



September 14, 2021

President Joseph R. Biden, Jr.
The White House
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

RE: Pardon for Federal Marijuana Offenders

Dear Mr. President:

We write in support of your strong leadership on criminal justice reform in the United States. We share your goals of a more just and fair society that lives up to the promises made in the Declaration of Independence and the U.S. Constitution. We believe, as you do, that real and lasting public safety can only be achieved by fulfilling those promises.

For these reasons, we urge you to exercise your authority as the chief law enforcement officer and the sole decision-maker on clemency under the U.S. Constitution to grant a full, complete, and unconditional pardon to all persons subject to federal criminal or civil enforcement on the basis of non-violent marijuana offenses.

As you know, the federal “war on drugs”¹ has crushed many souls and countless futures, while spreading intolerable levels of mistrust and dysfunction between minority communities and those sworn to protect them.² Although the war impacts individuals of all races, the effects of drug prohibition—from surveillance and arrest, to trial and conviction, to incarceration and reentry into society—are felt most keenly by the poor, the powerless, and people of color.³ Reckoning with these harms is a critical civil rights issue, which must proceed with what Dr. King memorably described as the “fierce urgency of now.”⁴

This resolve is witnessed today in both red and blue states, from coast to coast, as the American people call for an end to marijuana prohibition. Whatever one thinks of other drugs and other defendants, incarcerating marijuana offenders in federal prisons is a misuse of our nation’s resources and grossly hypocritical, given that a clear majority of Americans oppose marijuana prohibition and about half admit to using the drug during their lifetime.⁵ It also stands against the arc of history and the principle of federalism: nearly three-quarters of the states have now abandoned the federal government’s blanket criminal ban in favor of safe, regulated legal access to marijuana for adults and/or those with qualifying medical conditions.⁶

The harms of incarceration are obvious, but the pains of federal marijuana convictions transcend prison walls, making it more difficult for someone to get a job, access affordable housing, and

receive an education.⁷ A conviction can forever limit an individual's constitutional rights and can put the American dream further out of reach for an entire family.

Enough is enough. No one should be locked up in federal prison for marijuana. No one should continue to bear the scarlet letter of a federal conviction for marijuana offenses.

We know you share our concerns. In November 2019, during a Democratic Primary Debate, you stated: "I think we should decriminalize marijuana, period. And I think everyone—anyone who has a record—should be let out of jail, their records expunged, ... completely zeroed out."⁸ On the eve of your election, you reaffirmed "my commitment to you," the American people, to "decriminalize marijuana and automatically expunge prior marijuana convictions."⁹ You were right then, and you remain right today.

Relief from the federal war on marijuana would not only be just, it would also be good policy by advancing public safety and economic prosperity.¹⁰ A general pardon poses a low risk to the American public by releasing the last remaining prisoners of federal marijuana prohibition. Those who will have their sentences commuted comprise a small percentage of the federal prison population and are incarcerated only for non-violent marijuana offenses.¹¹ All other beneficiaries of a categorical pardon represent an even lower risk, since these people are already living peacefully among their neighbors.¹²

A general pardon of all federal marijuana offenders would also be consistent with the Constitution and past practices. Presidents from both political parties have issued categorical grants of clemency when circumstances warranted it. In 1974, President Ford established a program of conditional clemency for Selective Service Act violators.¹³ In 1977, President Carter issued a categorical pardon to all Selective Service Act violators, closing the book on a costly and painful war.¹⁴ You have the power to do the same for the federal war on marijuana.

We appreciate that the Biden-Sanders Task Force recommendations speak to these issues,¹⁵ and we recognize that expungement of harmful convictions is also an important part of the healing process. By your act of constitutional grace, a general clemency will send a clear and powerful message that our country is truly taking a new course on criminal justice policy and practice.

Thank you for your leadership in reforming criminal justice and advancing public safety in America today.

Sincerely,



Weldon Angelos



Erik Luna

on behalf of 150+ artists, athletes, producers, lawmakers, law enforcement officials, academics, business leaders, policy experts, reform advocates, and other professionals

LIST OF SIGNATORIES

(updated April 15, 2022)

ENTERTAINMENT

MUSIC

Drake

Four-Time Grammy Award-Winning Recording Artist (credits include 11x Platinum Single “God’s Plan” and 8x Platinum Single “Hotline Bling”); Actor; Producer; Entrepreneur

Killer Mike

Rap Artist – Founding member of rap duo “Run the Jewels,” Performed Grammy winning song “The Whole World” with Outkast; Political Activist – Recipient of the first ever Billboard Change Maker Award, created to recognize an artist or group that speaks truth to power through their music and celebrity

Tory Lanez

Grammy-nominated, Multi-Platinum Rap Superstar/Singer/Songwriter/Record Producer; Founder – Canadian record label and management company One Umbrella

Ty Dolla \$ign

Rapper/Singer/Songwriter/Musician/Record Producer – Currently with Atlantic Records, known for his songs “Paranoid,” “Or Nah,” and “Blasé,” as well as writing contributions to “Loyal” by Chris Brown, “Post to Be” by Omarion featuring Brown and Jhené Aiko, and “FourFiveSeconds” by Rihanna

T.I.

Three-Time Grammy-Award Winning Rapper; CEO – Grand Hustle Records; Actor – credits include “Get Hard” with Will Ferrell and Kevin Hart

2 Chainz

Grammy-Award Winning Recording Artist – songs “No Lie,” “Birthday Song,” and “I’m Different” listed in top 50 of Billboard top 100

Baby Bash

Grammy-Nominated Recording Artist – song “Cyclone” landed on Billboard charts

Dame Dash

Co-Founder – Roc-A-Fella Records with Jay Z; Co-Creator – Rocawear Clothing; Founder – Dame Dash TV

Dante Thomas

Platinum-selling Recording Artist – credits include international hit single “Miss California” featuring Pras

Dave East

Rapper – album reached #9 on Billboard 100, featuring Wiz Khalifa and Chris Brown; Songwriter; Actor (starred in film “Beats” featured on Netflix)

Freeway

Rapper – Roc Nation Label, member of rap group State Property, has worked alongside Jay-Z on multiple projects

Gunna

Rapper – Best known for his collaborations with Lil Baby and Young Thug, second studio album “Wunna” debuted atop the Billboard 200

Jackboy

Rapper – presently signed to Empire/Sniper Gang, known for his collaborations with Kodak Black, music career began with virality on YouTube

John Forté

Grammy Award-Winning Record Producer – classically trained violinist, worked with multi-platinum group The Fugees; Rapper

Kodak Black

Rapper – Currently with Atlantic Records, second album “Dying to Live” (2018) peaked at number one on the Billboard 200, single “Zeze” (featuring Travis Scott and Offset) peaked at number two on the Hot 100; Philanthropist

Lil Baby

Rapper – Currently with Motown Records, named “Artist of the Year” at the 2020 Apple Music Awards, nominated for three Grammy Awards, two American Music Awards and two MTV Video Music awards

Lil Yachty

Rapper – Signed a joint venture record deal with Quality Control Music, Capitol Records, and Motown Records, all four of his albums have charted within the top 20 of the Billboard 200

Mutulu “M-1” Olugbala

Rapper – Member of hip-hop group Dead Prez; social impact artist and global force connector; Co-founder, Urban Aroma

Loon

Rapper – best known for his association with Sean Combs’s Bad Boy Records; featured artist on Combs’s 2002 hits “I Need a Girl (Part One)” and “I Need a Girl (Part Two)”; Criminal Justice Reform Advocate with Jay Z’s REFORM Alliance

Meek Mill

Grammy-Nominated Recording Artist – single “Going Bad” rose to number six on Billboard Hot 100; Criminal Justice Reform Advocate – created the REFORM Alliance with Jay-Z

Russ

Rapper/Songwriter/Record Producer – platinum record “There’s Really a Wolf,” multi-platinum singles “What They Want” and “Losin Control”

