

# United States Senate

WASHINGTON, DC 20510

January 29, 2024

The Honorable Merrick Garland  
Attorney General  
U.S. Department of Justice 950  
Pennsylvania Avenue, NW  
Washington, DC 20530-0001

The Honorable Anne Milgram  
Administrator  
U.S. Drug Enforcement Administration  
8701 Morrissette Drive  
Springfield, Virginia 22152

Dear Attorney General Garland and Administrator Milgram:

We write to urge the Drug Enforcement Administration (DEA) to swiftly deschedule marijuana from the Controlled Substances Act (CSA). The Department of Health and Human Services (HHS) has recommended rescheduling marijuana from the CSA's strictest schedule, Schedule I, to Schedule III.<sup>1</sup> Earlier this month, in response to a Freedom of Information Act request, HHS for the first time disclosed its rationale for this recommendation, which made clear that cannabis does not meet the medical or scientific requirements for Schedule I.<sup>2</sup> While rescheduling to Schedule III would mark a significant step forward, it would not resolve the worst harms of the current system. Thus, the DEA should deschedule marijuana altogether. Marijuana's placement in the CSA has had a devastating impact on our communities and is increasingly out of step with state law and public opinion.

## Background

The Biden Administration has the power to reschedule or deschedule marijuana administratively, without congressional action.<sup>3</sup> Under the CSA, HHS is responsible for the medical and scientific analysis behind scheduling decisions, while the Department of Justice (DOJ), via the DEA, is responsible for making final drug scheduling decisions.<sup>4</sup> In October 2022, President Biden directed HHS and DOJ to "review expeditiously how marijuana is scheduled under federal law."<sup>5</sup>

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<sup>1</sup> Department of Health and Human Services, "Basis for the Recommendation to Reschedule Marijuana into Schedule III of the Controlled Substances Act," August 29, 2023, <https://www.dropbox.com/scl/fi/pw3rfs9gm6lg80ij9tja6/2023-01171-Supplemental-Release-1.pdf?rlkey=v5atj0tcnxxhnszyyzcwdcvvt&dl=0>.

<sup>2</sup> The text of the HHS's recommendation was made public on January 12, 2024. See New York Times, "Federal Scientists Recommend Easing Restrictions on Marijuana," Christina Jewett and Noah Weiland, January 12, 2024, <https://www.nytimes.com/2024/01/12/health/marijuana-fda-dea.html>.

<sup>3</sup> Congressional Research Service, "The Schedule I Status of Marijuana," updated October 7, 2022, p. 2, <https://crsreports.congress.gov/product/pdf/IN/IN11204>.

<sup>4</sup> 21 U.S.C. 811(b); Letter from DEA Office of Congressional Affairs Acting Chief Michael D. Miller to Representative Earl Blumenauer, December 19, 2023, <https://s3.documentcloud.org/documents/24253753/dea-letter-to-blumenauer.pdf>.

<sup>5</sup> The White House, "Statement from President Biden on Marijuana Reform," press release, October 6, 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/10/06/statement-from-president-biden-on-marijuana-reform/>.

The CSA divides controlled substances into five schedules ranging from Schedule I to Schedule V. Marijuana is currently a Schedule I drug — a classification reserved for the CSA’s most dangerous drugs that have a “high potential for abuse,” “no currently accepted medical use in treatment in the United States,” and “a lack of accepted safety for use of the drug or other substance under medical supervision.”<sup>6</sup> Thus, marijuana exists in the same category as heroin, and a more dangerous category than fentanyl or cocaine — even though marijuana is consistently found to be less dangerous than those substances, and less dangerous than alcohol, which is not scheduled under the CSA.<sup>7</sup> This scheduling decision was made against the political backdrop of the early 1970s, reportedly as part of President Nixon’s efforts to use cannabis prohibition to target “the antiwar left and black people.”<sup>8</sup>

In response to President Biden’s directive, on August 29, 2023, HHS recommended that the DEA reschedule marijuana to Schedule III. HHS concluded that cannabis satisfies the criteria for a Schedule III drug, meaning that it has (1) a “currently accepted medical use in treatment,” (2) a lower potential for abuse than Schedule I or II, and (3) a possibility of abuse that “may lead to moderate or low physical dependence or high psychological dependence.”<sup>9</sup> HHS noted that marijuana “does not produce serious outcomes compared to drugs in Schedules I or II,” and “the vast majority of individuals who use marijuana are doing so in a manner that does not lead to dangerous outcomes to themselves or others.”<sup>10</sup> Since receiving HHS’s recommendation, the DEA has said that it is “now conducting its review” of how marijuana is scheduled.<sup>11</sup>

### **Post-2016 Developments Supporting Removal of Marijuana from Schedule I**

Almost a decade has passed since the DEA last considered cannabis’s scheduling. In 2016, the DEA decided to retain marijuana’s placement in Schedule I.<sup>12</sup> Despite contrary evidence that

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<sup>6</sup> 21 U.S.C. 812(b)(1).

<sup>7</sup> Department of Health and Human Services, “Basis for the Recommendation to Reschedule Marijuana into Schedule III of the Controlled Substances Act,” August 29, 2023, pp. 5, 7, <https://www.dropbox.com/scl/fi/pw3rfs9gm6lg80ij9tja6/2023-01171-Supplemental-Release-1.pdf?rlkey=v5atj0tcnhxhnszyzycwdcvvt&dl=0>.

