



July 19, 2024

Anne Milgram  
Administrator  
Drug Enforcement Administration  
Department of Justice  
8701 Morrisette Drive  
Springfield, VA 22152

***Subject: Schedules of Controlled Substances: Rescheduling of Marijuana***

*Document Identifier: DEA-2024-0059*

Dear Administrator Milgram:

Thank you for the opportunity to comment on the Drug Enforcement Administration's (DEA) proposed rule change, which would reschedule marijuana from Schedule I to Schedule III under the Controlled Substances Act (CSA). Established in 1971, the Southern Poverty Law Center (SPLC) is a nonprofit organization founded in Montgomery, Alabama, to help ensure the promise of the Civil Rights Movement became a reality for all — particularly for Black people in the South, who are all too often the victims of discriminatory policies and who are disproportionately targeted by law enforcement. We work in partnership with communities of color to dismantle white supremacy, strengthen intersectional movements through transformative policies and initiatives, and advance the human rights of all. On behalf of the SPLC, we submit the following comment in response to this proposed rule.

While we appreciate the recognition that marijuana should be removed from Schedule I, this proposed rule falls short and will not reduce the damage that marijuana criminalization has inflicted upon marginalized people, especially Black and Brown communities. We urge the DEA to reconsider this proposed rule and instead issue a rule that would completely decriminalize and deschedule marijuana.

The administrative process conducted by the DEA was too limited in scope and failed to consider the enormous racial, economic, and public health consequences of maintaining the criminalization of marijuana. This criminalization has wreaked havoc on Black and Brown communities, wasted an enormous amount of public resources, and has been detrimental to public health and safety. It is past time for marijuana to be completely removed from the CSA and decriminalized — racial, social, and economic justice demand nothing less.



## I. Racial Justice Demands the Decriminalization of Marijuana

Over 50 years ago, then-President Richard Nixon declared a “War on Drugs.”<sup>1</sup> The devastation was swift — between 1975 and 2019, the U.S. prison population skyrocketed from less than 250,000 people to nearly 1.5 million.<sup>2</sup> At the federal and state levels, much of the increase in the prison population was as a result of drug offenses.<sup>3</sup> In 2018 alone there were 1,654,282 arrests for drug offenses, with marijuana offenses being the most frequently charged.<sup>4</sup> The racial justice implications have been profound. In all 50 states, Black and Brown people are far more likely to be arrested for marijuana offenses than white people. In fact, on average across the nation, a Black person is about four times more likely to be arrested than a white person, despite similar usage rates.<sup>5</sup> And Black people are about 10 times more likely than white people to be sentenced to prison for a drug offense.<sup>6</sup> This has been incredibly harmful to Black and Brown communities, not only because marijuana convictions carry lifelong consequences for employment and educational opportunities,<sup>7</sup> but also because of the trauma inflicted from the separation of families and incarceration. As noted by Michelle Alexander, “nothing has contributed more to the systematic incarceration of people of color in the United States more than the ‘War on Drugs.’”<sup>8</sup>

### *The inclusion of marijuana in the CSA was a key component in the disastrous “War on Drugs”*

Completely overlooked by the DEA analysis of this issue is the racist history of the inclusion of marijuana (and other substances) in the CSA. In 1970, when the CSA was created, marijuana was included; however, that was supposed to be temporary while the National Commission on Marihuana and Drug Abuse (more commonly known as the Shafer Commission) studied the issue. After conducting a thorough study, the commission concluded that marijuana was no more dangerous than alcohol and recommended it be decriminalized.<sup>9</sup>

President Nixon ignored this recommendation and pushed for the continued criminalization of marijuana. Nixon saw criminalization as an important tool in controlling the Black community

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<sup>1</sup> See i.e. Jamila Hodge, (2021, June 17). [Fifty Years Ago Today, President Nixon Declared the War on Drugs.](https://www.vera.org/news/fifty-years-ago-today-president-nixon-declared-the-war-on-drugs) <https://www.vera.org/news/fifty-years-ago-today-president-nixon-declared-the-war-on-drugs>

