



July 22, 2024

**Comments of the National Association of Criminal Defense Lawyers
Docket No. DEA-1362
Schedules of Controlled Substances: Rescheduling of Marijuana**

The National Association of Criminal Defense Lawyers (NACDL) welcomes the opportunity to comment on the Drug Enforcement Agency's (DEA's) proposed rule on the status of marijuana under the Controlled Substances Act (CSA). NACDL urges the DEA to reconsider its proposed rule and issue a new rule to deschedule marijuana. Rescheduling marijuana to Schedule III will not end federal marijuana arrests, even for possession and use, it will not release anyone from prison, and it will not expunge previous marijuana arrests from individuals' criminal records. NACDL contends that rescheduling marijuana is simply not enough, and marijuana should be federally descheduled.

NACDL is the preeminent organization in the United States advancing the mission of the nation's criminal defense lawyers to ensure justice and due process for individuals accused of crimes and incarcerated individuals. Founded in 1958, NACDL has over 10,000 direct members in 28 counties – and 90 state, provincial and local affiliate organizations totaling approximately 40,000 attorneys. Our members include private criminal defense lawyers, public defenders, U.S. military defense counsel, law professors, and judges who are committed to preserving justice and combatting racial injustice within America's criminal legal system.

Directing that marijuana be rescheduled and not descheduled, and therefore remain in the CSA, is contrary to the vast changes in law and policy respecting marijuana in the United States and the federal system. Most Americans live in a state that has legalized or decriminalized marijuana. Today, 38 states have legalized medical marijuana, and 24 states have legalized adult-use marijuana. This is something to celebrate. But there are many people who are often forgotten in the movement to legalize marijuana, and that includes those who are arrested, convicted, and imprisoned for marijuana crimes. Today, there are more than 40,000 people incarcerated for marijuana crimes while the corporate marijuana industry is booming.

For decades the United States has played an instrumental role in creating and enforcing marijuana prohibitions with devastating consequences. While federal marijuana prosecutions have declined in recent years, hundreds of people are still charged with federal marijuana offenses annually, and the average sentence for someone convicted of federal marijuana trafficking is still

measured in years. In fact, one quarter of those sentenced in 2023 received 5-15 year prison terms, and decades' long sentences were imposed in several cases. These enforcement and incarceration costs are not justified by public safety considerations. Beyond the fiscal costs are the individual and societal costs, especially continued harm to Black and brown communities. A disproportionately high percentage of those arrested and prosecuted for drug crimes are people of color. When they are sentenced, a higher proportion of Black and Latino individuals have their sentences increased because of prior marijuana possession offenses, and nearly all of these prior marijuana possession offenses were from state convictions, including convictions from states that have already decriminalized or legalized marijuana.

NACDL works to right these wrongs by helping those who are incarcerated for marijuana crimes return home to their families instead of serving long sentences for actions that are, today, legal in a majority of states. NACDL's Cannabis Justice Initiative, which files *pro bono* compassionate release motions and clemency petitions on behalf of persons incarcerated for federal marijuana offenses, has secured *pro bono* counsel for 150 individuals, and filed 79 motions and petitions to date.

One such client of the Cannabis Justice Initiative is David Lopez, a 63-year-old inmate who has served 12 years of a 24-year sentence for a non-violent marijuana conviction. Mr. Lopez has recently been diagnosed with Parkinson's Disease, which adds to his serious medical conditions that come with growing older in prison. He has a perfect disciplinary record, an exceptional programming history, and glowing letters of recommendation from nine Bureau of Prisons staff members who insist he will be law abiding if he is released. Since he has arrived in prison, he has worked diligently to become the man he is today – a deeply religious, rehabilitated, and changed man who is recognized as a model inmate by BOP staff. It is individuals like Mr. Lopez who will continue to be incarcerated for non-violent marijuana crimes should marijuana be rescheduled, rather than descheduled, as the DEA proposes.

Another client is Dannye McIntosh, a 57-year-old inmate who is serving a 360-month (30 year) prison sentence for his involvement in a non-violent marijuana offense in 2006. He has already been in federal custody for 18 years and is a survivor of prostate cancer. Over the course of his incarceration, Mr. McIntosh has taken over 50 classes, which amount to hundreds of hours of programming. He has also passed a barber's apprenticeship and currently works as barber inside his facility. It is individuals like David. Lopez and Dannye McIntosh who will continue to be incarcerated for non-violent marijuana crimes should marijuana be rescheduled, rather than descheduled, as the DEA proposes.

As long as marijuana is scheduled in the CSA, individuals can still be jailed for marijuana offenses, and the related harms and racial disparities will continue. Federal marijuana policy must seek an end to unjust criminal consequences for marijuana activity, restore the rights and opportunities to those whose communities are targeted by marijuana criminalization, and prevent the over-incarceration of people of color through its failed war against marijuana. It is time to end

the criminalization and incarceration of individuals for a drug that has been legalized and decriminalized across the United States.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael P. Heiskell". The signature is written in a cursive, flowing style with some loops and flourishes.

Michael P. Heiskell
President, NACDL