana Reform](#), initiated an administrative process to review the schedule placement of marijuana under the Controlled Substance Act (CSA). The potential rescheduling or removal (“descheduling”) of marijuana’s CSA placement could have significant implications for a number of components of marijuana reform, including criminal justice reform, collateral consequences, veterans issues, research, and existing state-regulated marijuana programs. This memo will provide a brief background of the administrative CSA review process, provide guidance on what can be expected under various outcomes, and provide recommendations to Congress.

It is the position of the Drug Policy Alliance (DPA) that marijuana must be descheduled from the CSA. As long as marijuana remains anywhere in the CSA, significant criminal penalties will apply to most marijuana conduct in the U.S., even in states that have legalized. However, descheduling by itself only ends future criminal penalties and does not provide relief to individuals currently incarcerated nor does it end the collateral consequences for people with previous marijuana convictions.

While the number of individuals arrested for marijuana at the federal level is relatively low compared to state marijuana convictions, marijuana’s placement in the CSA is a primary reason why many states have maintained criminalization. Currently, a person is arrested for marijuana every 90 seconds, with Black, Latinx, and Indigenous individuals being disproportionately targeted despite similar usage rates as their white counterparts.¹

Additionally, descheduling alone could create instability for existing state marijuana regulatory systems. While administrative descheduling would end future arrests, without accompanying legislation, there would be unresolved issues concerning individuals with previous marijuana arrests and no clear direction for how administrative agencies should approach marijuana policy. Instead, DPA strongly recommends that Congress pass comprehensive descheduling that addresses these additional concerns. Comprehensive federal marijuana policy reform that includes descheduling, or *descheduling-plus*, is necessary to not only end future arrests but provide retroactive relief for individuals with previous convictions and to provide funding and

¹ FBI Uniform Crime Report, 2020, <https://www.fbi.gov/news/pressrel/press-releases/fbireleases-2020-crime-statistics>.

establish programming to repair communities that have been disproportionately targeted by racially discriminatory enforcement of marijuana laws. Bills such as the Marijuana Opportunity, Reinvestment, and Expungement (MORE) Act, which passed in the House, and the Cannabis Administration and Opportunity Act (CAOA) would provide such a framework.

Background

Currently, marijuana is placed in Schedule 1 of the CSA, which means according to federal law, it has (1) a high potential for abuse, (2) no accepted medical use, and (3) a lack of safety for use under medical supervision.² This means the cultivation (or manufacture), possession, and distribution of marijuana are illegal except for the purposes of sanctioned research. Substances in Schedule II-V of the CSA have some accepted medical use. Schedule II substances have significant restrictions on research and access with a prescription because they are considered to have a high potential for abuse and dependency.³ Several marijuana derivatives and synthetic marijuana-like cannabinoids have already been assigned placement in other schedules, which raises serious doubts about the continuation of marijuana's Schedule I status.⁴

Schedules III-V have fewer restrictions around research and prescription access, with Schedule V being considered the lowest potential for abuse and dependency.⁵ Notably, placement of substances under Schedules II-V alone does not create prescription access, each substance or derived substance must still undergo approval from the Food and Drug Administration (FDA) to treat specific conditions to create access via a prescription.

Marijuana was initially assigned to Schedule I as a placeholder while the Nixon-appointed Shafer Commission worked to make a recommendation regarding its status as a controlled substance. Ultimately, the commission stopped short of recommending complete legalization, it did dispel the notions that marijuana had no accepted medical use and found the substance to be relatively benign, and recommended decriminalizing personal possession and use of marijuana.⁶ However, Congress ignored the commission's finding and has maintained marijuana's Schedule I status ever since.

There are two pathways available for addressing the schedule status of a substance, an administrative review process—conducted by Health and Human Services (HHS) through the FDA, the Drug Enforcement Administration (DEA), and the Attorney General (AG)—or Congressional legislation. The administrative review process has several statutory requirements and contrary to public opinion, cannot be accomplished on the whim of the Attorney General or

² [21 U.S.C. § 812\(b\)\(1\)](#).

³ [21 U.S.C. § 812\(b\)\(2\)](#).

⁴ For example, Marinol and Dronabinol, which is synthetic THC (marijuana's primary active compound) is placed in Schedule III, while Epidiolex containing CBD (marijuana's other main active compound) is in Schedule V. Notably, many patients prefer whole-plant marijuana options rather than these formulations.

⁵ [21 U.S.C. § 812\(b\)\(3\)-\(5\)](#).

