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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

April 7, 2024

The Honorable Troy A. Miller
Acting Commissioner
U.S. Customs and Border Protection
1300 Pennsylvania Ave., N.W.
Washington, D.C. 20004

Dear Acting Commissioner Miller:

I write today to request information about a recent policy change made by U.S. Customs and Border Protection (CBP) that lowers the threshold for marijuana use for recruits to U.S. Border Patrol from two years to 90 days. I am very concerned about the impact of this proposal on the security and integrity of the Border Patrol workforce. The evidence regarding the legalization of marijuana at the state level demonstrates that this policy undermines the security and integrity of the Border Patrol workforce and flatly contradicts Border Patrol's mission to protect our nation against illegal drugs. Accordingly, I urge you to reverse this policy change.

My staff received a briefing on CBP hiring last month, where CBP reported that it had made a few modifications to its recruitment process for Border Patrol agents in order to incentivize additional recruits. One of those modifications included reducing the lookback on marijuana usage by a potential recruit from any time in the past two years to any time in the past 90 days.

As you are aware, marijuana is currently classified as a Schedule I substance under the Controlled Substances Act. CBP briefers reported to my staff that this policy change was precipitated in part because of confusion between Federal law and state law in states where marijuana has been legalized. However, as a Federal agency, CBP should ensure its personnel comply with Federal law regarding the illicit or otherwise prohibited use of controlled substances.

Briefers noted to my staff that recruits who admit to marijuana usage during their polygraph often admit to other disqualifying criminal conduct. This is not surprising. Even in states where marijuana has been legalized, users often obtain "gray market" marijuana sold by unlicensed sellers due to its lower price.¹

In addition to users' decisions, the marijuana industry and markets in states where marijuana has been legalized often are riddled with corruption. The Drug Enforcement Agency's (DEA) 2020

¹ Alex Malyshev and Sarah Ganley, *Weeding out gray market cannabis operators presents special challenges for states*. Reuters, (Mar. 08, 2023): <https://www.reuters.com/legal/litigation/weeding-out-gray-market-cannabis-operators-presents-special-challenges-states-2023-03-08/>.

National Drug Threat Assessment notes: “Many polycrime and polydrug organizations are involved in domestic marijuana production, often establishing large scale illicit grow operations in states that have legalized marijuana.” The assessment also reports that marijuana produced by state-licensed growers often ends up being sold illicitly and that many state-licensed marijuana businesses receive financial backing from illicit sources, including transnational criminal organizations.²

The DEA’s findings in this report are certainly the case in my home state. Reporting on Oklahoma’s experiment with marijuana legalization, the *Wall Street Journal* states: “Oklahoma officials are now trying to gain control of the exploding marijuana industry, amid violent crimes—including the execution-style murders of four people at a pot warehouse this past month—and residents’ complaints about skunk-like smells on an industrial scale.”³ As I have talked to the Oklahoma Bureau of Narcotics and local police in my state, I have learned that many of the illicit marijuana grows in Oklahoma, and elsewhere across the country, often involve illegal immigrants who are labor trafficked into horrible situations at these grows.

Finally, marijuana use has been shown to increase schizophrenia and psychosis among users, particularly among young adults – an age range that CBP targets as potential recruits for U.S. Border Patrol agents.⁴ It is my understanding that Border Patrol agent positions are designated as “critical-sensitive, high risk” positions. This means that a rogue or corrupt Border Patrol agent has the “potential to cause exceptionally grave damage to national security” and could produce a “substantial or even inestimable amount of harm or serious damage to the public trust.”⁵ Guidelines regarding suitability and background investigations for Federal employment note that the Federal government screens for psychological issues and for illicit drug usage. Frequent, regular usage of marijuana in a state where marijuana has been legalized could significantly impact a Border Patrol recruit’s trustworthiness, particularly given the incidence of psychosis among heavy marijuana users.

Border Patrol’s primary mission is to stop the flow of illicit drugs and illegal immigration across our borders. CBP’s website currently notes that Border Patrol is the “primary drug interdicting organization along the Southwest border,” and it specifically references the amount of marijuana that Border Patrol agents have seized.⁶ Reducing the lookback on marijuana usage increases the possibility that a recruit to Border Patrol could have paid a transnational criminal organization

² Drug Enforcement Agency, *2020 National Drug Threat Assessment*, (Mar. 2021), P. 50, https://www.dea.gov/sites/default/files/2021-02/DIR-008-21%202020%20National%20Drug%20Threat%20Assessment_WEB.pdf.

³ Adolfo Flores, *Oklahoma has become a top source of black-market weed*, *Wall Street Journal*, (Dec. 26, 2022): <https://www.wsj.com/articles/oklahoma-has-become-a-top-source-of-black-market-weed-11671990991>.

⁴ Stoner, et. al., *Marijuana use in children: An update focusing on pediatric tetrahydrocannabinol and cannabidiol use*, *J. Am. Coll. Emerg. Physicians Open*. (Aug 2022, published online Jul. 5, 2022), §4.10: Psychiatric effects, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9255894/>.

⁵ USAJobs.Gov, “Security Clearances,” at <https://help.usajobs.gov/faq/job-announcement/security-clearances>.

⁶ U.S. Customs and Border Prot., “Border Patrol Overview,” at <https://www.cbp.gov/border-security/along-us-borders/overview>

for marijuana grown illicitly by illegal immigrant labor. This situation directly contradicts Border Patrol's mission and could create concerning security and integrity issues for agents.

As the Ranking Member of the Subcommittee on Governmental Operations and Border Management, my Subcommittee retains jurisdiction over Federal hiring and border management. I am gravely concerned that this policy change undermines the security and integrity of the Border Patrol workforce. Accordingly, I ask that you rescind this policy and restore the two-year lookback on marijuana usage among Border Patrol recruits.

In addition, I ask the following questions:

1. Please share a copy of the guidance regarding the two-year lookback on marijuana usage.
2. Please share a copy of the updated guidance regarding the 90-day lookback on marijuana usage.
3. On what evidence did CBP base the decision to lower the standards for marijuana use? Please share a copy of any analyses CBP used in evaluating this decision.
4. In evaluating this policy change, was CBP aware of the effects of marijuana on users, including a higher incidence of psychosis and schizophrenia? If so, how did this factor into CBP's decision?
5. How many recruits who have admitted to using marijuana within the past two years prior to application but not within the past 90 days have been disqualified for other conduct?
6. How many recruits who have admitted to using marijuana within the past two years but not within the past 90 days prior to application have not been disqualified for other conduct?
7. What impact, if any, has this policy change had on polygraph passage rates?
8. Has CBP instituted similar policies for other law enforcement positions at the agency?
9. Did the CBP Office of General Counsel evaluate this policy decision in light of marijuana's classification as a Schedule I substance under the Controlled Substances Act? If so, please share a copy of any such analysis.
10. Has CBP changed its policies or guidance regarding background investigations, suitability, credentialing, or security clearances for personnel or recruits who have used marijuana? If so, please share a copy of any such guidance.

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11. Has CBP assessed whether this policy change will impact a recruit's future ability to use a firearm under the Lautenberg Amendment of 1996, which includes provisions that would prohibit an individual who is "an unlawful user of ... any controlled substance" from being able to use a firearm? If so, please share any such assessment and any guidelines affiliated with this policy change.

Thank you for your attention to this matter. I look forward to receiving your response by not later than 5:00pm, May 7, 2024.

In God We Trust,



James Lankford
Ranking Member
Subcommittee on Government Operations
and Border Management