Mopreme Shakur

Member of Tupac Shakur's Rap Group, Thug Life

Jason Flom

Founder & CEO of Lava Records; Former CEO of Virgin Records; Former Chairman & CEO of Atlantic Records; Former Chairman & CEO of Capitol Music Group

Pierre "Pee" Thomas

CEO – Quality Control Music, credits include groundbreaking acts such as Migos, Lil Yachty, and Rich the Kid

Quavo

Rapper/Record Producer – Co-founder and frontman of hip-hop trio "Migos," solo album "Quavo Huncho" peaked at number two on the Billboard 200

Stalley

Rapper – Independent artist, most recent mixtape "Savage Journey to the American Dream" reached 100K downloads in the first week, was nominated for BET Hip Hop Awards for "Best Mixtape Category"

Stevie J

Grammy Award-Winning Record Producer – production credits include Puff Daddy's "No Way Out" album, Notorious B.I.G.'s "Life After Death" album, and Mariah Carey's "Butterfly" album; Reality TV Star – Cast member on Love & Hip Hop: Atlanta

Tee Grizzley

Rapper – released debut single "First Day Out" through YouTube gaining over two million views in less than three weeks leading to a record deal with 300 Entertainment and Atlantic Records

E.D.I. Mean

Rapper; Actor – member of 2Pac's legendary rap group The Outlawz; appeared on over 60 million records sales worldwide; credits include appearances on "Me Against the World," "All Eyez On Me," "Makaveli," "Still I Rise," "Until The End of Time," "Better Dayz," and "All Eyez On Me" (the Movie)

Waka Flocka Flame

Rapper – became a mainstream artist with the release of his singles "O Let's Do It," "Hard in da Paint," and "No Hands" (featuring Roscoe Dash and Wale) which peaked at number 13 on the US Billboard Hot 100; Reality TV Star – For Love & Hip Hop: Atlanta

Young Noble

Rapper; Actor; Member of 2Pac's Legendary Rap Group The Outlawz; credits include appearances on "Makaveli," "Still I Rise," "Until The End of Time," "Better Dayz" and "All Eyez On Me" (the Movie); appeared on over 60 million records sales worldwide

Young Buck

Rapper – former member of 50 Cent’s G-Unit, album “Straight Outta Cashville” debuted at number 3 on the Billboard 200 with about 361,000 copies sold in the first week and has since been certified Platinum; Music Executive – heads own record label Cashville Records

Young Scooter

Rapper – affiliated with Freebandz and 1017 Brick Squad Records, mixtape “Street Lottery” was certified gold on popular mixtape site DatPiff and was placed at number 24 on SPIN’s 40 Best Hip-Hop Albums of 2013; CEO – Black Migo Gang

SPORTS

Deion Sanders

NFL Hall of Famer – Super Bowl champion with the San Francisco 49ers and Dallas Cowboys (also played for Atlanta Falcons, Washington Redskins, Baltimore Ravens); Former MLB player – outfielder for New York Yankees, Atlanta Braves, Cincinnati Reds, and San Francisco Giants

Kevin Garnett

NBA Hall of Famer – NBA Champion with the Boston Celtics, first player in NBA draft (1995, 4th overall) selected directly out of high school since 1975

Jim Brown

NFL Hall of Famer – Super Bowl champion with the Cleveland Browns, Three-Time NFL MVP, NFL Rookie of the Year, NFL All-Time Teams (50th, 75th, and 100th Anniversaries); College Football Hall of Famer – All-Time Greatest College Football Player; Actor

Mike Tyson

Professional Boxer – World Heavyweight Champion (youngest heavyweight champion in history), Undisputed World Heavyweight Champion (1987-90, first heavyweight to hold simultaneously all three major belts – WBA, WBC & IBF); Boxing Hall of Famer

Badou Jack

Professional Boxer – World Champion in Two Weight Classes (WBC Super-Middleweight Title and WBA Light-Heavyweight Title)

Al Harrington

Former NBA Player – forward/center for the Indiana Pacers and six other NBA teams; former amateur National Player of the Year

Stephen Jackson

Former NBA Player – NBA Champion with the San Antonio Spurs, shooting guard/small forward with six other NBA teams; Civil Rights Activist

Julio Jones

NFL Player – wide receiver for the Tennessee Titans, reached 10,000 receiving yards faster than anyone in NFL history in 2011, played 10 seasons with the Atlanta Falcons (was the first to be named “All-Pro” for the Falcons in 2015)

J.R. Smith

Former NBA Player – NBA Champion with the Cleveland Cavaliers and Los Angeles Lakers, shooting guard with the Denver Nuggets and New York Knicks, 2012-13 NBA Sixth Man of the Year

John Wall

NBA Player – point guard for the Houston Rockets, played 10 seasons with the Washington Wizards, five-time NBA All-Star, first overall pick in 2010 NBA Draft

Keone Kela

MLB Player – pitcher for San Diego Padres, previously played for the Texas Rangers and Pittsburgh Pirates

FILM & FASHION

Brad Furman

Director/Producer/Writer - credits include “The Lincoln Lawyer” (2011), “The Infiltrator” (2016), “Justin Bieber: What Do You Mean?” (2015)

Bella Thorne

Actor – credits include “The DUFF” (2015), Disney’s “Shake It Up” and HBO’s “Big Love”; Author; Model; Singer; Entrepreneur

Louis Lombardi

Actor – credits include roles on “Sopranos,” Fox’s TV Series “24,” and “Natural Born Killers”

Jeremy Meeks

Fashion Model; Actor

Marc Levin

Award-winning Producer/Director – credits include “Slam” (1998), “Chasing the Thunder” (2018), “Thug Life in D.C.” (1998), television show “Brick City” won Peabody Award, received three Emmy Awards (1988, 1989, 1999) and the 1997 DuPont-Columbia Award

Michael “Big Hollis” Goldstein

Co-Founder of the Weldon Project; Music Producer; Filmmaker (credits include Matthew McConaughey’s movie “The Lincoln Lawyer”)

GOVERNMENT

ELECTED OFFICIALS

Gary Johnson

29th Governor of New Mexico, 1995-2003 (Republican); Libertarian Party Nominee for U.S. Senate (2018); Libertarian Party Nominee for President of the United States (2012 & 2016)

Joe Cunningham

U.S. Representative, South Carolina 1st District (2019-21); Candidate for Governor of South Carolina

Kwanza Hall

U.S. Representative, Georgia 5th District (2020-21); Councilman, Atlanta City Council (2005-17); Board Member, Atlanta Board of Education (2002-05); Candidate for Lieutenant Governor of Georgia

Peter Kinder

Lieutenant Governor of Missouri (2004-2016); Missouri State Senator (1992-2004)

Eddie Melton

Senator – Indiana State Legislature; Former Social Worker and National Leader in Youth Mentoring – helped implement President Obama’s “My Brother’s Keeper” initiative

Ross C. (Rocky) Anderson

Mayor – Salt Lake City, Utah (2000–2008); Presidential Candidate – Justice Party (2012)

Jason Stewart

Mayor, City of Cool Valley, MO

Majority Leader Kimberly A. Lightford

Illinois State Senate (Dist. 4)

Minority Leader John Rizzo

Missouri State Senate (District 11)

Assistant Minority Leader Brian Williams

Missouri State Senate (District 14)

Rep. Joe Adams

Missouri State House of Representatives (District 86)

Rep. Carol Ammons

Illinois State House of Representatives (Dist. 103)

Rep. Marlon Anderson

Missouri State House of Representatives (District 76)

Rep. LaDonna Appelbaum

Missouri State House of Representatives (District 71)

Sen. Lauren Arthur

Missouri State Senate (District 17)

Sen. Doug Beck

Missouri State Senate (District 1)

Rep. Richard Brown

Missouri State House of Representatives (District 27)

Rep. Ingrid Burnett

Missouri State House of Representatives (District 19)

Rep. Doug Clemens

Missouri State House of Representatives (District 72)

Rep. Jo Doll District

Missouri State House of Representatives (District 83)

Rep. Willie Dove

Kansas State House of Representatives (Bonner Springs)