⁶ NORML, "50 Years Ago, Congress' Own Expert Commission Demanded They Repeal Marijuana Prohibition." NORML, 22 March, 2022, <https://norml.org/blog/2022/03/20/50-years-ago-today-congress-own-expert-commission-demanded-they-repeal-marijuana-prohibition/>.

the President.⁷ The statutory requirements include a scientific review by the FDA under an 8-factor analysis. Once the FDA has completed its analysis, the AG designates the DEA to review the scientific findings and make a determination if rescheduling is warranted.

To date, there have been five marijuana scheduling petitions, each of which have resulted in marijuana remaining in Schedule I. The amount of time these scheduling petitions have taken has ranged from 6 to 22 years, with the most recent in 2016. Perhaps the greatest reason why marijuana remains in Schedule I is that the FDA is limited in the types of research it can consider for its scientific findings. Despite there being hundreds of studies investigating the health impacts of marijuana use,⁸ relatively few studies are permitted for consideration during the scientific review under the standard for “well-controlled, well-designed, well-conducted, and well-documented scientific studies, including studies performed in a large number of patients.”⁹ In a tragic irony, the primary reason why there is not the type of research is due to the research restrictions imposed on Schedule I substances.

Given the hurdles of the administrative review process and the general lack of new research since the most recent scheduling determination in 2016, it is conceivable that despite marijuana’s obvious medical efficacy, it could remain in Schedule I. However, there appears to be growing political consensus that marijuana’s Schedule I status is untenable. For example, a Biden campaign spokesperson said the then-candidate supported moving marijuana to Schedule II.¹⁰ It is possible that under the current environment there may be a fresh application of the long-standing evaluation requirements along with just enough new scientific evidence since the 2016 determination that could result in a different scheduling outcome. Based on recent statements, the administration appears to be leaning in this direction.¹¹ Unfortunately, the most just outcome from the administrative review process, descheduling, appears to be the least likely possibility. This only underscores the necessity of comprehensive marijuana descheduling legislation, through a bill such as the MORE Act or CAOAA.

Impact of Descheduling and Rescheduling on Various Components of Marijuana Policy

Criminal Penalties

⁷ *Does the President have the Power to Legalize Marijuana*, Congressional Research Service (November 4, 2021) [LSB10655 \(congress.gov\)](https://www.congress.gov/legislation/116/10655).

⁸ The Journal of Cannabis Research database contains over 150 peer-reviewed articles and studies (available at <https://jcannabisresearch.biomedcentral.com/articles>) and the International Association for Cannabinoid Medicines maintains a database of over 700 clinical studies and case reports (available at: <http://www.cannabis-med.org/studies/study.php>).

⁹ *Americans for Safe Access, et al v. DEA*, No. 11-1265 (D.C. Cir. 2013) (citing *Alliance for Cannabis Therapeutics v. DEA*, 15 F. 3d 1131).

¹⁰ Jaeger, Kyle. “Joe Biden Endorses Marijuana Decriminalization and Rescheduling-But Not Legalization.” *Marijuana Moment*, 16 May, 2019, <https://www.marijuanamoment.net/joe-biden-endorses-marijuana-decriminalization-and-rescheduling-but-not-legalization/>.

¹¹ Jaeger, Kyle. “FDA Exploring ‘Flexibilities’ in Marijuana Scheduling Review, But Top Official Says DEA Has ‘Final Word’.” *Marijuana Moment*, 27 October, 2022, <https://www.marijuanamoment.net/fda-exploring-flexibilities-in-marijuana-scheduling-review-but-top-official-says-dea-has-final-word/>.

Rescheduling marijuana would not alter federal criminal penalties for marijuana, nor would it create a pathway for expungement, resentencing, or release for individuals with prior convictions. This is because under 21 U.S.C. § 841 the penalties for marijuana are tied to the weight of marijuana or the quantity of plants rather than the scheduled placement. The same penalties that currently exist would exist regardless of where marijuana is in the CSA.

However, descheduling would end the federal criminalization of marijuana because the penalties in 21 U.S.C. § 841 are contingent on marijuana being a controlled substance. Absent additional legislation, this would only apply to future marijuana conduct, meaning previous marijuana convictions would not be eligible for expungement or resentencing.

