



Letter from

**Toi Hutchinson**  
**President and CEO, Marijuana Policy Project**

Regarding

**“Developments in State Cannabis Laws and  
Bipartisan Cannabis Reforms at the Federal Level”**

Before the

**Subcommittee on Civil Rights and Civil Liberties**  
**U.S. House of Representatives**

November 15, 2022

Dear Chairman Raskin, Representative Mace, Ranking Member Roy, and distinguished members of the Subcommittee on Civil Rights and Civil Liberties:

My name is Toi Hutchinson, and I am the president and CEO of the Marijuana Policy Project, the largest cannabis policy reform organization in the United States. I previously served as an Illinois state senator, where I was one of the four lawmakers who led the charge to pass equitable legalization in Illinois; president of the National Conference of State Legislatures; and Gov. Pritzker’s senior advisor for cannabis control.

The Marijuana Policy Project strongly supports legalizing and regulating cannabis for adults 21 and older and doing so in a way that repairs the damage inflicted by criminalization, and its unequal, racially biased enforcement. MPP has played a leading role in most of the major cannabis policy reforms since 2000, including 15 state medical cannabis laws, several state decriminalization laws, and 12 of the 21 adult-use legalization laws. Our priorities include the expungement of past cannabis convictions, release of cannabis prisoners, promoting diversity and social equity in the industry, reinvesting in communities hard-hit by the war on cannabis, and prioritizing affordable access to medical cannabis.

I am grateful to your subcommittee for exploring the issues of decriminalization at the federal level, racial disparities in the criminal justice system, improving treatment options for veterans, and allowing cannabis businesses to access banking services.

With Maryland and Missouri voters legalizing cannabis on Election Day, 48% of the U.S. population now lives in states where cannabis is legal for adults' use.<sup>1</sup> Still, federal law continues to harshly criminalize all cannabis possession and sales, even as federal policy has opened the door to widespread availability of far more risky synthetic cannabinoids that do not have age-gating, lab testing, or any of the other public health measures required by state cannabis regulation laws.<sup>2</sup>

**We implore *this* Congress to de-schedule and legalize cannabis under federal law, thus replacing an eight-decade policy failure that has derailed countless lives with expanded freedom and public health protections.** We are grateful to the U.S. House of Representatives for twice passing the M.O.R.E Act (H.R. 3617) and to Rep. Mace for introducing the States Reform Act (H.R. 5977).

**If full federal legalization is not achievable in the lame duck session, we strongly urge the following reforms be immediately enacted to reduce the harm inflicted by federal policy while work continues on broader reform:**

- Decriminalize cannabis under federal law by removing all federal penalties from personal possession and cultivation
- Remove all penalties for state-legal cannabis activities
- Reduce excessive federal penalties for cannabis offenses
- Provide for automatic expungement, re-sentencing, and release
- Improve safety by legalizing cannabis banking and credit card use
- Allow Veterans Affairs doctors to recommend medical cannabis

#### **I. Decriminalizing Cannabis Under Federal Law by Removing All Federal Penalties from Personal Possession and Cultivation**

At least 84% of Americans live in a state that has legalized federally illegal cannabis products for medical use, adult use, or both.<sup>3</sup> Yet every cannabis consumer in our nation — including families treating children's intractable seizures, veterans alleviating physical pain and mental anguish, and adults who simply prefer cannabis to a can of beer to wind down — is a criminal under federal law.

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<sup>1</sup> The 21 states that have legalized cannabis for adults 21 and older are: Alaska, Arizona, California, Colorado, Connecticut, Illinois, Maine, Maryland, Massachusetts, Michigan, Missouri, Montana, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia, and Washington. You can find a snapshot of key features of the adult-use laws [here](#). Washington, D.C. and the U.S. territories Guam and the Northern Mariana Islands have also legalized cannabis for adults.

<sup>2</sup> For more information and an exploration of the issues, see: Ceci M, Scialdone M, Tishler J. The Dark Side of Cannabidiol: The Unanticipated Social and Clinical Implications of Synthetic  $\Delta^8$ -THC. Cannabis Cannabinoid Res. 2022 Oct 19. doi: 10.1089/can.2022.0126. Epub ahead of print. PMID: 36264171

<sup>3</sup> 37 states, Washington, D.C, Puerto Rico, the U.S. Virgin Islands, Guam, and the Northern Mariana Islands, have enacted what MPP considers comprehensive medical cannabis laws. A list of the states and key features of their laws is [here](#). Three more states — Iowa, Texas, and Georgia — allow the medical use and production/in-state sales of lower THC cannabis products that exceed what is under the FARM Act.