Jacob Flores

Commissioner – Parks & Recreation Department, San Bernardino (CA)

Rep. Mary Flowers

Illinois State House of Representatives (Dist. 31)

Rep. LaShawn Ford

Illinois State House of Representatives (Dist. 8)

Rep. Ron Hicks

Missouri State House of Representative (District 102)

Sen. Jeff Irwin

Michigan State Senate (D-19), 2019-Present; Michigan State House of Representatives (D-53), 2010-2017

Sen. Adriane Johnson

Illinois State Senate (Dist. 30)

Sen. Connie Johnson

Oklahoma State Senate (Holdenville)

Rep. Michael Johnson

Missouri State House of Representatives (District 23)

Rep. Ashley Bland Manlove

Missouri State House of Representatives (District 26)

Rep. Bridget Walsh Moore

Missouri State House of Representatives (District 93)

Sen. Angela Mosley

Missouri State Senate (District 13)

Rep. Barbara Phifer

Missouri State House of Representatives (District 90)

Rep. Crystal Quade

Missouri State House of Representatives (District 132)

Sen. Greg Razer

Missouri State Senate (District 7)

Sen. Steven Roberts

Missouri State Senate (District 5)

Sen. Jill Schupp

Missouri State Senate (District 24)

Rep. Jeff Shipley

Iowa State House of Representatives (Fairfield)

Sen. Barbara Anne Washington

Missouri State Senate (District 9)

Rep. Emily Weber

Missouri State House of Representatives (District 24)

Aaron Wojciechowski

Councilman, Oskosh, Wisconsin (2021-Present); County Board Supervisor, Winnebago County, 2016-2020

David Woody

County Clerk – Clinton County, Missouri; Republican Candidate for Missouri State House (District 8)

LAW ENFORCEMENT & CRIMINAL JUSTICE

Kevin H. Sharp

Former U.S. District Court Judge (M.D. Tenn.)

Bill Nettles

U.S. Attorney for the District of South Carolina (2010-2016) – launched the Stop and Take a New Direction (STAND) program to divert street-level drug dealers facing federal charges into rehabilitation)

Barry Grissom

U.S. Attorney for the District of Kansas (2010-2016) – worked to enhance communal relations with law enforcement and fight human trafficking; Former Member of Attorney General's Advisory Committee

Patrick Hamacher

Assistant Prosecutor, Saint Louis Circuit Attorney's Office (2011-2018)

Rocky Kingree

Former Prosecutor – Carter County (MO)

Kim Kowalski

Former Detective and Officer – St. Louis Metropolitan Police Department

Wesley Bell

St. Louis County Prosecuting Attorney, 2019-Present; Ferguson, Missouri City Council, 2015-2018

Gamal Castile

Former Police Officer – Columbia (MO) Police Department

Deputy Chief Stephen Downing (Retired)

Los Angeles Police Department

Major Neill Franklin (Retired)

Law Enforcement Action Partnership

Lieutenant Diane Goldstein (Retired)

Executive Director Law Enforcement Action Partnership

Jamie Haase

Former Special Agent – U.S. Immigration and Customs Enforcement; Speaker – Law Enforcement Against Prohibition

Chris Hammann,

Police Chief – New Haven (MO) Police Department; Army Veteran

Chief Larry A. Kirk (Retired)

Old Monroe Police Department, Missouri

Captain Leigh Maddox (Retired)

Maryland State Police

Deputy Nick Morrow (Retired)

Los Angeles County Sheriff's Department

Captain Sonia Pruitt (Retired)

Founder – The Black Police Experience

Nate Bradley

Wheatland Police Office (2002-2006 & 2008-2009); Sutter County Sheriff's Department Deputy County Official (2006-2008); Executive Director, Cannabis Consumers Policy Council (2015-Present)

Inge Fryklund

Former Assistant State's Attorney – Cook County, IL

Mike Sharp

Former Sheriff – Jackson County (MO); Former President – Missouri Sheriff's Association

Bishop Mark Tolbert

Pastor – Victorious Life Church; Member – Kansas City Board of Police Commissioners

Darren White

Sheriff – Bernalillo County Sheriff (2003-2009); Cabinet Secretary – New Mexico Department of Public Safety (1995-1999)

Richard Van Wickler (Retired)

Superintendent of Corrections – Cheshire County, NH

ADVOCATES

Weldon Angelos

President, The Weldon Project; Co-Founder, MISSION [GREEN]; Music Producer (including credits with Snoop Dogg and 2Pac's Outlawz); sentenced to 55 years' imprisonment for federal marijuana offenses; released in 2016 and granted full presidential pardon in 2021

Brittany K. Barnett

Co-Founder, Buried Alive Project; Attorney; Entrepreneur

Grover Norquist

President, Americans for Tax Reform

Nkechi Taifa

President, The Taifa Group, and Convener of the Justice Roundtable; Senior Fellow, Center for Justice, Columbia University; Former Advocacy Director for Criminal Justice, Open Society Foundations (2002-2018); Founding Director, Equal Justice Program, Howard University School of Law (1996-2002); Former Legislative Counsel, American Civil Liberties Union (1991-1996)

Mark Holden

Senior Vice President (ret.), Koch Industries, Inc.; Chairman, Board of Directors, Americans For Prosperity

Pat Nolan

Director Emeritus – American Conservative Union Foundation’s Center for Criminal Justice Reform (now the Nolan Center for Justice); Former President – Justice Fellowship (Prison Fellowship’s program on criminal justice reform); one of the founders of the modern criminal justice reform movement

Doug Deason

Philanthropist; Businessman; Criminal Justice Reform Advocate

Alice Johnson

Author – “After Life: My Journey from Incarceration to Freedom”; Public Speaker; Criminal Justice Reform Advocate; President Trump Clemency Recipient

Katie Sinquefield

Philanthropist

Sarah Gersten

Executive Director and General Counsel, Last Prisoner Project

Shaleen Title

Distinguished Cannabis Policy Practitioner in Residence, Drug Enforcement and Policy Center, The Ohio State University Moritz College of Law; Former Commissioner, Massachusetts Cannabis Control Commission

Amy Povah

Founder – CAN-DO Clemency

Brandon Bolton

Director of Social Equity, Project Mission Green; Founder, United Core Alliance

Corvain Cooper

Advocate; 40 Tons Chief Ambassador

Connor Boyack

President – Libertas Institute, Named “Most Politically Influential” by The Salt Lake Tribune; Author – best known for “The Tuttle Twins”

Dale Sky Jones

Drug policy reformer; Chancellor, Oaksterdam University

Todd Scattini

Advocate; Lieutenant Colonel (Ret.) – United States Army

Donte Westmoreland

Social Justice & Social Equity Advocate, Last Prisoner Project

BUSINESS LEADERS

Kyle Kazan

American businessman/Venture capitalist/Real estate investor; CEO – Glass House Group; former police officer – Torrance Police Department

Michael “Big Mike” Straumietis

Founder & CEO of Advanced Nutrients; Philanthropist; Founder, Humanity Heroes

Nick Kovacevich

CEO, Greenlane Holdings, Inc.

