



An Equity Action Plan for Marijuana:

The Biden Administration's Opportunity to Advance Equity Through Cannabis Reform

Prepared by The Ohio State University Moritz College of Law
Drug Enforcement and Policy Center and the Drug Policy Alliance

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About The Ohio State University Moritz College of Law Drug Enforcement and Policy Center and the Drug Policy Alliance

The Drug Enforcement and Policy Center (DEPC) at The Ohio State University Moritz College of Law helps shape and enrich public conversations about the intersecting fields of criminal justice and drug policy and enforcement, and their historical and modern impact on society. Center faculty and staff examine criminal and civil laws, policies, and enforcement efforts related to traditionally illicit drugs, with a particular focus on marijuana laws and reform efforts. We conduct and support interdisciplinary, evidence-based research, scholarship, education, community outreach and public engagement on these issues and their impacts.

For more information about the Drug Enforcement Policy Center, please visit: moritzlaw.osu.edu/depc

The Drug Policy Alliance is the leading organization in the U.S. working to end the drug war, repair its harms, and build a non-punitive, equitable, and regulated drug market. We envision a world that embraces the full humanity of people, regardless of their relationship to drugs. We advocate that the regulation of drugs is grounded in health, equity, and human rights. In collaboration with other movements, and at every policy level, we change laws, advance justice, and save lives.

For more information about the Drug Policy Alliance, please visit: drugpolicy.org

About the Author



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Cat Packer is a leading expert on cannabis law and policy who envisions cannabis policy reform as both an opportunity and responsibility to promote harm reduction and advance equity and social justice. Currently, Packer serves as Distinguished Cannabis Policy Practitioner in Residence at the Drug Enforcement and Policy Center, Director of Drug Markets and Legal Regulation for the Drug Policy Alliance, Vice Chair of the Cannabis Regulators of Color Coalition, and is a contributing author to the Thomas Reuters Cannabis Law Deskbook.



Packer is recognized as the first person of color in the nation to lead a medical and adult-use cannabis regulatory program. From 2017 to 2022, Packer served as the first Executive Director of the City of Los Angeles Department of Cannabis Regulation where she led efforts to advise and implement cannabis business licensing and regulation in ‘the world’s largest cannabis market.’ Under her leadership, the City of Los Angeles licensed over 1200 cannabis businesses, collected over \$320 million in cannabis tax revenue and became one of the first jurisdictions in the nation to establish programming designed to promote equitable ownership and employment opportunities in the cannabis industry.

Prior to her role as a regulator, Packer worked for the Drug Policy Alliance where she organized cannabis-related legislative and public affairs strategies and partnerships at the state and local level. Packer is a proud alumna of The Ohio State University where she received a bachelor’s degree in political science, a master’s degree in public policy and management, a Juris Doctor and was named the 2020 Recipient of the Moritz College of Law Outstanding Recent Alumna Award.

I. Introduction

On President Joe Biden’s first day in office, he issued an executive order establishing equity as a key policy commitment of his administration. However, despite routinely characterizing marijuana reform as an opportunity to advance equity, the administration failed to include cannabis in its numerous equity efforts until October 2022. At that point, more than a year and a half into his presidency, Biden announced new steps to address what he called a “failed approach to marijuana.” He said cannabis convictions produce “needless barriers” to opportunities like employment, housing, and education, and he acknowledged that “while white and Black and brown people use marijuana at similar rates, Black and brown people have been arrested, prosecuted, and convicted at disproportionate rates.”

In the months since, the Biden administration has regularly noted the disparate impact of marijuana criminalization on Black and Latino communities, and the president has highlighted his actions on cannabis reform as a key part of his equity efforts. However, despite Biden’s boilerplate acknowledgments of inequities associated with cannabis criminalization, marijuana reform has been omitted from his administration’s Equity Action Plans, which are foundational to the administration’s goal of advancing equity across *all* federal policies and programs.

The omission represents a missed opportunity to address the disparate impact of federal marijuana laws on underserved communities — a disparity that Biden himself frequently acknowledges. It undermines the administration’s stated goal of using the power of the executive branch to comprehensively advance equity across the federal government and it stymies efforts of advocates for effective and equitable cannabis regulation at the local, state, and federal level.

This paper briefly reviews Biden’s and Vice President Kamala Harris’s histories on marijuana reform, as well as the administration’s positions on cannabis prior to taking up the subject in late 2022. It then argues that cannabis reform ought to be included under the administration’s efforts to comprehensively pursue equitable policies at the federal level, specifically through the use of Equity Action Plans.

