The Heritage Foundation

LEGAL MEMORANDUM

No. 310 | SEPTEMBER 23, 2022

EDWIN MEESE III CENTER FOR LEGAL & JUDICIAL STUDIES

Twenty-First Century Illicit Drugs and Their Discontents: An Introduction

Paul J. Larkin

KEY TAKEAWAYS

More than 100,000 Americans died from opioid overdoses in the most recent year of recorded data. Fentanyl threatens to multiply that number.

Opioids, particularly fentanyl and its analogues, along with methamphetamine and super-potent cannabis, are dangerous.

The United States must combine supply-side and demand-side steps to address this problem, and interdiction and enforcement must be a part of the plan.

The year 2022 saw the public return its attention to controversial public policy issues that grabbed our attention before the pandemic struck the United States from the winter of 2019 through 2021. One of those issues is illicit drug policy. Currently, misuse of analgesics—whether plant-based opioids like heroin or synthetic painkillers like fentanyl—is the principal focus of concern.[1] In fact, the great and increasing number of overdose fatalities from the use of such drugs has led commentators to describe our current plight as an epidemic.[2]

The question whether society should outlaw all or particular psychoactive drugs except under a licensed physician's supervision has been the subject of intellectual debate for quite some time.[3] As a matter of federal law, however, that issue has been settled for more than a half-century. The principal federal criminal law governing the subject of illegal

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

drugs is the Controlled Substances Act of 1970 (CSA).[4] The CSA incorporates the definition of the term "drug" from the Federal Food, Drug, and Cosmetic Act[5] and defines the term "controlled substance" (with certain exceptions) as "a drug or other substance, or immediate precursor, included in Schedule I, II, III, IV, or V of part B of this title."[6] Schedule I lists drugs, such as heroin, that are illegal to manufacture, distribute, or possess for any reason because they have no accepted medical use and are dangerous.[7] Schedules II through V may be prescribed by a licensed physician and distributed by pharmaceutical companies and drugstores, but they are subject to (decreasingly) strict regulations for public safety purposes. That scheduling system has been in place without any major change since the CSA became law in 1970.

Despite repeated calls to revise or repeal the CSA to legalize the distribution of some or all controlled substances, Congress has revisited that statute on numerous occasions over the past 50 years, and at no time has it eliminated the ban on the illegal distribution of drugs like heroin.[8] On the contrary, Congress has passed a variety of statutes—such as the Comprehensive Methamphetamine Control Act of 1996[9] and the Foreign Kingpin Designation Act of 1999[10]—that continue to use the criminal law to halt the distribution of dangerous controlled substances and prevent the diversion of regulated drugs doses for illegal use. Atop that, since 1970, Congress also has implicitly reaffirmed the need for those acts every time it has appropriated funds for the Drug Enforcement Administration and the Department of Justice for their drug law-enforcement missions.[11]

The bottom line is this: Whatever the merits of the Millsian position that the government should not interfere with an individual's choice regarding what drugs to use, three points are clear:

- The statutes on the books prohibit the importation, cultivation or manufacture, and distribution of a series of controlled substances and deem those drugs contraband;

- Congress is not likely to repeal the CSA in the near future; and

- The President is obligated by Article II of the Constitution to see to the enforcement of those laws within the budget constraints set by congressional appropriations.[12]

This *Legal Memorandum* is an introduction to a series of forthcoming Heritage Foundation publications on a variety of important drug policy

issues. The goal of those papers is a simple one. They will discuss how we should treat drugs like fentanyl, methamphetamine, hallucinogens, cannabis, and what are called Novel Psychoactive Substances, as well as the problem of polydrug use. The hope is to educate readers about the often-forgotten costs of legalizing certain 21st century illicit drugs. The advocates of legalization have already made their case.[13] We hope to add to the debate by mentioning the often-unmentioned costs that would follow in legalization's wake.[14]

Analgesics: Prescription Opioids, Heroin, and Fentanyl

Society has used opium as a medicine for thousands of years,[15] and opioids are the best-known painkiller available today.[16] Unfortunately, opioids can be quite addictive if overused, and recently they have been.

Over the past two decades, opioid-caused overdoses hit the nation in three successive "waves" of increasing severity.[17] Wave 1 involved the overuse of prescription opioids, such as oxycodone.[18] Once the federal and state governments limited opioid prescriptions to address opioid addiction, Wave 2 began.[19] Opioid users turned to heroin, a highly addictive Schedule I controlled substance[20] that has ruined thousands of lives in America[21] but became easier and less expensive to obtain than prescription painkillers.[22] Wave 3 is the current stage, and fentanyl is now the principal drug of concern.[23] Fentanyl has been used for decades as a surgical analgesic or treatment for end-stage cancer pain, but illegally sold fentanyl is now responsible for an increasing number of fatal overdoses.[24] In fact, the number of deaths has reached epic proportions.[25]

Fentanyl is an extraordinarily potent analgesic. It is 50–100 times more powerful than morphine, the drug that serves as the baseline for measuring analgesic effectiveness.[26] (For perspective, heroin is five times as powerful as morphine.) The result is that a small amount of fentanyl can be fatal. What is worse is that some analogues of fentanyl—such as carfentanil, which is used to tranquilize elephants—are *ten thousand times as powerful as morphine*.[27] Only a few grains—*grains*, not even *grams*—of carfentanil are fatal to humans. Addressing illicit fentanyl is quite literally a matter of life and death.[28]

Fentanyl, however, is not the only troubling drug used today. Other drugs also present us with their own set of troubling problems. Consider just two examples: methamphetamine and high-potency cannabis.

Methamphetamine

Methamphetamine, colloquially known simply as "meth," is a stimulant. Originally, biker gangs were the chefs principally responsible for creating meth from chemicals such as the pseudoephedrine found in over-the-counter decongestant medications.[29] Now the Mexican drug cartels produce considerable quantities of the drug and smuggle it across our Southwestern border.[30]

We might soon witness a shift from opioid use to a greater use of stimulants like meth. The reason is that, historically, societal illicit drug use has moved in a cycle, with large-scale use of depressants like opioids replaced by stimulants like methamphetamines before depressants return to haunt our communities.[31] Seen by opioid users as "a fentanyl substitute," meth "kept withdrawal at bay," leading drug users to believe meth was some kind of shield from fentanyl.[32] It is, however, at best a porous shield. As author Sam Quinones put it, "You don't generally overdose and die on meth, you decay," perhaps hoping that death is nigh.[33] Long-term users ultimately resemble the hungry ghosts in the Buddhist afterlife[34] or zombie travelers wandering about aimlessly in a post-apocalyptic world.[35]