Kellen O’Keefe

President & CEO, Flower One; Advisor to Cookies, Old Pal, and GPen

Jason Beck

Business Executive; Advocate

Ori Bytton

Co-Founder and CEO, Natura

ACADEMICS

Albert W. Alschuler

Julius Kreeger Professor Emeritus of Law and Criminology, University of Chicago Law School

Jody Armour

Roy P. Crocker Professor of Law, University of Southern California Law School

Rachel E. Barkow

Vice Dean, Charles Seligson Professor of Law, and Faculty Director of the Center on the Administration of Criminal Law, New York University School of Law

Shima Baradaran Baughman

Associate Dean of Faculty Research & Development, Presidential Scholar and Professor of Law, University of Utah College of Law

Valena Beety

Professor of Law and Deputy Director of the Academy for Justice, Arizona State University
Sandra Day O'Connor College of Law

Douglas A. Berman

Newton D. Baker-Baker & Hostetler Chair in Law and Professor of Law; Executive Director of
the Drug Enforcement and Policy Center, The Ohio State University Moritz College of Law

Richard J. Bonnie

Harrison Foundation Professor of Medicine and Law, Professor of Psychiatry and
Neurobehavioral Sciences, and Director of the Institute of Law, Psychiatry and Public Policy,
University of Virginia

Paul Butler

The Albert Brick Professor in Law, Georgetown University; Author of "Let's Get Free: A Hip-
Hop Theory of Justice"

I. Bennett Capers

Professor of Law and Director of the Center on Race, Law & Justice, Fordham University

Jennifer M. Chacón

Professor of Law, University of California, Berkeley, School of Law

Gabriel J. Chin

Edward L. Barrett Chair in Law and Martin Luther King, Jr. Professor of Law, University of
California, Davis

Frank Rudy Cooper

William S. Boyd Professor of Law and Director of the Program on Race, Gender, and Policing,
University of Nevada, Las Vegas

Angela J. Davis

Distinguished Professor of Law, American University

Jeffrey A. Fagan

Isidor and Seville Sulzbacher Professor of Law and Professor of Epidemiology, Columbia
University

Henry F. Fradella

Professor and Associate Director, School of Criminology and Criminal Justice, Arizona State
University; Affiliated Faculty, Arizona State University Sandra Day O'Connor College of Law;
Executive Director, Western Society of Criminology

Brandon L. Garrett

L. Neil Williams, Jr. Professor of Law and Faculty Director of the Center for Science and
Justice, Duke University

David A. Harris

Sally Ann Semenko Endowed Chair and Professor of Law, University of Pittsburgh School of Law

Elizabeth Hinton

Associate Professor of History, Department of History and the Department of African American Studies, Yale University; Professor of Law, Yale Law School

Shon Hopwood

Associate Professor of Law, Georgetown University Law Center

Douglas Husak

Distinguished Professor of Philosophy, Rutgers University

Sam Kamin

Chauncey G. Wilson Memorial Research Chair and Professor of Law, University of Denver College of Law

Alex Kreit

Assistant Professor of Law; Director of the Center on Addiction Law & Policy, Northern Kentucky University Salmon P. Chase College of Law

Erik Luna

Amelia D. Lewis Professor of Constitutional & Criminal Law; Faculty Director of the Academy for Justice, Arizona State University Sandra Day O'Connor College of Law

Ben McJunkin

Assistant Professor of Law and Associate Director of the Academy for Justice, Arizona State University Sandra Day O'Connor College of Law

Tracey L. Meares

Walton Hale Hamilton Professor and a Founding Director of the Justice Collaboratory, Yale Law School

Robert A. Mikos

LaRoche Family Chair in Law and Professor of Law, Vanderbilt University Law School

Alexandra Natapoff

Lee S. Kreindler Professor of Law, Harvard Law School

Ashley Oddo

Associate Director of the Academy for Justice, Arizona State University Sandra Day O'Connor College of Law

Mark Osler

Robert & Marion Short Distinguished Chair in Law and Professor of Law, University of St. Thomas; Assistant United States Attorney (1995-2000)

Eve Brensike Primus

Yale Kamisar Collegiate Professor of Law, University of Michigan

Michael Serota

Vis. Ass't. Professor of Law and Associate Director of the Academy for Justice, Arizona State University Sandra Day O'Connor College of Law; Director of the Criminal Justice Reform Lab

Jonathan Simon

Lance Robbins Professor of Criminal Justice Law and Director of the Center for the Study of Law and Society, University of California, Berkeley

Christopher Slobogin

Milton Underwood Professor of Law, Vanderbilt University Law School

Stephen F. Smith

Professor of Law, University of Notre Dame

Cassia Spohn

Foundation Professor of Criminology and Director of the School of Criminology and Criminal Justice, Arizona State University; Affiliated Faculty, Arizona State University Sandra Day O'Connor College of Law

Michael Tonry

McKnight Presidential Professor of Criminal Law and Policy, and Director of the Institute on Crime and Public Policy, University of Minnesota Law School; Scientific Member of Germany's Max Planck Society

** Affiliations provided for identification only*

NOTES AND REFERENCES

Note 1. The drug war literature is both broad and deep. Modern reference works (e.g., casebooks, edited collections, symposia) on marijuana and the law include: DOUGLAS A. BERMAN & ALEX KREIT, *MARIJUANA LAW AND POLICY* (2020); CONTEMPORARY HEALTH ISSUES ON MARIJUANA (Kevin A. Sabet & Ken C. Winters eds., 2018); ROBERT A. MIKOS, *MARIJUANA LAW, POLICY, AND AUTHORITY* (2017); Symposium, *Marijuana Laws and Federalism*, 58 B.C. L. REV. 857-1084 (2017); JOHN HUDAK, *MARIJUANA: A SHORT HISTORY* (2016); Symposium, *Disjointed Regulation: State Efforts to Legalize Marijuana*, 50 U.C. DAVIS L. REV. 573-895 (2016); Symposium, *Marijuana, Federal Power and the States*, 65 CASE W. RES. L. REV. 505-794 (2015); Symposium, *The Road to Legitimizing Marijuana: What Benefit at What Cost?*, 43 MCGEORGE L. REV. 1-167 (2012); ROBIN ROOM ET AL., *CANNABIS POLICY: MOVING BEYOND STALEMATE* (2010); *POT POLITICS: MARIJUANA AND THE COSTS OF PROHIBITION* (Mitch Earleywine ed., 2006); MARTIN BOOTH, *CANNABIS: A HISTORY* (2003); MITCH EARLEYWINE, *UNDERSTANDING MARIJUANA: A NEW LOOK AT THE SCIENTIFIC EVIDENCE* (2002).

For reference works on drugs and drug prohibition more generally, see GERALD F. UELMEN & ALEX KREIT, *DRUG ABUSE AND THE LAW SOURCEBOOK* (2021); GLEN R. HANSON ET AL., *DRUGS AND SOCIETY* (14th ed. 2020); JAMES A. INCIARDI & KAREN MCEL RATH, *THE AMERICAN DRUG SCENE: READINGS IN A GLOBAL CONTEXT* (7th ed. 2014); STEVEN BELENKO & CASSIA SPOHN, *DRUGS, CRIME, AND JUSTICE* (2014); NAT'L RESEARCH COUNCIL, *UNDERSTANDING THE DEMAND FOR ILLEGAL DRUGS* (Peter Reuter ed., 2010) [[link](#)]; THOMAS BABOR ET AL., *DRUG POLICY AND THE PUBLIC GOOD* (2009); *DRUGS IN AMERICA: A DOCUMENTARY HISTORY* (David Musto ed., 2002); NAT'L RESEARCH COUNCIL, *INFORMING AMERICA'S POLICY ON ILLEGAL DRUGS: WHAT WE DON'T KNOW KEEPS HURTING US* (Charles F. Mansky et al. eds., 2001) [[link](#)].

Note 2. See, e.g., Aimee Ortiz, *Confidence in Police Is at Record Low, Gallup Survey Finds*, N.Y. TIMES (Aug. 12, 2020) [[link](#)]; Anthony A. Braga et al., *Race, Place, and Effective Policing*, 45 ANN. REV. SOC. 535, 535-43 (2019) (describing and analyzing poor relations between police and minority communities); NANCY LA VIGNE ET AL., URBAN INST., *HOW DO PEOPLE IN HIGH-CRIME, LOW-INCOME COMMUNITIES VIEW THE POLICE?* (2017) [[link](#)] (survey of police-community relations in high-crime, high-poverty neighborhoods); Tracey L. Meares, *The Path Forward: Improving the Dynamics of Community-Police Relationships to Achieve Effective Law Enforcement Policies*, 117 COLUM. L. REV. 1355 (2017) (describing sociological, psychological, and historical research on police-minority community relations); Tom R. Tyler, *Policing in Black and White: Ethnic Group Differences in Trust and Confidence in the Police*, 8 POLICE Q. 322 (2005) (discussing minority citizens' low trust and confidence in law enforcement and the resulting impact on their willingness to interact with police); Ronald Weitzer & Steven A. Tuch, *Racially Biased Policing: Determinants of Citizen Perceptions*, 83 SOC. FORCES 1009 (2005) (study finding minority citizens perceive police prejudice as widespread and very common in their cities). See generally FINAL REPORT OF THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING 9-18 (2015) [[link](#)] (describing minority citizens' lower level of confidence in law enforcement and advocating community trust and legitimacy as the first pillar of good policing).

