



April 15, 2021

The Honorable Xavier Becerra  
Secretary  
Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

Dear Secretary Becerra:

We believe it is time for the Biden administration and the Food and Drug Administration (FDA) to follow the substantial scientific data and use the existing authority provided by the Tobacco Control Act to remove menthol cigarettes from the marketplace. We support President Biden and Vice President Harris in their focus on racial equity not simply as a fixture of their administration, but the responsibility of the entire federal government.

The administration's equity platform states that while equal opportunity is America's foundation, systemic racism — whether institutions, laws, or policies — prevents many Americans from realizing this ideal. This very inequality along racial lines has been all too evident in the coronavirus pandemic, which has devastated several racial and ethnic communities by taking their lives at a disproportionate rate, while leaving many in these communities unemployed or at greater risk of infection due to health disparities and their positions as essential workers. At a time when we are working to address such disparities and protect the health of all Americans from a host of threats, we must put an end to the tobacco industry's targeted efforts to lure youth and Black Americans into a lifetime of deadly addiction.

In 2011, the FDA's Tobacco Products Scientific Advisory Committee found menthol cigarettes cause substantial harm to public health beyond that caused by other cigarettes, a conclusion echoed two years later by the agency's own scientific review. Research continues to document the appeal of menthol cigarettes among youth, the role menthol plays in smoking initiation, and the impact of menthol in making it harder to quit smoking.<sup>1</sup> The FDA has never wavered in its conclusion that menthol cigarettes are harmful to public health, and, if FDA continues to follow the science, it can come to only one conclusion: menthol as a characterizing flavor in cigarettes must be prohibited.

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<sup>1</sup> Food and Drug Administration, *Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol Versus Nonmenthol Cigarettes* (2013) ("FDA Menthol Report"), <https://www.fda.gov/media/86497/download>.

Science has shown the cooling mint flavor of menthol numbs the throat and masks the harshness of tobacco smoke, making it easier for new users to start.<sup>2</sup> Almost all those new users are children under age 18. As a result, menthol cigarettes increase the number of children who try cigarettes and become regular smokers. Youth smokers are more likely to use menthol cigarettes than any other age group.<sup>3</sup> Half of youth who have ever tried smoking started with menthol cigarettes and half of all high school smokers use menthol cigarettes. Youth who start smoking with menthols are more likely to become addicted and long-term daily smokers.

Menthol cigarettes have had a particularly devastating impact on the health of Black community, who use menthol cigarettes disproportionately. 85% of all Black smokers' smoke menthol cigarettes, compared to 29% of whites.<sup>4</sup> This is the direct result of a deliberate decision made decades ago by the tobacco industry to target Black Americans with marketing for menthol cigarettes.<sup>5</sup> In the 1950s, fewer than 10 percent of the Black community who smoked used menthol cigarettes. After decades of the tobacco industry's targeting of our children and our communities with pervasive marketing campaigns and price discounts, use of menthol cigarettes skyrocketed in Black Americans. As of 2019, menthol cigarettes account for 37% of all cigarette sales—the highest proportion since major tobacco companies were required to report domestic market share of menthol and non-menthol cigarettes.<sup>6</sup>

The net result has contributed to the Black community suffering unfairly and disproportionately from tobacco-related diseases. Black Americans die from heart disease, lung cancer, strokes, and other tobacco-related diseases at rates far higher than other racial and ethnic groups.<sup>7</sup> Menthol cigarettes are a major reason why tobacco use has long been the leading preventable cause of death for the Black community. Over 45,000 Black men and women die from tobacco-caused diseases every single year.<sup>8</sup>

The FDA should begin a rulemaking to prohibit menthol cigarettes. In the process, the agency should make it clear the FDA's enforcement of a menthol prohibition will only focus on manufacturers and retailers, not individual consumers. We expect the FDA would enforce a menthol prohibition the same way the FDA has enforced the current prohibition on flavored

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<sup>2</sup> Yerger, VB, *Menthol's potential effects on nicotine dependence: a tobacco industry perspective*, Tobacco Control, 2011 May; 20(Suppl\_2): ii29–ii36, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3088468/pdf/tobaccocontrol41970.pdf>.

<sup>3</sup> Report by the Tobacco Products Scientific Advisory Committee of the Center of the Tobacco Products of the Food and Drug Administration, *Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations* (2011) ("TPSAC Report"), [http://www.njgasp.org/wp-content/uploads/2014/05/FDA\\_TPSAC\\_report\\_menthol\\_March\\_2011.pdf](http://www.njgasp.org/wp-content/uploads/2014/05/FDA_TPSAC_report_menthol_March_2011.pdf).

<sup>4</sup> 85% - Villanti, AC, et al., *Changes in the prevalence and correlates of menthol cigarette use in the USA, 2004-2014*, Tobacco Control, published online October 20, 2016, [https://tobaccocontrol.bmj.com/content/tobaccocontrol/25/Suppl\\_2/ii14.full.pdf](https://tobaccocontrol.bmj.com/content/tobaccocontrol/25/Suppl_2/ii14.full.pdf).

