

Marijuana Policy Recommendations to the Trump Transition Team



TO: Trump/Vance Presidential Transition Team
FROM: The Marijuana Policy Project (MPP) and the National Organization for the Reform of Marijuana Laws (NORML)
RE: Marijuana policy recommendations
DATE: November 15, 2024

We are grateful that President Trump, like a supermajority of Americans,¹ believes marijuana should be legal for adults. Forty-two states of all political stripes allow the sale of marijuana products that are federally illegal for medical use or for adults 21 and older. It is past time for the federal government to stop criminalizing responsible marijuana consumers and the businesses and workers that serve them.

As this memo explains in greater detail, we urge the second Trump Administration to:

- 1. End the federal criminalization of marijuana, allowing states to decide cannabis policy without undue federal interference.**
- 2. Alternatively, as interim measures:**
 - a. Provide full support to the ongoing administrative effort to reschedule marijuana to Schedule III or a less restrictive schedule,**
 - b. Formalize federal non-interference in state-legal marijuana businesses, and**
 - c. Support SAFER Banking or similar legislation so that financial institutions can explicitly provide services to state-licensed marijuana businesses.**
- 3. Restore marijuana consumers' Second Amendment rights.**
- 4. Change the federal policies that force the firing of qualified workers and contractors based on their off-hours or prior marijuana use.**

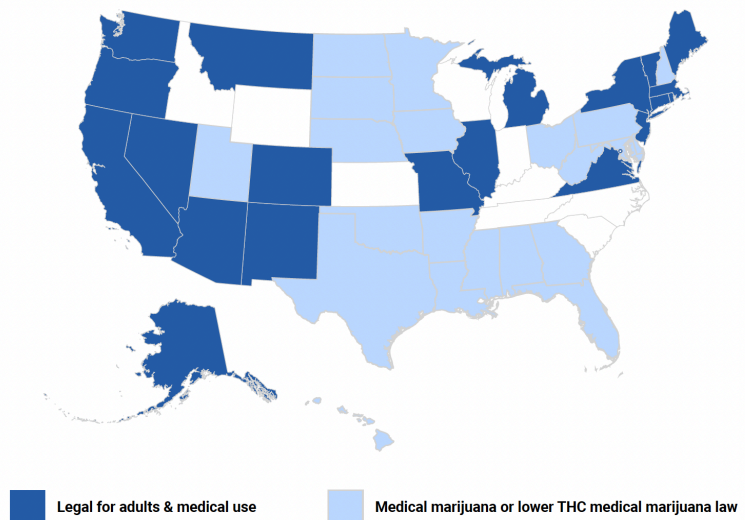
¹ Kyle Jaeger, "Americans' Support For Marijuana Legalization Stabilizes With Bipartisan Majorities In Favor, Gallup Poll Finds," *Marijuana Moment*, Nov. 1, 2024.

5. **Issue pardons and commutations and clear records for those with federal convictions for prior marijuana offenses.**
6. **Stop denying marijuana consumers access to federal housing solely on the basis of their marijuana use.**
7. **Stop interfering with D.C. Council decisions overseeing the District’s marijuana laws.**
8. **Evaluate all barriers to research on marijuana and remove them.**

Gallup polls show majority support for marijuana legalization across every demographic and political party, with support doubling in the past 20 years. There are now 24 states where marijuana is legal for adults 21 and older — home to 54% of Americans.²

Marijuana Policy in the United States


Yet, federal marijuana policy remains stuck in the past. Every marijuana consumer remains a criminal under federal law. Federal security clearances and federal jobs can be denied based on off-hours and even past marijuana use, and marijuana consumers who are gun owners risk 10 years in prison. The federal government should not be destroying lives for using a substance that is safer than alcohol and that — for many people — is beneficial.



We agree with Pres. Trump’s September 8, 2024, Truth Social post and offer these suggestions for how he can lead our country to a sounder, more modern marijuana policy.

²Athena Chapekis and Sono Shah, "Most Americans now live in a legal marijuana state – and most have at least one dispensary in their county," *Pew Research*, February 29, 2024.



Donald J. Trump 
@realDonaldTrump

As I have previously stated, I believe it is time to end needless arrests and incarcerations of adults for small amounts of marijuana for personal use. We must also implement smart regulations, while providing access for adults, to safe, tested product. As a Floridian, I will be voting YES on Amendment 3 this November. As President, we will continue to focus on research to unlock the medical uses of marijuana to a Schedule 3 drug, and work with Congress to pass common sense laws, including safe banking for state authorized companies, and supporting states rights to pass marijuana laws, like in Florida, that work so well for their citizens.