Note 3. On this issue, “[w]riting only for myself, and drawing on my professional experiences,” U.S. Supreme Court Justice Sonia Sotomayor spoke truth to power:

[I]t is no secret that people of color are disproportionate victims of [police] scrutiny. For generations, black and brown parents have given their children “the talk”—instructing them never to run down the street; always keep your hands where they can be seen; do not even think of talking back to a stranger—all out of fear of how an officer with a gun will react to them.

By legitimizing the conduct that produces this double consciousness, [we say] that your body is subject to invasion while courts excuse the violation of your rights. It implies that you are not a citizen of a democracy but the subject of a carceral state, just waiting to be cataloged.

We must not pretend that the countless people who are routinely targeted by police are “isolated.” They are the canaries in the coal mine whose deaths, civil and literal, warn us that no one can breathe in this atmosphere. They are the ones who recognize that unlawful police stops corrode all our civil liberties and threaten all our lives. Until their voices matter too, our justice system will continue to be anything but.

Utah v. Strieff, 136 S. Ct. 2056, 2070-71 (2016) (Sotomayor, J., dissenting). *See generally* Jeffrey Fagan, *Race and the New Policing*, in 2 REFORMING CRIMINAL JUSTICE: POLICING 83 (Erik Luna ed., 2017) [\[link\]](#); David A. Harris, *Racial Profiling*, in *id.* at 117; Devon W. Carbado, *Race and the Fourth Amendment*, in *id.* at 153; L. Song Richardson, *Police Use of Force*, in *id.* at 185; Paul Butler, *Race and Adjudication*, in 3 REFORMING CRIMINAL JUSTICE: PRETRIAL AND TRIAL PROCESSES 211 (Erik Luna ed., 2017) [\[link\]](#); Cassia Spohn, *Race and Sentencing Disparity*, in 4 REFORMING CRIMINAL JUSTICE: PUNISHMENT, INCARCERATION, AND RELEASE 169 (Erik Luna ed., 2017) [\[link\]](#).

Our nation’s ongoing crisis of race and criminal justice almost inevitably implicates the drug war. *See, e.g.,* Brian D. Earp et al., *Racial Justice Requires Ending the War on Drugs*, 21 AM. J. BIOETHICS 4 (2021) [\[link\]](#) (essay by academics marshalling evidence for ending drug prohibition, with an emphasis on racial justice concerns); ACLU, A TALE OF TWO COUNTRIES: RACIALLY TARGETED ARRESTS IN THE ERA OF MARIJUANA REFORM (2020) [\[link\]](#) (report on racial disparities in arrests for marijuana possession); ALEXANDRA NATAPOFF, PUNISHMENT WITHOUT CRIME: HOW OUR MASSIVE MISDEMEANOR SYSTEM TRAPS THE INNOCENT AND MAKES AMERICA MORE UNEQUAL 149-70 (2019) (documenting widespread racial disparities and discrimination throughout the misdemeanor system, exemplified and driven heavily by marijuana enforcement); MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS (2010) (arguing modern criminal justice, especially drug prohibition, operates in a manner similar to segregation). This is perhaps unsurprising as a matter of history, given that racial prejudice and fear helped spark the drug war, including marijuana prohibition. A century ago, Mexican immigrants became associated with marijuana and were vilified as a source of crime and violence. “From a survey of contemporary newspaper and periodical commentary,” two leading scholars concluded that, among the major influences on marijuana bans, “[t]he most prominent was racial prejudice.” Richard J. Bonnie & Charles H. Whitebread II, *The Forbidden Fruit and the Tree of Knowledge: An Inquiry into the Legal History of American Marijuana Prohibition*, 56 VA. L. REV. 971, 1011 (1970). A particularly egregious example was provided by a newspaper account of the Montana state legislature’s process in criminalizing marijuana.

There was fun in the House Health Committee during the week when the marihuana bill came up for consideration. Marihuana is Mexican opium, a plant used by Mexicans and cultivated for sale by Indians. “When some beet field peon takes a few rares of this stuff,” explained Dr. Fred Fulsher of Mineral County, “He thinks he has just been elected president of Mexico so he starts out to execute all his political enemies. I understand that over in Butte where the Mexicans often go for the winter they stage imaginary bullfights in the ‘Bower of Roses’ or put on tournaments for the favor of ‘Spanish Rose’ after a couple of whiffs of marihuana. The Silver Bow and Yellowstone delegations both deplore these international complications.” Everybody laughed and the bill was recommended for passage.

Id. at 1014-15 (quoting *Montana Standard*). Professors Bonnie and Whitebread summarized the impact of race and racism as prompts for marijuana prohibition:

The early laws against [marijuana] were passed with little public attention. Concern about marijuana was related primarily to the fear that marijuana use would spread, even among whites, as a substitute for the opiates and alcohol made more difficult to obtain by federal legislation. Especially in the western states, this concern was identifiable with the growth of the Mexican-American minority. It is clear that no state undertook any empirical or scientific study of the effects of the drug. Instead they relied on lurid and often unfounded accounts of marijuana's dangers as presented in what little newspaper coverage the drug received. It was simply assumed that cannabis was addictive and would have engendered the same evil effects as opium and cocaine. Apparently, legislators in these states found it easy and uncontroversial to prohibit use of a drug they had never seen or used and which was associated with ethnic minorities and the lower class.

Id. at 1021-22. *See also* DAVID F. MUSTO, *THE AMERICAN DISEASE: ORIGINS OF NARCOTIC CONTROL* 219-23 (3d ed. 1999) (describing racial prejudice in pursuit of marijuana prohibition); PAUL BUTLER, *LET'S GET FREE: A HIP-HOP THEORY OF JUSTICE* 45 (2009) (quoting early twentieth-century Texas state senator: "All Mexicans are crazy, and this stuff [marijuana] is what makes them crazy."). The perceived threat of marijuana—including the hysterical "reefer madness" it purportedly triggered—neatly conformed with popular prejudices, inspired marijuana bans in most states, and helped push Congress to pass the Marijuana Tax Act of 1937 (Pub. L. No. 75-238, 50 Stat. 551), which would become the basis for the federal war on marijuana. *See* Bonnie & Whitebread, *Forbidden Fruit*, *supra*, at 1036-37; *United States v. Sanchez*, 340 U.S. 42 (1950) (describing Marihuana Tax Act's operation and upholding law despite its prohibitive effect). *Cf.* ISAAC CAMPOS, *HOME GROWN: MARIJUANA AND THE ORIGINS OF MEXICO'S WAR ON DRUGS* (2012) (historical study of marijuana prohibition from the perspective of Mexico).

Racially tinged decision-making in the drug war continued in subsequent decades, although perhaps concealed by acceptable rationales. In the early 1970s, considerations of race and class were part of the political calculus in launching a new and explicit "war on drugs." According to journalist Dan Baum, one of the President's top aids, John Ehrlichman, said that the Nixon Administration 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. 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.

Dan Baum, *Legalize It All: How to Win the War on Drugs*, *HARPER'S MAG.*, Apr. 2016, at 22 [\[link\]](#). *But see* Hilary Hanson, *Nixon Aides Suggest Colleague Was Kidding About Drug War Being Designed to Target Black People*, *HUFFINGTON POST* (Mar. 25, 2016) [\[link\]](#). *See also* David A. Sklansky, *Cocaine, Race, and Equal Protection*, 47 *STAN. L. REV.* 1283, 1291-96 (1995) (describing the role that race played in enacting the notorious disparity in federal sentencing between crack cocaine and powder cocaine).