Federal Collateral Consequences

The collateral consequences of a marijuana conviction include limitations on accessing employment, business and occupational licensing, housing, voting, education, and other rights, benefits, and opportunities. Because there would be no retroactive relief from a federal marijuana conviction through the rescheduling or descheduling of marijuana alone, any relief from the collateral consequences would be limited to the discretionary authority of federal agencies. While such changes would not be automatic under either scenario, they would be much easier politically if marijuana was descheduled.

For example, Housing and Urban Development could issue a policy memo stating that it would no longer evict individuals for marijuana use in compliance with state law. Notably, federal agencies already have this ability under marijuana's current Schedule I status. The Department of Justice and Treasury have each issued various policy memos to not prosecute or penalize individuals or financial institutions for marijuana-related conduct under certain conditions.

Immigration Consequences / Noncitizens

Without descheduling, noncitizens will continue to face the threat of automatic detention and deportation even when in compliance with state and local marijuana laws. Although recreational marijuana use is now legal in 21 states and the District of Columbia, noncitizens will still face deportation for old convictions or, in some cases, for admitting to marijuana-related conduct that does not result in a conviction. Behind unauthorized entry, drug offenses were the most common offense for which people were deported in 2019.¹² Since 2003, ICE has deported over 45,000 immigrants whose most serious offense was marijuana possession.¹³ Moreover, federal immigration authorities regularly deny green cards and citizenship applications due to simple possession convictions. The only way to truly protect noncitizens from harsh immigration

¹² U.S. Immigration and Customs Enforcement, "Fiscal Year 2019 Enforcement and Removal Operations Report," U.S. Immigration and Customs Enforcement, 2019, <https://www.ice.gov/sites/default/files/documents/Document/2019/eroReportFY2019.pdf>.

¹³ "FAQ: Why Marijuana Legalization Matters for Immigrants." *Immigrant Defense Project*. <https://www.immigrantdefenseproject.org/criminal-justice-and-drug-reform/>.

consequences is to completely remove marijuana from the CSA. Notably, the Biden marijuana pardon excluded nearly all noncitizens.

State-licensed Marijuana Businesses

Generally speaking, rescheduling would not alter the playing field for state-licensed marijuana businesses with one significant exception. As long as marijuana remains in the CSA, there will be no legal uses for marijuana except for limited research purposes subject to federal approval and companies making FDA-approved medications. Access to SBA funding, transactional banking services, commercial loans, interstate commerce, and stock exchange access would remain unchanged.¹⁴ ¹⁵ Moreover, workers in the state-licensed marijuana industry would continue to be denied the protections of the National Labor Relations Act (NLRA) and the Fair Labor Standards Act (FLSA) that are available to laborers in other industries.

The notable exception is that marijuana businesses would be able to make ordinary business tax deductions if marijuana were moved to Schedule III, IV, or V. Currently, marijuana businesses are subject to Section 280E of the Internal Revenue Code, which prohibits any business from making ordinary business tax deductions for proceeds around the sale of Schedule I and II substances. The presence of 280E means that marijuana businesses have a significantly greater tax burden than other types of businesses, including alcohol and tobacco companies.

By comparison, descheduling would enable state-licensed marijuana businesses to access SBA funding, transactional banking services, commercial loans, stock exchanges, as well as 280E relief. Additionally, descheduling would enable interstate commerce for state-licensed marijuana businesses. Enabling interstate commerce without any Congressional legislation could however present its own set of challenges in that it could create a situation in which large multistate operators (“MSOs”) and large corporations currently on the marijuana sidelines (such as Big Tobacco, Big Alcohol, and Big Retail) could quickly consolidate and drive out social equity license holders and other small businesses. Additionally, given the variances of different labeling and testing requirements in different states, there would be no clear regulatory guidance on how to distribute products across state lines. Again, this highlights the need for comprehensive Congressional descheduling legislation.

Another concern under both a rescheduling or descheduling scenario is that marijuana, marijuana products and marijuana businesses currently regulated under state law could come under the regulatory authority of the FDA. While the FDA has not sought to exercise regulatory

¹⁴ Administrative agencies can create some limited workarounds through policy memos, such as the FinCEN guidance for financial institutions seeking to work with marijuana businesses. See *FIN-2014-G001*, available at: <https://www.fincen.gov/resources/statutes-regulations/guidance/bsa-expectations-regarding-marijuana-related-businesses>