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Trump Administration Policy Recommendations

1. End the federal criminalization of marijuana, allowing states to decide cannabis policy without undue interference.

By removing marijuana from the Controlled Substances Act in a manner similar to alcohol or tobacco, President Trump can reduce federal overreach and increase liberty. States that wish to continue criminalizing marijuana for adults' use or medical use would be free to do so. But it would no longer be a federal crime to choose to relax with marijuana or for state-licensed businesses to sell marijuana in accordance with state laws.

A. Pres. Trump can direct his Attorney General, DEA, and HHS to pursue descheduling marijuana administratively.

Under the Controlled Substances Act (CSA), the Attorney General has the authority to reschedule drugs or to remove them from the CSA. The CSA requires the Attorney General to first request a scientific evaluation from HHS, along with its recommendations on if the drug should be rescheduled or removed as a controlled substance. Marijuana is far less risky than alcohol, and it does not belong in CSA. After allowing the current rescheduling process to be completed in a timely fashion, the Trump Administration should move to deschedule marijuana administratively.

B. Pres. Trump can work with Congress to pass legislation to repeal federal laws criminalizing marijuana at the federal level. This would not force any state to legalize.

Pres. Trump can also call on Congress to deliver to his desk legislation to repeal the federal prohibition on marijuana, just as Congress similarly repealed the failed policy

of federal alcohol prohibition nearly a century ago. The proposal could vest federal agencies with some regulatory authority, such as standardized labels and testing requirements. If it imposes a tax on marijuana, the taxes should be modest and should not apply to the sales of medical marijuana. Rep. David Joyce (R) sponsors the bipartisan STATES Act 2.0 (H.R. 6673), which could provide a starting point for legislation.

2. Alternatively, if legalization cannot happen swiftly, as interim measures we urge the president to:

a. Provide full support to the ongoing administrative effort to reschedule marijuana to Schedule 3 or a less restrictive schedule.

We were grateful to see Pres. Trump express support for rescheduling to Schedule 3 on Truth Social.³ HHS and the DEA have proposed rescheduling marijuana from Schedule 1 to Schedule 3, and the administrative process is in its final stages.⁴ Rescheduling would acknowledge marijuana’s medical value and that it has a lower potential for abuse than Schedule II substances such as fentanyl, oxycodone, and methamphetamine.

Millions of Americans use marijuana as a medicine, consistent with the laws of dozens of states. Rescheduling to Schedule 3 improves upon the status quo — which maintains the fiction that marijuana has no medical value. But it is a limited step that would not harmonize state and federal laws.

Rescheduling to Schedule 3 would not legalize state-legal marijuana patients’ possession of marijuana, nor would it remove federal penalties from the businesses that serve them. It would be far more sensible to *deschedule* marijuana or to move it to a less restrictive schedule. The Trump Administration should legalize state-legal medical marijuana patients, adult-use consumers, and the state-legal businesses that serve them, while providing for appropriate regulations such as age-gating, packaging, labeling for potency, and regulations on advertising.

The current rescheduling process began in late 2022. HHS completed a scientific analysis and published its findings, which recommended rescheduling.⁵ This summer, the DEA received over 42,000 comments on rescheduling — with over 92%

³ <https://truthsocial.com/@realDonaldTrump/posts/113105431683796730>

⁴ <https://www.govinfo.gov/content/pkg/FR-2024-05-21/pdf/2024-11137.pdf>

⁵ Available at: <https://www.dea.gov/sites/default/files/2024-05/2016-17954-HHS.pdf>

supporting rescheduling or complete descheduling.⁶ The DEA announced a hearing on rescheduling starting December 2, 2024, and DEA Administrator Anne Milgram signed off on 25 witnesses. Chief Administrative Law Judge (ALJ) John Mulrooney issued an order indicating the information on witnesses was insufficient and requesting additional details. He asked about availability for a hearing in January or February 2025.⁷

It is important that the progress to classify marijuana in a more sensible schedule be completed in a timely manner, with the end result being rescheduling marijuana as Schedule 3 or a less restrictive schedule or be removed from the CSA. This process has already taken over two years, and Americans are eager to make progress in this area.

b. Formalize federal non-interference in state-legal marijuana businesses.