The paper also identifies tangible steps the Biden administration could take to develop an Equity Action Plan for marijuana reform, including the collection and reporting of data, consultation with underserved communities, and assessment of harms associated with cannabis criminalization. It concludes by considering additional actions necessary for the Biden administration to fulfill its promises on marijuana reform. These measures would help ensure that, when federal agencies are next required to submit



Equity Action Plans, in September 2023, marijuana reform is no longer omitted but instead meaningfully incorporated into the administration's systematic approach to equity.

II. Biden and Harris on Marijuana Reform Before October 2022

A. Notable Promises Before the Oval Office

As a candidate for president, Biden regularly framed marijuana reform as an opportunity to advance equity, identifying in particular its potential to address criminal legal disparities facing Black and Brown people. The Biden–Harris ticket in fact made marijuana reform a key pledge of its 2020 campaign. But after Biden took office, progress was slower than many supporters expected, and marijuana reform was absent from the administration's articulated priorities until Biden's October 2022 statement.

Although both Biden's and Harris' positions have evolved significantly throughout their respective careers, both politicians have been criticized for their past involvement in cannabis criminalization. Among drug policy advocates, each has a mixed reputation. Harris, for example, has been criticized¹ for opposing a proposal to legalize cannabis in California in 2010² and prosecuting state-level cannabis crimes as California's attorney general.³ Yet she ultimately became the lead Senate sponsor of the Marijuana Opportunity, Reinvestment, and Expungement (MORE) Act,⁴ a comprehensive bill to end federal marijuana prohibition. During her own primary bid for president, Harris voiced support for marijuana legalization⁵ and even acknowledged consuming marijuana herself in the past.⁶

Biden, meanwhile, faced criticism⁷ for his role in passing drug crime laws in the 1980s and 1990s, namely the landmark 1988 Anti-Drug Abuse Act⁸ and the 1994 Crime Bill,⁹ which increased penalties for many drug-related offenses. By the 2020 campaign, however, Biden had changed his position, expressing support for limited marijuana reforms. He highlighted those proposals as a part of a plan to make the

¹ Jaeger, Kyle. "Where Vice Presidential Candidate Kamala Harris Stands On Marijuana." Marijuana Moment, August 12, 2020. <https://www.marijuanamoment.net/where-vice-presidential-candidate-kamala-harris-stands-on-marijuana/>

² Lauder, Thomas Suh, and Jon Schleuss. "The Last Time California Tried to Legalize Weed It Failed. What Happened?" Los Angeles Times, November 4, 2016. <https://www.latimes.com/projects/la-pol-ca-prop-64-last-time-california-tried-to-legalize-weed/>

³ Lehman, Charles Fain, and Brent Scher. "Kamala Harris Packed California Prisons With Pot Peddlers." The Washington Free Beacon, February 12, 2019. <https://freebeacon.com/politics/kamala-harris-packed-california-prisons-for-peddling-pot/>

⁴ S.2227 – 116th Congress (2019-2020): Marijuana Opportunity Reinvestment and Expungement (MORE) Act of 2019. July 23, 2019. <https://www.congress.gov/bill/116th-congress/senate-bill/2227>

⁵ Harris, Kamala. "Kamala's Plan to Transform the Criminal Justice System and Re-Envision Public Safety in America." Medium, September 9, 2019. <https://kamalaharris.medium.com/kamalas-plan-to-transform-the-criminal-justice-system-and-re-envision-public-safety-in-america-f83a3d739bae>

⁶ "Kamala Harris Talks 2020 Presidential Run, Legalizing Marijuana, Criminal Justice Reform + More." YouTube. The Breakfast Club, February 19, 2019. https://youtu.be/Kh_wQUjeaTk

⁷ Jaeger, Kyle. "What Joe Biden's Presidential Victory Means For Marijuana In 2021." Marijuana Moment, November 9, 2020. <https://www.marijuanamoment.net/what-joe-bidens-presidential-victory-means-for-marijuana-in-2021/>

⁸ H.R.5210 - 100th Congress (1987-1988): Anti-Drug Abuse Act of 1988. November 18, 1988. <https://www.congress.gov/bill/100th-congress/house-bill/5210>

⁹ H.R.3355 - 103rd Congress (1993-1994): Violent Crime Control and Law Enforcement Act of 1994. September 13, 1994. <https://www.congress.gov/bill/103rd-congress/house-bill/3355>



federal government better serve Black America and described his past support for more punitive criminal drug policies as “a mistake.”