Cannabis

Another troubling drug is 21st century cannabis. Technically classified as *Cannabis Sativa L.* but colloquially known as marijuana, cannabis is an ancient nostrum. Archaeological evidence reveals that humans used agricultural cannabis more than 10 thousand years ago.[36] The states outlawed its use for medical or recreational purposes during the first third of the 20th century,[37] and the federal government followed suit by passing legislation in 1937 and 1970 that made the importation, cultivation, and distribution of cannabis a federal offense.[38] The nation also entered into several international conventions that treat cannabis trafficking as a crime.[39]

All that changed in 1996. Since that year, numerous states have amended their own laws to permit cannabis to be cultivated, distributed, and used for medical or recreational purposes. As of May 27, 2022, 37 states, four territories, and the District of Columbia permit the use of cannabis products for medical purposes, while 19 states, two territories, and the District of Columbia permit recreational-use cannabis.[40] Federal law, however, remains as it has been for more than 50 years: Cannabis is contraband and cannot be used for any purpose, either recreational or medical.[41] The Biden Administration recently reaffirmed the federal government's position that cannabis remains contraband.[42]

Unfortunately, "cannabis policy has raced ahead of cannabis science."[43] The states have revised their laws without giving adequate consideration to the facts that today's cannabis not only lacks uniformity and purity in its ingredients and potency,[44] but also is far more powerful than the version that grandpa smoked at Woodstock.[45]

The principal psychoactive component of cannabis is delta^9-tetrahydrocannabinol, commonly known as THC.[46] The THC content of cannabis from the 1960s through the 1980s was approximately 3 percent–4 percent.[47] Since then, the THC content of cannabis has increased logarithmically over time as growers have sought to create a more powerful drug to enhance their profits by giving it a greater "kick."[48] Today, however, the THC content can be 12 percent–20 percent in the plant form and 15 percent–65 percent in hash oil, an oil-based extract of hashish. Other formulations of cannabis can be in the 90-plus percent range. The result is that studies conducted on the "near beer" version of cannabis might not be relevant to the effect of today's grain alcohol–quality cannabis.

The need to study the effects of today's cannabis is not an excuse to find work for aspiring botanists or chemists pursuing their PhDs. In 2019, a former *New York Times* reporter, Alex Berenson, published a book—*Tell Your Children: The Truth About Marijuana, Mental Illness, and Violence*—that highlighted the problems noted in its title. More recently, commentators have noted that several of the parties responsible for recent mass shootings have been long-term or heavy cannabis users and have questioned whether such drug use is responsible for anomie, mental illness, and violence.[49] Various studies have also noted that there appears to be a relationship between cannabis use and mental illness or violence, although there is no agreement as to whether that relationship is causal in nature.[50] There now seems to be little doubt, however, that long-term, heavy cannabis use beginning when a person is a teenager (or even younger) can have adverse and severe neurological effects on the labile juvenile brain.[51]

The Need for Open, Honest Debate

Controversial public policy proposals inevitably have upsides and downsides. No issue worth a legislature's serious attention has outcomes that are all strawberries and cream. There are winners and losers on opposing sides of every contemporary public controversy, and nowadays their battles regularly resemble the no-holds-barred contests of Thunderdome.[52]

Drug policy is no exception. For example, since the 1960s, there has been considerable debate over the question whether cannabis should still be

outlawed by the state and federal governments or should be sold under a regulatory scheme similar to the ones currently used for alcohol or cigarettes.[53] Giving into the temptation to fund projects with taxes imposed on previously illegal drugs, numerous state legislatures have revised their codes to permit cannabis to be sold for medical or recreational use.[54]

Open, thoughtful, reasoned, and honest public debate on public policy issues is necessary in a democracy. Only informed members of the electorate can make educated choices about what path to follow. Debate therefore should be welcomed; no one should be subjected to a "heckler's veto," a boorish demonstration designed to prevent a speaker from even offering his or her views.[55] That is our loss whenever it occurs. It should not be used to stifle debate on this subject.

The nation needs to conduct that investigation before taking any further steps to legalize potentially dangerous drugs. A 2018 *New York Times* article by Aaron Carroll called for a robust discussion of the benefits and risks resulting from cannabis legalization.[56] The following year, Alex Berenson did just that in his book *Tell Your Children: The Truth About Marijuana, Mental Illness, and Violence*. Yet the reviews of his book principally ranged from ones that simply dismissed his theory to ones that ridiculed it.[57] As Berenson admitted, he is not a scientist or a physician; he once was a journalist and now is a writer. Nonetheless, he posed numerous difficult questions that society should reexamine about cannabis, certainly before that drug is legalized by the federal government. Similar questions could be raised about other drugs that have been recommended for medical use, such as psilocybin or lysergic acid diethylamide, commonly known as LSD.[58] More generally, Berenson's book raised the issue of how we should answer drug policy questions such as which drugs should be outlawed altogether, which drugs should be dispensed only by a physician, which drugs should be manufactured only by a licensed pharmaceutical company, and which drugs should be lawfully sold but only if regulated (for example, to ensure purity) and restricted (for example, to prevent sales to minors). Those questions are worthy of everyone's time, attention, and participation.

For more than a century, our nation has used a playbook to fend off the problems that follow in the wake of certain drugs such as heroin. The playbook contains more supply-side than demand-side ways of dealing with dangerous substances. Interdiction and criminal law enforcement have played prominent roles in our strategy. Over the next few decades, the public might throw out that playbook in favor of new approaches to our old problems.[59] Some of those new approaches might succeed, but they also might fail and worsen our current situation.

Conclusion

The legalization of dangerous drugs would allow a small number of people to profit from the misery of others. To date, we have not allowed our fellow citizens to suffer that fate just to satisfy the greed of a few. But the allure of being able to tax new categories of what once had been deemed contraband—the prospect that legalization would produce an entirely new cache of funds that elected officials could dispense to their favorite constituents or use to fund their pet projects—might turn out to be too great a temptation for politicians to ignore. Of course, once tax receipts start to roll in, elected officials could become as addicted to their new source of revenue as street-level addicts are today to their drug of choice.

Still, politicians will attempt to justify their decisions to legalize such drugs by pointing to the new "goodies" they can dispense and dismissing the unfortunate victims of drug abuse as not being "my people." They will find a way to justify with a straight face their willingness to cause misery and death to people they don't know and about whom they don't care. As a result, their decisions will cheapen or destroy the lives of whoever becomes physically dependent on or addicted to the drugs we formally legalize or the ones whose unlawful use we decide to willfully ignore. If that happens, the result will be disastrous to society and horrendous for the individuals involved, as well as for anyone who cares about them. We might have to ignore what we've done just to sleep at night.

But what we won't be able to do is say that we weren't warned.