<sup>8</sup> Vera Institute of Justice, “Fifty Years Ago Today, President Nixon Declared the War on Drugs,” Jamila Hodge and Nazish Dholakia, June 17, 2021, <https://www.vera.org/news/fifty-years-ago-today-president-nixon-declared-the-war-on-drugs>; Scientific American, “The Science behind the DEA’s Long War on Marijuana,” David Downs, April 19, 2016, <https://www.scientificamerican.com/article/the-science-behind-the-dea-s-long-war-on-marijuana/>; Congressional Research Service, “The Evolution of Marijuana as a Controlled Substance and the Federal-State Policy Gap,” updated April 7, 2022, pp. 6-7, <https://crsreports.congress.gov/product/pdf/R/R44782>.

<sup>9</sup> 21 U.S.C. 812(b)(3); Department of Health and Human Services, “Basis for the Recommendation to Reschedule Marijuana into Schedule III of the Controlled Substances Act,” August 29, 2023, pp. 62-65, <https://www.dropbox.com/scl/fi/pw3rfs9gm6lg80ij9tja6/2023-01171-Supplemental-Release-1.pdf?rlkey=v5atj0tcnhxhnszyzycwdcvvt&dl=0>.

<sup>10</sup> Department of Health and Human Services, “Basis for the Recommendation to Reschedule Marijuana into Schedule III of the Controlled Substances Act,” August 29, 2023, pp. 7, 62, <https://www.dropbox.com/scl/fi/pw3rfs9gm6lg80ij9tja6/2023-01171-Supplemental-Release-1.pdf?rlkey=v5atj0tcnhxhnszyzycwdcvvt&dl=0>.

<sup>11</sup> Letter from DEA Office of Congressional Affairs Acting Chief Michael D. Miller to Representative Earl Blumenauer, December 19, 2023, <https://s3.documentcloud.org/documents/24253753/dea-letter-to-blumenauer.pdf>.

existed at the time,<sup>13</sup> the agency reasoned that marijuana had a high potential for abuse, no currently accepted medical use in treatment in the United States, and inadequate safety for use even under medical supervision.<sup>14</sup> To support its decision, the DEA pointed to a lack of scientific evidence supporting marijuana’s medical use,<sup>15</sup> although this created a catch-22; as a Schedule I drug, marijuana is subject to the DEA’s arduous research approval process and restrictions on federal research funding, which has stymied researchers’ ability to rigorously study marijuana’s medical uses.<sup>16</sup> At the time, HHS had reached the same conclusion.<sup>17</sup>

However, HHS has now concluded that cannabis does not meet the requirements for a Schedule I drug and has identified “credible scientific support for the medical use of marijuana” for at least some medical indications.<sup>18</sup> The DEA is bound by HHS’s recommendations as to “scientific and medical matters,” including HHS’s expert medical judgment that marijuana “has a currently accepted medical use in treatment in the United States.”<sup>19</sup> Moreover, experts today generally agree that marijuana has currently accepted medical uses for several indications. Numerous studies have identified such medical uses, including to manage pain, spasms, and nausea in patients undergoing chemotherapy, and to stimulate appetite in patients with weight loss from AIDS.<sup>20</sup> Studies have also found that marijuana access has second-order public health benefits by

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<sup>12</sup> U.S. Drug Enforcement Administration, Federal Register Notice, “Denial of Petition to Initiate Proceedings to Reschedule Marijuana,” August 12, 2016, <https://www.federalregister.gov/documents/2016/08/12/2016-17954/denial-of-petition-to-initiate-proceedings-to-reschedule-marijuana>. The DEA has previously reviewed marijuana’s scheduling. *See, e.g.*, U.S. Drug Enforcement Administration, Federal Register Notice, “Marijuana Scheduling Petition; Denial of Petition; Remand,” March 26, 1992, [https://archives.federalregister.gov/issue\\_slice/1992/3/26/10498-10508.pdf](https://archives.federalregister.gov/issue_slice/1992/3/26/10498-10508.pdf); Nat’l Org. for Reform of Marijuana L. (NORML) v. Drug Enf’t Admin., U. S. Dep’t of Just., 559 F.2d 735, 741 (D.C. Cir. 1977).

<sup>13</sup> *See, e.g.*, Americans for Safe Access, “Scheduling Cannabis: A Preparatory Document for FDA’s 8-Factor Analysis on Cannabis,” July 2016, <https://american-safe-access.s3.amazonaws.com/documents/8factor/8factorFinal.pdf>.

<sup>14</sup> U.S. Drug Enforcement Administration, Federal Register Notice, “Denial of Petition to Initiate Proceedings to Reschedule Marijuana,” August 12, 2016, <https://www.federalregister.gov/documents/2016/08/12/2016-17954/denial-of-petition-to-initiate-proceedings-to-reschedule-marijuana>.

<sup>15</sup> *Id.*

<sup>16</sup> Nature Medicine, “Drug scheduling limits access to essential medicines and should be reformed,” Mason Marks and Carmel Shachar, February 2023, p. 295, <https://www.nature.com/articles/s41591-022-02169-4>; Journal of the National Cancer Institute: Monographs, “Challenges for Clinical Cannabis and Cannabinoid Research in the United States,” Ziva Cooper et al., December 2021, <https://academic.oup.com/jncimono/article/2021/58/114/6446199>; 21 U.S.C. 823; 21 C.F.R. 1301.13; NBC News, “One doctor vs. the DEA: Inside the battle to study marijuana in America,” Tyler Kingkade, April 29, 2020, <https://www.nbcnews.com/news/us-news/one-doctor-vs-dea-inside-battle-study-marijuana-america-n1195436>; United States Department of Justice, “Researcher’s Manual: An Informational Outline of the Controlled Substances Act,” revised 2022, p. 14, [https://www.dea diversion.usdoj.gov/GDP/\(DEA-DC-057\)\(EO-DEA217\)\\_Researchers\\_Manual\\_Final\\_signed.pdf](https://www.dea diversion.usdoj.gov/GDP/(DEA-DC-057)(EO-DEA217)_Researchers_Manual_Final_signed.pdf).