Two final points deserve mention: Even if we gave the drug war's architects the benefit of the doubt and assumed race was not a (primary) motivating factor in decision-making, they would still be accountable for their "malign neglect" of prohibition's devastating impact on people of color, which was foreseeable to anyone who thought about it. MICHAEL TONRY, *MALIGN NEGLECT: RACE, CRIME, AND PUNISHMENT IN AMERICA* (1995); *see also* MICHAEL TONRY, *PUNISHING RACE: A CONTINUING AMERICAN DILEMMA* (2011). And even if the driver of disparate enforcement turns out to be class rather than race—resulting from differences in drug distribution markets, for instance—we are not thereby absolved of responsibility for the consequences. "[I]n a society where racial division is all too real, decisions that have no racial cause may still have a very powerful racial meaning," admonished the late,

great Harvard Law Professor Bill Stuntz. “[I]n a world where communities are divided along class and race lines, one divide tends to produce the other.” William J. Stuntz, *Race, Class and Drugs*, 98 COLUM. L. REV. 1795, 1812, 1825 (1998).

Note 4. See, e.g., Georgia Keohane, *MLK, Civil Rights and The Fierce Urgency of Now*, TIME (Jan. 19, 2015) [\[link\]](#) (noting origin of Martin Luther King, Jr.’s words and related civil rights debate).

Note 5. See Jeffrey M. Jones, *Nearly Half of U.S. Adults Have Tried Marijuana*, GALLUP (Aug. 17, 2021) [\[link\]](#); CTR. FOR BEHAV. HEALTH STAT. & QUALITY, SAMHSA: SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., 2019 NATIONAL SURVEY ON DRUG USE AND HEALTH DETAILED TABLES: TABLE 1.25B (2019) [\[link\]](#) (survey finding roughly half of all adults admit to using marijuana during their lifetime); MARIST COLL. INST. FOR PUB. OP., YAHOO NEWS & MARIST POLL: WEED AND THE AMERICAN FAMILY 8 (April 17, 2017) [\[link\]](#) (poll finding a majority of respondents admit trying marijuana and support marijuana legalization); Ted Van Green, *Americans Overwhelmingly Say Marijuana Should Be Legal for Recreational or Medical Use*, PEW RSCH. CTR. (Apr. 16, 2021) [\[link\]](#); Megan Brennan, *Support for Legal Marijuana Inches Up to New High of 68%*, GALLUP (Nov. 9, 2020) [\[link\]](#).

Note 6. See *State Medical Marijuana Laws*, NAT’L CONF. OF STATE LEGISLATORS (June 22, 2021) [\[link\]](#). See also Alex Kreit, *Marijuana Legalization*, in 1 REFORMING CRIMINAL JUSTICE: INTRODUCTION AND CRIMINALIZATION 115 (Erik Luna ed., 2017) [\[link\]](#) (providing overview and analysis of legalization). State efforts to end marijuana prohibition can be explained and justified by *federalism*, a system of government enshrined in the Constitution by enumerating the powers of Congress, see U.S. CONST. art. I, §8—and then making clear that other powers were “reserved to the States respectively, or to the people.” *Id.* amend. X. Under federalism, the national government’s powers would be “exercised principally on external objects, as war, peace, negotiation, and foreign commerce,” without interfering with a state’s core activities, “which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State.” THE FEDERALIST No. 45, at 292-93 (James Madison) (Clinton Rossiter ed., 1961). Among the areas that the Framers sought to reserve to the states was “the ordinary administration of criminal and civil justice.” FEDERALIST No. 17, at 120 (Alexander Hamilton). The Constitution itself mentions only a handful of crimes, all of which are consistent with the design and limits of federalism. See U.S. CONST. art. I, §8, cl. 6 & 10 (counterfeiting, piracy, felonies on the high seas, offenses against the law of nations); U.S. CONST. art. III, §3 (treason). “States possess primary authority for defining and enforcing the criminal law,” the Supreme Court has noted. When federal law displaces state policy judgments, it threatens a “change in the sensitive relation between federal and state criminal jurisdiction.” *United States v. Lopez*, 514 U.S. 549, 561 n.3 (1995).

There are numerous arguments in favor of federalism: “It assures a decentralized government that will be more sensitive to the diverse needs of a heterogeneous society; it increases opportunity for citizen involvement in democratic processes; it allows for more innovation and experimentation in government; and it makes government more responsive by putting the States in competition for a mobile citizenry.” *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991). When people are unable to bear their home state’s approach to public policy, federalism allows them to vote with their feet, so to speak, by moving to another state. These benefits are thwarted by federal interference with state criminal justice systems, which inevitably implicate norms and values that vary by jurisdiction. Such interference also jeopardizes the “principal benefit” of federalism—as “a check on abuses of government power” and a “protection of our fundamental liberties”—where “a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front.” *Gregory*, 501 U.S. at 458.

Marijuana prohibition emasculates federalism, amassing too much power in too few hands—those of federal drug enforcement—to impose on the states a major criminal justice policy that stands in

opposition to the affected citizenry's decision to decriminalize or legalize marijuana. In the past, federal drug enforcement even engaged in war-like offensives in support of marijuana prohibition—for instance, heavily armed agents would swoop into rural areas, like “an assault on an enemy prison camp in Vietnam,” to raid purported marijuana grow operations. RADLEY BALKO, *RISE OF THE WARRIOR COP: THE MILITARIZATION OF AMERICA'S POLICE FORCES* 110 (2013). More recently, the DEA responded to state medical marijuana laws by raiding marijuana dispensaries and prosecuting medical marijuana providers, even when they were in full compliance with state and local law. *See, e.g.,* Alex Kreit, *Reflections on Medical Marijuana Prosecutions and the Duty to Seek Justice*, 89 DENV. U. L. REV. 1027, 1034-35 (2012).

One particularly pathetic raid involved a collective hospice, located on a farm in Santa Cruz, California, that had “approximately 250 member-patients who suffer from HIV or AIDS, multiple sclerosis, glaucoma, epilepsy, various forms of cancer, and other serious illnesses.” Consistent with state law and only pursuant to a physician's recommendation, the hospice “assists seriously ill and dying patients by providing them with the opportunity to cultivate marijuana plants for their personal medicinal use and to produce marijuana medications collectively used by [hospice] members to alleviate their pain and suffering.”

During the raid, between 20-30 DEA agents “forcibly entered the premises, pointed loaded firearms at the [farm owners], forced them to the ground, and handcuffed them.” One of the owners—who herself used medical marijuana to control seizures resulting from a traumatic head injury—was driven away in her nightgown. Another patient, a paraplegic woman suffering from polio, “was told to stand up to be handcuffed; when she could not do so, she was handcuffed to her bed.” The drug agents remained at the hospice for eight hours, “seizing 167 marijuana plants [and] many of the [hospice] members' weekly allotments of medicinal marijuana.” When state and local officials condemned the raid, the DEA gave a response evincing anti-humanitarian indifference: “No one in the United States is allowed to distribute illegal drugs, period.”

Erik Luna, *Drug War and Peace*, 50 U.C. DAVIS L. REV. 813, 880-81 (2016) (quoting *Cty. of Santa Cruz v. Ashcroft*, 279 F. Supp. 2d 1192 (N.D. Cal. 2003), and RANDOLPH J. GERBER, *LEGALIZING MARIJUANA: DRUG POLICY REFORM AND PROHIBITION POLITICS* (2004)).