Paul J. Larkin is the John, Barbara, and Victoria Rumpel Senior Legal Research Fellow in the Edwin Meese III Center for Legal and Judicial Studies at The Heritage Foundation.

Endnotes

1. That might not last. Methamphetamine use has been resurgent. *See*, *e.g.*, Sam Quinones, The Least of Us: True Tales of America and Hope in a Time of Fentanyl and Meth (2021).
2. *See*, *e.g.*, Robert L. DuPont, Chemical Slavery: Understanding Addiction and Stopping the Drug Epidemic (rev. ed., 2018); Barry Meier, Painkiller: An Empire of Deceit and the Origin of America's Opioid Epidemic (2018); Sam Quinones, Dreamland: The True Tale of America's Opioid Epidemic (2015).
3. *See*, *e.g.*, Drug Legalization: For and Against (Rod L. Evans & Irwin M. Berent eds., 1992); Steven B. Duke & Albert C. Gross, America's Longest War: Rethinking Our Tragic Crusade Against Drugs (1993); Douglas Husak & Peter de Marneffe, The Legalization of Drugs (2005); Sally L. Satel, Drug Treatment: The Case for Coercion (1999); John Kaplan, *Taking Drugs Seriously*, 92 Pub. Int. 32 (1988); Ethan A. Nadelmann, *The Case for Legalization*, 92 Pub. Int. 3 (1988); James Q. Wilson, *Against the Legalization of Drugs*, 89 Comment. 21 (1990); Fed't Soc'y, Teleforum Debate: "*Opioids: The Crisis in 2022 and Beyond,*" Aug. 10. 2022, https://fedsoc.org/events/opioids-the-crisis-in-2022-and-beyond.
4. Pub. L. No. 91-513, 84 Stat. 1242 (codified as amended at 21 U.S.C. §§ 801–904 (2018)). The Controlled Substances Act was Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970. Title I addressed prevention and treatment of narcotics addiction, and Title III dealt with the import and export of controlled substances. *See* Gonzales v. Raich, 545 U.S. 1, 11 n.14 (2005).
5. 21 U.S.C. § 201(g)(1) (2019).
6. There are exceptions for "distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in subtitle E of the Internal Revenue Code of 1954." 21 U.S.C. § 802(6) (2018).
7. *See* 21 U.S.C. § 841.
8. *See*, *e.g.*, First Step Act of 2018, Tit. IV, § 401, Pub. L. No. 115-391, 132 Stat. 5194 (codified at various sections of 18 U.S.C.); Agricultural Improvement Act of 2018, Tit. XII, § 12619(a), Pub. L. No. 115-334, 132 Stat. 4490; Substance Use—Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act, Pub. L. No. 115-271, Stat 3894 (2018) (codified at various sections of 21 & 42 U.S.C.); Comprehensive Addiction and Recovery Act, Pub. L. No. 114-198, 130 Stat 695 (2016) (codified at various sections of 21 & 42 U.S.C.); Designer Anabolic Steroid Control Act of 2014, Pub. L. No. 113-260, 128 Stat 2929) (codified at various sections of 18 & 21 U.S.C.); Ryan Haight Online Pharmacy Consumer Protection Act of 2008, Pub. L. No. 110–425, 122 Stat 4820 (codified at 21 U.S.C. § 801 note (2018)); USA PATRIOT Improvement and Reauthorization Act of 2005, Pub. L. No. 109-177, 120 Stat 192; Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, 119 Stat 2960; Anabolic Steroid Control Act of 2004, Pub. L. No. 108-358, 118 Stat 1661; Children's Health Act of 2000, Pub. L. No. 106-310, Div. B, Tit. XXXVI, § 3622(a), 114 Stat 1101; Hillory J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 2000, Pub. L. No. 106-172, 114 Stat 7; Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (codified at various sections of 12, 18 & 42 U.S.C.); Crime Control Act of 1990, Pub. L. No. 101-647, 104 Stat. 4789 (codified at various sections of 18 U.S.C.); Chemical Diversion and Trafficking Act, Pub. L. No. 100-690, 102 Stat. 4181 (1988) (codified at various sections of 21 U.S.C.); Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, 102 Stat. 4181 (codified at various sections of 21 U.S.C.); Federal Analogue Act, Pub. L. No. 99-570, 100 Stat. 3207 (codified at 21 U.S.C. § 813 (2018)); Dangerous Drug Diversion Control Act of 1984, Pub. L. No. 98-473, Tit. II of H. Joint Res. 648, Ch. V, Pt. B, §§ 506–25, 98 Stat 1837; Controlled Substances Penalties Amendments Act of 1984, Tit. II of H. Joint Res. 648, Pub. L. No. 98-473, Ch. V, Pt. A, §§ 501–03, 98 Stat 1837; Sentencing Reform Act of 1984, Tit. II of H. Joint Res. 648, Pub. L. No. 98-473, §§ 211–19, 306–09, 98 Stat. 1837 (1984); Psychotropic Substances Act of 1978, Pub. L. No. 95-633, 92 Stat. 3768; Narcotic Treatment Act of 1974, Pub. L. No. 93-281, 88 Stat. 124.
9. Comprehensive Methamphetamine Control Act of 1996, Pub. L. No. 104-237, 110 Stat 3099 (codified at scattered sections of 21 U.S.C. (2018)).
10. Foreign Narcotics Kingpin Designation Act, Pub. L. No. 106-120, 113 Stat. 1606 (1999) (codified at 21 U.S.C. § 1901 et seq. (2018)).
11. *E.g*., 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, Div. B, Tit. IV, § 4002(c)(1), 116 Stat 1758 (2002); *see* TVA v. Hill, 437 U.S. 153, 189–91 (1978) (noting that when passing an appropriations bill, Congress ordinarily assumes that the underlying substantive law will remain unchanged). To be sure, Congress has enacted a series of appropriations riders that seek to prevent the Justice Department from using the criminal law to shut down state-authorized medical cannabis programs. *See* Paul J. Larkin, Jr., *Reflexive Federalism*, 44 Harv. J.L. & Pub. Pol'y 523, 530–31 n.29 (2021 (collecting congressional appropriations laws). *None* of those riders, however, would have removed heroin or similar drugs from the CSA. No President, no senior executive branch official, and no Member of Congress has stepped forward to champion the legalization of heroin. In the current Congress, the House of Representatives passed a bill that would remove cannabis from Schedule I of the CSA. *See* Marijuana Opportunity Reinvestment and Expungement (MORE) Act, H.R. 3617, 117th Cong. (2022). The bill has not yet come up for a vote in the Senate. That bill also would not legalize the distribution of heroin. It never makes sense to say never, but the likelihood that Congress would repeal the CSA in its entirety is, realistically speaking, nil.
12. *See* U.S. Const. art. II, § 3 ("[The President] shall take Care that the Laws be faithfully executed….").
13. *See*, *e.g*., Jonathan P. Caulkins et al., RAND Corp., Considering Marijuana Legalization: Insights for Vermont and Other Jurisdictions (2015); John Kaplan, Marijuana: The New Prohibition (1970); Richard Lawrence Miller, The Case for Legalizing Drugs (1991); Jacob Sullum, Saying Yes: In Defense of Drug Use (2003); Mark A.R. Kleiman, *The Public-Health Case for Legalizing Marijuana*, 39 Nat'l Affs. 68 (2019); *supra* note 3. That is particularly true in the case of parties who hope to profit from legalization.