<sup>17</sup> *Id.*

<sup>18</sup> Department of Health and Human Services, “Basis for the Recommendation to Reschedule Marijuana into Schedule III of the Controlled Substances Act,” August 29, 2023, p. 63, <https://www.dropbox.com/scl/fi/pw3rfs9gm6lg80ij9tja6/2023-01171-Supplemental-Release-1.pdf?rlkey=v5atj0tcnhxhnszyzcvvt&dl=0>.

<sup>19</sup> *Id.* at p. 62; 21 U.S.C. 812(b)(3).

<sup>20</sup> Department of Health and Human Services, “Basis for the Recommendation to Reschedule Marijuana into Schedule III of the Controlled Substances Act,” August 29, 2023, pp. 2-3,

reducing the rates of opioid use and opioid deaths.<sup>21</sup> Multiple medical organizations, including the World Health Organization and the American Academy of Family Physicians, have recognized the legitimate medical uses of marijuana.<sup>22</sup> Additionally, since 2016, the FDA has approved THC- and CBD-based medications, including two medications containing the primary compound that is responsible for marijuana’s abuse potential.<sup>23</sup> And in 2018, CBD (which is part of marijuana’s chemical makeup) was legalized in certain forms.<sup>24</sup>

Furthermore, since the DEA’s last review, the landscape of state marijuana law has changed significantly. In 2016, only eight states had legalized recreational marijuana.<sup>25</sup> That number has grown to 24 states today,<sup>26</sup> and 53 percent of Americans now live in a state where recreational

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<https://www.dropbox.com/scl/fi/pw3rfs9gm6lg80ij9tja6/2023-01171-Supplemental-Release-1.pdf?rlkey=v5atj0tcnhxhnszyyzcwdcvvt&dl=0>; see, e.g., National Academies of Sciences, Engineering, and Medicine, “The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research,” 2017, Chapter 4: Annex, p. 13, <https://nap.nationalacademies.org/read/24625/chapter/2#13>; Open Neurology Journal, “Medical Marijuana: Clearing Away the Smoke,” Igor Grant et al., 2012, p. 23, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3358713/pdf/TONEUJ-6-18.pdf>; Harvard Health Publishing, “Medical Marijuana,” Peter Grinspoon, April 10, 2020, <https://www.health.harvard.edu/blog/medical-marijuana-2018011513085>; Journal of Affective Disorders, “Acute Effects of Cannabis on Symptoms of Obsessive-Compulsive Disorder,” Dakota Mauzay, Emily M. LaFrance and Carrie Cuttler, January 15, 2021, <https://pubmed.ncbi.nlm.nih.gov/33049434/>; Journal of Pain, “Low-dose vaporized cannabis significantly improves neuropathic pain,” Barth Wilsey et al., February 2013, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3566631/>; NORML, “Recent Medical Marijuana Research,” Paul Armentano, July 9, 2021, <https://norml.org/marijuana/library/recent-medical-marijuana-research>; Neurology, “Cannabis in painful HIV-associated sensory neuropathy: A randomized placebo-controlled trial,” D. I. Abrams et al., February 13, 2007, <https://www.neurology.org/doi/10.1212/01.wnl.0000253187.66183.9c>; Canadian Medical Association Journal, “Smoked cannabis for chronic neuropathic pain: a randomized controlled trial,” Mark A. Ware et al., August 30, 2010, <https://www.cmaj.ca/content/cmaj/early/2010/08/30/cmaj.091414.full.pdf>; PLoS One, “Cannabis is associated with clinical but not endoscopic remission in ulcerative colitis: A randomized controlled trial,” Timna Naftali et al., February 11, 2021, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7877751/>.

<sup>21</sup> Journal of General Internal Medicine, “Impact of Medical Marijuana Legalization on Opioid Use, Chronic Opioid Use, and High-risk Opioid Use,” Anuj Shah et al., January 25, 2019, <https://link.springer.com/article/10.1007/s11606-018-4782-2>; JAMA Internal Medicine, “Associations Between US State Medical Cannabis Laws and Opioid Prescribing in the Medicare Part D Population,” Ashley C. Bradford, David Bradford and Amanda Abraham, May 1, 2018, <https://pubmed.ncbi.nlm.nih.gov/29610897/>; Economic Inquiry, “*The Effects of Recreational Marijuana Legalization and Dispensing on Opioid Mortality*,” Nathan W. Chan, Jesse Burkhardt and Matthew Flyr, August 6, 2019, <https://onlinelibrary.wiley.com/doi/10.1111/ecin.12819>.

<sup>22</sup> American Academy of Family Physicians, “Marijuana and Cannabinoids: Health, Research and Regulatory Considerations (Position Paper),” July 2019, <https://www.aafp.org/about/policies/all/marijuana-position-paper.html>; World Health Organization, “WHO Expert Committee on Drug Dependence: Forty-first report,” 2019, p. 41, <https://iris.who.int/bitstream/handle/10665/325073/9789241210270-eng.pdf?sequence=10>.