<sup>2</sup> See i.e. Aaron Morrison, (2021, July 26). [50-Year War on Drugs Imprisoned Millions of Black Americans.](https://www.pbs.org/newshour/nation/50-year-war-on-drugs-imprisoned-millions-of-black-americans) <https://www.pbs.org/newshour/nation/50-year-war-on-drugs-imprisoned-millions-of-black-americans>

<sup>3</sup> See i.e. Pew Charitable Trusts. [Drug Arrests Stayed High Even as Imprisonment Fell From 2009 to 2019.](https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/02/drug-arrests-stayed-high-even-as-imprisonment-fell-from-2009-to-2019#:~:text=However%2C%20at%20the%20same%20time%2C%20intensified%20enforcement%20launched,the%20overdose%20death%20rate%20more%20than%20tripled.%204) <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/02/drug-arrests-stayed-high-even-as-imprisonment-fell-from-2009-to-2019#:~:text=However%2C%20at%20the%20same%20time%2C%20intensified%20enforcement%20launched,the%20overdose%20death%20rate%20more%20than%20tripled.%204>

<sup>4</sup> See i.e. Susan Stellan, (2019, November 5). [Is the ‘War on Drugs’ Over? Arrest Statistics Say No.](https://www.nytimes.com/2019/11/05/upshot/is-the-war-on-drugs-over-arrest-statistics-say-no.html) <https://www.nytimes.com/2019/11/05/upshot/is-the-war-on-drugs-over-arrest-statistics-say-no.html>

<sup>5</sup> Ezekiel Edwards, Will Bunting, and Lynda Garcia, (2013, June). [A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform.](https://www.aclu.org/publications/report-war-marijuana-black-and-white) <https://www.aclu.org/publications/report-war-marijuana-black-and-white>

<sup>6</sup> Jamie Fellner and Patrick Vinck, (2008, May). [Targeting Blacks: Drug Law Enforcement and Race in the United States.](https://www.hrw.org/sites/default/files/reports/us0508_1.pdf) [https://www.hrw.org/sites/default/files/reports/us0508\\_1.pdf](https://www.hrw.org/sites/default/files/reports/us0508_1.pdf)

<sup>7</sup> See i.e. Jesse Wegman, (2014, July 28). [The Injustice of Marijuana Arrests.](https://www.nytimes.com/2014/07/29/opinion/high-time-the-injustice-of-marijuana-arrests.html) <https://www.nytimes.com/2014/07/29/opinion/high-time-the-injustice-of-marijuana-arrests.html>

<sup>8</sup> Michelle Alexander, (2010). *The New Jim Crow: Mass Incarceration in the Age of Colorblindness.* The New Press Inc.

<sup>9</sup> See i.e. NORML. (2022, March 22) [50 Years Ago, Congress’ Own Expert Commission Demanded They Repeal Marijuana Prohibition.](https://norml.org/blog/2022/03/20/50-years-ago-today-congress-own-expert-commission-demanded-they-repeal-marijuana-prohibition/) <https://norml.org/blog/2022/03/20/50-years-ago-today-congress-own-expert-commission-demanded-they-repeal-marijuana-prohibition/>



and anti-war protesters. In a 1994 interview, Nixon’s domestic policy chief John Ehrlichman stated:

“The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people. You understand what I’m saying? We knew we couldn’t make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did.”<sup>10</sup>

*Continued federal criminalization encourages targeted enforcement against Indigenous people*

Over the last several years, as more and more states have begun to legalize and decriminalize marijuana, federal enforcement of marijuana has also shifted. Though still illegal under federal law, federal law enforcement authorities have largely refrained from criminal enforcement of marijuana in states that have legalized the substance.<sup>11</sup> However, this laissez-faire approach unfortunately does not extend to Indigenous people living on federal tribal lands, because the land is subject to federal supervision.<sup>12</sup> Consequently, they remain largely unprotected from continual federal enforcement, further exacerbating the disproportionate impact the “War on Drugs” approach has had on communities of color.