14. Decriminalization of drug use—the treatment of drug use and possession of personal-use amounts of a drug as a civil infraction, particularly for first-time offenders—is a different matter. *See*, *e.g*., Paul J. Larkin, Jr., *Medical or Recreational Marijuana and Drugged Driving*, 52 Am. Crim. L. Rev. 453, 461 n.30 (2015) (discussing the related concepts of "decriminalization" and "legalization"). It might make more sense to treat medically low-level offenders addicted to a drug rather than processing them through the criminal justice system. Mandatory drug treatment could serve as a mechanism for helping them to cease their drug use. *See*, *e.g*., Sally L. Satel, Drug Treatment: The Case for Coercion (1999). That does not mean that there is no role for the criminal justice system. It could serve as a fallback option for addicts and users who prove unwilling to pursue treatment to a successful conclusion or who commit additional crimes during their probationary, treatment period. Programs such as the South Dakota 24/7 Sobriety and Hawaii Opportunity Probation with Enforcement follow that approach. To induce compliance, they seek to use voluntary compliance and, if a probationer fails, initially mild (but increasingly severe) periods of confinement imposed swiftly and certainly rather than harsh punishments imposed randomly, if at all. *See*, *e.g*., Paul J. Larkin, Jr., *Swift, Certain, and Fair Punishment—24/7 Sobriety and HOPE: Creative Approaches to Alcohol- and Illicit Drug-Using Offenders*, 105 J. of Crim. L. & Criminology 39 (2016).
15. *See*, *e.g*., Gene M. Heyman, Addiction: A Disorder of Choice 23–25 (2009).
16. *See*, *e.g*., Jerrold S. Meyer & Linda F. Quenzer, Psychopharmacology: Drugs, the Brain, and Behavior 305–06 (2d ed. 2018) ("As a class, [opioids] are the very best painkillers known to man.").
17. *See*, *e.g*., Anna Lembke, Drug Dealer, MD (2016).
18. Paul J. Larkin, Jr., & Bertha K. Madras, *Opioids, Overdoses, and Cannabis: Is Marijuana an Effective Therapeutic Response to the Opioid Epidemic?*, 17 Geo. J.L. & Pub. Pol'y 555, 588 (2019).
19. *See*, *e.g*., Stefan G. Kertesz et al., *Promoting a Patient-Centeredness in Opioid Deprescribing: A Blueprint for De-Implementation Science*, 35 J. Gen'l Internal Med. S972, S972 (2020) ("A downward trend in opioid prescribing between 2011 and 2018 has brought per-capita opioid prescriptions below the levels of 2006, the earliest year for which the Centers for Disease Control and Prevention has published data.").
20. *See supra* text accompanying notes 5–8.
21. *See*, *e.g*., John Kaplan, The Hardest Drug: Heroin and Public Policy (1985).
22. Larkin & Madras, *supra* note 18, at 588; Paul J. Larkin, Ruan v. United States: *An Important Ruling or Merely "Sound and Fury"?*, 21 Geo. J.L. & Pub. Pol'y (2023) (forthcoming 2023) (manuscript 10–12).
23. *See*, *e.g*., Comm'n on Combating Synthetic Opioid Trafficking, Final Report iii, vii, ix–xi (2022); Bryce Pardo et al., RAND, The Future of Fentanyl and Other Synthetic Opioids (2019); Brodie Ramin, The Age of Fentanyl: Ending the Opioid Epidemic (2020); Ben Westhoff, Fentanyl, Inc.: How Rogue Chemists Are Creating the Deadliest Wave of the Opioid Epidemic (2019). Unlike heroin, which is the product of the opium poppy grown in places such as Mexico, Afghanistan, and Southeast Asia, fentanyl, like other so-called Novel Psychoactive Substances (NPSs), is a synthetic opioid. Chemists can produce fentanyl in a laboratory from lawfully available precursor chemicals. Synthetic Opioid Comm'n Report, *supra*, at iii, vii, ix–xi.
24. *See* Drug Enforcement Admin., U.S. Dep't of Justice, National Drug Threat Assessment 2020 DEA-DCT-DIR-008-21, at 4 (Mar. 2021) [hereafter 2020 DEA Nat'l Drug Assessment] ("Illicit fentanyl—produced in foreign clandestine laboratories and trafficked into the United States in powder and pill form—is primarily responsible for fueling the ongoing opioid crisis. Fentanyl-laced counterfeit pills continue to be trafficked across the country and remain significant contributors to the rates of overdose deaths observed across the country. As inexpensive, potent fentanyl continues to push into established heroin markets, fentanyl will augment, and in some cases supplant, white powder heroin in various domestic markets.").
25. In 1997, Professor Norval Morris write that "[e]ach year nicotine kills some 300,000; alcohol kills at least 30,000; the other drugs kill fewer than 3000." Norval Morris, *Teenage Violence and Drug Use*, 31 Val. U. L. Rev. 547, 549 (1997). Fentanyl-related deaths have eclipsed that last number by a country mile. *See* Cntrs. for Disease Control & Prevention, U.S. Overdose Deaths Increased Half as Much as in 2020—But Are Still Up 15% (May 11, 2022) ("Provisional data from CDC's National Center for Health Statistics indicate there were an estimated 107,622 drug overdose deaths in the United States during 2021, an increase of nearly 15% from the 93,655 deaths estimated in 2020. The 2021 increase was half of what it was a year ago, when overdose deaths rose 30% from 2019 to 2020."); *id*. (noting that deaths attributable to fentanyl increased from 57,834 in 2020 to 71,238 in 2021); Drug Overdose Deaths in the United States, 1999–2020 (Dec. 2021); Cntrs. for Disease Control & Prevention, Drug Overdose Deaths in the United States, 1999–2020 (Dec. 2021) ("In 2020, 91,799 drug overdose deaths occurred in the United States for an age-adjusted rate of 28.3 per 100,000 standard population (Figure 1). The rate in 2020 (28.3) was 31% higher than the rate in 2019 (21.6)."); Cntrs. for Disease Control & Prevention, Fentanyl (June 1, 2022), https://www.cdc.gov/opioids/basics/fentanyl.html ("Pharmaceutical fentanyl is a synthetic opioid, approved for treating severe pain, typically advanced cancer pain.... However, most recent cases of fentanyl-related harm, overdose, and death in the U.S. are linked to illegally made fentanyl. It is sold through illegal drug markets for its heroin-like effect. It is often mixed with heroin and/or cocaine as a combination product—with or without the user's knowledge—to increase its euphoric effects.... Rates of overdose deaths involving synthetic opioids other than methadone, which includes fentanyl and fentanyl analogs, increased over 56% from 2019 to 2020. The number of overdose deaths involving synthetic opioids in 2020 was more than 18 times the number in 2013. More than 56,000 people died from overdoses involving synthetic opioids in 2020. The latest provisional drug overdose death counts through June 2021 suggest an acceleration of overdose deaths during the COVID-19 pandemic.") (footnotes omitted) (last visited Aug. 11, 2022) [hereafter CDC, Fentanyl].
26. CDC, Fentanyl, *supra* note 25; Pardo et al., *supra* note 23, at 2.
27. *See*, *e.g*., Pardo et al., *supra* note 23, at 2; Westhoff, *supra* note 23, at 31–32.