<sup>23</sup> National Institute on Drug Abuse, “Is marijuana safe and effective as medicine?,” July 2020, <https://nida.nih.gov/publications/research-reports/marijuana/marijuana-safe-effective-medicine>; U.S. Food & Drug Administration, “FDA and Cannabis: Research and Drug Approval Process,” February 24, 2023, <https://www.fda.gov/news-events/public-health-focus/fda-and-cannabis-research-and-drug-approval-process>; Department of Health and Human Services, “Basis for the Recommendation to Reschedule Marijuana into Schedule III of the Controlled Substances Act,” August 29, 2023, pp. 2-3, 9, <https://www.dropbox.com/scl/fi/pw3rfs9gm6lg80ij9tja6/2023-01171-Supplemental-Release-1.pdf?rlkey=v5atj0tcnhxhnszyyzcwdcvvt&dl=0>.

<sup>24</sup> In the 2018 Farm Bill, Congress legalized CBD derived from hemp, with THC levels up to .3 percent, which removed hemp from the CSA. Agriculture Improvement Act of 2018, Public Law 115–334, Sec. 12619, <https://www.congress.gov/115/plaws/publ334/PLAW-115publ334.pdf>.

marijuana is legal under state law.<sup>27</sup> Americans' widespread support for medical marijuana use is even clearer: a total of 38 states permit the medical use of cannabis.<sup>28</sup> Accordingly, thousands of doctors in those states recommend marijuana to their patients, and millions of patients consume medical marijuana under healthcare professionals' guidance each year.<sup>29</sup> This widespread acceptance of marijuana in medical practice strengthens the HHS's conclusion that cannabis has a currently accepted medical use. And more states will likely follow suit as public opinion continues to favor ending the criminalization of marijuana use, with 88 percent of Americans now in support of legalizing marijuana in some form.<sup>30</sup> Furthermore, roughly 50 percent of Americans say they have tried marijuana, making the federal government's one-off arrests for marijuana possession increasingly arbitrary and inequitable.<sup>31</sup> Without descheduling at the federal level and protecting state regulatory programs, consumers and workers in those states remain at risk of arrest and prosecution.<sup>32</sup>

Finally, in 2016 the DEA considered its international treaty obligations a bar to rescheduling marijuana to anything less restrictive than Schedule II.<sup>33</sup> Since then, cannabis has been rescheduled under international law — a change that the United States and the World Health

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<sup>25</sup> Washington Post, "More than half of Americans live in places where recreational marijuana is legal," Tim Meko and Adrian Blanco, November 8, 2023, <https://www.washingtonpost.com/politics/2023/legal-weed-states-map/>.

<sup>26</sup> *Id.*

<sup>27</sup> Politico, "Ohio becomes 24th state to embrace weed legalization," Mona Zhang, November 7, 2023, <https://www.politico.com/news/2023/11/07/ohio-marijuana-legalization-vote-results-00125991>.

<sup>28</sup> National Conference of State Legislatures, "State Medical Cannabis Laws," updated June 22, 2023, <https://www.ncsl.org/health/state-medical-cannabis-laws>.

<sup>29</sup> Department of Health and Human Services, "Basis for the Recommendation to Reschedule Marijuana into Schedule III of the Controlled Substances Act," August 29, 2023, <https://www.dropbox.com/scl/fi/pw3rfs9gm6lg80ij9tja6/2023-01171-Supplemental-Release-1.pdf?rlkey=v5atj0tcnhxhnszyyzcwcdevvt&dl=0>; Marijuana Policy Project, "Medical Cannabis Patient Numbers," <https://www.mpp.org/issues/medical-marijuana/state-by-state-medical-marijuana-laws/medical-marijuana-patient-numbers/>.

<sup>30</sup> Pew Research Center, "Americans Overwhelmingly Say Marijuana Should Be Legal For Medical or Recreational Use," Ted Van Green, November 22, 2022, <https://www.pewresearch.org/short-reads/2022/11/22/americans-overwhelmingly-say-marijuana-should-be-legal-for-medical-or-recreational-use/>.

<sup>31</sup> American Civil Liberties Union, "A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform," April 16, 2020, <https://www.aclu.org/publications/tale-two-countries-racially-targeted-arrests-era-marijuana-reform>; Federal Bureau of Investigation: Crime Data Explorer, "Arrests Offense Counts in The United States: Arrests For Drug Possession Offenses," 2022, <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/arrest>; Gallup, "Fully Half of Americans Have Tried Marijuana," Justin McCarthy, August 10, 2023, <https://news.gallup.com/poll/509399/fully-half-americans-tried-marijuana.aspx>.

<sup>32</sup> Congressional Research Service, "Legal Consequences of Rescheduling Marijuana," January 16, 2024, pp. 2-3, <https://crsreports.congress.gov/product/pdf/LSB/LSB11105>; Politico, "The Half-Legal Cannabis Trap," Amanda Chicago Lewis, February 9, 2021, <https://www.politico.com/news/magazine/2021/02/09/los-angeles-legalization-cannabis-criminalization-467572>.