On September 8, 2024, Pres. Trump said on Truth Social, “As President, we will ... work with Congress to pass common sense laws, including ... supporting states rights to pass marijuana laws, like in Florida, that work so well for their citizens.” He also joined 56% of Florida voters in casting his ballot for Florida’s legalization initiative, Amendment 3.⁸

We urge the incoming Department of Justice to issue a new memo that reinstates a policy of non-interference in states where marijuana is legal for adults or medical use.

We also urge the Trump administration to support expanding the current Commerce, Justice, Science, and Related Agencies (CJS) appropriations rider that prevents intervention into state medical marijuana laws to extend to adult-use legalization laws. For example, it could read:

“None of the funds made available by this Act to the Department of Justice may be used, with respect to any of the States, the District of Columbia, or U.S. territories to prevent any of them from implementing their own laws that authorize the use, distribution, possession, or cultivation of marijuana.”

Limited federal law enforcement resources should not be wasted to wage a failed war on marijuana in states that have modernized their marijuana laws.

⁶“Unprecedented Support for Cannabis Scheduling Reform Revealed by Data from the DEA Comment Period,” Headset, July 23, 2024.

⁷ <https://truthsocial.com/@realDonaldTrump/posts/113105431683796730>

⁸ <https://truthsocial.com/@realDonaldTrump/posts/113105431683796730>

c. Support SAFER Banking or similar legislation so that financial institutions can explicitly provide services to state-licensed marijuana businesses.

We were also grateful to see Pres. Trump express support for federal banking reform for state-licensed marijuana businesses in the Truth Social post.⁹ According to current federal data, fewer than nine percent of all banks and/or credit unions service the multi-billion marijuana industry.¹⁰ This results in it being a cash-mostly business that puts everyone involved at risk. The American Bankers Association, the International Brotherhood of Teamsters, Independent Community Bankers of America, and the Electronic Transactions Association are among the many supporters of the bill.¹¹ We urge Pres. Trump to call on Congress to swiftly pass SAFER Banking (S.2860).

3. Restore marijuana consumers' Second Amendment rights.

An area where Pres. Trump should immediately rein in federal overreach is marijuana consumers' gun rights. The Biden Justice Department maintains it is constitutional to strip Americans who consume marijuana of their gun rights, and to incarcerate them for up to 10 years if they possess a gun.¹² Pres. Trump should reverse course and act to restore the Second Amendment rights of the 35 million Americans who are marijuana consumers.

This principled stance would be in line with the 2022 U.S. Supreme Court *Bruen* decision, which expanded Second Amendment protections, and the subsequent decision *Rahimi*. Based on those cases' reasoning, the Fifth Circuit Court of Appeals has ruled for marijuana consumers' Second Amendment rights. In the August 2024 panel decision *U.S. v. Connelly*, the court found "there is no historical justification for disarming sober citizens not presently under an impairing influence."

A. Reverse Department of Justice opposition to marijuana consumers' gun rights.

Outrageously, the Biden Department of Justice is continuing to oppose marijuana consumers' Second Amendment rights. The Trump Justice Department should

⁹ Tom Angell, "Trump Backs Federal Marijuana Rescheduling And Cannabis Industry Banking Access," Marijuana Moment, September 9, 2024.

¹⁰ "Treasury Report: Over 800 Banking Institutions Report Relationships With State-Licensed Cannabis Businesses," NORML, November 14, 2024.

¹¹ Kyle Jaeger, "50 State Bankers Associations, Insurance Groups And Top Union Urge Passage Of Marijuana Banking Bill," Marijuana Moment, May 12, 2023.

¹² See: Jacob Sullum, "The DOJ Claims Medical Marijuana Patients Who Own Guns 'Endanger the Public in Multiple Ways,'" *Reason*, July 18, 2024.

reverse this position. It should stop prosecuting marijuana consumers under 18 USC 922(g)(8) and reverse its position in ongoing litigation, including:

- *Cooper v. Attorney General*, No. 22-13893, in the 11th Circuit;
- *U.S. v. Daniels*, Case No. 22-60596, in the 5th Circuit on remand from the U.S. Supreme Court;
- *U.S. v. Harrison*, CR-22-00328-PRW, in the 10th Circuit; and
- *Greene v. Garland*, Civil Action No.1:24-cv-21 in the U.S. District Court for the Western District of Pennsylvania.

B. Revise ATF Form 4473 to be consistent with the Second Amendment.

ATF form 4473¹³ forces Americans who use marijuana to give up their Second Amendment rights, despite court rulings that the prohibition is unconstitutional. Any marijuana consumer — including in a state where it is legal — must answer that they are an unlawful user of marijuana, which results in them being refused the sale of firearms and ammunition. If they answer “no,” they face perjury charges.