This is all the more outrageous given that, in most circumstances, even murder, rape, and burglary are not federal offenses. But Congress has made it a federal crime to possess a plant that is safer than alcohol even in the privacy of one's home.<sup>4</sup>

Under federal law, possession of even a single joint carries up to a year in jail, a fine of up to \$1,000, or both.<sup>5</sup> A second offense carries a minimum of 15 days in jail with a maximum of two years and a fine of up to \$2,500. Subsequent offenses have a 90-day mandatory minimum, with a maximum sentence of three years in prison and a fine of up to \$5,000.

Over 50 years ago, on March 22, 2022, the Nixon-commissioned National Commission on Marihuana and Drug Abuse recommended removing all federal penalties from cannabis possession.<sup>6</sup> As law professor Richard Bonnie, who served as associate director of the Shafer Commission, explained, "After an exhaustive review of the history of prohibition and the scientific research on marijuana, in 1972 President Nixon's National Commission on Marihuana and Drug Abuse called for decriminalization at the federal and state levels. We found the cost of criminalization — 200,000 arrests for marijuana possession in 1970 — was not justified by the marginal preventive effects of arresting and jailing people who possess marijuana for their own use. What was true 50 years ago is even more compelling today — the cost of criminalizing millions of marijuana consumers is too high, and it is time to end this failed policy in favor of a sensible form of regulated access."<sup>7</sup>

It is long past time to heed the Shafer Commission's recommendation and decriminalize cannabis under federal law.

Instead, each year thousands of federal arrests are made for cannabis possession.<sup>8</sup> The federal criminalization of cannabis has even harsher consequences for some individuals, including immigrants, those living in federally subsidized housing, and gun owners. Due to the federal illegality of cannabis possession, more than 6,000 individuals are deported

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<sup>4</sup> Cannabis is less toxic, less addictive, and not nearly as harmful to the body as alcohol. See <https://www.mpp.org/marijuana-is-safer/> for more information.

<sup>5</sup> 21 U.S.C. § 844.

<sup>6</sup> National Commission on Marihuana and Drug Abuse, "Marihuana: A Signal of Misunderstanding," March 1972. See also Richard J. Bonnie and Charles H. Whitebread, "The Marijuana Conviction: A History of Marijuana Prohibition in the United States," Drug Policy Classic Reprint from the Lindesmith Center, 1999.

<sup>7</sup> As quoted in MPP's report on the 50th anniversary of the Shafer Commission report, "Behind the Times: The 19 States Where a Joint Can Still Land You in Jail." Available at [mpp.org/DecrimReport](https://www.mpp.org/DecrimReport).

<sup>8</sup> In fiscal year 2019, the Drug Enforcement Administration arrested 2,597 individuals for cannabis offenses. In 2013, the most recent year with accessible data, there were 2,169 federal convictions for simple possession of cannabis. Mark Motivans, "Federal Justice Statistics, 2019," U.S. Department of Justice, Bureau of Justice Statistics, Appendix Table 2.' "Weighing the Charges: Simple Possession of Drugs in the Federal Criminal Justice System," United States Sentencing Commission, September 2016, p. 3, table 1.

each year over cannabis<sup>9</sup> and lawful permanent residents may be deemed permanently inadmissible for using cannabis — including state-legal cannabis.<sup>10</sup> Individuals living in HUD-subsidized housing have been evicted for medical cannabis use.<sup>11</sup>

Meanwhile, Americans who exercise their Second Amendment rights to buy, own, or possess a gun or ammunition risk a federal felony charge due to federal criminalization of cannabis.<sup>12</sup> This has a particularly dramatic impact on veterans, 64% of whom own firearms<sup>13</sup> compared to 32% of Americans overall.<sup>14</sup> It causes immense strain on veterans who want to treat their debilitating pain or PTSD with cannabis — forcing them to choose between the medicine many find works best for them and their gun rights. Some continue to use cannabis and own guns but live under a cloud of anxiety and stress due to possible felony penalties.

Criminalizing possession of a substance half Americans have used<sup>15</sup> — and 50 million have used in the past year<sup>16</sup> — opens the door to selective enforcement and staggering racial disparities. That has been both the intent and the consistent outcome of the War on Drugs.<sup>17</sup>

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<sup>9</sup> “Secure Communities and ICE Deportation: A Failed Program?,” TRAC Immigration, Syracuse University (finding 6,770 ICE deportations in FY 2013 where the most serious offense was cannabis possession and 6,447 in FY 2012).