¹⁵ Smith, Jeff. “DEA-endorsed marijuana research grower debuts on Nasdaq; shares soar.” *MJBizDaily*, 17 May, 2022. [DEA-endorsed marijuana research grower debuts on Nasdaq; shares soar \(mjbizdaily.com\)](https://mjbizdaily.com)

authority over intrastate commercial marijuana activity, removing marijuana from Schedule I may embolden the FDA to do so. The FDA has maintained a hands-off approach to intrastate commerce but has indicated they will regulate interstate activity.¹⁶ The FDA's regulatory approach is incompatible with the state licensing regimes and even under the least disruptive possibilities, unfettered FDA regulatory control over state programs would create unpredictability and instability for the viability of the state-licensed industry. It also runs the risk of fostering circumstances that would allow Big Pharma companies, including those who have profited off the proliferation of prescription opioids, to enter the market, as these companies (along with Big Tobacco) are the most well-equipped to thrive under FDA regulation. While it is unlikely (but not impossible) that FDA would seek to shut down the state-legal industry, more likely outcomes could include pulling products from shelves and imposing significant restrictions on the already highly regulated state-legal industry. This would likely have the unintended consequence of driving consumers towards making purchases from unregulated businesses.

Based on the experience of industrial hemp, Congress would be wise to pass comprehensive marijuana regulation legislation to avoid repeating similar mistakes. When Congress effectively descheduled hemp in the 2018 Farm Bill, it did so with very little regulatory guidance. Now, the legal hemp industry is being used as a backdoor around state adult-use and medical marijuana laws and regulations. The proliferation of Delta-8 products at convenience stores and gas stations is a byproduct of both the continued federal prohibition of marijuana and the lack of comprehensive regulatory provisions for hemp in the 2018 Farm Bill.

In order to avoid repeating the missteps of hemp descheduling, Congress should make sure that descheduling is coupled with comprehensive federal marijuana policy reform that includes national standards and time for states to adapt to such standards. Because of the unwillingness of the federal government to take the lead on regulating marijuana, states have had to implement their own regulatory structures. While many of these states strive to base their regulations on best practices, variances exist in key areas, such as lab testing, labeling, and product safety protocols. Providing national standards to allow for compatibility between state-regulated programs is an essential element of the transition towards interstate commerce of the marijuana industry.

Law Enforcement Authority & Resources

When considering state and federal arrests combined, marijuana arrests are still widespread across the U.S and reflect extreme racial disparities.¹⁷ As long as marijuana remains in the CSA, marijuana will still be just as illegal as it is currently. Additionally, because funding levels for the Department of Justice's various programs are not determined by schedule status under

¹⁶ "FDA Regulation of Cannabis and Cannabis-Derived Products, Including Cannabidiol (CBD)." Food and Drug Administration. <https://www.fda.gov/news-events/public-health-focus/fda-regulation-cannabis-and-cannabis-derived-products-including-cannabidiol-cbd>.

¹⁷ *A Tale of Two Countries Racially Targeted Arrests in the Era of Marijuana Reform*, ACLU Research Report (2020), https://www.aclu.org/sites/default/files/field_document/marijuanareport_03232021.pdf

the CSA¹⁸, even under rescheduling, limited taxpayer resources will be devoted to the continuation of racist marijuana law enforcement.

Under administrative descheduling, enforcement would be turned over to the FDA, per the Food, Drug, and Cosmetics Act.¹⁹ While the FDA has its own enforcement division separate from DOJ, it would remain unclear what FDA enforcement would look like under administrative descheduling. Optimally, comprehensive descheduling legislation would set perimeters for whichever federal agency or agencies would have enforcement authority. For example, consideration should be given to whether the Alcohol and Tobacco Tax and Trade Bureau or a newly created federal marijuana enforcement division would be better suited than FDA to be the primary enforcement agency over the adult-use market. Regardless of which federal agency has the primary regulatory authority over marijuana, enforcement should emphasize civil remedies that seek to bring offending actors into compliance rather than a criminal enforcement approach.

Rescheduling or descheduling could potentially alter criminal penalties at the state level. While the federal criminal penalties of the CSA are tied to the substance rather than schedule placement, several states use their controlled substance schedules to determine criminal penalties. Moreover, although many states depart from the federal CSA, most states controlled substance schedules closely mirror the federal CSA. As such, if marijuana were removed from the CSA, many state law penalties would also go away. Any impact that federal descheduling has on state law penalties for marijuana would be profound as the vast majority of arrests and prosecutions for marijuana occur under state law.