In November 2019, Biden tweeted a graphic titled “Where I Stand on Marijuana Laws”¹⁰ that articulated his position on reform through five value statements:

- No one should be in jail for marijuana use.
- Decriminalize recreational marijuana use and automatically expunge prior convictions.
- Legalize medical marijuana.
- Allow states to legalize recreational marijuana.
- Reschedule marijuana so researchers can study its health impacts.

The campaign also featured cannabis reform in other policy proposals. In May 2020, for example, Biden released what he called The Biden Plan for Black America.¹¹ In it, Biden said that as president, he would “decriminalize the use of cannabis and automatically expunge all prior cannabis use convictions, and end all incarceration for drug use alone and instead divert individuals to drug courts and treatment.” If expectations among reformers were high, the campaign did little to diminish them.

In July 2020, Biden highlighted marijuana reform as a part of the so-called Biden Plan to Build Back Better by Advancing Racial Equity Across the American Economy:

“Getting caught for smoking marijuana when you’re young surely shouldn’t deny you, the rest of your life, being able to have a good-paying job or a career or a loan or an ability to rent an apartment,” he said at a related live-streamed event,¹² “Right now, that criminal record is the weight that holds back too many people of color, and many whites as well. Under my plan, if a state decides it wants to implement an automated system for the sealing and expunging of certain nonviolent criminal records, if a state chooses to do that, the federal government will help put together the process and allow them the money to be able to know how to organize to do that. That’s what racial equity in our economy looks like.”

As the election approached, in October 2020, Biden’s prior record on drug laws came up during the second presidential debate.¹³ Specifically, Biden was asked to respond to “the crime bill that [he] supported in the ’80s and ’90s [that] contributed to the incarceration of tens of thousands of young Black men who had small amounts of drugs in their possession.” “They are sons. They are brothers. They are fathers. They are uncles — whose families are still, to this day, some of them suffering the consequences,” the moderator said, prompting Biden to “speak to their families.”

¹⁰ Biden, Joe (@JoeBiden). “There is a lot of talk out there on where I stand when it comes to our marijuana laws. Here are the facts.” Twitter, November 18, 2019. <https://twitter.com/JoeBiden/status/1196577576644415489>

¹¹ Biden, Joe. “Lift Every Voice: The Biden Plan for Black America.” Medium, May 4, 2020. <https://medium.com/@JoeBiden/lift-every-voice-the-biden-plan-for-black-america-d546228da188>

¹² “Vice President Biden Delivers Remarks on How We’re Going to Build Back Better - Economic Equity.” YouTube. Joe Biden, July 28, 2020. <https://www.youtube.com/watch?v=SYs14l0clQ0>

¹³ “Second 2020 Presidential Debate between Donald Trump and Joe Biden.” YouTube. C-SPAN, October 22, 2020. <https://www.youtube.com/watch?v=bPiofmZGb8o&t=5990s>



Biden replied that his past legislation “on drugs and how to deal with drugs was a mistake” and that he had “been trying to change it since then.” When asked later that month about his record on drug laws, this time¹⁴ Biden added that the drug policies he once helped craft “harmed Black communities” in particular.

B. Notable Silence on Cannabis Reform During Presidency

Although marijuana reform was a key promise of the Biden–Harris campaign during the 2020 election, the two politicians seemed to fall silent on the issue once sworn into office. After frequently highlighting marijuana reform as an opportunity to advance equity, Biden conspicuously omitted marijuana reform¹⁵ from his transition plan on racial equity. When asked, the new administration repeatedly stated¹⁶ that it maintained its earlier stances on marijuana, but as months went by, officials failed to take material actions related to reform.

The first time¹⁷ either President Biden or Vice President Harris publicly mentioned cannabis after the election was when Harris confirmed in an April 2021 interview that the administration hadn’t “yet taken that on.”¹⁸ She explained the inaction by gesturing to the overwhelming impact of the COVID-19 pandemic.

Over a year later, in October 2022, President Biden issued a statement on marijuana reform announcing actions his administration was taking to end the country’s “failed approach to marijuana.” The statement included the most significant steps the administration has taken on cannabis reform to date. It also marked the first time Biden linked cannabis reform with equity efforts as a sitting president.

III. The First Executive Order on Equity

Despite the administration’s scant action on marijuana reform until Biden’s October 2022 statement, official efforts to advance equity more broadly began the first day Biden took office.