<sup>33</sup> United Nations, "Single Convention on Narcotic Drugs," [https://www.unodc.org/pdf/convention\\_1961\\_en.pdf](https://www.unodc.org/pdf/convention_1961_en.pdf); U.S. Drug Enforcement Administration, Federal Register Notice, "Denial of Petition to Initiate Proceedings to Reschedule Marijuana," August 12, 2016, <https://www.federalregister.gov/documents/2016/08/12/2016-17954/denial-of-petition-to-initiate-proceedings-to-reschedule-marijuana>; 21 U.S.C. 811(d); *Nat'l Org. for Reform of Marijuana L. (NORML) v. Drug Enf't Admin., U. S. Dep't of Just.*, 559 F.2d 735, 747 (D.C. Cir. 1977).

Organization supported, in light of “the legitimate medical use” of certain cannabis products.<sup>34</sup> Now, the relevant treaty, the Single Convention on Narcotic Drugs of 1961 (Single Convention), has removed cannabis from the most restrictive schedule and placed it in a schedule that requires countries to limit the drug’s use to only “medical and scientific purposes.”<sup>35</sup> Additionally, since 2016, the DEA has found that placing the first cannabis-based FDA-approved drug in Schedule V (and later descheduling it altogether) was consistent with the Single Convention.<sup>36</sup> The United States can persuasively argue that decriminalizing marijuana activity is consistent with its treaty obligations. As the U.S. State Department and United Nations have clarified, the relevant narcotics treaties are “highly respectful of the legal frameworks of states party”<sup>37</sup> and “allow for sufficient flexibility for States parties to design and implement national drug policies according to their priorities and needs.”<sup>38</sup> Furthermore, the treaties are primarily concerned with the trafficking of narcotics “having an international dimension,” rather than purely domestic matters<sup>39</sup> — and research has found that marijuana legalization may actually *reduce* violent international drug trafficking.<sup>40</sup> As it has done in the past,<sup>41</sup> the DEA can in good faith reinterpret

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<sup>34</sup> United Nations Commission on Narcotic Drugs, “Statements following the voting on the WHO scheduling recommendations on cannabis and cannabis-related substances,” December 2-4, 2020, p. 12, [https://www.unodc.org/documents/commissions/CND/CND\\_Sessions/CND\\_63Reconvened/ECN72020\\_CRP24\\_V2007524.pdf](https://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_63Reconvened/ECN72020_CRP24_V2007524.pdf); United Nations Commission on Narcotic Drugs, “CND votes on recommendations for cannabis and cannabis-related substances,” press release, December 2, 2020, [https://www.unodc.org/documents/commissions/CND/CND\\_Sessions/CND\\_63Reconvened/Press\\_statement\\_CND\\_2\\_December.pdf](https://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_63Reconvened/Press_statement_CND_2_December.pdf).

<sup>35</sup> United Nations, “Single Convention on Narcotic Drugs,” Art. 2(1), 4(c), Annex: List of Drugs Included in Schedule I, [https://www.unodc.org/pdf/convention\\_1961\\_en.pdf](https://www.unodc.org/pdf/convention_1961_en.pdf).

<sup>36</sup> U.S. Drug Enforcement Administration, Federal Register Notice, “Schedules of Controlled Substances: Placement in Schedule V of Certain FDA-Approved Drugs Containing Cannabidiol; Corresponding Change to Permit Requirements,” September 28, 2018, <https://www.federalregister.gov/documents/2018/09/28/2018-21121/schedules-of-controlled-substances-placement-in-schedule-v-of-certain-fda-approved-drugs-containing#p-33>; Drug Topics, “DEA Deschedules Antiepileptic CBD Oral Solution Epidiolex,” April 7, 2020, <https://www.drugtopics.com/view/dea-deschedules-antiepileptic-cbd-oral-solution-epidiolex>.

<sup>37</sup> UN Web TV, “[6th meeting] CND Thematic Discussions,” October 23-25, 2023, 1:44:45-1:45:00, <https://webtv.un.org/en/asset/k18/k183ng5zxr>.

<sup>38</sup> United Nations Office on Drugs and Crime, Commission on Narcotic Drugs, “Implementation of All International Drug Policy Commitments,” July 2019, p. 2, [https://www.unodc.org/documents/hlr/19-V1905795\\_E\\_ebook.pdf](https://www.unodc.org/documents/hlr/19-V1905795_E_ebook.pdf).

<sup>39</sup> UN Web TV, “[6th meeting] CND Thematic Discussions,” October 23-25, 2023, 1:46:59-1:47:10, <https://webtv.un.org/en/asset/k18/k183ng5zxr>; *see also* United Nations, “United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988,” art. 2, [https://www.incb.org/documents/PRECURSORS/1988\\_CONVENTION/1988Convention\\_E.pdf](https://www.incb.org/documents/PRECURSORS/1988_CONVENTION/1988Convention_E.pdf); Marijuana Moment, “State Department’s Permissive Reading Of International Drug Treaties Is ‘Good Sign’ For Marijuana Rescheduling, Lawyer Says,” Ben Adlin, November 7, 2023, <https://www.marijuanamoment.net/state-departments-permissive-reading-of-international-drug-treaties-is-good-sign-for-marijuana-rescheduling-lawyer-says/>.

<sup>40</sup> Economic Journal, “Is Legal Pot Crippling Mexican Drug Trafficking Organizations? The Effect of Medical Marijuana Laws on US Crime,” Evelina Gavrilova, Takuma Kamada and Floris Zoutman, November 16, 2017, <https://doi.org/10.1111/eoj.12521>; Center for American Progress, “Rethinking Federal Marijuana Policy,” Ed Chung, Maritza Perez and Lea Hunter, May 1, 2018, <https://www.americanprogress.org/article/rethinking-federal-marijuana-policy/>.