28. *See*, *e.g.*, CDC, Fentanyl, *supra* note 25 ("Rates of overdose deaths involving synthetic opioids other than methadone, which includes fentanyl and fentanyl analogs, increased over 16% from 2018 to 2019. Overdose deaths involving synthetic opioids were nearly 12 times higher in 2019 than in 2013. More than 36,000 people died from overdoses involving synthetic opioids in 2019. The latest provisional drug overdose death counts through May 2020 suggest an acceleration of overdose deaths during the COVID-19 pandemic.") (footnotes omitted); Pardo et al., *supra* note 23, at xv, 11–12 (noting that overdoes fatalities involving fentanyl or an analogue outnumber overdose death from heroin or semisynthetic drugs by a 2:1 ratio), 35 (suggesting that illicit fentanyl might be replacing heroin in some locations); Westhoff, *supra* note 23, at 4 ("'Today we are facing the most deadly crisis in American history,' then U.S. Attorney General Jeff Sessions said during a 2018 press conference. 'We've never seen anything like it.'"); *id*. ("'Fentanyl is the game changer,' Special Agent in Charge James Hunt of the US Drug Enforcement Administration (DEA) told *Vice*. 'It's the most dangerous substance in the history of drug trafficking. Heroin and cocaine pale in comparison to how dangerous fentanyl is.'"); *id*. at 25 ("Never…has an opiate—or any other drug, for that matter—killed so many people annually as the fentanyl epidemic."); *id*. at 51 ("[By 2016,] fentanyl had shot past heroin and was killing more Americans annually than any other drug in American history. And the fentanyl analogues, which are being developed and marketed at a rapid clip, threaten to make the problem worse."), 125 ("'Fentanyl has taken over as the drug that is killing people here,' said [Madison County, Illinois] coroner Stephen Nonn. 'When we go to a death scene and you still see the needle in the arm, we know it was fentanyl because it works that quick.'"); *cf*. *id*. at 20 ("The former director of the DEA's Special Operations Division, Derek Maltz, used stark terms to describe the fentanyl-driven opioid epidemic. 'Where it becomes a national security emergency is the connectivity between the drug traffickers and the terrorists that are out there that are trying to destroy our way of life,' he said in November 2018.").
29. Quinones, *supra* note 1, at 26. *See generally* Nick Redding, Methland (2009).
30. 2020 DEA Nat'l Drug Assessment, *supra* note 24, at 19 ("Most of the methamphetamine available in the United States is clandestinely produced in Mexico and smuggled across the SWB.").
31. Quinones, *supra* note 1, at 269. Traditionally, individual users were committed either to opioids such as heroin or to stimulants such as meth. "Meth and heroin users had been separate groups, different cultures; historically they never mixed" because "the drugs affect different parts of the brain's reward pathway." *Id*. at 268. That scenario is changing. *Id*. at 268–69.
32. *Id*. at 269.
33. *Id*. What criminologist James Q. Wilson wrote about cocaine applies even more powerfully to methamphetamine. "Tobacco shortens one's life, cocaine debases it. Nicotine alters one's habits, cocaine alters one's soul." Wilson, *supra* note 3, at 26.
34. *See* Gabor Mate, In the Realm of Hungry Ghosts: Close Encounters with Addiction (2010).
35. *See The Walking Dead* (AMC Networks 2010).
36. *See*, *e.g.*, Sunil K. Aggarwal et al., *Medicinal Use of Cannabis in the United States: Historical Perspectives, Current Trends, and Future Directions*, 5 J. Opioid Mgmt. 153, 153–57 (2009); Alan J. Budney et al., *Cannabis*, *in* Lowinson & Ruiz's Substance Abuse: A Comprehensive Textbook 214–15 (Pedro Ruiz & Eric Strain eds., 5th ed. 2011); Tod H. Mikuriya, *Marijuana in Medicine: Past, Present, and Future*, 110 Cal. Med. 34 (1969); Solomon H. Snyder, *Foreword* to Leslie L. Iversen, The Science of Marijuana 12–13, 17–18, 21–24, 116, 121 (2d ed. 2008). We no longer leave decisions regarding the safety and effectiveness of drugs to the individual judgment of pharmacists, physicians, chemists, or anyone else for that matter. Since 1938, we have entrusted the Food and Drug Administration with that responsibility. *See* the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § (2018); Paul J. Larkin, Jr., *States' Rights and Federal Wrongs: The Misguided Attempt to Label Marijuana Legalization as a "States' Rights" Issue*, 16 Geo. J.L. & Pub. Pol'y 495 (2018). Numerous states, however, have forgotten that fact. *See infra* text accompanying note 41.
37. *See* Richard J. Bonnie & Charles H. Whitebread II, The Marijuana Conviction: A History of Marijuana Prohibition in the United States (1999) (1974).
38. The first federal statute governing cannabis was the Marihuana Tax Act of 1937, ch. 553, 50 Stat. 551 (1937) (repealed 1970). That act did not itself treat cannabis as contraband; instead, it merely required anyone wishing to distribute cannabis to register with the federal government and pay a tax. The President's Advisory Commission on Narcotic and Drug Abuse, Final Report 32–39 (1963); Thomas M. Quinn & Gerald T. McLaughlin, *The Evolution of Federal Drug Control Legislation*, 22 Cath. U. L. Rev. 586, 599, 605 (1973) (citing Reorganization Plan No. 1 of 1968, § 2(a), 28 U.S.C. § 509 (1970)). Yet the 1937 act had the effect of criminalizing the distribution of cannabis because, by that year, every state had outlawed possession or distribution of cannabis. Gonzales v. Raich, 545 U.S. 1, 11 n.14 (2005). The result was that every federal registrant automatically incriminated himself under state law. For that reason, the Supreme Court of the United States held the 1937 act unconstitutional in 1969. Leary v. United States, 395 U.S. 6 (1969). The following year, Congress replaced that statute with the CSA. Congress placed cannabis into Schedule I of the CSA, which is reserved for controlled substances with a high potential for abuse, no currently accepted domestic medical use, and no accepted safe use. 21 U.S.C. § 812(b)(1)(A)–(C) (2018). The CSA prohibits physicians from prescribing Schedule I drugs to anyone for any use. 21 U.S.C. § 841 (2015); *see* Ruan v. United States, 142 S. Ct. 2370 (2022); United States v. Moore, 423 U.S. 122 (1975) (both ruling that a physician can be convicted for distributing a controlled substance outside the boundaries of professional medical practice). Congress authorized the U.S. Attorney General to reclassify marijuana if, after consulting with the Secretary of Health and Human Services, he found that doing so would be appropriate. No Attorney General has done so, however, and marijuana remains in the same category that Congress chose 50 years ago, as contraband.
39. *See* Single Convention on Narcotic Drugs, Mar. 30, 1961, 18 U.S.T. 1407, *amended by* 1972 Protocol, Mar. 25, 1972, 26 U.S.T. 1439; Convention on Psychotropic Substances, Feb. 21, 1971, 32 U.S.T. 543; United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Dec. 20, 1988, 1582 U.N.T.S. 164.