A. Biden’s Call for a “Comprehensive Approach to Advancing Equity”

On his first day as president, Biden signed Executive Order 13985,¹⁹ titled “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.” In it, he wrote that “entrenched

¹⁴ Jaeger, Kyle. “Biden Says Anti-Drug Policies Harmed Black Communities, And It Was A ‘Mistake’ To Support Them.” Marijuana Moment, November 2, 2020. <https://www.marijuanamoment.net/biden-says-anti-drug-policies-harmed-black-communities-and-it-was-a-mistake-to-support-them/>

¹⁵ Jaeger, Kyle. “Marijuana Reform Omitted From Biden Transition Plan On Racial Equity Despite Campaign Pledges.” Marijuana Moment, November 11, 2020. <https://www.marijuanamoment.net/marijuana-reform-omitted-from-biden-transition-plan-on-racial-equity-despite-campaign-pledges/>

¹⁶ “Jen Psaki holds White House news briefing.” YouTube. PBS NewsHour, April 20, 2021. <https://www.youtube.com/live/H9xsyNht4zc?feature=share&t=1215>

¹⁷ Jaeger, Kyle. “Biden Is Too Busy To Decriminalize Marijuana, Harris Says.” Marijuana Moment, April 6, 2021. <https://www.marijuanamoment.net/biden-is-too-busy-to-decriminalize-marijuana-harris-says/>

¹⁸ *Ibid.*

¹⁹ Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government. The White House. Briefing Room, January 20, 2021. <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>



disparities in our laws, public policies, and institutions too often deny equal opportunity to individuals and communities.”

“It is therefore the policy of [this] Administration that the Federal Government should pursue a comprehensive approach to advancing equity for all,” the order declared, “including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.” It added that “Affirmatively advancing equity, civil rights, racial justice, and equal opportunity is the responsibility of the whole of our Government.”

The order defined equity as “the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment. According to the order, “Because advancing equity requires a systematic approach to embedding fairness in decision-making processes, executive departments and agencies ... must recognize and work to redress inequities in their policies and programs that serve as barriers to equal opportunity.” It tasked each agency with specific equity-related requirements and charged the White House Domestic Policy Council (DPC) with coordinating the mandate.

B. Equity Action Plans as a Core Requirement of Biden’s Systematic Approach

The executive order required federal agencies, in consultation with the director of the White House’s Office of Management and Budget (OMB), to “select certain of the agency’s programs and policies for a review that [would] assess whether underserved communities and their members face systemic barriers in accessing benefits and opportunities” and submit a related report. Moreover, within one year, agencies were required to work with Biden administration officials in DPC and OMB to produce plans “addressing any barriers to full and equal participation in programs identified.”

According to the administration,²⁰ the new mandate resulted in federal agencies assessing “how their programs and policies perpetuate systemic barriers to opportunity” and developing “evidence-based solutions to advance equity.” More than 90 agencies across the federal government filed Equity Action Plans, which the administration described as “first-of-their-kind roadmaps to address the barriers and discrimination that underserved communities face.”²¹

C. Marijuana Policies and Practices Absent From Equity Action Plans

Despite Biden and Harris’s insistence that cannabis criminalization remains a major contributor to racial disparities, none of 90 Equity Action Plans submitted by federal agencies in response to Biden’s order mentioned marijuana reform.²² This omission is most notable in the Equity Action Plan²³ submitted by the Office of National Drug Control Policy (ONDCP).

²⁰ “Advancing an Equitable Government.” U.S. General Services Administration. Performance.gov. <https://www.performance.gov/equity/>

²¹ “Advancing Equity and Racial Justice Through the Federal Government.” The White House. <https://www.whitehouse.gov/equity/>

²² “Advancing an Equitable Government.” *Ibid.*

²³ E.O. 13985 Equity Action Report. Office of National Drug Control Policy. Executive Office of the President, January 20, 2022. <https://www.whitehouse.gov/wp-content/uploads/2022/04/Equity-EO-ONDCP-Action-Plan-Jan-20-2022-v9.3.pdf>



Biden's equity order required federal agencies to "consult with members of communities that have been historically underrepresented in the Federal Government and underserved by, or subject to discrimination in, Federal policies and programs." Pursuant to this requirement, in July 2021, ONDCP released a Request For Information on the Application of Equity in U.S. National Drug Control Policy²⁴ (RFI), seeking related public comment and "seeking comments from the public regarding how its future proposed policies, budgets, regulations, grants, or programs might be more effective in advancing equity." ONDCP, the agency said, "sought to incorporate more perspectives from a wide array of backgrounds, including those most impacted by United States' drug policies."

In response to ONDCP's RFI, the government received more than 75 public comments,²⁵ which ONDCP says were used to inform the agency's Equity Action Plan.²⁶ But strikingly, despite "marijuana" or "cannabis" being referenced more than 200 times in the submitted comments, the agency's eventual Equity Action Plan didn't mention it once.

