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January 10, 2024

The Honorable Joseph R. Biden
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

VIA EMAIL

Dear President Biden,

For more than 50 years, Black Americans have borne the brunt of cannabis prohibition. Racially disparate enforcement derailed millions of lives despite marijuana use rates being roughly equal between Black and white Americans respectively.¹ For decades, misinformation prevailed and obscured the medical benefits of cannabis. Convictions and sentencing for marijuana disproportionately incarcerated, Black Americans, and created barriers to employment, education, and housing. To rationalize the decades-long war on marijuana, a false and intractable notion was baked into federal law: that marijuana had no acceptable medical use and that it had the highest potential for abuse.¹

In 2022, the White House directed the Attorney General to examine the classification of cannabis as a Schedule I drug (most restrictive class) under the Controlled Substances Act of 1971. This proclamation launched perhaps the most consequential federal marijuana reform effort ever by a United States President. In August 2023, after more than a year of research and deliberation, and after reviewing an unprecedented amount of data, three health agencies (HHS, NIH, and the FDA) concurred that cannabis would be more appropriately placed under Schedule III. As a result of this research, Attorney General Garland authored an interim proposed rule to reclassify cannabis to Schedule III in April 2024. The DEA held a public comment period that demonstrated overwhelming support for Schedule III. It is imperative that your administration do everything within its power to bring this process to a close.

The Congressional Black Caucus is asking that you uphold your promise and

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complete the rescheduling of marijuana from Schedule I to Schedule III before you leave office. The reclassification of cannabis to Schedule III would be a legacy-defining achievement that acknowledges the medical benefits of the cannabis plant and its moderate to low abuse potential, removes barriers for experts to conduct research on the plant, removes the 280(e) tax restriction which, up until this point has incentivized the illicit market to flourish, and creates an opportunity for profitable licensees at the state level - that have already been set aside for Black and minority entrepreneurs. This is an important step forward to resolve a critical issue that has had material consequences for Black Americans for far too long.

The Congressional Black Caucus and scores of other Black leaders have been at the forefront of shaping the social and political discourse that has led to 39 legal state cannabis markets around the country. We have fought tirelessly for Black Americans, who have been the most harmed by the war on marijuana, to have a chance to participate in what is now a state-licensed industry.

Even though Black Americans were aggressively targeted for cannabis prohibition enforcement, they have been slow to benefit from the state-licensed economy. While we successfully established many state systems that awarded licenses to minority entrepreneurs, those efforts have not yet yielded the desired outcomes due to the difficulty that Black and minority cannabis entrepreneurs experience in accessing start-up capital and the ongoing capital investment needed to grow and sustain a cannabis business in the face of a complex and highly regulated industry without access to traditional banking and operational services.

But perhaps the greatest barrier to social equity applicants is the application of Section 280e of the Federal Tax Code. Section 280E prevents state-legal cannabis businesses from taking standard business deductions and receiving tax credits. Depending on the business construct, 280E can burden a business with an effective tax rate of between 50% and 70% given impending increases in federal tax rates on licensed cannabis operators. Cannabis businesses are ineligible for deductions including employee salaries, training, health insurance, advertising, marketing, accounting, and other professional expenses. Ultimately, many Black and minority-owned cannabis businesses will not survive unless this administration completes the reclassification of cannabis.

Today, a staggering 88% of Americans say marijuana should be legal for medical or recreational use.¹ Yet, law enforcement agencies, in many states, are still disproportionately arresting Black men and women for possessing cannabis. If this administration does not complete the Schedule III classification now, Black and minority communities' participation in the industry will continue to suffer, and the stigma and misinformation around cannabis may never be replaced by the science and medical expertise so thoughtfully put together by the HHS, NIH, and FDA.

¹ Pew Research Center, March 2024, "Most Americans Favor Legalizing Marijuana for Medical, Recreational Use." <https://www.pewresearch.org/politics/2024/03/26/most-americans-favor-legalizing-marijuana-for-medical-recreational-use/>

² 21 U.S.C. § 801 et seq.

³ Pew Research Center, March 2024, "Most Americans Favor Legalizing Marijuana for Medical, Recreational Use." <https://www.pewresearch.org/politics/2024/03/26/most-americans-favor-legalizing-marijuana-for-medical-recreational-use/>

While we recognize there are only mere days left of this administration, the Congressional Black Caucus is writing to implore you, Mr. President, to use every tool within your arsenal to re-classify marijuana and put an end to the disparate impact this issue continues to have on our community. Its current classification as a Schedule I controlled substance under the Controlled Substances Act (CSA) is inappropriate and problematic, particularly because 90% of American states allow for the use of medical marijuana, which defies the CSA's determination that marijuana "has no currently accepted medical use in treatment in the United States." Rescheduling marijuana will allow needed research to proceed on the long-term impacts of marijuana use and will allow for social equity entrepreneurs to participate in state-licensed economies. We look forward to working with your administration to bring this imperative work to a close before the end of your term.

Sincerely,

A handwritten signature in black ink that reads "Yvette D. Clarke". The signature is fluid and cursive. Below the signature, the letters "M.C." are printed in a small, bold, sans-serif font.

U.S. Representative Yvette D. Clarke (NY-09)
Chair, Congressional Black Caucus