Because of this, federal authorities have continued to criminalize marijuana, even in communities located within states that have fully legalized recreational use. In just one example, a 54-year-old man living on tribal land in New Mexico — a state that has legalized both medicinal and recreational use — found himself the victim of such targeted enforcement. He was enrolled in New Mexico’s medicinal marijuana program and suddenly found his home being raided for violating the federal prohibition on marijuana.<sup>13</sup> The Bureau of Indian Affairs (BIA) has raided and arrested people on tribal land in New Mexico and elsewhere for possessing marijuana that is legal within the state. In response, the BIA has stated that “the BIA Office of Justice Services is obligated to enforce federal law and does not instruct its officers to disregard violations of federal law in Indian Country.”<sup>14</sup> Only descheduling marijuana will put an end to this racialized targeted enforcement of Indigenous people.

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<sup>10</sup> See i.e. Tom LoBianco (2016, March 24). *Report: Aide says Nixon’s war on drugs targeted blacks, hippies*. <https://www.cnn.com/2016/03/23/politics/john-ehlichman-richard-nixon-drug-war-blacks-hippie/index.html>

<sup>11</sup> See i.e. Congressional Research Service (2024, May 2). *The Federal Status of Marijuana and the Policy Gap with States*. <https://crsreports.congress.gov/product/pdf/IF/IF12270>

<sup>12</sup> See i.e. U.S. Department of Human Services. *American Indians and Alaska Natives - Indian Country and Reservations*. <https://www.acf.hhs.gov/ana/fact-sheet/american-indians-and-alaska-natives-indian-country-and-reservations>

<sup>13</sup> See i.e. Morgan Lee (2021, November 19). *Cannabis Bust on Indigenous Land in New Mexico Highlights Legal Divide*. <https://www.nbcsandiego.com/news/national-international/cannabis-bust-indigenous-land-new-mexico-highlights-legal-divide/2797233/>

<sup>14</sup> Id.



*Rescheduling will allow for the continuation of weaponizing marijuana criminalization against noncitizens*

While the criminalization of marijuana hurts everyone, especially Black and Brown communities, the consequences are especially harsh for noncitizens. Criminalization has resulted in people needlessly being sent to jails and prisons, but for noncitizens the consequence is frequently being deported from the country where they have lived, worked, and raised families for years. For example, in 2013, simple possession of marijuana was the fourth most common justification for deportation and the most common cause of deportation for violations of drug laws. Since 2003, more than 45,000 people have been deported when their most serious conviction was simple possession of marijuana.<sup>15</sup> This is true even in states that have legalized marijuana, creating a situation where a person is engaging in behavior that is completely legal in their state, yet they still face deportation.<sup>16</sup> Simply rescheduling marijuana will allow this targeted enforcement to continue, with otherwise law-abiding people being deported away from their families and communities simply for possessing a small amount of marijuana.

*The incremental step of rescheduling won't benefit the communities most affected by the "War on Drugs"*

Arguably, the most significant impact of rescheduling marijuana is that legal marijuana businesses will see tax benefits such as the ability to deduct business expenses and to pay a federal tax rate that is more in line with other businesses. This will overwhelmingly benefit wealthy, white people — not the people who have been harmed by the “War on Drugs.” The DEA’s analysis around this proposed rule is completely devoid of discussion of this critical issue.

Only about two percent of marijuana business owners are Black.<sup>17</sup> Black and Brown people have been disproportionately targeted by marijuana enforcement, leading to a much higher arrest and conviction rate. This has barred many people from entering the legal marijuana marketplace because most states bar people with drug convictions from obtaining a license.<sup>18</sup> To ensure the benefits flow to all people, the DEA should completely deschedule and decriminalize marijuana. That — along with enacting policies that prioritize restorative and economic justice, such as expungement and grant programs that minimize the barriers to obtaining licensing — will allow all people to benefit from marijuana legalization, not just the privileged few.<sup>19</sup>