According to ONDCP's Equity Action Plan,²⁷ the agency incorporated "the spirit" of Biden's equity order throughout the development of its 2022 National Drug Control Strategy (NDCS),²⁸ which serves as a foundation for the federal government's policy in areas of drug prevention, harm reduction, substance use disorder treatment and recovery, the illicit drug supply, criminal justice, and related data collection and research.

On April 21, 2022, ONDCP released the strategy document, which specifically identified "advancing racial equity in [its] approach to drug policy" as one of seven first-year priorities. "The increased focus on improving racial equity, which has been a longstanding problem in drug policy affecting both public health and public safety, is long overdue," it said. The report further noted that "BIPOC and other historically marginalized communities have experienced harmful disparate impacts throughout all aspects of the criminal justice system, leading to the disruption of families and communities." However, the NDCS barely mentioned marijuana aside from a few references to concerns regarding youth access and illegal outdoor cultivation.

IV. October 2022: Biden's Statement on Marijuana Reform

After nearly a year and a half in office, President Biden finally issued a White House statement on marijuana reform.²⁹ "As I often said during my campaign for President, no one should be in jail just for using or possessing marijuana," it said. "Sending people to prison for possessing marijuana has upended too many lives and incarcerated people for conduct many states no longer prohibit. Criminal records for marijuana possession have also imposed needless barriers to employment, housing, and educational

²⁴ "Application of Equity in U.S. National Drug Control Policy." *Ibid.*

²⁵ Public Submission. "Request for Information: Application of Equity in U.S. National Drug Control Policy." Docket ONDCP-2021-0001. July 20, 2021. <https://www.whitehouse.gov/wp-content/uploads/2021/08/ONDCP-RFI-2021-07-07-Public-Comments.pdf>

²⁶ E.O. 13985, Equity Action Report. *Ibid.*

²⁷ *Ibid.*

²⁸ 2022 National Drug Control Strategy. Office of National Drug Control Policy. The White House, April 18, 2022. <https://www.whitehouse.gov/wp-content/uploads/2022/04/National-Drug-Control-2022Strategy.pdf>

²⁹ Statement from President Biden on Marijuana Reform. The White House. Briefing Room, October 6, 2022. <https://www.whitehouse.gov/briefing-room/statements-releases/2022/10/06/statement-from-president-biden-on-marijuana-reform/>



opportunities. And while white and Black and brown people use marijuana at similar rates, Black and brown people have been arrested, prosecuted, and convicted at disproportionate rates.”

President Biden then announced three steps he would take “to end this failed approach”: He pardoned individuals who committed the federal offense of simple possession of marijuana³⁰ and urged all governors to do the same at the state level.³¹ He also asked the Secretary of Health and Human Services and the Office of the Attorney General to begin reviewing how marijuana is scheduled under federal law. “Too many lives have been upended because of our failed approach to marijuana,” the president said. “It’s time that we right these wrongs.”

Since the October 2022 statement, the administration has more explicitly and proactively connected marijuana reform to federal equity efforts. One place this is most evident is in the marijuana-related statements, press releases, fact sheets³² and tweets released by the administration in the months following the announcement.

Vice President Harris called Biden’s actions³³ “a step forward in correcting the historical injustices of failed drug policies.” ONDCP Director Dr. Rahul Gupta agreed, releasing a statement³⁴ saying, “It is clear that our current marijuana laws have not worked, and that we need a new approach that balances science with criminal justice reform efforts.”

Shortly after the marijuana announcement, on October 19, 2022, the administration released a fact sheet³⁵ around its efforts to advance equity and opportunity for Latino communities. In it, under a section titled “Advancing Public Safety and Public Trust for Latino Communities,” the officials acknowledged the racial disparities associated with cannabis criminalization and suggested that “reforming marijuana laws”

³⁰ A Proclamation on Granting Pardon for the Offense of Simple Possession of Marijuana. The White House. Briefing Room, October 6, 2022. <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/10/06/granting-pardon-for-the-offense-of-simple-possession-of-marijuana/>

³¹ Biden has used his clemency power on three other occasions — April 26, 2022; December 30, 2022; and April 28, 2023 — to provide legal relief to individuals for past cannabis crimes. But although Biden’s clemency actions around marijuana have been unprecedented, critics have said the relief is not fairly accessible to all individuals. A December 2022 Congressional Research Service report identified several limitations of Biden’s clemency actions, including that Biden’s pardons do not apply to offenses beyond simple possession, fail to redress consequences experienced by noncitizens, and fall short of expunging or undoing all related legal consequences.