40. *State Medical Cannabis Laws*, Nat'l Conf. of State Leg. (Feb. 3, 2022), https://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx [https://perma.cc/8FTQ-THGR] (last visited Aug. 7, 2022). State laws permitting cannabis to be distributed for either purpose differ widely. *See* Drug Policy and the Public Good 245–54 (Thomas Babor et al., eds., 2d ed. 2018); Rosalie Liccardo Pacula et al., *Words Can Be Deceiving: A Review of Variation Among Legally Effective Medical Marijuana Laws in the United States*, 7 J. Drug Pol'y Analysis 1 (2014).

41. *See* 21 U.S.C. § 812 (2018). *See generally* Paul J. Larkin, Jr., *Reflexive Federalism*, 44 Harv. J.L. & Pub. Pol'y 523, 527–43 (2021) (discussing the confusion created by the conflicting state and federal schemes).

42. *See* Letter from Peter Hyun, Acting Ass't Att'y Gen'l, to Senators Elizabeth Warren & Cory A. Booker (Apr. 12, 2022) (rejecting the Senators' request to move cannabis out of Schedule I; "Cannabis is a Schedule I controlled substance under the Controlled Substances Act (CSA). This is—in part—due to HHS's determination that cannabis has not been proven in scientific studies to be a safe and effective treatment for any disease or condition.").

43. *See* Archie Bleyer & Brian Barnes, *Opioid Death Rate Acceleration in Jurisdictions Legalizing Marijuana Use*, 178 JAMA Internal Med. 1280, 1280 (2018).

44. See, *e.g.*, Jonathan P. Caulkins et al., Marijuana Legalization: What Everyone Needs to Know 34 (2d ed. 2016).

45. *See*, *e.g.*, Alan J. Budney et al., *Cannabis*, *in* Lowinson and Ruiz's Substance Abuse: A Comprehensive Textbook 216 (Pedro Ruiz & Eric Strain eds., 5th ed. 2011) (the potency of marijuana increased by 60 percent over 2000–2010); Robin Room et al., Cannabis Policy: Moving Beyond Stalemate 6 (2010) (noting that some varieties of marijuana (Sinsemilla, also known as skunk and Netherweed) may have THC content as high as 20 percent, that hashish (dried cannabis resin and crushed plants) has a THC content in the range of 2–20 percent, and that hash oil (an oil-based extract of hashish) has a THC content of 15 percent–50 percent); *id*. at 39–40; Wayne Hall & Louisa Degenhardt, *High Potency Cannabis: A Risk Factor for Dependence, Poor Psychosocial Outcomes, and Psychosis*, 350 Br. Med. J. 1205 (2015); Eric L. Sevigny et al., *The Effects of Medical Marijuana Laws on Potency*, 25 Int'l J. Drug Pol'y 308, 309 (2014); Elizabeth Stuyt, *The Problem with the Current High Potency THC Marijuana from the Perspective of an Addiction Psychiatrist*, 115 Missouri Med. 482 (Nov./Dec. 2018); Nora D. Volkow et al., *Adverse Health Effects of Marijuana Use*, 370 New Eng. J. Med. 2219, 2222 (2014).

46. *See*, *e.g.*, Leslie Iversen, The Science of Marijuana (2d ed. 2008).

47. *See*, *e.g.*, Paul J. Larkin, Jr., *Reconsidering Federal Marijuana Regulation*, 18 Oh. St. J. Crim. L. 99, 120 (2020).

48. *Id*.

49. *See* Alysia Finley, *Cannabis and the Violent Crime Surge*, Wall St. J., June 6, 2022, https://www.wsj.com/articles/cannabis-and-the-violent-crime-surge-marijuana-pot-use-thc-shootings-psychosis-mental-11654540197 ("Mass shooters at Rep. Gabby Giffords's constituent meeting in Tucson, Ariz. (2011), a movie theater in Aurora, Colo. (2012), the Pulse nightclub in Orlando, Fla. (2016), the First Baptist church in Sutherland Springs, Texas (2017), and Marjory Stoneman Douglas High School in Parkland, Fla. (2018), were reported to be marijuana users. It could be a coincidence, but increasing evidence suggests a connection."); *see also*, *e.g.*, Alex Berenson, *New York Times Has Edited Out Its Reference to Salvador Ramos's Cannabis Use*, Unreported Truths, May 26, 2022, https://alexberenson.substack.com/p/urgent-the-new-york-times-has-edited/comments?s=r (Salvador Ramos was the Uvalde, Texas, school shooter); Madeleine Kearns, *Marijuana and Mass Shooters*, Nat'l Rev., Jun 8, 2022, https://www.nationalreview.com/corner/marijuana-and-mass-shooters/.

