

**NATIONAL COALITION SUPPORTING ENFORCEMENT OF FEDERAL
MARIJUANA LAWS**

10 Elmwood Lane
Asheville, NC 28803

March 16, 2022

The Hon. Merrick Garland
Attorney General
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Garland:

There are many extraordinary domestic issues facing our country. You are leading the Justice Department through a most difficult time. We are pleased to have such an experienced and esteemed jurist, scholar and litigator serving in this position.

This letter comes from people with divergent political affiliations throughout our nation as well as international representatives who know that marijuana legalization in several states is causing grave dangers to this country and is an erosion of our rule of law domestically and abroad.

We are grateful that you ruled on the marijuana issue while serving on the US Court of Appeals for the DC Circuit and you refused to reschedule marijuana, deferring to the science and the scientists. You held that “substantial evidence supported DEA's finding that no adequate and well-controlled studies had established that marijuana had currently accepted medical use.” Americans for Safe Access v. Drug Enforcement, 706 F.3d 438 (DC Cir. 2013)

We also appreciate that the Surgeon General, Dr. Vivek Murthy, told teens not to use marijuana, alcohol or cigarettes in a recent statement about youth mental health. We appreciate that Dr. Jerome Adams, the previous Surgeon General, and Alex Azar, the previous HHS Secretary, warned teens and pregnant women that no amount of marijuana was safe for them. However, we believe these efforts are ineffective without stronger federal government action.

Attorney General Garland we implore you to take the following actions:

1. Reaffirm support for federal law. Issue a statement affirming the administration's commitment to the Controlled Substances Act with the goal of reducing, not expanding, the use of marijuana in the nation.
2. Develop a plan to enforce the federal Controlled Substances Act regarding marijuana. The U.S. Supreme Court has ruled that federal marijuana law preempts state marijuana laws and

that marijuana control is a federal matter and not a states' rights matter. [FN1] This plan should include:

a. Initiate a moratorium on new marijuana businesses or marijuana stores. This should be your first priority.

b. Coordinate with lower-level officials. Prioritize reaching out to governors and key law enforcement officials in states that have legalized marijuana to work with them on enforcement of federal marijuana laws. Support state attorneys general in non-legalized states. Non-legalized states have suffered significantly from illegal diversion of marijuana from legalized states, and from the apparent increase in sophisticated cartel activity there.

c. Require mandatory reporting of the drugs involved including marijuana when there are acts of gun violence, mass shootings, knifings and other acts of irrational violence. These toxicology reports should be made public to both the press and the public and not be covered up for any reason. All District Attorneys in the US should be required to release the information, and it should be part of the public record. This will help to track marijuana-related violence.

d. Create a national task force to study the issue of driving under the influence of drugs and multi-drug abuse. AAA and NHTSA have all issued strong statement against stoned driving. Continually, the marijuana lobbyists upend any efforts to clamp down on stoned driving. Once states legalize marijuana, it's very hard to get a conviction even when drivers kill.

e. Instruct the Drug Enforcement Administration to keep marijuana as a Schedule I drug until there is scientific proof that marijuana does not have a high potential for abuse and that it has a legitimate medical purpose. Currently this proof does not exist.

f. Expand the DEA school education efforts on marijuana.

g. Provide legal assistance to the Food and Drug Administration to enforce our medicine and food laws regarding marijuana. This will ensure that all substances used as medicine are safe and effective.

3. Reassert America's drug policy on the world stage. The White House should make it clear that the United States continues to support the international drug conventions, and that it intends to change its domestic policy to reflect that support.

4. Rescind and replace the DOJ's 2009 Ogden memo and August 2013 memorandum from then Deputy Attorney General James M. Cole (the "Cole Memo"). The Department of justice could do this by reiterating that marijuana cultivation, distribution, and sale are against federal law and that while states may decriminalize possession of marijuana, they may not issue licenses to sell or commercialize marijuana.

5. Select visible marijuana businesses to prosecute. Find a handful of cases in which large, well-funded marijuana businesses are in violation of both state and federal marijuana laws and prosecute both their management/operators and financiers. A real threat of prosecution will raise the cost of capital in the industry significantly, and seriously impede any operations above the cottage-level. Moreover, selection of unsympathetic defendants in violation of both state and federal law will (1) minimize political pushback, (2) avoid conflict with congressional appropriations provisions, and (3) clearly demonstrate the failure of the Cole Memo.