See: Clemency Recipient List. The White House. Briefing Room, April 26, 2022. <https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/26/clemency-recipient-list/>

Clemency Recipient List. The White House. Briefing Room, December 30, 2022. <https://www.whitehouse.gov/briefing-room/statements-releases/2022/12/30/clemency-recipient-list-2/>

Clemency Recipient List. The White House. Briefing Room, April 28, 2023. <https://www.whitehouse.gov/briefing-room/statements-releases/2023/04/28/clemency-recipient-list-3/>

Lampe, Joanna R. “Recent Developments in Marijuana Law.” Legal Sidebar. Congressional Research Service, updated December 26, 2022. <https://crsreports.congress.gov/product/pdf/LSB/LSB10859>

³² Search results for “marijuana.” The White House. <https://www.whitehouse.gov/?s=marijuana>

³³ Harris, Kamala (@VP). “Today, @POTUS pardoned all prior federal offenses of simple marijuana possession. He has asked @SecBecerra and the Attorney General to review how marijuana is scheduled under federal law. This is a step forward in correcting the historical injustices of failed drug policies.” Twitter, October 6, 2022. <https://twitter.com/VP/status/1578126197539708928>

³⁴ Dr. Gupta Statement on President Biden’s Marijuana Reform Announcement. The White House. Briefing Room, October 6, 2022. <https://www.whitehouse.gov/ondcp/briefing-room/2022/10/06/dr-gupta-statement-on-president-bidens-pardon-announcement/>

³⁵ Fact Sheet: The Biden-Harris Administration Advances Equity and Opportunity for Latino Communities Across the Country. The White House. Briefing Room, October 19, 2022. <https://www.whitehouse.gov/briefing-room/statements-releases/2022/10/19/fact-sheet-the-biden-harris-administration-advances-equity-and-opportunity-for-latino-communities-across-the-country-2/>



would help “promote equity and fairness in the justice system.” On November 6, 2022, the Biden administration released another fact sheet, this one examining efforts to improve equity and opportunity for Black Americans.³⁶ In this fact sheet, under a section titled, “Making the promise of equal justice a reality for all,” the October 2022 announcement on marijuana reform was the first example given.

Similar acknowledgments of racial disparities are found in another recent fact sheet, published February 7, 2023, about, “effective, accountable policing.”³⁷ That, too, attributes racial inequities to cannabis criminalization.

Going into April 2023, Biden declared the month Second Chance Month, saying he believed in the power of redemption.³⁸ His proclamation described the administration’s actions on marijuana reform as “historic steps to end our Nation’s failed approach to marijuana.” “Sending people to prison for possession has upended too many lives for conduct that many States no longer prohibit,” he said. “It has seen Black and Brown Americans disproportionately arrested, prosecuted, and convicted; and imposed unfair barriers to housing, employment, and education.”

Moreover, since the October 2022 statement, the White House has touted its actions on marijuana reform as one of its most significant equity-focused accomplishments to date. Less than a month after Biden’s statement, when the president was asked on a radio show³⁹ what he had done for the Black community during his two years in office, his first response was to point to the recent actions his administration had taken on marijuana reform. “I hope I’ve improved the lives of African Americans like I said I would do,” he said. “For example, too many African Americans were denied everything from Pell Grants, student loans, housing, etc., because they were arrested for possession of marijuana — many too many.”

On the administration’s web page⁴⁰ dedicated to highlighting its own achievements, it lists “Ending our Failed Approach to Marijuana” as one of 18 “top accomplishments.” And in December 2022, Assistant to the President for Domestic Policy (APDP) and Domestic Policy Council Ambassador Susan E. Rice highlighted the marijuana announcement as one of a dozen “historic” Biden–Harris achievements that year.⁴¹

In February 2023, a report from the Domestic Policy Council, “Delivering On Equity, Access, and Opportunity For The American People,”⁴² highlighted recent actions taken by federal agencies “to expand

³⁶ The Biden-Harris Administration Advances Equity and Opportunity for Black Americans and Communities Across the Country. The White House. Briefing Room, November 6, 2022. <https://www.whitehouse.gov/briefing-room/statements-releases/2022/11/06/the-biden-harris-administration-advances-equity-and-opportunity-for-black-americans-and-communities-across-the-country/>

³⁷ Fact Sheet: The Biden-Harris Administration’s Work to Make Our Communities Safer and Advance Effective, Accountable Policing. The White House. Briefing Room, February 7, 2023. <https://www.whitehouse.gov/briefing-room/statements-releases/2023/02/07/fact-sheet-the-biden-harris-administrations-work-to-make-our-communities-safer-and-advance-effective-accountable-policing/>