Although the Supreme Court upheld the federal crackdown on state medical marijuana—*see* *Gonzales v. Raich*, 545 U.S. 1 (2005) (rejecting Commerce Clause challenge); *United States v. Oakland Cannabis Buyers' Coop.*, 532 U.S. 483 (2001) (rejecting necessity defense for medical marijuana)—Justice Clarence Thomas recently questioned the Court's jurisprudence in this area:

Whatever the merits of *Raich* when it was decided, federal policies of the past 16 years have greatly undermined its reasoning. Once comprehensive, the Federal Government's current approach is a half-in, half-out regime that simultaneously tolerates and forbids local use of marijuana. This contradictory and unstable state of affairs strains basic principles of federalism and conceals traps for the unwary.... If the Government is now content to allow States to act “as laboratories” “and try novel social and economic experiments,” then it might no longer have authority to intrude on “[t]he States' core police powers ... to define criminal law and to protect the health, safety, and welfare of their citizens.” A prohibition on intrastate use or cultivation of marijuana may no longer be necessary or proper to support the Federal Government's piecemeal approach.

Standing Akimbo, LLC v. United States, 594 U. S. ____ (2021) (Thomas, J.) (statement on denial of petition for writ of certiorari) [\[link\]](#). *See also* MARIJUANA FEDERALISM: UNCLE SAM AND MARY JANE (Jonathan H. Adler ed., 2020) (discussing various federalism-related issues arising from marijuana legalization); Robert A. Mikos, *On the Limits of Supremacy: Medical Marijuana and the States' Overlooked Power to Legalize Federal Crime*, 62 VAND. L. REV. 1421 (2009). To be clear, the federalism

of which Justice Thomas speaks is not the illegitimate façade of “states’ rights” invoked in the past as an apologia for slavery and then for Jim Crow, and duly weaponized in the penal codes of the segregated south. Instead, this is the federalism that helps *shield* minority communities from federal drug warfare when it’s waged in spite of the peaceful resolutions brokered by states and localities.

Note 7. See, e.g., RICHARD GLEN BOIRE, CTR. FOR COGNITIVE LIBERTY & ETHICS, LIFE SENTENCES: COLLATERAL SANCTIONS ASSOCIATED WITH MARIJUANA OFFENSES (2007) [\[link\]](#) (describing myriad collateral consequences of marijuana convictions); Gabriel J. Chin, *Race, the War on Drugs, and the Collateral Consequences of Criminal Conviction*, 6 J. GENDER RACE & JUST. 253 (2002) (describing collateral consequences of drug convictions and their disparate impact on people of color). See generally Gabriel J. Chin, *Collateral Consequences*, in 4 REFORMING CRIMINAL JUSTICE: PUNISHMENT, INCARCERATION, AND RELEASE 371 (Erik Luna ed., 2017).

Note 8. *Democratic Debate Transcript*, NBC NEWS (Nov. 20, 2019) [\[link\]](#).

Note 9. *Joe Biden on Decriminalizing Marijuana*, YOUTUBE (Oct. 27, 2020) [\[link\]](#). In fact, the decriminalization of marijuana, the release of federal marijuana offenders, and the expungement of federal marijuana convictions were part of your bold plan to reform criminal justice:

Decriminalize the use of cannabis and automatically expunge all prior cannabis use convictions. Biden believes no one should be in jail because of cannabis use. As president, he will decriminalize cannabis use and automatically expunge prior convictions. And, he will support the legalization of cannabis for medical purposes, leave decisions regarding legalization for recreational use up to the states, and reschedule cannabis as a schedule II drug so researchers can study its positive and negative impacts.

The Biden Plan for Strengthening America’s Commitment to Justice, JOEBIDEN.COM [\[link\]](#).

Note 10. See J.J. Prescott & Sonja B. Starr, *Expungement of Criminal Convictions: An Empirical Study*, 133 HARV. L. REV. 2460 (2020) [\[link\]](#) (empirical study finding that beneficiaries of expungement have extremely low subsequent crime rates and experience a sharp upturn in their wage and employment trajectories); Michael Mueller-Smith, *The Criminal and Labor Market Impacts of Incarceration* (unpub. man. Aug. 18, 2015) [\[link\]](#) (empirical study finding incarceration increases the frequency and severity of recidivism, worsens labor market outcomes, and increases dependence on public assistance). See generally Rachel E. Barkow, *Clemency and Presidential Administration of Criminal Law*, 90 N.Y.U. L. REV. 802 (2015) (arguing for clemency as a mechanism to ensure that enforcement reflects the President’s priorities and values, and to ensure that federal law enforcement does not contradict those views, and noting clemency can be used as “a wholesale matter to correct applications of law across a range of cases that share certain attributes”).

Note 11. According to the most recent data, there are fewer than 3,000 federal prisoners serving time for marijuana offenses. See U.S. SENTENCING COMM’N, QUICK FACTS: FEDERAL OFFENDERS IN PRISON (Mar. 2021) [\[link\]](#) (listing 65,370 federal inmates for drug crimes, 4.1% of whom were incarcerated for marijuana); see also U.S. SENTENCING COMM’N, QUICK FACTS: MARIJUANA TRAFFICKING OFFENSES (June 2021) [\[link\]](#). See generally FED. BUREAU OF PRISONS, U.S. DEP’T OF JUSTICE, INMATE STATISTICS: OFFENSES (2021) [\[link\]](#). Some of these federal inmates would be ineligible for release from prison, because they’re also serving time for a non-marijuana offense. Other inmates might be ineligible because their marijuana-related offenses involved acts or threats of violence. If you were to adopt this potential requirement or similar prerequisites for clemency eligibility, criteria would need to be developed to determine which federal inmates would be eligible for release. Whatever the complexities of this task,

however, they are entirely resolvable and should not delay the achievement of justice. After all, real lives are at stake.

Consider, for instance, the case of Luke Scarmazzo. From 2004-2006, Luke owned and operated a medical marijuana dispensary in Modesto, California, with his friend Ricardo Montes, all pursuant to California's Compassionate Use Act of 1996 (codified as CAL. HEALTH & SAFETY CODE § 11362.5). Although other medical marijuana dispensaries operated throughout California at the time, Luke and Ricardo were prosecuted in federal court, and in 2008, they were sentenced to over 20 years in prison. In January 2017, after serving nine years, Ricardo had his sentence commuted by President Obama. Luke wasn't as fortunate: His petition for commutation was denied without explanation, and he remains in federal prison to this day. During a White House briefing, Press Secretary Jen Psaki responded to a question on Luke's case by reiterating your position in support of medical marijuana. *See Press Briefing by Press Secretary Jen Psaki*, WHITEHOUSE.GOV (Apr. 20, 2021) [\[link\]](#). Mr. President, you have the power to correct the injustices left unaddressed by prior administrations.

Consider also the case of Terrell "Ralo" Davis, an Atlanta rapper and acclaimed recording artist who is facing up to eight years in federal prison for marijuana-only offenses. Although a large quantity of marijuana was involved (over 400 lbs.), Ralo's offenses were entirely non-violent. By contrast, every single day marijuana entrepreneurs and businesses across the country openly violate the exact same federal statute under which Ralo was prosecuted and sentenced—yet they avoid the wrath of federal drug enforcement. In the words of fellow rapper Killer Mike: "At a time where so many young White people and others are capitalizing off marijuana's new legitimacy, to see this brother sit and suffer is sickening. He is a real one and helped his community and now he is hostage of the state." @KillerMike, TWITTER (Feb. 21, 2020) [\[link\]](#). Ralo has paid a high price in terms of his career opportunities, his personal resources, his family's wellbeing, and, of course, his freedom. Wherever the equities may lie, Mr. President, Ralo surely doesn't deserve to rot in federal prison at a time when "reefer madness" is finally waning in American criminal law.

