

November 14, 2022

The Hon. Xavier Becerra
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington D.C. 20201

The Hon. Merrick B. Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington D.C. 20530

Director Susan Rice
Domestic Policy Council
1600 Pennsylvania Ave. NW
Washington D.C. 20500

Director Jennifer Klein
Gender Policy Council
1600 Pennsylvania Ave. NW
Washington D.C. 20500

Dear Secretary Becerra, Attorney General Garland, Director Rice, and Director Klein,

The undersigned 116 organizations who are committed to advancing the rights and protections of survivors of exploitation and trafficking welcome the pardoning of federal convictions for simple marijuana possession offenses for U.S. citizens and legal permanent residents¹. However, we urge the Biden Administration to expand the scope and protections of the pardon to *all* non-citizens, including immigrant trafficking survivors. This expansion would honor and strengthen the promises the Biden Administration made to immigrant survivors in the National Action Plan to Combat Trafficking².

The Biden Administration can meaningfully help survivors and effectuate specific promises in the National Action Plan to Combat Trafficking by taking the following steps:

- 1. To uphold Priority Action 2.2.3 (provide remedies for victims with inappropriate arrests and criminal records), the Biden Administration should explicitly expand the pardon to everyone in the U.S., regardless of immigration status.**

¹ White House Briefing Room, A Proclamation on Granting Pardon for the Offense of Simple Possession of Marijuana, Oct. 6, 2022; <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/10/06/granting-pardon-for-the-offense-of-simple-possession-of-marijuana/>

² <https://www.whitehouse.gov/wp-content/uploads/2021/12/National-Action-Plan-to-Combat-Human-Trafficking.pdf>

As long as trafficking persists, so will the complex intersection of human trafficking and the use of substances like cannabis. It has been understood across party lines for decades that substance use:

- can exacerbate one's vulnerability to trafficking
- be used by traffickers to initiate dependency as a form of coercion
- be used by a survivor before, during, and after their exploitation as an accessible therapy tool and coping mechanism for the physical and mental trauma of being trafficked³.

For example, an anti-trafficking service provider in Maine found that 66% of its clients reported substance use led to their being trafficked and 4.5% reported using it after they were trafficked⁴. A survey of survivors across the U.S. found that 84.3 % used substances while trafficked and cannabis was one of the substances used by more than 50% of the survey respondents⁵. In another survey of human trafficking service providers in the Mid-West, providers noted that substance use was the primary coping tool for survivors post-trafficking and cannabis was the most frequently used⁶. These patterns parallel the widespread use of cannabis to treat and reduce Post-Traumatic Stress Syndrome across diverse populations who have experienced complex and compounded trauma⁷.

2. To uphold Principle 2.2 (to safeguard victims of human trafficking from being inappropriately incarcerated, fined, or otherwise penalized for unlawful acts committed as a direct result of being trafficked), the Biden Administration must de-schedule cannabis from the federal drug schedule.

As long as cannabis is kept on the federal drug schedule, survivors (particularly from Black and brown communities) will continue to be arrested and convicted for simple drug possession.

³ See U.S. Department of State Trafficking in Persons Report 2005 at pg. 11, 50, 128 (<https://2009-2017.state.gov/j/tip/rls/tiprpt/2005/index.htm>) U.S. Department of State, Trafficking in Person Report 2011 at pg. 10, 25, 40 (<https://2009-2017.state.gov/j/tip/rls/tiprpt/2011/index.htm>); ; U.S. Department of State Trafficking in Persons Report 2020 at pg. 32 (<https://www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-062420-FINAL.pdf>); The National Action Plan to Combat Trafficking 2020 at pg. 10, 17, 26 (<https://www.whitehouse.gov/wp-content/uploads/2021/12/National-Action-Plan-to-Combat-Human-Trafficking.pdf>); See generally <https://freedomnetworkusa.org/2022/07/12/intersectionality-between-substance-use-and-human-trafficking/>

⁴ Smith A, Stoklosa H, Corrigan C, Foley L. The intersection of substance abuse and human trafficking. Paper presented at: Office for Victims of Crime Human Trafficking Regional Training Forum; August 24, 2016; Providence, RI

⁵ Stoklosa H, MacGibbon M, Stoklosa J. Human Trafficking, Mental Illness, and Addiction: Avoiding Diagnostic Overshadowing. *AMA J Ethics*. 2017 Jan 01; 19(1):23-34. PMID: 28107153.