³⁸ A Proclamation on Second Chance Month, 2023. The White House. Briefing Room, March 31, 2023. <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/03/31/a-proclamation-on-second-chance-month-2023/>

³⁹ “Vice President Biden Delivers Remarks on How We’re Going to Build Back Better - Economic Equity.” YouTube. Joe Biden, July 28, 2020. <https://www.youtube.com/watch?v=SYs14I0cIQ0>

⁴⁰ “The Biden-Harris Record.” The White House. <https://www.whitehouse.gov/therecord/>

⁴¹ “2022 in Review.” Ambassador Susan E. Rice. The White House. Briefing Room, December 29, 2022. <https://www.whitehouse.gov/briefing-room/blog/2022/12/29/2022-in-review/>

⁴² Delivering on Equity, Access, and Opportunity for the American People. Domestic Policy Council. The White House, February 2023. <https://www.whitehouse.gov/wp-content/uploads/2023/02/Equity-EO-Agency-Highlights.pdf>



federal investment in and support for underserved communities” since the release of their Equity Action Plans in April 2022. Despite no Equity Action Plans mentioning marijuana, the DPC report points to Biden’s statement on cannabis reform as an example of how “agencies are working to reduce racial disparities in the criminal justice system and advance equitable policing practices, while keeping our communities safe.”

V. The Second Executive Order on Equity

In February 2023 Biden issued a second executive order on equity,⁴³ Executive Order 14091, titled “Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.” It required federal agencies, beginning in September 2023, to submit Equity Action Plans on an annual basis.

“Additional action” was needed, the new order said, “to continue the work ... to combat discrimination and advance equal opportunity, including by redressing unfair disparities and removing barriers to Government programs and services.” Because “achieving racial equity and support for underserved communities is not a one-time project,” it continued, “it is the policy of [this] Administration to advance an ambitious, whole-of-government approach to racial equity and support for underserved communities and to continuously embed equity into *all* aspects of Federal decision-making.”

Biden’s second order set new mandates, established agency equity teams, and launched the White House Steering Committee on Equity. And while the first equity-related order made no mention of cannabis, the second order directly highlighted Biden’s actions on marijuana reform as a concrete example of its commitment to equity.

In addition to requiring that agencies submit Equity Action Plans on an annual basis, the order also mandated that the plans be available to the public and include updates on progress made on goals set by the preceding year’s plans. They must also identify potential barriers underserved communities face in accessing programs and develop strategies “to meaningfully engage with underserved communities.”

A. Equity Action Plans as Key Facets of Biden’s Equity Orders

Since taking office, the Biden administration has aspired to make equity a key priority and issued two executive orders aimed specifically at advancing the principle in all aspects of government policy. But federal agencies have consistently failed to connect the dots between equity and marijuana policy when constructing Equity Action Plans. This omission is a missed opportunity to address the disparate impact of federal marijuana laws on underserved communities — a problem Biden and Harris both claim they want to solve.

Equity Action Plans are specifically designed to ensure policies and programs are in place to address specific needs of underserved communities. Failure to include cannabis in the plans underscores the systemic and cultural obstacles to reform that undergird cannabis criminalization and its disproportionate impact on Black and Brown communities.

⁴³ Executive Order on Further Advancing Racial Equity and Support for Underserved Communities Through The Federal Government. The White House. Briefing Room, February 16, 2023. <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/02/16/executive-order-on-further-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>



VI. What an Equity Action Plan for Marijuana Reform Would Offer

As the administration continues to weigh further action on marijuana reform, the development of a subject-specific Equity Action Plan could be a critical step to ensuring that the evolving marijuana landscape promotes equity and justice. Without an Equity Action Plan, there exist no formal mechanisms to study and document how underserved communities continue to experience inequity associated with federal marijuana laws.

Using Biden's two executive orders on equity as a foundation, the administration could take a proactive approach to embedding fairness in marijuana reform. Similar to how the executive orders require federal agencies to develop Equity Action Plans,⁴⁴ the administration itself could develop an Equity Action Plan on marijuana reform that would serve as a first-of-its-kind roadmap to address the barriers and discrimination underserved communities face around federal marijuana policies and programs.

A. Developing a Cannabis-Specific Equity Action Plan

"A first step to promoting equity in Government action is to gather the data necessary to inform that effort," says Biden's first executive order on equity.⁴⁵ As such, an initial step to developing an Equity Action Plan for marijuana reform could be to require federal agencies to collect, analyze, and report marijuana-related data, looking for inequities and disparities. Officials could collect and report data on cannabis arrests criminal records, for example, looking specifically at impacts on Black and Latino communities.