<sup>5</sup> Gardiner, P, *The African Americanization of menthol cigarette use in the United States*, Nicotine & Tobacco Research Volume 6, Supplement 1 (February 2004) S55–S65, [http://www.acbhcs.org/wp-content/uploads/2017/11/African\\_Americanization.pdf](http://www.acbhcs.org/wp-content/uploads/2017/11/African_Americanization.pdf)

<sup>6</sup> Federal Trade Commission (FTC), *Cigarette Report for 2019*. Washington: Federal Trade Commission, 2021, available at [https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-cigarette-report-2019-smokeless-tobacco-report-2019/cigarette\\_report\\_for\\_2019.pdf](https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-cigarette-report-2019-smokeless-tobacco-report-2019/cigarette_report_for_2019.pdf).

<sup>7</sup> Kochanek KD, Murphy SL, Xu JQ, Tejada-Vera B. *Deaths: Final Data for 2014*, National Vital Statistics Reports, 2016; vol 65: no 4. Hyattsville, MD: National Center for Health Statistics, [https://www.cdc.gov/nchs/data/nvsr/nvsr65/nvsr65\\_04.pdf](https://www.cdc.gov/nchs/data/nvsr/nvsr65/nvsr65_04.pdf).

<sup>8</sup> Department of Health and Human Services (HHS), *Tobacco Use Among US Racial/Ethnic Minority Groups—African Americans, American Indians and Alaskan Natives, Asian Americans and Pacific Islanders, and Hispanics: A Report of the Surgeon General*, 1998, [http://www.cdc.gov/tobacco/data\\_statistics/sgr/1998/complete\\_report/pdfs/complete\\_report.pdf](http://www.cdc.gov/tobacco/data_statistics/sgr/1998/complete_report/pdfs/complete_report.pdf).

cigarettes (other than menthol) and the current prohibition on sales to minors – by conducting inspections of manufacturers and retailers, not by enforcement against individual consumers.

The tobacco industry must no longer be permitted to use menthol cigarettes to profit at the expense of the health of Black Americans. The compelling and consistent scientific evidence shows that removing menthol cigarettes from the marketplace will likely reduce youth smoking initiation, improve smoking cessation outcomes in adult smokers, advance health equity, and benefit public health. The time for decisive action by the Food and Drug Administration has come. We urge the FDA, HHS, and you to follow the science and protect kids by finalizing the rulemaking to remove menthol cigarettes from the market, as quickly as possible.

We look forward to working with you to achieve our mutual goals of striving for racial equity, ending tobacco use, and preventing tobacco-caused diseases and premature deaths. Thank you for your prompt and full consideration of our request on such an important and timely public health matter.

Sincerely,

/s/

Robin Kelly  
Member of Congress  
Chair, CBC Health Braintrust

/s/

Joyce Beatty  
Member of Congress

/s/

David Scott  
Member of Congress  
Chair, Agriculture Committee

/s/

Barbara Lee  
Member of Congress  
Member, Appropriations Subcommittee on  
Agriculture  
Member, Appropriations Subcommittee on  
LHHS

/s/

Frank Pallone, Jr.  
Member of Congress  
Chairman, Energy and Commerce Committee

/s/

Karen Bass  
Member of Congress

/s/

Emanuel Cleaver, II  
Member of Congress

/s/

Eleanor Holmes Norton  
Member of Congress

/s/

Bobby L. Rush  
Member of Congress

/s/

André D. Carson  
Member of Congress

/s/

Bonnie Watson Coleman  
Member of Congress

/s/

Lisa Blunt Rochester  
Member of Congress

/s/

Stacey E. Plaskett  
Member of Congress

/s/

Gregory W. Meeks  
Member of Congress

/s/

Dwight Evans  
Member of Congress

/s/

Mondaire Jones  
Member of Congress

/s/

John Garamendi  
Member of Congress

/s/

Donald M. Payne, Jr.  
Member of Congress

/s/

Terri A. Sewell  
Member of Congress

/s/

Danny K. Davis  
Member of Congress

/s/

Eddie Bernice Johnson  
Member of Congress

/s/

Jamaal Bowman  
Member of Congress

/s/

Al Green  
Member of Congress

/s/

Cori Bush  
Member of Congress

/s/

Brenda Lawrence  
Member of Congress

/s/

Marc Veasey  
Member of Congress

/s/

Ayanna Pressley  
Member of Congress

/s/

Bobby Scott  
Member of Congress

/s/

Lauren Underwood  
Member of Congress

/s/

Frederica Wilson  
Member of Congress

/s/

Joe Neguse  
Member of Congress

/s/

Nikema Williams  
Member of Congress

/s/

Ritchie Torres  
Member of Congress

/s/

Anthony Brown  
Member of Congress

/s/

Sheila Jackson Lee  
Member of Congress

/s/

Marilyn Strickland  
Member of Congress

CC: Janet Woodcock, Acting Commissioner, Food and Drug Administration