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<sup>15</sup> See i.e. “Findings” within bill text for the Cannabis Administration and Opportunity Act (2022, July 21). <https://www.congress.gov/bill/117th-congress/senate-bill/4591/text#toc-H0B5AB2160FDC4FB69F28B9B18801E9C7>

<sup>16</sup> Human Rights Watch, (2024, July 15), *Disrupt and Vilify: The War on Immigrants Inside the U.S. War on Drugs*. <https://www.hrw.org/report/2024/07/15/disrupt-and-vilify/war-immigrants-inside-us-war-drugs>

<sup>17</sup> See i.e. “Findings” within bill text for the Cannabis Administration and Opportunity Act (2022, July 21). <https://www.congress.gov/bill/117th-congress/senate-bill/4591/text#toc-H0B5AB2160FDC4FB69F28B9B18801E9C7>

<sup>18</sup> Id.

<sup>19</sup> See i.e. *The Cannabis Administration and Opportunity Act*. <https://www.congress.gov/bill/117th-congress/senate-bill/4591/text>



## **II. The Criminalization of Marijuana Is Inconsistent With a Public Health Approach**

If one of the goals of the criminalization of marijuana is to deter use, this has been proven ineffective. Over 55 million Americans use marijuana within a given year, and over half of all Americans have admitted to using marijuana at least once.<sup>20</sup> The DEA's own analysis demonstrates that between 1969 (the year before the CSA was passed) and 2013, there was a steady increase in the number of people stating they had used marijuana. Prior to the inclusion of marijuana in the CSA, four percent of people stated they had used it, and in 2013, 38 percent stated they had.<sup>21</sup> This clearly demonstrates that including marijuana in the CSA was completely ineffective at deterring use.

The criminalization of marijuana is incredibly bad for public health. The reality is that millions of Americans use marijuana. Criminalization simply drives the market underground, which may lead to unscrupulous suppliers allowing harmful and unexpected substances such as LSD and heroin to contaminate the product.<sup>22</sup> As a result, people may unknowingly and unwillingly consume potentially dangerous substances. Legalization allows for regulation in a way that delivers a safe product to consumers. Studies have demonstrated that legalization does not harm public health, and in fact has been shown to reduce alcohol use disorder.<sup>23</sup> Additionally, the legalization of marijuana has been shown to decrease the use of opioids, which are widely considered more harmful than marijuana.<sup>24</sup>

## **III. The Criminalization of Marijuana Continues to Be an Enormous Waste of Taxpayer Resources**

The United States spends an unconscionable amount of taxpayer dollars on the criminalization of marijuana, and this practice will only continue if marijuana remains scheduled in the CSA. Between 2001 and 2010 alone, police made more than 8.2 million arrests for marijuana, and 90 percent of these were for simple possession. Law enforcement arrests far more people for

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<sup>20</sup> See i.e. National Center for Drug Abuse Statistics. <https://drugabusestatistics.org/marijuana-addiction/>

<sup>21</sup> *Schedules of Controlled Substances: Rescheduling of Marijuana*, (2024, May 21) A Proposed Rule by the Drug Enforcement Administration. <https://www.federalregister.gov/documents/2024/05/21/2024-11137/schedules-of-controlled-substances-rescheduling-of-marijuana>

<sup>22</sup> See i.e. American Addiction Centers. *What Can Marijuana Be Laced With?* <https://americanaddictioncenters.org/marijuana-rehab/what-can-marijuana-be-laced-with>

<sup>23</sup> See i.e. Stephanie Zellers et al., (2023, January 5) Recreational cannabis legalization has had limited effects on a wide range of adult psychiatric and psychosocial outcomes. <https://www.cambridge.org/core/journals/psychological-medicine/article/recreational-cannabis-legalization-has-had-limited-effects-on-a-wide-range-of-adult-psychiatric-and-psychosocial-outcomes/D4AB5EB78D588473A054877E05D45F16>

<sup>24</sup> See i.e. Dirk Lachenmeier and Jurgen Rehm (2015, January 30). *Comparative risk assessment of alcohol, tobacco, cannabis and other illicit drugs using the margin of exposure approach*, National Library of Medicine.