Note 12. Although unnecessary to justify clemency, it's worth noting here that marijuana does not cause crime and violence (but marijuana *prohibition* does!). A century ago, prohibitionists made wild-eyed claims of marijuana destroying a user's sense of morality and law-abiding tendencies, or even endowing the user with the ability to commit horrible acts of violence. The "father of the drug war"—Harry Anslinger, the first Commissioner of the Federal Bureau of Narcotics—testified that "in some cases one cigarette might develop a homicidal mania, probably to kill his brother," and "all the experts agree that the continued use leads to insanity." *Taxation of Marihuana: Hearings on H.R. 6906 Before the Comm. on Finance of the U.S. Senate*, 75th Cong. 14 (1937). *See also id.* at 6 ("Under the influence of this drug the will is destroyed and all power of directing and controlling thought is lost.... Inhibitions are released. As a result of these effects, many violent crimes have been and are being committed by persons under the influence of this drug.") (comments of Clinton Hester, Ass't Gen. Counsel, Treasury Dept.); *id.* at 11-12, 14; (offering horror stories); *Taxation of Marihuana: Hearings on H.R. 6385 Before the Comm. on Ways and Means of the House of Representatives*, 75th Cong. 22-23, 37, 45, 123-24 (1937) (similar); JAMES SWARTZ, *SUBSTANCE ABUSE IN AMERICA: A DOCUMENTARY AND REFERENCE GUIDE* 18 (2012) (quoting a police chief's "daily experience" with marijuana users who were "very violent, especially when they become angry and will attack an officer even if a gun is drawn on him," and claiming that "under the influence of this weed they have enormous strength and it will take several men to handle one man while, under ordinary circumstances, one man could handle him with ease"). Perhaps such arguments could be spun as mere hyperbole from the previous century. *But see, e.g., Hearings on H.R. 6385, supra*, at 92 (testimony of Dr. William C. Woodward of the American Medical Association, questioning factual basis of arguments). Today, however, these claims would be hard to believe as a matter of common experience and unsupported as a matter of science.

A causal link between marijuana use and non-prohibitionist crimes and violence has never been proven. *See, e.g.*, OFFICE OF NAT’L DRUG CONTROL POL’Y, IMPROVING THE MEASUREMENT OF DRUG-RELATED CRIME iv, 9, 15, app. A (2013) [\[link\]](#) (reviewing studies and finding that marijuana use does not cause violent or property crimes); Klaus A. Miczek et al., *Alcohol, Drugs of Abuse, Aggression, and Violence*, in 3 UNDERSTANDING AND PREVENTING VIOLENCE: SOCIAL INFLUENCES 377, 401 (Albert J. Reiss & Jeffrey A. Roth eds., 1994) (“all major reviews of the literature on cannabis and human aggression and violence during the past two decades conclude that cannabis has no effect on or actually decreases various indices of aggression”). *See also* Bernard E. Harcourt & Jens Ludwig, *Reefer Madness: Broken Windows Policing and Misdemeanor Marijuana Arrests in New York City, 1989-2000*, 6 J. CRIMINOLOGY & PUB. POL’Y 165 (2007) (study finding no good evidence that aggressive marijuana arrests were associated with reductions in serious, violent, or property crimes, and instead suggesting such arrests actually increased crime); Philip H. Smith et al., *Couples’ marijuana use is inversely related to their intimate partner violence over the first 9 years of marriage*, 28 PSYCH. ADDICT BEHAV. 734 (2014). *See generally* Jeffrey A. Miron, *Drug Prohibition and Violence*, in 1 REFORMING CRIMINAL JUSTICE: INTRODUCTION AND CRIMINALIZATION 99, 106-07 (Erik Luna ed., 2017) [\[link\]](#) (summarizing studies finding little or no causal link between drug use and violence); Shima Baradaran, *Drugs and Violence*, 88 S. CAL. L. REV. 227 (2015) (critiquing claims of a connection between drugs and violence).

Conversely, there is little evidence that decriminalization or legalization of marijuana generally increases crime. *See, e.g.*, Ruibin Lu et al., *The Cannabis Effect on Crime: Time-Series Analysis of Crime in Colorado and Washington State*, 38 JUST. Q. 565 (2021) (study finding marijuana legalization in Colorado and Washington has had no or minimal effect on violent and property crimes); JULIAN MORRIS, REASON FOUND., DOES LEGALIZING MARIJUANA REDUCE CRIME? (Sept. 2018) [\[link\]](#) (reviewing studies and concluding that marijuana legalization does not increase crime); Shana L. Maier et al., *The Implications of Marijuana Decriminalization and Legalization on Crime in the United States*, 44 CONTEMP. DRUG PROBS. 125 (2017) (study finding marijuana legalization does not increase violent or property crimes); Edward M. Shepard & Paul R. Blackley, *Medical Marijuana and Crime: Further Evidence from the Western States*, 46 J. DRUG ISSUES 122 (2016) (similar); Robert G. Morris et al., *The Effect of Medical Marijuana Laws on Crime: Evidence from the State Panel Data, 1990-2006*, PLOS ONE, Mar. 2014, at 1 (similar). *See also* Davide Dragone et al., *Crime and the Legalization of Recreational Marijuana*, 159 J. ECON. BEHAV. & ORG. 488 (2019) (study finding marijuana legalization reduced certain violent and property crimes); Jeffrey Brinkman & David Mok-Lamme, *Not in My Backyard? Not So Fast: The Effect of Marijuana Legalization on Neighborhood Crime*, 78 REG. SCI. & URB. ECON. 103460 (2019) (study finding reduction in neighborhood crime from the opening of legal marijuana dispensaries).

This doesn’t mean there are no negative consequences from the abuse of marijuana. *See, e.g.*, Paul J. Larkin, Jr., *Cannabis Capitalism*, 69 BUFF. L. REV. 215, 255-66 (2021) (describing risks of addiction and roadway fatalities); NAT’L ACADS. OF SCI., ENG’G & MED., THE HEALTH EFFECTS OF CANNABIS AND CANNABINOIDS: THE CURRENT STATE OF EVIDENCE AND RECOMMENDATIONS FOR RESEARCH (2017) (evaluating health consequences). Acknowledging the risks, however, U.S. Surgeon General Vivek Murtha recently stated: “I don’t think there is value to individuals or to society to lock people up for marijuana use. I don’t think that serves anybody well.... [I]n terms of our approach to marijuana, I worry when we don’t let science guide our process in policy-making.” *Surgeon General: No value to locking people up for marijuana use*, CNN.COM (July 18, 2021) [\[link\]](#). In reality, the vast majority of those who use marijuana do so without destructive consequences for themselves or for others, and instead live productive, otherwise crime-free lives. *See, e.g.*, JACOB SULLUM, SAYING YES: IN DEFENSE OF DRUG USE (2003); *see also* DOUGLAS N. HUSAK, DRUGS AND RIGHTS (1992) (critiquing inflated claims of drug-use harms and arguing adults have a right to drugs). Marijuana prohibition is thus a perfect example of an exaggerated response by federal law enforcement—who quite literally “make a federal case out of

it,” *see, e.g.*, Gene Healy, *Making a Federal Case Out of Almost Everything*, REASON.COM (Dec. 17, 2004) [\[link\]](#)—effectively overriding state and local decisions to decriminalize or legalize marijuana.

Note 13. *See* Proclamation No. 4313: Program for the Return of Vietnam Era Draft Evaders and Military Deserters, 39 Fed. Reg. 33,293 (Sept. 16, 1974) [\[link\]](#); Exec. Order No. 11803, 39 Fed. Reg. 33,297 (Sept. 16, 1974) [\[link\]](#); Exec. Order No. 11804, 39 Fed. Reg. 33,299 (Sept. 16, 1974) [\[link\]](#). *See also* U.S. PRESIDENTIAL CLEMENCY BOARD, REPORT TO THE PRESIDENT (1975) [\[link\]](#); U.S. COMPTROLLER GENERAL, THE CLEMENCY PROGRAM OF 1974: REPORT TO THE CONGRESS (1977) [\[link\]](#); Mark Osler, *Clemency*, in 4 REFORMING CRIMINAL JUSTICE: PUNISHMENT, INCARCERATION, AND RELEASE 419, 425-27 (Erik Luna ed., 2017) [\[link\]](#) (describing President Ford’s clemency board).

Note 14. Proclamation No. 4483: Granting Pardon for Violations of the Selective Service Act, 42 Fed. Reg. 4391 (Jan. 21, 1977) [\[link\]](#). These acts of clemency by Presidents Ford and Carter can serve as a model for ending the federal war on marijuana.

Note 15. *Biden-Sanders Unity Task Force Recommendations*, JOEBIDEN.COM [\[link\]](#).