A second step in the development of an Equity Action Plan could require federal agencies to consult with members of communities that have been historically underrepresented in the federal government and that are underserved by, or subject to discrimination in, federal marijuana policies and programs. For example, agencies could conduct listening sessions, make requests for public comment, or reach out to underserved communities directly. As evidenced in public comments already submitted to ONDCP, Americans consider marijuana reform a critical part of the government's stated efforts to advance equity in drug policy. Collecting and assessing marijuana-specific comments would help ensure the consideration of perspectives from individuals and communities most impacted by federal marijuana policies.

Third, the development of an Equity Action Plan for marijuana reform could require federal agencies to assess whether, and to what extent, their marijuana policies and programs perpetuate barriers facing underserved communities. Officials could then develop strategies to remove or lessen those barriers. For example, Biden has already acknowledged⁴⁶ that laws criminalizing marijuana have disproportionately impacted Black and Brown people. He's also acknowledged that cannabis criminalization has imposed needless barriers to employment, housing, and educational opportunities. By drawing on existing processes and requirements in Biden's two executive orders on equity, the administration could develop a

⁴⁴ "Advancing an Equitable Government." *Ibid.*

⁴⁵ Executive Order On Advancing Racial Equity. *Ibid.*

⁴⁶ Statement from President Biden on Marijuana Reform. *Ibid.*



plan to ensure its actions around cannabis are guided by a more comprehensive, standardized approach to advance equity at the federal level.

The Domestic Policy Council, which is tasked with coordinating and reviewing Equity Action Plans, already acknowledged that Biden's recent marijuana reforms serve an equity purpose.⁴⁷ As such, DPC is well positioned to ensure the administration takes a unified, comprehensive approach to advancing equity through further marijuana reform — a subject area likely to impact a broad range of federal agencies.

A comprehensive Equity Action Plan for marijuana reform could involve agencies such as ONDCP, the Department of Justice (DOJ), and the Department of Health and Human Services (HHS). Such a document could ensure ONDCP's National Drug Control Strategy includes a specific strategy for marijuana and that the strategy be guided by the administration's stated equity objectives. An Equity Action Plan could help inform the DOJ in the development of its federal enforcement priorities and influence how both the DOJ and HHS approach their review of cannabis scheduling under the Controlled Substances Act. Further, considering the impact of federal marijuana policies and programs on housing, employment, and education — as well as stakeholders such as veterans and small businesses — a related Equity Action Plan could guide the departments of Housing and Urban Development, Labor, Education, and Veterans Affairs, along with the Small Business Administration and potentially others.

B. Holding Government Accountable for Equity in Cannabis Reform

Although the Biden administration already characterizes its early steps toward marijuana reform as “promises kept,”⁴⁸ federal cannabis criminalization continues to ruin lives, and there's still a long way to go to make up for generations of harm caused by the War on Drugs. Additional actions are essential to end the country's failed approach to marijuana and ensure the president can keep the promises he's made on marijuana reform.⁴⁹ Moreover, due to the wide-ranging impacts of marijuana policy — impacting health, the economy, criminal justice, and more — the holistic, cooperative approach embodied in Equity Action Plans could greatly benefit the administration's consideration of future reform.

The president's existing executive orders on equity should be used as a framework to understand and address how marijuana laws and policies create barriers for underserved communities. But without further guidance, cannabis policy may again be omitted from agency Equity Action Plans due in September 2023.⁵⁰

The president should call for the development of an Equity Action Plan for marijuana reform aimed at ensuring all future actions on marijuana reform are evaluated on the basis of advancing equity. In addition to serving as a roadmap for the administration, the resulting document could also help guide and support future reform efforts in Congress and those at the state and local level, and it would represent a significant step toward finally addressing the harmful, racially disparate impacts of federal cannabis laws.

⁴⁷ Delivering on Equity, Access, and Opportunity for the American People. *Ibid.*

⁴⁸ Press Briefing by Press Secretary Karine Jean-Pierre. The White House. Briefing Room, October 18, 2022. <https://www.whitehouse.gov/briefing-room/press-briefings/2022/10/18/press-briefing-by-press-secretary-karine-jean-pierre-october-18-2022/>

⁴⁹ Biden, Joe (@JoeBiden). Twitter. *Ibid.*

⁵⁰ Executive Order on Further Advancing Racial Equity. *Ibid.*