<sup>10</sup> See: Ana Campoy and Justin Rohrlich, “Immigrants are being denied US citizenship for smoking legal pot,” Quartz, April 20, 2019; Michelle Kain, “The Impact of Marijuana Decriminalization on Legal Permanent Residents: Why Descheduling Marijuana at the Federal Level Should Be a High Priority,” 62 B.C. L. Rev. 2057 (2021).

<sup>11</sup> Morgan Besecker, “Medical marijuana user evicted from public housing,” *The Times Tribune*, August 8, 2022; US Dept. of Housing and Urban Development, “Medical Marijuana Use in Public Housing and Housing Choice Voucher Programs,” February 10, 2011. <https://www.hud.gov/sites/documents/MED-MARIJUANA.PDF>

<sup>12</sup> 18 U.S. Code § 924; 18 U.S. Code § 922 (g)(3). There is no similar prohibition on alcohol consumers owning or buying firearms, despite the fact that alcohol intoxication — unlike cannabis — is linked to violence. Hoaken PN, Stewart SH. “Drugs of abuse and the elicitation of human aggressive behavior.” See: *Journal of Addictive Behaviors*. 2003 Dec;28(9):1533-54. doi: 10.1016/j.addbeh.2003.08.033. PMID: 14656544.

<sup>13</sup> “We Surveyed 1,001 Veterans About Gun Control, Here’s What They Said,” *Veterans Life*, <https://veteranlife.com/military-news/gun-control/>

<sup>14</sup> Lydia Saad, “What Percentage of Americans Own Guns?” *Gallup*, updated Nov. 13, 2020.

<sup>15</sup> Taylor Orth, “Half of Americans have tried marijuana and most say their experiences were positive,” *YouGovAmerica*, April 7, 2022.

<sup>16</sup> “What is the scope of cannabis (marijuana) use in the United States?,” National Institute on Drug Abuse. <https://nida.nih.gov/publications/research-reports/marijuana/what-scope-marijuana-use-in-united-states>. (Accessed on November 11, 2022, Source: 2020 National Survey on Drug Use and Health)

<sup>17</sup> Pres. Richard Nixon's domestic policy advisor, John Ehrlichman, explained decades later that Nixon launched the War on Drugs because Nixon had “two enemies: the antiwar left and black people ... 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.” Dan Baum, “Legalize It All,” *Harper’s Magazine*, April 2016. American Civil Liberties Union (ACLU), “A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform,” 2020. (finding Black individuals are 3.6 times as likely to be arrested for cannabis possession as white

MPP strongly urges Congress to immediately remove all federal penalties for possession of *at least* a pound of cannabis and 20 plants. There is no sound reason to make a federal case out of personal possession and cultivation of cannabis.

## II. Remove All Penalties for State-Legal Cannabis Activities

In red, blue, and purple states, the American people and their elected officials have made their states “laboratories of democracy” and enacted cannabis policies that differ dramatically from federal law. At least 40 states allow the licensed, regulated sales of cannabis products that are federally illegal. Sale or manufacture of cannabis is a federal felony, with even the smallest quantities carrying up to five years in prison.<sup>18</sup>

It is unconscionable that workers in state-legal cannabis businesses are all felons in the eyes of the federal government.

It should come as no surprise that the National Conference of State Legislatures — which requires a 75% majority of all *states’* delegations to pass a resolution — has called for federal de-scheduling and resolved that “the federal government should respect state decisions to regulate cannabis, including hemp in non-FDA approved cannabis products.”<sup>19</sup>

In addition to the possibility of prosecution,<sup>20</sup> federal prohibition creates numerous other hardships. For example, state-legal cannabis employees often have trouble obtaining mortgages because their work is federally illegal.<sup>21</sup> They are put at risk of violent robberies because federal law results in their businesses accepting mostly cash. For immigrants, working in the state-legal cannabis industry can have dire consequences.<sup>22</sup>

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individuals, despite nearly identical use rate.) Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, New Press, 2010.

<sup>18</sup> 21 U.S.C. § 841; Since 2015, Congress has included a provision in budgets to prevent interference in state medical cannabis laws. See: Consolidated and Further Continuing Appropriations Act of 2015, Section 538, Pub. L. 113-235, 128 Stat. 2130 (2014) However, that only applies to medical cannabis, it requires annual renewal, and does not actually change federal criminal law.