<sup>41</sup> U.S. Department of Justice Office of Legal Counsel, “Licensing Marijuana Cultivation in Compliance with the Single Convention on Narcotic Drugs,” June 6, 2018, <https://www.justice.gov/olc/file/1272131/download>; Drug Enforcement Administration, Federal Register Notice, “Controls To Enhance the Cultivation of Marihuana for Research in the United States,” December 18, 2020, <https://www.federalregister.gov/documents/2020/12/18/2020-27999/controls-to-enhance-the-cultivation-of-marihuana-for-research-in-the-united-states>; Congressional Research Service, “The Evolution of Marijuana as a Controlled Substance and the Federal-State Policy Gap,” April 7, 2022,

its obligations under the Single Convention. It could argue that even adult-use marijuana legalization would still permit a civil regulatory regime that prevents abuse and international trafficking while satisfying the country’s domestic policy need to advance an evidence-based harm reduction approach, protect the settled expectations of U.S. states, and comply with international human rights obligations that weigh against the disproportionate criminalization of people of color.<sup>42</sup> The United States would not be the first mover; many fellow signatories of the Single Convention have legalized cannabis for medical and non-medical uses.<sup>43</sup> And arguably, the United States is already among them as a country that has largely permitted cannabis at the state level.

### **The Case for Descheduling Marijuana**

The case for removing marijuana from Schedule I is overwhelming. The DEA should do so by removing cannabis from the CSA altogether, rather than simply placing it in a lower schedule. Although HHS recommended rescheduling, its analysis could support a decision to deschedule — particularly its emphasis on the fact that marijuana has less adverse outcomes (including less potential of an overdose) and less potential of abuse than substances that are descheduled (alcohol) or scheduled below Schedule III (such as benzodiazepines).<sup>44</sup> The DEA has final decision-making authority<sup>45</sup> and should ultimately deschedule marijuana.

To be sure, rescheduling marijuana to Schedule III would have some important policy benefits. It would pave the way toward increasing scientific research of marijuana’s medical uses,<sup>46</sup> eliminating barriers to federal employment for medical marijuana users, and permitting the Department of Veterans’ Affairs to prescribe marijuana to veterans.<sup>47</sup> It would allow marijuana businesses to access standard tax deductions for ordinary business expenses.<sup>48</sup> Rescheduling would also represent the first federal acknowledgment of marijuana’s legitimate medical uses —

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pp. 69-70, <https://crsreports.congress.gov/product/pdf/R/R44782>.

<sup>42</sup> Global Health Law Clinic, “Reconciling Canada’s Legalization of Non-Medical Cannabis with the UN Drug Control Treaties,” April 2017, pp. 7-8, [https://commonlaw.uottawa.ca/sites/commonlaw.uottawa.ca/files/global\\_health\\_law\\_clinic\\_-\\_group\\_report\\_final\\_-\\_apr\\_9\\_2017.pdf](https://commonlaw.uottawa.ca/sites/commonlaw.uottawa.ca/files/global_health_law_clinic_-_group_report_final_-_apr_9_2017.pdf); Michigan Journal of International Law, “A Higher Authority: Canada’s Cannabis Legalization in the Context of International Law,” Antonia Eliason and Robert Howse, pp. 351-54, <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1946&context=mjil>

<sup>43</sup> JD Supra, “Between a Rock and a Hard Place: Rescheduling and the UN Single Convention on Narcotics,” Jesse Harlan Alderman and Jeffrey Schultz, September 6, 2023, <https://www.jdsupra.com/legalnews/between-a-rock-and-a-hard-place-4632020/>.

<sup>44</sup> Department of Health and Human Services, “Basis for the Recommendation to Reschedule Marijuana into Schedule III of the Controlled Substances Act,” August 29, 2023, pp. 5, 7, 9, 52, 60, <https://www.dropbox.com/scl/fi/pw3rfs9gm6lg80ij9tja6/2023-01171-Supplemental-Release-1.pdf?rlkey=v5atj0tenhxhnszyzycwdcvvt&dl=0>.

<sup>45</sup> 21 U.S.C. 811.

<sup>46</sup> Marijuana Moment, “Biden Review Must Fully Deschedule—And Not Merely Reschedule—Marijuana To Resolve State-Federal Conflicts (Op-Ed),” Paul Armentano, June 21, 2023, <https://www.marijuanamoment.net/biden-review-must-fully-deschedule-and-not-merely-reschedule-marijuana-to-resolve-state-federal-conflicts-op-ed/>; Harvard Law Today, “Up in smoke?,” Jeff Neal, September 5, 2023, <https://hls.harvard.edu/today/harvard-law-expert-explains-federal-governments-push-to-ease-marijuana-restrictions/>.

