

November 4, 2022

The Hon. Joseph R. Biden, Jr.  
President of the United States  
The White House  
1600 Pennsylvania Ave, NW  
Washington, DC 20500

Dear President Biden:

We welcome your decision to pardon federal convictions for marijuana possession as a much-needed first step toward mitigating the harm “war on drugs” and “war on crime” policies have imposed on Black and Brown families. However, as organizations working on racial justice, human rights, and immigrant rights issues, we are grimly disappointed at the explicit exclusion of many immigrants and at the absence of affirmative measures to ensure that *all* immigrants get meaningful relief from the immigration consequences that can follow marijuana convictions.

Cutting people out of criminal policy reforms simply because of their place of birth casts a shadow over the White House’s efforts to address the over-policing and mass incarceration of Black and Brown communities. Moving forward, we urge you to ensure that every step taken to remedy racial injustice includes relief to impacted immigrant communities. In particular, we urge you to extend protection to all immigrants, regardless of immigration status, and to take necessary steps to ensure that immigrants do not suffer negative immigration consequences from marijuana convictions.

You rooted the October 6th proclamation in the pursuit of racial equity, noting that “Black and brown people have been arrested, prosecuted, and convicted at disproportionate rates.” Yet you exclude Black and Brown immigrants facing the same structural racism as U.S. citizens. The announcement accompanying the proclamation also notes that pardons will relieve the collateral consequences resulting from marijuana-related convictions, including barriers to employment, housing, or educational opportunities.<sup>1</sup> Yet immigration detention and deportation are also consequences that flow from marijuana-related convictions, consequences left unaddressed by your proclamation.

The proclamation leaves immigrants behind in two primary ways. First, it applies only to people who are currently citizens or lawful permanent residents, casting aside undocumented immigrants and other lawfully present immigrants such as refugees and asylees.<sup>2</sup> Second,

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<sup>1</sup> White House Briefing Room, [Statement from President Biden on Marijuana Reform](#), Oct. 6, 2022.

<sup>2</sup> White House Briefing Room, [A Proclamation on Granting Pardon for the Offense of Simple Possession of Marijuana](#), Oct. 6, 2022.

although full and unconditional pardons by the President should have the legal effect of removing the immigration consequences of marijuana possession convictions,<sup>3</sup> immigration prosecutors and judges will likely ignore the pardon's effect in deportation proceedings.<sup>4</sup> These omissions mean that non-citizens will either be entirely ineligible for a pardon or may receive a pardon, but still face deportation as a consequence of the pardoned offense. The President should extend the pardon to *all* immigrants, and the administration should issue agency guidance that ensures immigrants previously deported or facing deportation because of a pardoned conviction receive appropriate relief.<sup>5</sup>

When pardons, clemencies, or sentence reduction measures do not address immigration consequences the ensuing harms are grievous. Deportation can be a death sentence for individuals who have fled or fear persecution in their country of birth; others face stigma and violence specifically aimed at people deported from the United States. Family members remaining in the United States after a loved one is deported often endure poverty, food and housing insecurity, and negative mental health outcomes.<sup>6</sup> There is also palpable injustice when the same government that delivers an act of clemency follows it with a penalty as harsh as deportation.

More than one year ago your administration announced the development of a pardon process focused on pursuing racial equity. Nearly 200 civil rights, immigration, and criminal justice organizations [wrote to you](#) following that announcement, emphasizing that immigration is a racial justice issue and urging you to include immigrants in the pardon process.<sup>7</sup> We reiterate that request today, and urge you to acknowledge that unjust laws that disparately impact Black and Brown communities are no more or less unjust depending on one's citizenship status. As you stated on October 6th, no one should be in jail for marijuana possession. No one should be

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<sup>3</sup> See Jason Cade, The Immigration Implications of Presidential Pot Pardons, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4255925](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4255925).

<sup>4</sup> 8 U.S.C. § 1227(a)(2)(A)(vi) provides a list of removal grounds that may be waived in the case of a presidential or gubernatorial pardon. Because the controlled-substance ground is not included in this list, the Board of Immigration Appeals and some federal courts have ruled that pardons by state governors for drug-related offenses will not prevent immigration consequences.

<sup>5</sup> Many immigrants previously deported because of a pardoned conviction or facing removal on the basis of a pardoned conviction will require a positive exercise of discretion by the Department of Homeland Security (DHS) to ensure they are able to access relief. For individuals already deported on the basis of a marijuana related pardoned conviction, DHS can mitigate the immigration consequences by joining in the individual's motion to reopen their proceeding and stipulating to termination of proceedings or a grant of relief from removal. For individuals currently in the United States facing removal proceedings or at risk of facing removal proceedings on the basis of a vacated conviction, numerous options are available to DHS to ensure protection from deportation including stipulating to the individual's relief or providing protection from deportation in the form of Deferred Action.

<sup>6</sup> Soc'y Cmty. Research & Action Div. of the Am. Psychological Ass'n, [Statement on the Effects of Deportation and Forced Separation on Immigrants, Their Families, and Communities](#), 62 Am. J. Community Psychol. 3, 3-12 (2018); [Facing Our Future: Children in the Aftermath of Immigration Enforcement](#), Urb. Inst. (Feb. 2010).

<sup>7</sup> National Immigration Project of the National Lawyers Guild, [Civil Rights Groups Call on President Biden to Include Immigrants in Pardon Process](#), June 2, 2021.

denied access to higher education or precluded from pursuing the career of their dreams because of marijuana possession. Surely no one should be deported and permanently exiled from their loved ones and community because of marijuana related convictions.