6. Prosecute those dealing in marijuana, which is illegal under federal law, using the Racketeer Influenced and Corrupt Organizations Act (RICO). Those who engage in a pattern of

racketeering activity through a corporation or other enterprise are liable for three times the economic harm they cause. RICO gives federal courts the power to order racketeering enterprises and their coconspirators to cease their unlawful operations.

7. Prosecute those who provide financing for marijuana operations. Federal anti-money laundering statutes make it illegal to engage in financial transactions designed to promote illegal activities, including drug and human trafficking. Start with one major marijuana financier and successfully prosecute it.

8. Empower the FDA to take action to protect patients and the public. Marijuana legalization poses a public health problem and the FDA should be tasked with investigating marijuana for chemical contamination and pesticides. Marijuana should also be subject to the standards of the rigorous criteria of the FDA approval process for medicines and foods, which has been carefully constructed to protect consumer and patient health and safety.

9. Undertake a complete public safety analysis including marijuana-related fatal crashes, child abuse deaths, homicides, suicides and random acts of violence for states that legalized the drug.

10. Federal law 23 U.S.C. 405 National Priority Safety Programs provides incentives for states to address drunk driving. The Code should be amended to incentivize states to address drugged driving as well, including driving under the influence of marijuana's tetrahydrocannabinol.

11. Require NHTSA to fund development, approval and implementation of technology to measure driver impairment by drugs (not drug presence), including marijuana's tetrahydrocannabinol.

The Rationale for Taking These Actions

The science regarding the dangers of marijuana has grown stronger and more robust, with 1000s of studies published in the past decade. The THC content of marijuana has increased dramatically. Many products are 95% THC.

We are terrified for our country's future because of the epidemic of all drug use, which, for most users, begins with marijuana. We scorn the media for not reporting the truth about marijuana's relationship to mental illness, addiction, and threats to public safety.

We greatly fear what will happen to visitors and residents of a crowded city like New York once marijuana shops become as ubiquitous as they are in San Francisco, Los Angeles or Denver. The NYPD is no longer allowed to stop individuals for public use of marijuana, endangering everyone.

In states that have legalized marijuana for recreational use, the occurrence of huge, illegal home grows has grown to outrageous proportions, because a large illegal market, many operated by foreigners, can hide behind the legal market. Note a grow that was recently discovered in Massachusetts. (Exhibit 1).

In California and other western states, the illegal indoor and outdoor grows are everywhere, even in counties that ban marijuana businesses. Note that western fires have a marijuana connection. Here's the news of a fire that started on January 12th, 2022. (Exhibit 2)

The state of California never learned how to regulate medical marijuana, which began in 1996. It had 20 years to learn, but the state compounded its mistake by legalizing recreational marijuana in 2016, with some voters thinking it could be forced into regulation. The black market is still thriving and there has been massive environmental damage. (Exhibit 3)

When the federal government doesn't stop cannabis sales and states become drug dealers, it does little good to warn against youth use of marijuana. Our teens currently think marijuana is "harmless," "just a plant" and "safer than alcohol," because the cannabis lobby and social media do a better job at shaping their opinions than parents or the federal government.

Violence Against Women

Marijuana use is associated with intimate partner violence perpetration among men arrested for domestic violence. Marijuana use is positively and significantly associated with psychological, physical, and sexual interpersonal violence perpetration, even after controlling for alcohol use and problems, antisocial personality symptoms, and relationship satisfaction. (Exhibit 4)(FN2)

Marijuana and Violence

There are many factors that increase violence and gun deaths, but marijuana is one of the most significant factors in crime and violence. Attached are 65 reports of marijuana involved mass violence representing 1000s of deaths and 1000s of injuries. We are sure there are many more. Each incident has an informational link to the relevant reports of how marijuana is involved with the perpetrator's behavior. (Exhibit 5). The perpetrators of mass killings are often marijuana users or used marijuana heavily in adolescence. The Secret Service has reported on this marijuana connection. (Exhibit 6).

Lowering the drug use in this country and getting it down to the level of western European countries could substantially decrease violence in America. A "war on drugs" will never eradicate drug use, but we must do better than our current policies *promoting drug use*.

The Marijuana Industry

We know that President Biden is against marijuana legalization, but the marijuana industry is relentless and greedy and increasingly tied to other addiction-for-profit industries such as tobacco.