⁶ Hopper, E.K. (2017). Trauma-Informed Treatment of Substance Use Disorders in Trafficking Survivors. In: Chisolm-Straker, M., Stoklosa, H. (eds) *Human Trafficking Is a Public Health Issue*. Springer, Cham. https://doi.org/10.1007/978-3-319-47824-1_12; see generally Erica Koegler, Claire A. Wood, Sharon D. Johnson, Lilly Bahlinger, Service providers' perspectives on substance use and treatment needs among human trafficking survivors, *Journal of Substance Abuse Treatment*, Volume 143, 2022, 108897, ISSN 0740-5472.

⁷ <https://www.forbes.com/sites/emilyearlenbaugh/2020/09/17/new-research-reveals-why-cannabis-helps-ptsd-sufferers/?sh=650fe72d179a>

Human trafficking survivors are frequently arrested for simple drug possession by criminal and civil enforcement agencies. In a survey of trafficking survivors by the National Survivor Network Member Survey, 90.8% had been arrested in the U.S., and 40% of them were arrested for drug possession⁸. In 2019, Freedom Network USA's Survivor Re-entry Project noted that out of the 500 convictions its' clients held, 46% included drug offenses⁹.

Moreover, similar to the arrest patterns for cannabis-related enforcement¹⁰, survivors from communities of color are more likely to be arrested and convicted than their white counterparts while being trafficked. For example, Black girls are statistically treated more as criminals and not trafficking victims in comparison to any other racial group¹¹. They are arrested at exorbitantly higher rates, have their cases fully adjudicated through the juvenile legal system, and are more likely to be detained in a locked facility than their white counterparts.¹²

3. To uphold Priority Action 2.2.2. (provide human trafficking victims protection from removal), the Biden Administration must not initiate immigration enforcement actions for cannabis-related activity.

As long as the Biden Administration remains silent on the immigration consequences of cannabis-related activities, immigrant survivors (particularly those from Black and brown immigrant communities) will remain vulnerable to immigration enforcement and deportation. Non-citizens have historically faced disparate consequences in the criminal and immigration enforcement systems for cannabis possession. Between 2003 and August 2018, it is estimated that the U.S. government deported more than 45,000 individuals across the country for mere possession of cannabis¹³. Similarly, the U.S. government has confirmed multiple times that non-citizen trafficking survivors have routinely fallen through the cracks of various enforcement systems and been subjected to immigration detention and removal proceedings, such that “victims are often more harshly punished than traffickers themselves¹⁴.”

We request a meeting to discuss our concerns and the specific recommendations made in this letter. We welcome the opportunity to engage with the administration in finding ways to explore the expansion of the pardon to meaningfully protect all immigrants, including immigrant trafficking survivors. For any information regarding the letter, please contact Sabrina Talukder at Sabrina.talukder@lls.edu.

⁸ <https://nationalsurvivornetwork.org/wp-content/uploads/2017/12/VacateSurveyFinal.pdf>

⁹ <https://freedomnetworkusa.org/2021/11/10/impact-of-arrest-and-conviction-histories-on-trafficking-survivors/>

¹⁰ *See generally* Rosenbaum, C. What (and Whom) State Marijuana Reformers Forgot: Crimmigration Law and Noncitizens. *DePaul J. Soc. Just.* 1 (2015-2016).

