



National Association of Assistant United States Attorneys

Safeguarding Justice for All Americans

Board of Directors July 26, 2022

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Subcommittee on Criminal Justice & Counterterrorism
Washington, D.C. 20510

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**RE: Comments for the Record for “Decriminalizing Cannabis at the Federal Level:
Necessary Steps to Address Past Harms”**

Dear Chairman Booker, Ranking Member Cotton, and Members of the Subcommittee:

On behalf of the National Association of Assistant United States Attorneys (NAAUSA), representing the interests of the over 6,300 Assistant U.S. Attorneys (AUSAs) working in the 94 U.S. Attorney Offices, we write to provide comments on the Cannabis Administration and Opportunity Act’s proposal to expunge marijuana convictions at the federal level.

NAAUSA does not support or oppose federal marijuana decriminalization. We believe this is a question properly left in the hands of Congress. As Congress considers expunging *past* marijuana convictions, we write to discuss (1) common misconceptions about the nature of federal marijuana convictions, (2) the impact of expungement on the criminal process, and (3) resource constraints that make expungement burdensome to the administration of justice.

I. Federal Solution to a State Problem

Federal law enforcement does not target drug users. Nearly all drug cases in federal court involve drug trafficking. U.S. Attorney Offices across the country work to dismantle large-scale, often multi-national drug trafficking operations. We do not focus attention on street level dealers or individuals struggling with addiction.

Almost all ([99.5 percent](#)) of drug offenders in federal prison are serving sentences for drug trafficking. In 2021, [20 percent](#) of marijuana sentences were increased for possessing a weapon. The median amount of marijuana involved in federal offenses last year was between [80 and 100 kilograms](#). At the federal level, offenders must be involved in significant sale and distribution to trigger a felony arrest.

Executive Director
Chad Hooper

Washington Reps.
Jason Briefel
Natalia Castro

Counsel
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Does that mean there are no individuals imprisoned for minor marijuana possession? No. It means they are not imprisoned at the *federal level*. [Data from 2017](#) indicates federal law enforcement only charged 92 defendants for marijuana possession in that year—making up less half a percent of all federal drug offenders. The conversation about decriminalizing marijuana possession is a *state level conversation* occurring at the federal level due to the persistent false narrative that federal law enforcement target users.

While the bill claims to retain federal prohibitions on trafficking of cannabis in violation of state law, or in states that have not legalized cannabis, this is a hollow tool for law enforcement. Removing cannabis from the Controlled Substances Act and eliminating federal prohibitions in states that have chosen to legalize medical cannabis, will create a patchwork of inconsistent laws

that undermine coordinated law enforcement efforts to dismantle large-scale drug trafficking operations.

We urge Congress to refocus attention on the state level so not to unintentionally inhibit federal law enforcement operations against large-scale drug trafficking operations.

II. Impedes the Court from Assessing Full Criminal History

During various periods in the criminal process, the court assesses a defendant's criminal history to make determinations about their fitness to reenter society. Even if Congress decides marijuana should no longer be legal, expungement prevents the court's from assessing behavior that was unlawful at the time it was committed. In some cases, this may deprive the court from accurately and completely imposing sentence for a defendant. In other cases, it can prevent a jury from learning material information that speaks to an individual's intent or pattern of behavior.

Criminal history is critical to understanding the full scope of an individual's risk to society, particularly at the federal level. Given most marijuana cases involve trafficking significant quantities, denying the court information on these arrests hamstrings prosecutors ability to highlight the scale and scope of a criminal enterprise.

Again, at the state level, expunging a marijuana conviction may make sense based on the size or scope of the charges. But federal law enforcement charge those engaging in large-scale drug trafficking operations, often involving firearms and other drugs. In federal cases, expungement undermines law enforcement efforts to combat the distribution of a wide range of illicit substances, beginning with marijuana but also including fentanyl, fentanyl-related substances, and methamphetamine.

Expunging federal marijuana convictions limits a judge and jury's ability to understand the full scope of an individual's criminal activity. Given the nature of federal charges, this hampers federal law enforcement's ability to combat large-scale drug trafficking operations.

III. Resource Allocation Concerns

Passing a law mandating expungement does not automatically adjust the sentence or lead to the release of marijuana offenders in federal prison. The law will trigger a process that requires significant time and attention from our justice system. A court will need to recalibrate the sentence of many offenders whose marijuana conviction is coupled with other charges. Prosecutors will need to pull cases files to prepare recommendation. These case files may be decades old, and some may still be paper files.

U.S. Attorney Offices lack the resources and personnel to manage this workload. When Congress expanded access to compassionate release during the COVID-19 pandemic, AUSAs reported spending considerable time processing these requests, many of which resulted in little change for the defendant. AUSAs were called to process cases on unrealistic deadlines that forced the AUSA to take time away from new victims and work far outside reasonable hours to ensure claims were considered adequately.

Like with compassionate release, meritorious expungement requests deserve time and attention; not just for the defendant but to ensure individuals likely to commit crimes again do not revictimize society. U.S. Attorney Offices are already struggling with longstanding recruitment and retention challenges, calling on these offices to consider the expungement of millions of convictions burdens

the overall administration of justice.

When Congress enacts a law expunging an entire class of criminal conduct, it imposes a significant burden on U.S. Attorney Offices. It diverts attention away from new cases and meritorious claims as well as lowers the quality of the case review. Congress must take a measured approach to prevent burdening the administration of justice or ensure U.S. Attorney Offices have the personnel and resources to meet the needs of new Congressional enactments.

IV. Conclusion

Our nation continues to battle a drug abuse epidemic. At the federal level, efforts to combat drug trafficking are critical to public health and safety. Expunging past marijuana convictions undermines these efforts and diverts limited resources away from new cases. Regardless of how Congress chooses to act on marijuana moving forward, the retroactively erasing criminal convictions undermines federal law enforcement operations.

For additional information on NAAUSA's position, please do not hesitate to reach out to our Washington representative Natalia Castro (ncastro@shawbransford.com).

Sincerely,

A handwritten signature in black ink, appearing to read "Steven Wasserman". The signature is fluid and cursive, with the first name "Steven" written in a larger, more prominent script than the last name "Wasserman".

Steven Wasserman
President
National Association of Assistant U.S. Attorneys