Personal Use - Federal Employees Off-Duty Marijuana Use

Federal employees are currently forbidden from using any illegal substance on their own off-duty time due to Executive Order 12564.²⁰ The EO is not based on the scheduling of a substance within the CSA; therefore, federal employees are and would remain subject to termination for using state-regulated marijuana off the clock. Administrative descheduling would end the federal criminalization of marijuana, meaning federal employees could use marijuana products on their own time.

Medical Access

There is no prescription access to Schedule I substances; however, rescheduling marijuana would not create prescription access to marijuana, at least not initially. In order for marijuana in its conventional “dried flower” form to be available through a prescription, it would need to go

¹⁸ Department of Justice General Administration Federal Funds, Department of Justice (2023), https://www.whitehouse.gov/wp-content/uploads/2022/03/jus_fy2023.pdf.

¹⁹ Armstrong, Kathryn B. and Staman, Jennifer A. “Enforcement of the Food, Drug, and Cosmetic Act: Select Legal Issues.” *Congressional Research Service*. 9 February 2018. <https://sgp.fas.org/crs/misc/R43609.pdf>.

²⁰ *Executive Order 12564—Drug Free Federal workplace*, National Archives, (1986), <https://www.archives.gov/federal-register/codification/executive-order/12564.html>

through the FDA approval process, a process that would take several years at a minimum. The FDA has a separate approval process for botanical medicines and only two approved medications have been approved under this process, sinecatechins and crofelemer.²¹ Notably, both FDA-approved botanical medicines are single-compound substances, while marijuana is a multi-compound substance. This is important because in order to meet FDA approval criteria, a substance must be able to “perform in a reproducible and predictable manner.”²² This would be each strain and cannabinoid profile would have to be approved separately. Given the multi-compound nature of marijuana, this will likely be a difficult standard to establish. Notably, rescheduling would also mean that the marijuana products and their use would be limited to medical purposes approved under the regulation of the FDA. This is likely to significantly disrupt patient access as rescheduling and the FDA’s regulation of medical marijuana could have a widespread impact on state medical marijuana programs which have varied approaches to medical marijuana products and related qualifying conditions.

If marijuana was descheduled, it could gain over-the-counter (OTC) designation to treat certain conditions through the FDA’s OTC monograph process. However, marijuana could not be marketed as a dietary supplement because it has been the subject of an Investigational New Drug application (IND).²³ In order to ensure the preservation of continuous safe access to medical marijuana, Congress must pass comprehensive descheduling legislation that protects the existing state programs. Because insurance coverage for medications is predicated on FDA approval, Congress should include provisions to help offset out-of-pocket costs for medical marijuana patients.

Adult-Use Access

The impact of rescheduling or descheduling on consumer access to state-regulated adult-use marijuana is less complicated compared to medical access, but could still be disrupted without Congressional legislation. If marijuana is rescheduled or descheduled without accompanying legislation on federal marijuana regulation, the FDA would assume such authority over the state programs. However, if marijuana is only rescheduled, existing state-licensed adult-use industries will still be considered illegal. However, because the FDA currently has no regulatory framework for overseeing state-licensed marijuana businesses, medical or otherwise, it is difficult to predict how the agency would proceed. Given the FDA’s handling of nicotine vapes and the menthol ban, there is a very real possibility that the agency would ban certain products currently being sold through state-regulated marijuana retail outlets.

²¹ *What is a Botanical Drug?* U.S. Food and Drug Administration, (2022), <https://www.fda.gov/about-fda/center-drug-evaluation-and-research-cder/what-botanical-drug>

²² *Botanical Drug Development Guidance for Industry*, U.S. Department of Health and Human Services, (2016), <https://www.fda.gov/media/93113/download>

²³ See: “9. Can THC or CBD products be sold as dietary supplements?” at *FDA Regulation of Cannabis and Cannabis-Derived Products, Including Cannabidiol*, U.S. Food and Drug Administration, (2021), <https://www.fda.gov/news-events/public-health-focus/fda-regulation-cannabis-and-cannabis-derived-products-including-cannabidiol-cbd#:~:text=9,-.Can%20THC%20or%20CBD%20products%20be%20sold%20as%20dietary%20supplements,the%20FD%26C%20Act%20%5B21%20U.S.C.>

Research

The area where rescheduling would likely have the greatest impact is clinical research. Schedule I substances have the most severe restrictions on research and unlike other Schedule I substances, marijuana can not be synthesized in a laboratory and must be manufactured (cultivated) at a federally approved facility. Until very recently, there was only one federally approved facility to cultivate marijuana for clinical research purposes.²⁴ This has created significant difficulty for researchers to obtain the marijuana necessary for their studies. Additionally, Schedule I status allows the DEA to severely limit the quantity of marijuana available for research and places higher regulatory burdens around record keeping and security that often dissuade doctors and scientists from attempting to conduct clinical research.