The Trump ATF should revise this form to be consistent with Second Amendment-supporting jurisprudence.

Question 21 (f) currently reads:

Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance?

Warning: The use or possession of marijuana remains unlawful under Federal law regardless of whether it has been legalized or decriminalized for medicinal or recreational purposes in the state where you reside.

It should be revised to read:

Are you an unlawful user of, or addicted to, any depressant, stimulant, narcotic drug, or any other controlled substance?

Note: You are only required to answer “yes” to being an “unlawful user” if the substance is something other than marijuana.

C. Rescind the 2011 Department of Justice letter to firearms dealers.

In 2011, the Department of Justice issued a guidance letter to firearms licensees advising that they are prohibited from transferring firearms and ammunition “having reasonable

¹³www.atf.gov/firearms/docs/4473-part-1-firearms-transaction-record-over-counter-atf-form-53009/download

cause to believe” the buyer is a marijuana consumer.¹⁴ The letter said, “if you are aware that the potential transferee is in possession of a card authorizing the possession and use of marijuana under State law, then you have ‘reasonable cause to believe’ that the person is an unlawful user of a controlled substance.”

This tremendous overreach criminalizes transferring firearms to a person even if they are not a user of marijuana, and they merely have a card that would allow them to choose to do so under state law.

In light of the Supreme Court’s decision in *Bruen* and the Fifth Circuit’s decision in *U.S. v. Connelly* (2024), the Trump Department of Justice should issue a superseding letter that advises firearms licensees that the Department no longer maintains that it is illegal to transfer a firearm to a person who possesses marijuana or who has a state medical marijuana card.

4. Change the federal policies that force the firing of qualified workers and contractors based on their off-hours or prior marijuana use.

Just as the federal government does not fire federal workers or contractors for using alcohol in their spare time, it should not be firing them for off-hours use of marijuana when they are not impaired on-the-job. Nor should federal authorities be coercing private employers into firing their employees based on off-hours marijuana use. For many, marijuana is a safer alternative to alcohol and prescription drugs.

Elon Musk is one of the many federal contractors who was subjected to intrusive and wasteful drug tests by the federal government. After apparently smoking a joint on Joe Rogan’s podcast in 2018, he was subjected to a year of drug tests as a federal contractor.¹⁵

The most common drug tests for marijuana are urine tests, which screen for inactive metabolites. THC itself (the primary psychoactive component of marijuana) is not detectable in urine.¹⁶ Metabolites are products of metabolizing marijuana in one’s body and do not show up in urine until between an hour and four hours after last-use.¹⁷ In other words, a person will often not test positive on a urine test until *after* impairment has worn off. A person can continue to test positive for metabolites for more than 100 days after last use.¹⁸

¹⁴ "Open Letter to All Federal Firearms Licensees," U.S. Department of Justice, September 21, 2011.

¹⁵ <https://www.youtube.com/watch?v=caJN5vNE3lk>

¹⁶ <https://www.mayocliniclabs.com/test-catalog/drug-book/specific-drug-groups/marijuana>

¹⁷ Id.

¹⁸ See, “Weeding Through the Information: Interpreting Laboratory Tests to Determine New vs. Residual Use of Marijuana,” Mayo Clinic Laboratories, https://norml.org/wp-content/uploads/pdf_files/Review_biologic_matrices_indicators_cannabis_use.pdf

We urge Pres. Trump to revise or rescind the existing executive order providing for drug testing of federal employees — Executive Order 12564.¹⁹ We also urge him to work for other changes, including:

- Federal legislation to stop firing and not hiring federal workers for prior marijuana use and for testing positive for marijuana in amounts that do not cause impairment; and
- Repealing or revising the Drug-Free Workplace Act so the federal government does not coerce grantees and private companies to drug test for marijuana.

5. Issue pardons and commutations and clear records for those with federal convictions for prior marijuana offenses.

Pres. Trump should go further than Pres. Biden to stop ruining lives for marijuana. He should issue pardons and commutations to all individuals with federal convictions for marijuana, absent a reason that a specific individual should not get relief — such as if they distributed to minors or committed violent offenses. With more than half of Americans living in legal marijuana states, it's time to stop incarcerating people and ruining lives over a substance that is safer than alcohol.