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4311234/>; see also Donald Teater, *The Psychological and Physical Side Effects of Pain Medications*.

<https://hcpf.colorado.gov/sites/hcpf/files/Psychological%20and%20Physical%20Side%20Effects%20Teater%20NSC.pdf>



marijuana possession than for all violent crimes combined.<sup>25</sup> It is an enormous waste of resources to dedicate so much time and money to the enforcement of offenses that have no bearing on public safety.

It is estimated that the U.S. spends upwards of \$7.6 billion annually on the criminalization of marijuana.<sup>26</sup> Putting aside the harms incurred by criminalization, this is an enormous amount of taxpayer money that could be put to far better use. In addition to the money saved by diverting from the criminal legal system, the legalization of marijuana provides much-needed funding by regulating and taxing the product. It is estimated that legalization would generate \$2.4 billion per year if marijuana is taxed similarly to consumer goods, or \$6 billion per year if taxed similarly to alcohol and tobacco.<sup>27</sup> Missouri legalized marijuana in 2020, and it is projected that by the end of 2024 it will have generated \$238 million in tax revenue.<sup>28</sup> The state uses that money to fund drug treatment, veterans services, and other important social programs. In another example, Colorado generated \$1.6 billion in tax revenue within a six-year period to fund schools, literacy programs, and mental health programming.<sup>29</sup> In troubling economic times, where social programs are frequently underfunded, it is fiscally irresponsible to spend so much taxpayer money on the continued criminalization of marijuana.

#### **IV. The Federal Government Should Follow the Lead of the States and Decriminalize Marijuana**

Thirty-eight states, the District of Columbia (D.C.), Puerto Rico, Guam, and the U.S. Virgin Islands have comprehensive laws and policies allowing for the medicinal use of marijuana, with nine additional states allowing for “limited access medical cannabis.”<sup>30</sup> Twenty-four states, D.C., Guam, and the Northern Mariana Islands allow for the recreational use of marijuana.<sup>31</sup>

Despite this, the Department of Justice has made clear that marijuana offenses remain criminal under federal law. With so many states legalizing marijuana in some form, retaining criminalization federally results in confusion, with people unknowingly breaking federal law even while obeying the laws of their state. And while under the current administration, the Department of Justice may be taking a more hands-off approach when it comes to enforcing this federal law within the states, that can change at the whim of a new administration. For example,

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<sup>25</sup> Christopher Ingraham, (2016, October 12). *Police arrest more people for marijuana use than for all violent crimes – combined*. [Police arrest more people for marijuana use than for all violent crimes – combined](https://www.washingtonpost.com/news/energy-environment/wp/2016/10/12/police-arrest-more-people-for-marijuana-use-than-for-all-violent-crimes-combined/) - The Washington Post

<sup>26</sup> James Austin, *Rethinking the Consequences of Decriminalizing Marijuana*. [https://www.prisonpolicy.org/scans/jfa/marijuana\\_report.pdf](https://www.prisonpolicy.org/scans/jfa/marijuana_report.pdf)

<sup>27</sup> Ezekiel Edwards and Rebecca McCray, (2012, April 26). *Hundreds of Economists: Marijuana Prohibition Costs Billions, Legalization Would Earn Billions*. <https://www.aclu.org/news/smart-justice/hundreds-economists-marijuana-prohibition-costs-billions>

<sup>28</sup> Joe McLean, (2024, June 15). *Projected marijuana tax revenue in 2024 enough to fully fund Missouri’s health, public safety departments*. <https://www.kctv5.com/2024/06/15/projected-marijuana-tax-revenue-2024-enough-fully-fund-missouris-health-public-safety-departments/>

<sup>29</sup> Robert Hoban, (2022, April 14). *The Success of Colorado’s Marijuana Tax Dollars*. <https://www.forbes.com/sites/roberthoban/2021/05/23/the-success-of-colorados-marijuana-tax-dollars/>

<sup>30</sup> See i.e. Congressional Research Service (2024, May 2). *The Federal Status of Marijuana and the Policy Gap with States*. <https://crsreports.congress.gov/product/pdf/IF/IF12270>

<sup>31</sup> Id.



former Attorney General Jeff Sessions cited the importance of the “rule of law” in directing a more hardline approach to marijuana enforcement,<sup>32</sup> while President Biden has made clear his belief that people should not be incarcerated for marijuana.<sup>33</sup> Decriminalizing at the federal level will put an end to this inconsistency and the confusion it sows.

