December 13, 2023

The Honorable Merrick Garland   The Honorable Anne Milgram
Attorney General   Administrator
U.S. Department of Justice   Drug Enforcement Administration
950 Pennsylvania Avenue, NW   8701 Morrissette Drive
Washington, DC 20530   Springfield, VA 22152

Dear Attorney General Garland and Administrator Milgram,

As former United States Attorneys, we are deeply concerned over the Department of Health and Human Services' (HHS) recommendation that the Department of Justice (DOJ) reclassify marijuana as a Schedule III drug. For fifty years, both Democratic and Republican Administrations have followed the science and affirmed that marijuana should not be rescheduled. Since its last review seven years ago, marijuana has only become more dangerous, potent, and addictive. Further, marijuana sales (even in jurisdictions that have legalized marijuana) in the US remain a profitable enterprise for drug cartels. Now is not the time to loosen federal restrictions on a drug that addicts millions of Americans and boosts profits for cartels.

In 2016 under President Obama, then-DEA Administrator Chuck Rosenberg determined that "there is no substantial evidence that marijuana should be removed from Schedule I." He gave three justifications for this determination: "Marijuana has a high potential for abuse... Marijuana has no currently accepted medical use in treatment in the United States... Marijuana lacks accepted safety for use under medical supervision."

Evidence for former Administrator Rosenberg's claims is even stronger today than in 2016. The CDC states that marijuana has an addiction rate of 30%. A study published in JAMA the same day Admiral Levine's letter on rescheduling was sent to the DEA determined that marijuana's addiction rate in Washington state after legalization was 21%. The most comprehensive study on the addictive potential of different drugs determined that marijuana is more addictive than several other Schedule I drugs, including LSD, GHB, ecstasy, and khat. These studies certainly confirm that marijuana has a high abuse potential.

The primary driver for marijuana's increasing addictiveness is the dramatic rise in THC potency. Researchers have concluded that the "use of high potency cannabis, compared to low potency cannabis, was linked to a four-fold increased risk of addiction." The average THC potency of marijuana seized by the DEA has spiked from 3.96% in 1995 to 15.34% in 2021. In 2016, when marijuana's scheduling was last reviewed, the average THC potency was at 11.51%. Many concentrates sold in state "legal" markets today are upwards of 99% THC.

Data also supports the determination that marijuana does not have accepted medical use or safe use under medical supervision. A systematic review on cannabis-based medicines published in June 2023 concluded with "high to moderate certainty" that "cannabis-based medicines increased adverse events related to the central nervous system." Leading researchers also express the need for more data to be collected on marijuana. A NIDA factsheet on medical marijuana wrote, "So far, researchers haven't conducted enough large-scale clinical trials that show that the benefits of the marijuana plant (as opposed to its cannabinoid ingredients) outweigh its risks in patients it's meant to treat."

Almost no one has benefitted from legal weed, but there is one group coming out on top: drug cartels. Many states have enacted home-grow marijuana laws, which led to cartels growing marijuana in the United States to cut trafficking costs. As marijuana becomes more normalized, the cartels continue to make money on illicit sales. Even in California, where marijuana is legal, the illicit market makes up 75% of sales. Law enforcement estimates that over 80% of the state's dispensaries sell products grown illegally. Attorneys and law enforcement already have one hand tied behind their backs when it comes to enforcing federal marijuana laws. Rescheduling marijuana, and thus reducing criminal penalties for marijuana trafficking, removes a key tool federal agents have to prosecute cartels.

Reclassifying marijuana to Schedule III will harm public health and safety. Making marijuana Schedule III would allow the industry, which relies on an addiction-for-profit model to make money, to deduct business expenses, as they would no longer be subject to IRS regulation Section 280E. This means marijuana corporations would be able to deduct expenses for advertisements appealing to youth and the sale of kid-friendly marijuana gummies. We can't afford to create a new Big Tobacco that targets kids. Placing marijuana in Schedule III will allow the industry's commercialization ability to explode.

We urge you to consider the scientific research that demonstrates marijuana's high addictive potential, its lack of safe medical use, and the impact rescheduling will have on prosecuting drug cartels when conducting your scheduling review.

Sincerely,

Alice Martin, Former U.S. Attorney, Northern District of Alabama

Billy J. Williams, Former U.S. Attorney, District of Oregon

Donald Q. Cochran, Former U.S. Attorney, Middle District of Tennessee

Ed Yarbrough, Former U.S. Attorney, Middle District of Tennessee

Jay E. Town, Former U.S. Attorney, Northern District of Alabama

Jeffrey A. Taylor, Former U.S. Attorney, District of Columbia

Jessie K. Liu, Former U.S. Attorney, District of Columbia

Joe Russoniello, Former U.S. Attorney, Northern District of California

John Brownlee, Former U.S. Attorney, Western District of Virginia

John Huber, Former U.S. Attorney, District of Utah

John C. Richter, Former U.S. Attorney, Western District of Oklahoma and Former Acting Assistant Attorney General, Criminal Division

John Suthers, Former U.S. Attorney, District of Colorado

Johnny Sutton, Former U.S. Attorney, Western District of Texas

Joseph D. Brown, Former U.S. Attorney, Eastern District of Texas

Mark A. Klaassen, Former U.S. Attorney, District of Wyoming

Marty Jackley, Former U.S. Attorney, District of South Dakota

Matt Dummermuth, Former U.S. Attorney, Northern District of Iowa

McGregor W. Scott, Former U.S. Attorney, Eastern District of California

Michael B. Stuart, Former U.S. Attorney, District of West Virginia

Michael J. Sullivan, Former U.S. Attorney, District of Massachusetts, and Former Acting Director, Bureau of Alcohol, Tobacco, Firearms and Explosives

Mike Dunavant, Former U.S. Attorney, Western District of Tennessee

Nicholas A. Trutanich, Former U.S. Attorney, District of Nevada

Richard B. Roper, Former U.S. Attorney, Northern District of Texas

Robert Brewer, Former U.S. Attorney, Southern District of California

Robert Troyer, Former U.S. Attorney, District of Colorado

Ron Parsons, Former U.S. Attorney, District of South Dakota

Ronald J. Tenpas, Former U.S. Attorney, Southern District of Illinois

Timothy Shea, Former U.S. Attorney, District of Columbia, and Former Acting DEA Administrator

William Leone, Former U.S. Attorney, District of Colorado