<sup>19</sup> Policies for the Jurisdiction of the Law, Criminal Justice and Public Safety Committee: Cannabis and Federalism, NCSL. <https://www.ncsl.org/ncsl-in-dc/task-forces/policies-law-and-criminal-justice.aspx>

<sup>20</sup> While we are not aware of recent federal prosecutions of state-legal providers, they have happened — including during the Obama Administration, which had indicated it would not target those complying with state medical cannabis. For example, Richard Flor died in federal custody after being sentenced to five years for being a Montana medical cannabis provider. His health rapidly deteriorated after prosecution began. Matt Bolz, "Ex-medical marijuana provider dies in custody," *Associated Press*, Aug, 30 2013.

<sup>21</sup> See: Jeremy Berke, "Cannabis execs and employees are struggling to get mortgages and having their bank accounts canceled — even though the industry is legal in many states," *Business Insider*, June 6, 2022.

<sup>22</sup> See: “Controlled Substance-Related Activity and Good Moral Character Determinations,” U.S. Citizenship and Immigration Services, April 19, 2019, Policy Manual.. (Policy Highlight: "An applicant who

### **III. Reduce Excessive Federal Cannabis Penalties for Cannabis Offenses**

Under federal law, some cannabis offenses carry mandatory minimum sentences. A second or subsequent conviction for possessing even a tiny amount of cannabis carries a mandatory minimum. Sale and cultivation of large amounts carry staggering five- or 10-year mandatory minimums.<sup>23</sup>

Mandatory minimums strip judges of the ability to use their discretion based on the facts of the case. They result in harsher penalties for non-violent cannabis offenses than many sex offenders and violent criminals. Some federal cannabis offenses even carry the possibility of life imprisonment.

These harsh penalties are an outrageous misallocation of limited criminal justice resources and are devastating to individuals who were simply growing or selling a substance that is safer than alcohol, opiates, and even the long-term use of many over-the-counter medications.

We strongly urge that all mandatory minimum sentences be removed for all cannabis-related offenses and the maximum penalties be significantly reduced.

### **IV. Providing for Automatic Expungement, Release, and Re-Sentencing**

Cannabis laws have been enforced unequally, with Black individuals and other people of color vastly more likely to be stopped, searched, arrested, and harshly sentenced.<sup>24</sup>

An arrest or criminal record carries a myriad of collateral sanctions that close the door to opportunity. The unequal enforcement of cannabis laws (and other offenses) means Black individuals are disproportionately likely to have their dreams and lives derailed, and their earning power reduced.

Collateral sanctions from a cannabis conviction can include revocation or suspension of professional licenses, barriers to employment or promotion, deportation, loss of educational financial aid, restrictions on access to public housing, driver's license suspension, and bars on adoption, voting, and receiving food stamps.<sup>25</sup> The American Bar

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is involved in certain marijuana related activities may lack GMC if found to have violated federal law, even if such activity is not unlawful under applicable state or foreign laws.")

<sup>23</sup> 21 U.S.C. § 841. (Manufacturing or distributing 100-999 plants or kilograms carries a five year mandatory minimum, while 100-999 plants or kilograms carries ten years to life.)

<sup>24</sup> Pierson, E., Simoiu, C., Overgoor, J. et al. A large-scale analysis of racial disparities in police stops across the United States. *Nat Hum Behav* 4, 736–745 (2020). <https://doi.org/10.1038/s41562-020-0858-1>; ACLU, "A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform," 2020. Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, New Press, 2010.

<sup>25</sup> See "Life Sentences: The Collateral Sanctions Associated with Marijuana Offenses," available at <https://www.mpp.org/issues/criminal-justice/collateral-sanctions-associated-with-marijuana-offenses/>.

Association's National Inventory of Collateral Consequences of Conviction details more than 44,000 collateral consequences of criminal records.<sup>26</sup>

Incarceration is even more devastating. Even a day or two in jail can result in lost jobs and housing, in addition to the mental health outcomes from witnesses or experiencing violence. Several individuals have even died while incarcerated for cannabis possession.<sup>27</sup>

It is vital that the scarlet records of federal cannabis convictions be erased automatically — not just for possession but for other cannabis offenses, too. Sentence reforms should be made retroactive, and there should be a swift review of every current cannabis-related sentence. The vast majority of (or all) cannabis prisoners and probationers should be released from custody and supervision. In addition, federal probation and parole should not be revoked for testing positive for THC or other cannabinoids.

## V. Enhance Safety: Allow for Safe Banking and Credit Card Transactions

Due to federal law, most cannabis businesses do not accept credit cards and banking is very difficult to secure.<sup>28</sup> Federal authorities have pursued felony charges against some for allegedly finding a work-around to get banks to process credit card transactions for state-legal cannabis businesses.<sup>29</sup> Federal law forces cannabis to be a cash-mostly business and makes cannabis businesses extremely vulnerable to armed robbery.