We reject the marijuana lobby's claim that marijuana was made illegal because of racism. Mexico made it illegal in 1920 and the international call to make marijuana universally illegal came out of Egypt in 1925. The social justice argument to legalize marijuana has turned out to be a cruel manipulation to vote it through in the states. The fact is that most marijuana shops do not end up bringing equity; minorities and poor neighborhoods suffer the most damage with legalization. Marijuana shops disproportionately locate in poor communities.

The Dangers of the New High Potency Marijuana

It has been known for 100 years that marijuana is dangerous, but it is has become that much more dangerous in the 21st century, and especially since the legalized marijuana industry is pushing very potent products that are far more powerful than in the 1970s. They can contain up to 99% THC. (Exhibit 7)

“Dabbing” is a method of inhaling highly concentrated THC (commonly referred to as hash oil, wax or shatter) using a blow torch-heated delivery system commonly referred to as a dab rig. THC is the main high-inducing chemical in marijuana. Six years after adult-use marijuana commercialization began in Colorado, teens reported an alarming increase in their use of ultra-potent marijuana products in the form of dabs and vapes, according to official state data. More than half of high school students who use marijuana reported that they dab marijuana to get high. Among students who reported using marijuana in the past 30 days, 52% said they dabbled it, up from 34.4% just two years ago - a 50% increase. There was a 69% increase in students vaping marijuana in two years. Among high school students who used marijuana in the past 30 days, 34.3% reported vaping it, up from 20.3% in 2017. Rachel O'Bryan, an attorney and co-founder of Smart Colorado said, “It's no surprise that kids are switching to easily concealed ultra-potent marijuana when they are bombarded with images and marketing for these high-THC products that have proliferated since legalization. This is not the much milder marijuana of their parents' generation.” [FN3]

Of Colorado High School marijuana users in the last 30 days, the percent usually dabbing increased from 7.6% in 2017 to 20.4% in 2019. [FN4]

In the state of Washington and other states there is an alarming increase in teen psychosis because the teens are dabbing. [FN5]

Drugged Driving

As the first state to legalize recreational marijuana use, Colorado has demonstrated the effect marijuana commercialization has on drugged driving:

Traffic deaths per Billion Vehicle Miles Traveled (BVMT) increased from 9.91 in the five years before recreational marijuana commercialization (2014) to 11.26 in the five years after

recreational marijuana commercialization. In the five years prior to recreational marijuana commercialization, Colorado had a thriving commercialized “medical” marijuana industry spawned by the DOJ’s 2009 Ogden memo. [FN6]

Traffic fatalities increased 1.7 deaths/BVMT per year after marijuana commercialization compared with states without legal recreational or medical marijuana. [FN7]

Colorado convicts about 900 drivers per year of DUI when marijuana’s THC was the *only* impairing drug found in toxicology tests. [FN8]

Because of the difficulty prosecutors have in convicting drivers of marijuana-impaired driving, the 2019 conviction rate was only 74% for stoned drivers vs. 92% for drunk drivers. [FN9]

Of drivers arrested for DUI who tested positive for marijuana’s THC, 68% also had other impairing drugs measured in their blood. Polydrug impairment like this is now more common than impairment by any single drug other than alcohol. This may be due in part because drugged driving is under-counted. Polydrug impairment is more dangerous than any single drug, including alcohol. Polydrug impairment is growing more rapidly than impairment by any single drug, including alcohol. 17% of drivers arrested for DUI in 2019 were polydrug impaired drivers, 74% of which had marijuana’s THC included in their drug cocktail. [FN10]

See Exhibit 8 for a discussion of what Congress should do.

We look forward to your response and we are available to provide any clarification and follow up to assist.

Sincerely,

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The consortium of non-profit national and international groups that have signed on to this letter.