The federal government should take cues from the broad success enjoyed by the states on this issue and decriminalize marijuana. Half of the states in the U.S. have fully legalized recreational use of marijuana, and 38 have legalized medicinal use. The results are clear — legalization has been an overwhelming success. In one of the most obvious signs that legalization is working, not a single state has reversed its legalization of either medicinal or recreational marijuana.<sup>34</sup>

Not only have these states generated an enormous amount of tax revenue to support schools, literacy programs, alcohol and drug treatment, and veterans programs, they have greatly reduced the number of marijuana arrests and the corresponding waste of state taxpayer dollars for prosecutions. For example, after legalizing marijuana, court filings in Washington fell by 98 percent, arrests in Oregon declined by 96 percent, in D.C. by 98 percent, and in Alaska by 93 percent.<sup>35</sup> Not only does this reflect an enormous cost savings, but the savings to human lives is profound. These statistics reflect parents who are not being separated from their children, employees who are not losing their jobs, and community members who are not being removed to jails and prisons. None of these states have sought to reverse legalization because they see the benefits in terms of tax revenues and decreased criminalization, without a corresponding decrease to public health or public safety.<sup>36</sup> Simply put, marijuana legalization has demonstrated itself to be a win-win proposition.

## Conclusion

While the proposed rule to reschedule marijuana from Schedule I to Schedule III may be a step in the right direction, it falls far short of effecting meaningful change. From a racial, social, and economic justice perspective, rescheduling marijuana is wholly insufficient. The analysis from the DEA that led to this proposed rule is completely void of any inquiry into the troubling history of the CSA and the ways in which the inclusion of marijuana was an integral piece of the “War on Drugs.” A war that has harmed, and continues to harm Black, Brown, and Indigenous communities. Nothing short of descheduling will address and begin to rectify these harms. We urge the DEA to reconsider this proposed rule, take into account the successes of the states that have legalized marijuana, and instead propose a rule to deschedule marijuana from the CSA.

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<sup>32</sup> See i.e. Press Release: *Justice Department Issues Memo on Marijuana Enforcement* (2018, January 4). <https://www.justice.gov/opa/pr/justice-department-issues-memo-marijuana-enforcement> ; see also Congressional Research Service (2018, January 10). *Attorney General’s Memorandum on Federal Marijuana Enforcement: Possible Impacts*. <https://crsreports.congress.gov/product/pdf/LSB/LSB10054>

<sup>33</sup> See i.e. *Statement from President Biden on Marijuana Reform* (2022, October 6). <https://www.whitehouse.gov/briefing-room/statements-releases/2022/10/06/statement-from-president-biden-on-marijuana-reform/>

<sup>34</sup> See i.e. Congressional Research Service (2024, May 2). *The Federal Status of Marijuana and the Policy Gap with States*. <https://crsreports.congress.gov/product/pdf/IF/IF12270>

<sup>35</sup> Drug Policy Alliance (2018, January 19). *From Prohibition to Progress: What We Know About Marijuana Legalization in Eight States and D.C.* <https://drugpolicy.org/news/prohibition-progress-what-we-know-about-marijuana-legalization-eight-states/>

<sup>36</sup> *Id.*



If we can answer any questions or be a resource in any way, please do not hesitate to reach out to Aiden Cotter, Senior Policy Counsel for Decarceration and Decriminalization at the Southern Poverty Law Center, at [aiden.cotter@splcenter.org](mailto:aiden.cotter@splcenter.org).

Sincerely,

A handwritten signature in black ink that reads "Aiden Cotter". The signature is written in a cursive, flowing style.

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