Institutions that knowingly bank cannabis charge very hefty fees due to the risk and the need to file time-consuming Suspicious Activities Reports (SARS).<sup>30</sup> Many financial institutions only bank those clients they already have a relationship with — who are disproportionately white and wealthy. It is very common for financial institutions to suddenly drop cannabis businesses. Even MPP — a nonprofit advocacy organization that is not involved in cannabis sales — has lost banking in the past due to federal policy. The lack of safe-banking is particularly harmful to small minority-owned businesses.

Congress should immediately allow cannabis banking and the acceptance of credit cards to reduce the vulnerability to violent robberies and to allow small and minority businesses to have improved access to banking and a more level playing field.

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See also National Inventory of Collateral Consequences of Conviction, available at <https://niccc.nationalreentryresourcecenter.org/> and "After the Sentence, More Consequences: A National Report of Barriers to Work," The Council of State Governments Justice Center (2021).

<sup>26</sup> Available at <https://niccc.csgjusticecenter.org/about/>.

<sup>27</sup> See: Henri E. Cauvin, "DC Jail Stay Ends in Death for Quadriplegic Md. Man," *The Washington Post*, October 1, 2004. "Snohomish County probes death of inmate who had food allergy," *Associated Press*, October 14, 2012. Tim Elfrink, "He died in jail hours after a minor pot arrest. Now 7 corrections officers have been fired," *Washington Post*, April 2, 2021.

<sup>28</sup> See: "Editorial: Cannabis madness," *Times Union*, Nov. 11, 2022. ("Entrepreneurs have trouble getting loans, setting up a business checking account, or taking credit card transactions. Consequently, many have to act as cash operations, making them prime targets for robberies.")

<sup>29</sup> Jody Godoy, "Ex-Eaze consultants sentenced to prison for pot payment scheme," *Reuters*, June 18, 2021.

<sup>30</sup> "BSA Expectations Regarding Marijuana-Related Businesses," Financial Crimes Enforcement Network, Feb., 14, 2014.

## V. Allow Veterans Affairs doctors to recommend medical cannabis

Veterans Affairs medical professionals are not allowed to issue medical cannabis recommendations, which are required for patients to participate in state medical cannabis programs.<sup>31</sup> This steers many veterans to more dangerous opiates and other prescription painkillers. Whereas cannabis has not been shown to cause fatal overdoses, prescription opioids cause 16,000 fatal overdoses in the U.S per year.<sup>32</sup>

Other veterans who are denied VA-recommendations use cannabis obtained on the illicit market. This puts them at risk of arrest by local police and it also results in far more risky access to cannabis — street cannabis is not standardized or labeled for potency and often has hazardous pesticides, heavy metals, and other contaminants. Meanwhile, some veterans pay for out-of-pocket appointments with doctors who are able to issue certification for medical cannabis, a hardship to a population that has a high rate of disability and unemployment.

Those who risked their lives for our country and endured lengthy separations from their families should not be denied a safe and effective medical treatment that is legal in at least 40 states. During the lame duck session, Congressional cannabis policy reforms should include clearly allowing VA doctors to certify their patients for state medical cannabis programs.

Congress should also consider removing the prohibition on off-duty use of cannabis from the Uniform Code of Military Justice.<sup>33</sup> Active duty military should also not be steered to far more dangerous substances like alcohol and opiates.

### Concluding Thoughts

In a time of political polarization and tension, Congress has an opportunity to deliver on reforms the American public of all political stripes support. Don't let it pass by. Before the year ends, stop the senseless federal criminalization of tens of millions of Americans.

I would welcome an opportunity to answer any questions and to discuss MPP's vision for federal policy, which is informed by my experiences as a lawmaker devoted to equity and justice, state cannabis czar, and leader of an organization of *all* state legislatures. My team also has a wealth of resources and experience on the various state laws that we would be happy to share.

Thank you for your careful consideration of this important issue of freedom, equity, public health and safety, and sound public policy.

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<sup>31</sup>VA and Marijuana – What Veterans need to know, U.S. Dept. of Veterans Affairs (accessed Nov. 13, 2022) <https://www.publichealth.va.gov/marijuana.asp>

<sup>32</sup> "Prescription Opioid Overdose Death Maps," Centers for Disease Control and Prevention.

<sup>33</sup> 10 U.S. Code § 912a.



Sincerely,

*Toi W. Hutchinson*

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CEO and President  
Marijuana Policy Project