¹¹ Ocen, Priscilla. (E)rasing Childhood: Examining the Racialized Construction of Childhood and Innocence in the Treatment of Sexually Exploited Minors. *62 UCLA L. Rev.* 1586 (2015)

¹² *Id.*

¹³ <https://trac.syr.edu/immigration/reports/349/>

¹⁴ <https://www.law.cornell.edu/uscode/text/22/7101>; *see also* U.S. Department of State Trafficking in Person Report 2013

Sincerely,

AIDS Foundation Chicago

Al Otro Lado

American Friends Service Committee (AFSC)

Apoyo Legal Migrante Asociado (ALMA)

Asian American Legal Defense and Education Fund (AALDEF)

Asian Pacific Institute on Gender-Based Violence

ASISTA Immigration Assistance

Asylum Seeker Advocacy Project (ASAP)

Benedictine Sisters of Chicago

BU Law Immigrants' Rights and Human Trafficking Program

Battered Women's Justice Project

California Rural Legal Assistance Foundation (CRLA Foundation)

Capital Area Immigrants' Rights (CAIR) Coalition

Casa Myrna

Center for Gender & Refugee Studies

Center for Human Rights and Constitutional Law

Central American Legal Assistance

Central American Refugee Center (CARECEN-NY)

Church of Our Saviour/La Iglesia de Nuestro Salvador

Coalition Ending Gender-Based Violence

Coalition to Abolish Slavery & Trafficking (CAST)

Communities United for Status & Protection (CUSP)

Congregation of Our Lady of Charity of the Good Shepherd, U.S. Provinces

Deportation Defense Clinic at Hofstra Law School

Detention Watch Network

Disciples Immigration Legal Counsel

Dolores Street Community Services

Dominican Sisters of Sparkill

Dorothy Day House, Washington DC

Drug Policy Alliance

El Vínculo Hispano

End Domestic Abuse Wisconsin
Esperanza United (formerly Casa de Esperanza: National Latin@ Network)
Federal Public and Community Defenders
Fight for the Future
Florida Immigrant Coalition
Freedom Network USA
Futures Without Violence
Heartland Workers Center
Her Justice, Inc.
Hispanic Federation
If/When/How: Lawyering for Reproductive Justice
Immigrant Defense Project
Immigrant Justice Network
Immigrant Law Center of Minnesota
Immigrant Legal Resource Center (ILRC)
Immigration Center for Women and Children
Immigration Equality
Immigration Hub
Immigration Support Services Network
InReach
Inter-Faith Committee on Latin America
Jobs With Justice Education Fund
Justice Action Center
Justice At Last
Justice at Work Pennsylvania
Kentucky Coalition for Immigrant and Refugee Rights
La Raza Community Resource Center
Last Prisoner Project
Latino Pastoral Action Center, Inc., & Council of Holistic Christian Churches and Ministries (C.H.C.C.M.)
Law Office of Peggy J. Bristol
Legal Aid DC
Los Angeles Center for Law and Justice
Louisiana Survivors for Reform
Loyola Immigrant Justice Clinic

Legal Services of New Jersey
MetroWest Legal Services
National Advocacy Center of the Sisters of the Good Shepherd
National Center for Law and Economic Justice
National Center on Domestic Violence, Trauma, and Mental Health
National Clearinghouse for the Defense of Battered Women
National Employment Law Project
National Immigration Law Center
National Immigration Project (NIPNLG)
National Latina Institute for Reproductive Justice
National LGBTQ Institute on Intimate Partner Violence
National Survivor Network
New Hope Immigration Legal Services
NEW Pride Agenda
New York Immigration Coalition
Open Immigration Legal Services
Pax Christi Illinois
Preble Street
Public Counsel
Quixote Center
RAICES
RCHP-AHC Still Waters Anti-trafficking Program
Robert F. Kennedy Human Rights
Rocky Mountain Immigrant Advocacy Network
Sabra Boyd LLC
Safe Horizon, Inc.
Sanctuary for Families
SIREN
Sisters of Charity Federation
Sisters of St. Joseph TOSF
Sisters of the Most Precious Blood
SlaveFree Today
The Advocates for Human Rights
The Door (NYC)

The Exploitation Intervention Project, The Legal Aid Society

The Legal Aid Society of New York

The Purple Health Foundation

The Sex Workers Project of the Urban Justice Center

Tulane Immigrant Rights Clinic

Ujima Inc., The National Center on Violence Against Women in the Black Community

UndocuBlack Network

University of San Francisco Immigration & Deportation Defense Clinic

UnLocal

Urban Justice Center Domestic Violence Project

UUFHCT

VIDA Legal Assistance Inc

Wallingford Indivisible

Wilco Justice Alliance (Williamson County, TX)

WOMANKIND