Rescheduling would significantly reduce these barriers; however, researchers would still be forbidden from using marijuana sourced from state-regulated marijuana businesses. Given that state-regulated marijuana is the type of cannabis that virtually all patients and adult-use consumers are using, the ability to conduct research from these sources is essential. Congressional legislation would be necessary to allow for state-regulated marijuana businesses to serve as sources for clinical research.

Veterans' Medical Access through Veterans Health Administration

Currently, veterans who rely on the Veterans Health Administration for their medical care are unable to have access to state medical marijuana programs without going out-of-pocket and seeing a non-VHA physician to obtain their recommendation. The VHA predicates this position on marijuana's placement in Schedule I of the CSA. Since 2011, the VHA has issued several directives around how it treats veterans who participate in or are seeking a state medical marijuana recommendation, as well as how its physicians can speak to veterans about medical marijuana. While the so-called "VA gag order" that prevented VHA physicians from even discussing medical marijuana is no longer in effect, the most recent VHA directive still forbids their doctors from filling out state medical marijuana recommendation forms.²⁵ This would likely remain in effect if marijuana were rescheduled because the VHA has held marijuana's placement in the CSA as the reason for this prohibition. While the VHA could alter this policy to not punish or discourage its physicians for filling out such forms, descheduling would fully lift this prohibition and allow veterans to access state medical marijuana programs without going out-of-pocket to obtain a recommendation.

²⁴ Jagger, Kyle. "Federal Marijuana Monopoly Finally Ends As Two Companies Harvest Cannabis Approved By DEA." *Marijuana Moment*. 11 January, 2022, <https://www.marijuanamoment.net/dea-finally-breaks-federal-marijuana-grower-monopoly-with-two-new-companies-harvesting-cannabis-approved-by-agency/>.

²⁵ [VHA-1315](#) (2017).

Conclusion

In order to have significant marijuana reform that ends future criminal penalties, repairs the harms caused by decades of racially discriminatory enforcement of marijuana prohibition, facilitates a more equitable industry, and enables the federal government to work with states to regulate the sector in a productive manner both descheduling and comprehensive marijuana policy reform are necessary. Rescheduling marijuana from Schedule I to a less restrictive schedule within the CSA will do little to improve the current situation beyond easing barriers to research and creating a pathway for Big Pharma to potentially overtake the industry. Additionally, if marijuana were rescheduled somewhere between Schedules III-V, it would result in a huge financial gain for the industry in the form of 280E tax relief, with the majority of this windfall would go to the mostly white leaders of marijuana companies while thousands will remain incarcerated for selling the exact same product.

Administrative descheduling is clearly preferable to rescheduling but still is suboptimal policy. Descheduling would not only lift research barriers and provide 280E relief, it would also end future criminal penalties and allow the industry to function just like any other federally legal business with respect to accessing financial services and government programs. Descheduling would also make it much easier for administrative agencies to implement policies of non-discrimination against those engaged in personal or business-related marijuana conduct. However, federal agencies are free to implement such non-discrimination policies even while marijuana remains in Schedule I. Descheduling, without comprehensive federal marijuana policy reform, would also allow for interstate commerce without any guardrails, a scenario that could threaten the already tenuous viability of many social equity license holders and other small marijuana businesses. Most importantly, administrative descheduling alone would do nothing to repair the harms caused by racially discriminatory marijuana law enforcement.

As such, Congress should pass comprehensive federal marijuana policy reform that includes descheduling, which would end future criminal penalties and provide relief for those with previous marijuana offenses. In order to allow for federal expungements, resentencing, and protection of immigrants, Congress must pass comprehensive federal marijuana policy reform that explicitly includes provisions to accomplish those objectives. In addition to criminal justice reform, comprehensive reform should also include dedicated funding to repair the communities that have disproportionately been targeted by racist enforcement of marijuana criminalization. Additionally, comprehensive descheduling should include a regulatory mechanism that promotes labor protections for workers and equitable ownership of the industry. Rescheduling or administrative descheduling of marijuana are insufficient to fully address these concerns; therefore Congress must pass comprehensive legislation in order to end the criminalization of marijuana and to remedy the harms caused by the placement of marijuana in the Controlled Substances Act.