50. *See*, *e.g.*, Nat'l Inst. on Drug Abuse, Research Report: Cannabis (Marijuana) Research Report 15 (Rev. July 2020), ("Several studies have linked marijuana use to increased risk for psychiatric disorders, including psychosis (schizophrenia), depression, anxiety, and substance use disorders, but whether and to what extent it actually causes these conditions is not always easy to determine. Recent research suggests that smoking high-potency marijuana every day could increase the chances of developing psychosis by nearly five times compared to people who have never used marijuana. The amount of drug used, the age at first use, and genetic vulnerability have all been shown to influence this relationship. The strongest evidence to date concerns links between marijuana use and psychiatric disorders in those with a preexisting genetic or other vulnerability.") (footnotes omitted); Laura Dellazizzo et al., *Association Between the Use of Cannabis and Physical Violence in Youths: A Meta-Analytical Investigation*, 177 Am. J. Psychiatry 619 (2020); Marta Di Forti et al., *The Contribution of Cannabis Use to Variation in the Incidence of Psychotic Disorder Across Europe (EU-GEI): A Multicentre Case-Control Study*, 6 Lancet Psychiatry 427 (2019); Kirsten H. Dillon et al., *Cannabis Use Disorder, Anger, and Violence in Iraq/Afghanistan-era Veterans*, 138 J. Psychiatric Research 375 (2021); Julianne C. Flanagan et al., *Association of Cannabis Use with Intimate Partner Violence Among Couples with Substance Misuse*, 29 Am. J. Addiction 323 (2020); Shea-Lee Godin & Sherif Shehata, *Adolescent Cannabis Use and Later Development of Schizophrenia: An Updated Systematic Review of Longitudinal Studies*, 78 J. Clin. Psychology 1331 (2022); Carsten Hjorthoj et al., *Development Over Time of the Population-Attributable Risk Fraction for Cannabis Use Disorder in Schizophrenia in Denmark*, 78 JAMA Psychiatry 1013 (2021); Theresa H.M. Moore et al., *Cannabis Use and Risk of Psychotic or Affective Mental health Outcomes: A Systematic Review*, 370 Lancet P319 (2007); Dorsa Rafiei & Nathan J. Kolla, *Fact or Fiction Regarding the Relationship between Cannabis Use and Violent Behavior*, 50 J. Am. Acad. Sci. & L. 44 (2021).

51. *See*, *e.g.*, World Health Org., The Health and Social Effects of Nonmedical Cannabis Use 16 (2016) ("Accumulating evidence reveals that regular, heavy cannabis use during adolescence is associated with more severe and persistent negative outcomes than use during adulthood."); George F. Koob et al., Drugs, Addiction, and the Brain 269, 279–87 (2014); Robin Room et al., Cannabis Policy: Moving Beyond Stalemate 31–39 (2010) (describing studies investigating the risk that adolescent marijuana use could adversely affect learning, result in a greater dropout rate, be a prelude to other drug use, or lead to schizophrenia or depression); Bertha Madras, *Drug Use and Its Consequences*, *in* The Effects of Drug Abuse on the Human Nervous System 14–15 (Bertha Madras & Michael Kuhar eds., 2014); Wayne Hall, *What Has Research over the Past Two Decades Revealed About the Adverse Health Effects of Recreational Cannabis Use?*, 110 Addiction 19, 24–26 (2015); Volkow et al., *supra* note 45, at 2220 (noting that negative effects in brain development, educational outcome, cognitive impairment, and life satisfaction are "strongly associated with initial marijuana use early in adolescence"). *See generally* Paul J. Larkin, Jr., *Marijuana Edibles and "Gummy Bears*," 66 Buff. L. Rev. 313, 326–28 (2018) ("Several respected government and private organizations—the American Medical Association, the American Psychiatric Association, the American Academy of Pediatrics, the American Cancer Society, the American Academy of Ophthalmology, the National Institute for Drug Abuse, and others—have noted those harms and agree that minors should not use cannabis.") (footnote omitted).

52. "Two men enter. One man leaves." *Mad Max Beyond Thunderdome* (Warner Bros. 1985), https://www.youtube.com/watch?v=9yDL0AKUCKo.