A Sobering Choice, California
Alliance for Drug Free Youth, California
Americans Against Legalizing Marijuana, California
Ban Candy Pops, California
Beach Cities Coalition Against Drugs, California
Breathe Free Oregon, Oregon
Cannabis Industry Victims Educating Litigators, New Jersey
Citizens for a Safe and Healthy Texas, Texas
Coalition for a Drug Free Texas, Texas
Coalition for Family Justice, New York
Courage to Speak Foundation, Connecticut
Drug Free Schools Coalition, New Jersey
Drug free Australia, Australia
Drug Watch International, Inc., Virginia
DUID Victim Voices, Colorado
Every Brain Matters, Virginia
Five Minutes of Courage, Colorado
Hermosa Coalition for Drug-Free Kids, California
Illinois Family Institute, Illinois
Jennifer's Messengers, Ohio
Johnny's Ambassadors, Colorado
Lifeway International, Texas
Marijuana Victims Alliance, Arizona
Marijuana Harmless? Think Again, Arizona
Moms Strong, California
National Drug & Alcohol Screening Association, Washington, DC
National Institute of Citizen Anti-drug Policy (NICAP), Virginia
Not Even Once Projects, Australia
Parents Opposed to Pot, Virginia
Save Your Brain Resource, Australia
Save Our Society From Drugs, Florida
Shasta County Chemical People, California
Siskiyou and Shasta County Citizens Against Marijuana, California
Student Drug Testing Coalition, Florida
Take Back America Campaign, California

Teen Challenge Tasmania, Australia
Washingtonians Against Legalizing Marijuana, Washington State
Woman's Christian Temperance Union, Australia
Youth Against Drug Abuse YADA International, Cameroon, Africa

Footnotes

1. United States v. Oakland Cannabis Buyers' Cooperative, 532 US 483 (2001); Gonzales v. Raich, 545 U.S. 1 (2005); United States v. Hicks, 722 F.Supp.2d 829 (E.D. Mich. 2010) (It is indisputable that state medical- marijuana laws do not, and cannot, supercede federal laws that criminalize the possession of marijuana)

An opinion written by now Justice Gorsuch stated that: statutes criminalizing conspiracy to traffic in marijuana were within Congress's constitutional authority to regulate interstate commerce. Statutes criminalizing conspiracy to traffic in marijuana did not violate Tenth Amendment based on defendant's claim that such authority to punish drug crimes was reserved to states; existence of state statutes criminalizing drug trafficking did not preclude Congress from legislating in same area so long as it stayed within its enumerated powers. United States of America v. Rutherford, 472 Fed.Appx. 863 (CA 10 2012)

An opinion joined in by now Justice Kavanaugh held that: The Drug Enforcement Administration's (DEA) interpretation of a regulation requiring that a generic cannabinoid drug have Food and Drug Administration (FDA) marketing approval did not violate the federal Controlled Substances Act, and was not otherwise arbitrary and capricious. 21 C.F.R.1308.13 (g)(1). The court noted that “the presence of FDA marketing approval obviously is powerful evidence that a drug has currently accepted medical use and accepted safety for use under medical supervision. John Doe, Inc., v. Drug Enforcement Administration, 484 F.3d 561, 571 (CA DC 2007)

US v. Pickford, 100 F.Supp.3d 981(D.Cal. 2015), 21 U.S.C.A. § 812.

2. Marijuana use is associated with intimate partner violence perpetration among men arrested for domestic violence, Ryan C. Shorey, Ellen Haynes, Meagan Brem, Autumn Rae Florimbio, Hannah Grigorian, and Gregory L. Stuart, *Transl Issues Psychol Sci.* 2018; 4(1): 108–118. Published online 2018 Mar 1. doi: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5663469/>

Seeing Green? Cannabis Use Associated With Domestic Violence, Wendy L. Patrick, J.D., Ph.D. *Psychology Today*, 2018
<https://www.psychologytoday.com/us/blog/why-bad-looks-good/201810/seeing-green-cannabis-use-associated-domestic-violence>

3. Alarming Increase “Dabbing” and “Vaping” by Colorado Kids

August 4, 2020 Editor, <https://poppot.org/2020/08/04/alarmed-increase-dabbing-and-vaping-by-colorado-kids/>

4. <https://marijuanahealthinfo.colorado.gov/health-data/healthy-kids-colorado-survey-hkcs-data>

5. <https://www.theolympian.com/article54985485.html>

6. Federal Highway Administration, <https://www.fhwa.dot.gov/resources/pubstats/>

7. Kamer RS, Warshafsky S, Kamer GC. Change in Traffic Fatality Rates in the First 4 States to Legalize Recreational Marijuana. JAMA Intern Med. Published Online June 22 (2020)

8. https://cdpsdocs.state.co.us/ORS/Docs/Reports/2021-DUI_HB17-1315.pdf

9. Ibid

10. Ibid

cc:

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The White House

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