<sup>47</sup> Congressional Research Service, “Department of Health and Human Services Recommendation to Reschedule Marijuana: Implications for Federal Policy,” September 13, 2023, p. 3, <https://crsreports.congress.gov/product/pdf/IN/IN12240>.

though, importantly, it would not automatically permit marijuana to be used as a medicine; medical marijuana would still have to undergo FDA drug approval, the DEA registration process for manufacturers, and compliance with prescription regulations in order to be legally prescribed under federal law.<sup>49</sup>

However, rescheduling would do little to rectify the most severe harms of the current system. Many of the CSA’s criminal penalties for marijuana will continue as long as marijuana remains in the CSA, because those penalties are based on the quantity of marijuana involved, not the drug’s schedule status.<sup>50</sup> Thus, criminal penalties (including prison sentences, fines, and asset forfeiture) for recreational marijuana use, and for medical use of marijuana products that lack federal approval, would still exist, disproportionately penalizing Black and Brown communities.<sup>51</sup> Similarly, non-citizens could still be denied naturalization and green cards, and even deported, based on most marijuana offenses.<sup>52</sup> Furthermore, rescheduling marijuana would not restore access to public housing or nutrition assistance for individuals who use marijuana recreationally or engage in other marijuana activity against federal law.<sup>53</sup> Nor would rescheduling resolve the growing inconsistency between federal and state law; states’ regulatory systems for the recreational marijuana industry — and for medical marijuana products that have not been federally approved — would continue to lack federal legal recognition.<sup>54</sup>

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<sup>48</sup> 26 U.S.C. 280E; Reuters, “What rescheduling to Schedule III would mean for the cannabis industry,” Alex Malyshev and Sarah Ganley, September 12, 2023, <https://www.reuters.com/legal/litigation/what-rescheduling-schedule-iii-would-mean-cannabis-industry-2023-09-12/>.

<sup>49</sup> Congressional Research Service, “Legal Consequences of Rescheduling Marijuana,” January 16, 2024, pp. 2-3, <https://crsreports.congress.gov/product/pdf/LSB/LSB11105>.

<sup>50</sup> *Id.*; Bloomberg Law, “Moving Marijuana to Schedule III Would Aid Access to Legal Care,” Andrew Kline and Shane Pennington, October 25, 2023, <https://news.bloomberglaw.com/us-law-week/moving-marijuana-to-schedule-iii-would-aid-access-to-legal-care>; 21 U.S.C. 841, 844.

<sup>51</sup> 21 U.S.C. 841(b)(1)(D), 844(a); Letter from Senator Elizabeth Warren to President Joseph R. Biden, Attorney General Merrick Garland, and HHS Secretary Xavier Becerra, July 6, 2022, <https://www.warren.senate.gov/imo/media/doc/2022.07.06%20Follow%20up%20letter%20to%20Biden%20admin%20on%20cannabis%20descheduling%20and%20pardoning.pdf>.

<sup>52</sup> Politico Magazine, “She Immigrated Legally. She Married a U.S. Citizen. But She Was Denied Citizenship for Working in Legal Cannabis,” Kaylee Tornay, December 23, 2023, <https://www.politico.com/news/magazine/2023/12/23/biden-administration-immigrants-legal-cannabis-00133085>; Congressional Research Service, “Marijuana and Restrictions on Immigration,” September 17, 2020, <https://crsreports.congress.gov/product/pdf/IN/IN11503>; Immigration Legal Resource Center, “Biden Administration Must Remove Marijuana as a Federally Controlled Substance,” September 20, 2023, <https://www.ilrc.org/biden-administration-must-remove-marijuana-federally-controlled-substance>.

<sup>53</sup> U.S. Department of Housing and Urban Development, “Use of Marijuana in Multifamily Assisted Properties,” Deputy Assistant Secretary Benjamin T. Metcalf, December 29, 2014, <https://www.hud.gov/sites/documents/USEOFMARIJINMFASSISTPROPTY.PDF>; Congressional Research Service, “Drug Testing and Crime-Related Restrictions in TANF, SNAP, and Housing Assistance,” Maggie McCarty et al., November 28, 2016, pp. 11-12, 24-28, <https://sgp.fas.org/crs/misc/R42394.pdf>; Collateral Consequences Resource Center, “Accessing SNAP and TANF Benefits after a Drug Conviction: A Survey of State Laws,” Margaret Love and Nick Sibilla, December 6, 2023, <https://ccresourcecenter.org/national-snap-tanf-drug-felony-study/>.

<sup>54</sup> Congressional Research Service, “Legal Consequences of Rescheduling Marijuana,” January 16, 2024, p. 2, <https://crsreports.congress.gov/product/pdf/LSB/LSB11105>.



These harms could be remedied only through fully descheduling marijuana. Once descheduled, marijuana can still be subject to public health regulations, drawing from lessons learned through the regulation of alcohol and tobacco. And here, the federal government has the rare opportunity to shape the new cannabis industry from the ground up, designing a federal regulatory system untainted by the corporate capture that has influenced alcohol and tobacco regulations,<sup>55</sup> and advancing federal cannabis reforms that acknowledge and repair the harms of cannabis criminalization.

### **Conclusion**

The DEA has never kept a drug in Schedule I after HHS recommended removing it,<sup>56</sup> and it must not do so now. It is imperative that the DEA remove marijuana from Schedule I as several members of Congress and state attorneys general have urged.<sup>57</sup> The DEA should do so promptly; its past record of taking years to resolve rescheduling petitions should not be repeated here.<sup>58</sup> Furthermore, the DEA and HHS should be fully transparent about the evidence relied upon in the course of their review processes. The Biden Administration has a window of opportunity to deschedule marijuana that has not existed in decades and should reach the right conclusion — consistent with the clear scientific and public health rationale for removing marijuana from Schedule I, and with the imperative to relieve the burden of current federal marijuana policy on ordinary people and small businesses.