53. *See*, *e.g.*, Inst. of Med., Marijuana and Medicine: Assessing the Science Base (Janet E. Joy et al. eds., 1999); Committee on the Health Effects of Marijuana, Nat'l Acad. of Sci., Eng'g, & Med., The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research (2017); Office of Nat'l Drug Control Policy, Marijuana Myths and Facts: The Truth Behind 10 Popular Misconceptions (2004); Div. of Mental Health and Prevention of Substance Abuse, World Health Org., Cannabis: A Health Perspective and Research Agenda (1997); William J. Bennett & Robert A. White, Going to Pot: Why the Rush to Legalize Marijuana Is Harming America (2015); Jonathan P. Caulkins et al., Considering Marijuana Legalization: Insights for Vermont and Other Jurisdictions (RAND Corp. 2015); Mitch Earleywine, Understanding Marijuana: A New Look at the Scientific Evidence (2002); Wayne Hall & Rosalie Liccardo Pacula, Cannabis Use and Dependence: Public Health and Public Policy (2003); John Kaplan, Marijuana: The New Prohibition (1969); Mark A.R. Kleiman, Marijuana: Costs of Abuse, Costs of Control (1989); Kevin A. Sabet, Reefer Sanity: Seven Great Myths About Marijuana (Rev. ed. 2018); Wayne Hall, *What Has Research Over the Past Two Decades Revealed About the Adverse Health Effects of Recreational Cannabis Use?*, 110 Addiction 19 (2014); Wayne Hall & Louisa Degenhardt, *Adverse Health Effects of Non-Medical Cannabis Use*, 374 Lancet 1383 (2009); Jerome P. Kassirer, *Federal Foolishness and Marijuana*, 336 New Eng. J. Med. 366 (1997); Rosalie Liccardo Pacula & Eric L. Sevigny, *Marijuana Liberalization Policies: Why We Can't Learn Much from Policy Still in Motion*, 33 J. Pol'y Analysis & Mgmt. 212 (2014).
54. *See supra* note 40.
55. *See*, *e.g.*, Marc A. Thiessen, *Free Speech Gets Tossed at Yale Law School*, Wash. Post, Mar. 24, 2022, https://www.washingtonpost.com/opinions/2022/03/24/yale-law-school-silberman-protest/.
56. *See*, *e.g.*, Aaron E. Carroll, *It's Time for a New Discussion of Marijuana's Risks*, N.Y. Times, May 7, 2018, https://www.nytimes.com/2018/05/07/upshot/its-time-for-a-new-discussion-of-marijuanas-risks.html?action=click&module=RelatedLinks&pgtype=Article (article subtitled "You may decide the benefits outweigh the harms, but you should know about those potential harms.").
57. Most commentators were critical of his thesis that cannabis use can trigger mental illness and violence. *See*, *e.g.*, Robert Ashford, *Letter from Scholars and Clinicians Who Oppose Junk Science About Marijuana*, Drug Policy Alliance, Feb. 14, 2019, https://drugpolicy.org/resource/letter-scholars-and-clinicians-who-oppose-junk-science-about-marijuana; James Hamblin, *If Legal Marijuana Leads to Murder, What's Up in the Netherlands?*, Atlantic, Jan. 14, 2019, https://www.theatlantic.com/health/archive/2019/01/marijuana-murder-gladwell/579949/; Carl L. Hart & Charles Ksir, *Does Marijuana Use Really Cause Psychotic Disorders?*, Guardian, Jan. 20, 2019, https://www.theguardian.com/commentisfree/2019/jan/20/marijuana-cannabis-health-effects-issues-mental-health-disorders-science; James Lartney, *Popular Book on Marijuana's Apparent Dangers Is Pure Alarmism, Experts Say*, Guardian, Feb. 17, 2019, https://www.theguardian.com/society/2019/feb/17/marijuana-book-tell-your-children-alex-berenson; Amanda Chicago Lewis, *Is Alex Berenson Trolling Use with His Anti-Weed Book?*, Rolling Stone, Jan. 12, 2019, https://www.rollingstone.com/culture/culture-features/alex-berenson-marijuana-tell-your-children-trolling-777741/; German Lopez, *What Alex Berenson's New Book Gets Wrong About Marijuana, Psychosis, and Violence*, Vox, Jan. 14, 2019, https://www.vox.com/future-perfect/2019/1/14/18175446/alex-berenson-tell-your-children-marijuana-psychosis-violence; Jacob Sullum, *Does Legalizing Marijuana Cause "Sharp Increases in Murders and Aggravated Assault"?*, Reason, Jan. 9, 2019, https://reason.com/2019/01/09/does-legalizing-marijuana-cause-sharp-in/; Katie Way, *What Fearmongering About Pot Tells You About Mainstream Marijuana Coverage*, Nation, Jan. 28, 2019, https://www.thenation.com/article/archive/alex-berenson-marijuana-legalization-tell-your-children-review/; Drug Policy Alliance, What Not to Tell Your Children: Five Things Alex Berenson Gets Wrong About Marijuana (undated), https://drugpolicy.org/sites/default/files/berenson_what_not_to_tell_your_children_011819_1.pdf (last visited Aug. 7, 2022). Some even went so far as to ridicule his position. *See* Sessi Kuwarabara Blanchard, *Tell Your Children...That Alex Berenson Is Full of It*, Filter, Jan. 9, 2019, https://filtermag.org/tell-your-children-alex-berenson-marijuana/. Favorable treatments appear to represent the minority view. *See*, *e.g.*, Paul Davis, *Book Review: "Tell Your Children" by Alex Berenson*, Wash. Times, Jan. 20, 2019, https://www.washingtontimes.com/news/2019/jan/20/book-review-tell-your-children-by-alex-berenson/; Malcolm Gladwell, *Is Marijuana as Safe as We Think?*, New Yorker, Jan. 7, 2019, https://www.newyorker.com/magazine/2019/01/14/is-marijuana-as-safe-as-we-think; Stephanie Mencimer, *This Reporter Took a Deep Look into the Science of Smoking Pot. What He Found Is Scary*, Mother Jones, Jan. 5, 2019, https://www.motherjones.com/politics/2019/01/new-york-times-journalist-alex-berenson-tell-your-children-marijuana-crime-mental-illness-1/; Sharif B. Mohr, *Review of "Tell Your Children" by Alex Berenson*, Shari's Book Review, Feb. 2019, https://www.dfaf.org/review-of-tell-your-children-by-alex-berenson/; Publishers Weekly, Jan. 2019, https://www.publishersweekly.com/978-1-9821-0366-8. For a review that is equal parts pro and con, see John J. DiIulio, Jr., *Reefer Madness*, Claremont Rev. of Books, Fall 2019, https://claremontreviewofbooks.com/reefer-madness/.
58. *See*, *e.g.*, Kevin F. Boehnke et al., *Applying Lessons from Cannabis to the Psychedelic Highway: Buckle Up and Build Infrastructure*, 3 JAMA Health Forum e221618 (2022); Michael P. Bogenschultz et al., *Percentage of Heavy Drinking Days Following Psilocybin-Assisted Psychotherapy vs Placebo in the Treatment of Adult Patients with Alcohol Use Disorder*, JAMA Psychiatry Online, Aug. 24, 2022, https://jamanetwork.com/journals/jamapsychiatry/fullarticle/2795625?guestAccessKey=43f147b9-8285-4fde-9f0b-412db9d8a803&utm_source=silverchair&utm_medium=email&utm_campaign=article_alert-jamapsychiatry&utm_content=olf&utm_term=082422; Alan K. Davis et al., *Effects of Psilocybin-Assisted Therapy on Major Depressive Disorder: A Randomized Clinical Trial*, 78 JAMA Psychiatry 481 (2021); Henry R. Kranzler & Emily E. Hartwell, *Treating Alcohol-Use Disorder with Hallucinogens—Renewed Interest After a 50-Year Hiatus*, JAMA Psychiatry, Aug. 24, 2022, https://jamanetwork.com/journals/jamapsychiatry/fullarticle/2795627?guestAccessKey=09d7af98-0d21-42c3-a964-96753d9ee1d6&utm_source=silverchair&utm_medium=email&utm_campaign=article_alert-jamapsychiatry&utm_content=olf&utm_term=082422; Matthias E. Lichti, *Modern Clinical Research on LSD*, 42 Neuropharmacology 2114 (2017); Joshua Phelps, *The Rapid Rise in Investment in Psychedelics—Cart Before the Horse*, 79 JAMA Psychiatry 189 (2022); Wendy Pots & Farid Chakhssi, *Psilocybin-Assisted Compassion Focused Therapy for Depression*, 13 Frontiers in Psychology 812930 (2022).
59. For example, it is commonplace today to be told that the "War on Drugs" is racist and should be ended forthwith. *See*, *e.g.*, Michelle Alexander, The New Jim Crow: Mass Incarceration in the Age of Colorblindness (Rev. ed. 2012); Steven B. Duke & Albert C. Gross, America's Longest War: Rethinking Our Tragic Crusade Against Drugs 161 (1993) ("'Maybe no one planned it, maybe no one wanted it and certainly few saw it coming, but around the country, politicians, public officials and even many police officers and judges say, the nation's war on drugs has in effect become a war on black people.'") (quoting Ron Harris, *Blacks Feel Brunt of Drug War*, L.A. Times, Apr. 22, 1990, at A1). That conclusion is mistaken, *see* Paul J. Larkin & GianCarlo Canaparo, *The Fallacy of Systemic Racism in the American Criminal Justice System*, 17 Liberty U. L. Rev. (forthcoming 2023), but we have made mistakes before.