While Pres. Biden claimed his pardons for possession would result in expungement,²⁰ they did not. The stigma of a federal marijuana conviction — even for a pardoned offense — often continues to stand in the way of getting a job, housing, and otherwise fulfilling one's dreams. The pardons were incredibly popular, with 69% support and only 18% opposed.²¹ That broad support may be the reason why Pres. Biden repeatedly overstated their impact. We ask that Pres. Trump call on Congress to enact legislation to create a government-initiated process to expunge, or seal, federal convictions for marijuana offenses — which would achieve what most Americans believed the pardons would do.

6. Stop denying marijuana consumers access to federal housing solely on the basis of their marijuana use.

Under 48 U.S.C. § 13661, state-legal cannabis users — including patients — cannot be admitted to public housing or housing choice voucher programs. In addition, leases must allow evictions for a controlled substance — including state-legal cannabis.²² We urge Pres.

¹⁹ Available at <https://www.archives.gov/federal-register/codification/executive-order/12564.html>

²⁰ Kyle Jaeger, "Fact-Check: Biden Falsely Claims His Marijuana Pardons Expunged 'Thousands Of Convictions' In State Of The Union Address," Marijuana Moment, March 8, 2024.

²¹ Kyle Jaeger, "Biden's Marijuana Clemency Action Is Most Popular Of All Presidential Pardons In U.S. History, Poll Finds," Marijuana Moment, August 27, 2027.

²² <https://www.hud.gov/sites/documents/MED-MARIJUANA.PDF>

Trump to support revising this law to stop denying housing for the use of a state-legal substance that many find relieves their intractable pain, seizures, cancer-related symptoms, and other debilitating medical conditions.

7. Stop interfering with D.C. Council decisions overseeing the District's marijuana laws.

Congress' interference in D.C.'s marijuana laws created a mess. In 2014, D.C. voters legalized possession, home cultivation of six plants, and marijuana gifting. The D.C. Council planned to legalize and regulate sales, but Congress enacted a rider that prevents the District from spending any allocated funds to further legalize and regulate marijuana for adults. It has been renewed every cycle.

By preventing D.C. from legalizing and regulating marijuana sales, like 23 states do, Congress created a wink-and-nod "gifting" economy that prevents sensible regulations, like potency labels and security requirements. Pres. Trump should oppose this coercion that has prevented D.C. from legalizing and regulating marijuana sales.

8. Evaluate all barriers to research on marijuana and remove them.

We were glad to see Pres. Trump supports marijuana research. Federal policies have hindered, delayed, and otherwise complicated clinical research into marijuana's therapeutic benefits. The administration should work with researchers to identify and remove all obstacles to cannabis research and support future coverage as an alternative therapy or botanical drug. Among those obstacles are:

- cannabis' Schedule I status that necessitates unnecessarily onerous security restrictions,
- federal regulatory restrictions on doing clinical research using the products and administration methods that medical cannabis patients and adult-use consumers obtain from state-legal cannabis businesses, and
- NIH's historical focus on funding research on the harms of cannabis use rather than its potential therapeutic utility.

Concluding Thoughts

Federal authority has stretched beyond the limited, enumerated powers listed in the Constitution. Just over a century ago, Congress enacted the 18th Amendment to the Constitution to prohibit alcohol sales under federal law. At the time, Congress recognized that its authority to regulate *interstate* Commerce did not give it authority to prohibit the

intrastate production and sale of alcohol. Simple possession of alcohol was never made a federal crime.

Since then, federal authority under the interstate Commerce Clause has broadened to the extent that Congress has criminalized the simple possession of marijuana *within* a state. In 2007, the Supreme Court blessed this massive overreach in the context of medical cannabis patients in its *Raich v. Gonzales* decision. Justice Clarence Thomas dissented.

Like alcohol prohibition before it, marijuana prohibition has failed. It has also become quite unpopular. President Trump can lead the nation to sensible national federal policy, which enables states to make their own decisions, and allows for sensible lab-testing and safety regulations. He can also roll back federal overreach that denies Americans their gun rights, work, housing, and federal contracts for relaxing with cannabis.

Please don't hesitate to reach out to explore these and other policies that the second Trump Administration can make to advance liberty and allow states to choose their own marijuana policies.

Sincerely,

Karen O'Keefe
Director of State Policies
kokeefe@mpp.org
202-905-2012
Marijuana Policy Project

Morgan Fox
Political Director
morgan@norml.org
202-926-4333
National Organization for the Reform of Marijuana Laws