### **Questions**

To help the American people understand what steps the DEA is taking to act on HHS’s rescheduling recommendation, we request responses to the following questions no later than February 12, 2024:

1. What is the current status of the DEA’s review of marijuana’s scheduling, pursuant to President Biden’s 2022 directive and HHS’s 2023 recommendation?

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<sup>55</sup> New England Journal of Medicine, “FDA Regulation of Tobacco — Pitfalls and Possibilities,” Allan M. Brandt, July 31, 2008, <https://www.nejm.org/doi/full/10.1056/NEJMp0803729>; Commission on Narcotic Drugs Blog, “Side event: Mitigating the risks of corporate capture for legal cannabis markets,” March 18, 2022, <https://cndblog.org/2022/03/side-event-mitigating-the-risks-of-corporate-capture/>.

<sup>56</sup> House of Representatives, Subcommittee on Health, Committee on Energy and Commerce, hearing testimony, “Cannabis Policies For The New Decade,” p. 61, <https://www.congress.gov/116/meeting/house/110381/documents/HHRG-116-IF14-Transcript-20200115.pdf#page=61>; Congressional Research Service, “Department of Health and Human Services Recommendation to Reschedule Marijuana: Implications for Federal Policy,” Lisa N. Sacco and Hassan Z. Sheikh, September 13, 2023, p. 2, <https://crsreports.congress.gov/product/pdf/IN/IN12240>.

<sup>57</sup> Letter from Attorney General Phil Weiser et al., to Administrator Anne Milgram, January 12, 2024, <https://coag.gov/app/uploads/2024/01/Attorneys-General-Letter-Requesting-MJ-Rescheduling-1.pdf>; Letter from Senator Kirsten Gillibrand to Administrator Anne Milgram, November 9, 2023, <https://www.gillibrand.senate.gov/wp-content/uploads/2023/11/Quill-Letter-L13764-Letter-to-DEA-to-Reschedule-Marijuana-Version-8-11-16-2023-@-12-40-PM.pdf>; Letter from Representative Earl Blumenauer et al., to Administrator Anne Milgram, October 27, 2023, [https://blumenauer.house.gov/sites/evo-subsites/blumenauer.house.gov/files/evo-media-document/2022-12-22-letter-urging-recognition-of-merits-of-descheduling-1\\_0.pdf](https://blumenauer.house.gov/sites/evo-subsites/blumenauer.house.gov/files/evo-media-document/2022-12-22-letter-urging-recognition-of-merits-of-descheduling-1_0.pdf).

<sup>58</sup> NORML, “A Brief History of Cannabis Rescheduling Petitions in the United States,” <https://norml.org/marijuana/fact-sheets/a-brief-history-of-cannabis-rescheduling-petitions-in-the-united-states/>.

- a. What is the DEA’s timeline for removing marijuana from Schedule I?
2. What evidence does the DEA intend to consider in reaching its decision regarding the scheduling of marijuana?
  - a. If the DEA believes clinical trials testing marijuana are necessary in order to change its scheduling, what is the DEA’s roadmap for developing clinical-trial evidence, in light of roadblocks to accessing funding for such studies?
3. In the course of this review, is the DEA still assessing cannabis’s medical use based on the five-factor test that the agency created for itself in 1992,<sup>59</sup> which differs from HHS’s analysis?
4. Specifically, how (if at all) would the criminal enforcement of marijuana by the DEA change if marijuana were moved to another schedule in the CSA? Please provide an answer for Schedule II, Schedule III, Schedule IV, and Schedule V.
5. What specific steps has the DEA taken to ensure that its marijuana-related policies and programs, including its marijuana enforcement strategy, comply with Executive Order 13985 and 14091?<sup>60</sup>
6. To what extent does the DEA’s evaluation of marijuana’s scheduling acknowledge or address the harms of cannabis criminalization and related collateral consequences, and racial disparities associated with federal marijuana enforcement?

We thank you for your attention to this matter, and we look forward to your prompt action.

Sincerely,



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Elizabeth Warren  
United States Senator



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John Fetterman  
United States Senator

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<sup>59</sup> U.S. Drug Enforcement Administration, Federal Register Notice, “Marijuana Scheduling Petition; Denial Of Petition; Remand,” March 26, 1992, p. 10504, [https://archives.federalregister.gov/issue\\_slice/1992/3/26/10498-10508.pdf](https://archives.federalregister.gov/issue_slice/1992/3/26/10498-10508.pdf).

<sup>60</sup> Executive Office of the President, Federal Register Notice, “Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,” February 22, 2023, <https://www.federalregister.gov/documents/2023/02/22/2023-03779/further-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal>; Executive Office of the President, Federal Register Notice, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,” January 20, 2021, <https://www.federalregister.gov/documents/2021/01/25/2021-01753/advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government>.



Charles E. Schumer  
United States Senator



Cory A. Booker  
United States Senator



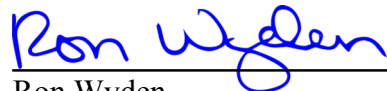
Jeffrey A. Merkley  
United States Senator



Bernard Sanders  
United States Senator



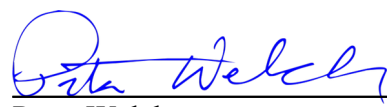
Kirsten Gillibrand  
United States Senator



Ron Wyden  
United States Senator



John Hickenlooper  
United States Senator



Peter Welch  
United States Senator



Chris Van Hollen  
United States Senator



Alex Padilla  
United States Senator

CC: The Honorable Xavier Becerra, Secretary of the Department of Health and Human Services