Thank you for your consideration. With questions, please contact Heidi Altman at [haltman@heartlandalliance.org](mailto:haltman@heartlandalliance.org) and Sirine Shebaya at [sirine@nipnl.org](mailto:sirine@nipnl.org).

Sincerely,

ABISA

ACLU of New Jersey

African Communities Together

AIDS Alabama

AIDS United

Aldea - The People's Justice Center

Alternative Chance / Chans Alternativ

American Civil Liberties Union

American Friends Service Committee

American Gateways

American Immigration Lawyers Association

Asian Americans Advancing Justice - Asian Law Caucus

Asian Americans Advancing Justice - Atlanta

Asian Americans Advancing Justice | AAJC

ASISTA Immigration Assistance

Asylum Seeker Advocacy Project (ASAP)

Better Organizing to Win Legalization

Black Alliance for Just Immigration

Black and Brown United in Action

California Collaborative for Immigrant Justice (CCIJ)

California Immigrant Youth Justice Alliance

Cameroonian Community Of West Michigan (CACOWMI)

Capital Area Immigrants' Rights Coalition

CARECEN SF - Central American Resource Center of Northern California

Carolina Migrant Network

Center for Constitutional Rights

Center for Gender & Refugee Studies

Center for Law and Social Policy

Central Florida Jobs With Justice

Centro de Trabajadores Unidos

City of Atlanta Office of the Public Defender

Civil Rights Education and Enforcement Center  
Colectiva Legal del Pueblo  
Colorado Immigrant Rights Coalition  
Colorado Jobs with Justice  
Columbia Law School Immigrants' Rights Clinic  
Communities United for Restorative Youth Justice  
Communities United for Status & Protection (CUSP)  
Community Asylum Seekers Project  
Connecticut Shoreline Indivisible  
Conversations with Friends  
Detention Watch Network  
Drug Policy Alliance  
Envision Freedom Fund  
Faith in New Jersey  
Families for Freedom  
Farmworker Association of Florida  
Federal Public & Community Defenders  
Florence Immigrant & Refugee Rights Project  
Florida Immigrant Coalition (FLIC)  
Freedom for Immigrants (FFI)  
Freedom Network USA  
Giselle Holloway  
Grassroots Leadership  
Haitian Bridge Alliance  
Her Justice, Inc.  
Hispanic Federation  
Hope CommUnity Center  
Human Rights Watch  
Illinois Coalition for Immigrant and Refugee Rights  
Immigrant Action Alliance  
Immigrant and Non-Citizen Rights Clinic, CUNY School of Law  
Immigrant ARC  
Immigrant Defenders Law Center  
Immigrant Defense Project  
Immigrant Justice Network  
Immigrant Legal Advocacy Project  
Immigrant Legal Defense  
Immigrant Legal Resource Center  
Immigration Hub  
Inter-Faith Committee on Latin America

Jewish Activists for Immigration Justice  
JUNTOS Philadelphia  
Just Futures Law  
Justice Action Center  
Justice Strategies  
La Resistencia  
Legal Aid Justice Center  
Long Beach Immigrant Rights Coalition (LBIRC)  
Louisiana Advocates for Immigrants in Detention (LA-Aid)  
Louisiana Organization for Refugees and Immigrants  
The Leadership Conference on Civil and Human Rights  
Make the Road New York  
Mariposa Legal, program of COMMON Foundation  
Migrant Center for Human Rights  
MomsRising/MamásConPoder  
Monsoon Asians & Pacific Islanders in Solidarity  
Muslim Advocates  
NASTAD  
National Association of Criminal Defense Lawyers  
National Day Laborer Organizing Network (NDLON)  
National Immigrant Justice Center  
National Immigration Law Center  
National Immigration Project (NIPNLG)  
National Korean American Service & Education Consortium (NAKASEC)  
National Network for Immigrant and Refugee Rights  
National Organization for the Reform of Marijuana Laws  
NETWORK Lobby for Catholic Social Justice  
New York Immigration Coalition  
NorCal Resist  
North Carolina Justice Center  
Northwest Immigrant Rights Project  
NYU Immigrant Rights Clinic  
Ohio Immigrant Alliance  
Parabola Center for Law and Policy  
Public Defenders Coalition for Immigrant Justice  
RAICES  
RCHP-AHC Still Waters Anti-trafficking Program  
Respond Crisis Translation  
Robert F. Kennedy Human Rights  
Rocky Mountain Immigrant Advocacy Network

Rural Organizing Project  
SEIU Florida Public Services Union  
South Asian Americans Leading Together (SAALT)  
Southeast Asia Resource Action Center  
Southern Poverty Law Center Action Fund  
Still Waters Anti-trafficking Program  
StoptheDrugWar.org  
Students for Sensible Drug Policy  
Sunita Jain Anti-Trafficking Initiative  
TASSC (Torture Abolition & Survivors' Support Coalition) International  
The Bronx Defenders  
The Legal Aid Society (New York)  
The Sentencing Project  
The Unitarian Universalist Association  
Transformations CDC  
UCLA Center for Immigration Law and Policy  
UCLA Law Criminal Defense Clinic  
UnLocal  
Vera Institute of Justice  
Veterans Cannabis Coalition  
Washington Office on Latin America (WOLA)  
Washington Statewide Reentry Council  
Wind of the Spirit Immigrant Resource Center  
Women's Refugee Commission