

DRAFT

EXECUTIVE ORDER

ON ESTABLISHING A CLEMENCY BOARD TO REVIEW CERTAIN CONVICTIONS OF PERSONS UNDER 21 USC § 881, CERTAIN CONVICTIONS FOR VIOLATIONS OF 21 USC §§ 821, 841, 842 (A)(1), 842(B), 844, 846, 850, 952, 953, AND 963 AND TO MAKE RECOMMENDATIONS FOR EXECUTIVE CLEMENCY WITH RESPECT THERETO

By virtue of the authority vested in me as President of the United States by Section 2 of Article II of the Constitution of the United States, and in the interest of the internal management of the Government, it is ordered as follows:

§1. POLICY.

It is the policy of my Administration to weigh in on the important domestic discussion around drug policy, policing, and criminal justice reform by using the tool the Framers put at my most immediate disposal: executive clemency. We expect that this effort — which seeks to redress the harms of a policy that has proven to be unwise, inequitable, and unjust — will provide the relief qualified recipients need as they work to rebuild their lives and achieve the full promise of this nation.

While a true reimagining of our nation's approach to these issues will demand further action in Congress, we believe this order represents another step forward in our nation's long-awaited reckoning around race, equity, and justice. It is my sincere hope that this action will compel other local, state, tribal, and federal authorities to deploy their clemency power in a similar manner, at the same time they continue to work towards a more just, equitable, and effective approach to law enforcement and criminal justice.

Almost exactly fifty years ago, America formally entered a 'War on Drugs', a costly crusade that has failed to achieve its stated public health goals. As Americans, we believe in the importance of liberty, opportunity, and equal justice under the law. The evidence shows that our current federal approach to cannabis hasn't just failed to live up to these values, it's actively undermined them. Criminalizing people who use marijuana needlessly entangles millions of people in the criminal legal system each year at a tremendous societal cost. And the burden of these misguided policies disproportionately falls on the most vulnerable segments of our society.

As a matter of fairness, equality, and sound public health policy, we must ensure justice is at the foundation of America's approach to drug policy. To that end, this order seeks to use my executive authority to further these aims by: establishing a cannabis offense-focused executive clemency board; implementing a focused clemency strategy; reviewing certain convictions of persons convicted under or related to the Controlled Substances Act; working to reduce the number of people with cannabis-related convictions in federal custody; working to encourage the reform of outdated and unjust practices and ensuring clarity of messaging about cannabis on the federal level.

§2. Executive Cannabis Clemency Board.

(a) Establishment and Membership. There is hereby established in the Executive Office of the President a Board of ___ members, chaired by _____, which shall be known as the Presidential Cannabis Clemency Board. The members of the Board shall be appointed by the Chairperson, with the advice and approval of the President.

(b) Mission and Functions. To support the implementation and oversight of the policy laid out in section 1 of this order, the Board, under such regulations as it may prescribe, shall examine the cases of persons who have been convicted of or who are currently under a criminal justice sentence for a Federal cannabis-related offense, including individuals who:

(i) have been convicted of violating 21 USC §§ 821, 841, 842 (a)(1), 842(b), 844, 846, 860, 952, 953, and 963 of the Controlled Substances Act, or of any rule or regulation promulgated pursuant to that section, for unlawful cannabis-related acts committed after May 1, 1971, or

(ii) have received criminal sanctions and/or punitive or undesirable discharges related to the possession, use, cultivation, or distribution of cannabis as a consequence of violations of 21 USC §§ 821, 841, 842 (a)(1), 842(b), 844, 846, 860, 952, 953, and 963 that occurred after May 1, 1971, and/or are serving sentences of confinement for these, as well as other, cannabis-related violations.

If the case of any person convicted of or currently under a criminal justice sentence for a Federal cannabis-related offense is not reviewed by the Board such person may petition the Board for special consideration.

The board shall promulgate the initial regulations to perform the functions outlined in this section not later than _____.

(c) Scope. The Board is tasked with the evaluation of the cases of "cannabis violators"—including, but not limited to—individuals who were convicted of cannabis-related violations of the Controlled Substances Act and related penalties and enhancements. These statutes include, but are not limited to unlawfully:

- (i) Possessing marijuana,
- (ii) Distributing marijuana,
- (iii) Cultivating marijuana,
- (iv) Money laundering under 18 USCS § 1956 with a connection to marijuana, or
- (v) Conspiring to or intent of committing any of the above acts.

(d) Purview. The Chair of the Executive Clemency Board shall coordinate with the Federal Bureau of Investigations, the Federal Bureau of Prisons, and other relevant agencies or their designees, as necessary, to ensure that this Clemency Board's work is executed in an effective and equitable manner.

§3. PRIORITIZATION.

The Board shall give priority consideration to those applicants who have been convicted of an offense set forth in §2 of this order and are presently confined or on supervised release. The Board should also give priority consideration to petitioners of advanced age.

§4. REPORTING

The Board shall report to the President its findings and recommendations as to whether executive clemency should be granted or denied in any case. If clemency is recommended, the Board shall also recommend the form that such clemency should take, including full or conditional pardon, commutation, and/or remission of fines and fees.

§5. COMPENSATION

Each member of the Board, except any member who then receives other compensation from the United States, may receive compensation for each day the member is engaged upon the work of the Board at not to exceed the daily rate now or hereafter prescribed by law for persons and positions in GS-18, as authorized by law (5 U.S.C. 3109), and may also receive travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5703) for persons in the government service employed intermittently.

§6. FUNDING

Necessary expenses of the Board may be paid from the Unanticipated Personnel Needs Fund of the President or from such other funds as may be available.

§7. ADMINISTRATIVE SERVICES

Necessary administrative services and support may be provided to the Board by the General Services Administration on a reimbursable basis.

§8. ADMINISTRATIVE SUPPORT

All departments and agencies in the Executive branch are authorized and directed to cooperate with the Board in its work, and to furnish the Board all appropriate information and assistance, to the extent permitted by law.

§9. TIMEFRAME AND DEADLINE

The Board shall submit its final recommendations to the President not later than _____, at which time it shall cease to exist.

§10. General Provisions.

(a) Nothing in this order shall be construed to impair or otherwise affect:(i) the authority granted agencies, or entities, its officers, employees, or agents, or any other person by law to an executive department or agency, or the head thereof; or(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

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(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

**JOSEPH R. BIDEN JR.
THE WHITE HOUSE**