



July 21, 2022

Robert M. Califf, MD  
Commissioner, Food and Drug Administration  
10903 New Hampshire Ave  
Silver Spring, MD 20993

Dear Commissioner Califf:

We write in strong support of the proposed rule the Food and Drug Administration (FDA) announced on April 28<sup>th</sup> to remove menthol cigarettes from the market. When finalized, this long overdue rule will have a profound impact in reducing youth cigarette use, advancing health equity, and saving lives. There is strong and substantial evidence in support of this proposed rule, and we urge the administration to act expeditiously to finalize it.

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 at greater risk of infection due to health inequities associated with the social determinants of health. At a time when we are working to address such inequities and protect the health of all Americans from a host of threats, we are pleased this administration has taken this critically important step to 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.<sup>1</sup> Research continues to document the appeal of menthol cigarettes among youth,<sup>2</sup> the role menthol plays in smoking initiation,<sup>3</sup> and

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<sup>1</sup> Tobacco Products Scientific Advisory Committee (TPSAC), FDA, "Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations, 2011, [Tobacco Products Scientific Advisory Committee | FDA](#).

<sup>2</sup> Cohn, AM, et al., "Menthol Smoking Patterns and Smoking Perceptions Among Youth: Findings from the Population Assessment of Tobacco and Health Study," *American Journal of Preventive Medicine*, 56(4): e107-e116, 2019

<sup>3</sup> Cwalina, SN, et al., "Adolescent menthol cigarette use and risk of nicotine dependence: Findings from the national Population Assessment on Tobacco and Health (PATH) study," *Drug and Alcohol Dependence*, published online November 15, 2019

the impact of menthol in making it harder to quit smoking.<sup>4</sup> The FDA has never wavered in its conclusion that menthol cigarettes are harmful to public health, and, we applaud the FDA for continuing to follow the science in issuing this proposed rule.

Research demonstrates the cooling flavor of menthol numbs the throat and masks the harshness of tobacco smoke, making it easier for new users to start.<sup>5</sup> As a result, menthol cigarettes increase the number of youths who try cigarettes and become regular smokers. Half of youth who ever tried smoking started with menthol cigarettes and youth who smoke menthol cigarettes are more likely to develop a cigarette addiction and become long-term daily smokers.<sup>6</sup> Most worrisome is that while the use of menthol cigarettes declined among non-Hispanic white youth between 2011 and 2018, there was not a similar decline in the use of menthol cigarettes for Black and Hispanic youth.<sup>7</sup>

Menthol cigarettes are also popular among the Black community as a whole. In 2019, approximately 85% of non-Hispanic Black or African American adults used menthol cigarettes, compared to 30% of non-Hispanic white smokers.<sup>8</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. In the 1950s, fewer than 10 percent of Black smokers 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 among Black Americans.<sup>9</sup> As of 2020, menthol cigarettes accounted 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>10</sup>

The net result of these predatory marketing strategies is the Black community is suffering unfairly and disproportionately from tobacco-related diseases. As the proposed rule notes, "Scientific evidence indicates that menthol cigarettes have historically and continue to be disproportionately marketed in underserved communities and contribute to the longstanding disparities in menthol cigarette smoking and health outcomes observed in vulnerable populations, particularly the Black community."<sup>11</sup> Indeed, menthol cigarettes are a major reason why tobacco use has long been the leading preventable cause of death for the Black community.

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<sup>4</sup> Mills, S, et al., *The Relationship between Menthol Cigarette Use, Smoking Cessation and Relapse: Findings from Waves 1 to 4 of the Population Assessment of Tobacco and Health Study*, Nicotine & Tobacco Research, published online October 16, 2020.

<sup>5</sup> Tobacco Products Scientific Advisory Committee (TPSAC), FDA, "Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations, 2011; FDA. *Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol versus Nonmenthol Cigarettes* (2013). <https://www.fda.gov/media/86497/download>  
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3088468/pdf/tobaccocontrol41970.pdf>

<sup>6</sup> Impact of Menthol Cigarettes on Youth Smoking Initiation and Health Disparities, Campaign for Tobacco-Free Kids, May 16, 2022, [0390.pdf \(tobaccofreekids.org\)](https://www.tobaccofreekids.org)

<sup>7</sup> Delnevo, CD, et al., "Banning Menthol Cigarettes: A Social Justice Issue Long Overdue," *Nicotine & Tobacco Research*, 22(10): 1673-1675, 2020

<sup>8</sup> [Menthol and Cigarettes | Smoking & Tobacco Use | CDC](#)

<sup>9</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>10</sup> U.S. Federal Trade Commission (FTC), *Cigarette Report for 2020*, 2021, <https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-cigarette-report-2020-smokeless-tobacco-report-2020/p114508fy20cigarettereport.pdf> [data for top 5 manufacturers only].

<sup>11</sup> 87 Fed. Reg. 26469 (May 4, 2022)

Over 45,000 Black men and women die from tobacco-caused diseases every single year.<sup>12</sup> Black Americans die from heart disease, lung cancer, stroke, and other tobacco-related diseases at rates far higher than other racial and ethnic groups.<sup>13</sup> A recent study estimated that from 1980 to 2018, menthol cigarettes were responsible for 1.5 million extra smokers, 157,000 smoking-related premature deaths, and 1.5 million excess life-years lost among the African American community. Additionally, African Americans represented 15% of new smokers, 41% of excess premature deaths and 50% of excess life-years lost, despite only accounting for 12% of the population.<sup>14</sup> The proposed FDA rule cites studies estimating that between 92,000 and 238,000 smoking-attributable deaths among Black Americans would be avoided within 40 years if menthol cigarettes were removed from the market.<sup>15</sup> Notably, 60% of pregnant smokers use menthols and smoking increases the risk for infant mortality.<sup>16</sup>

Concerns have been raised about whether the implementation of the proposed menthol ban would lead to increased policing of the Black community. We share these concerns and would like to partner with social justice and criminal justice groups, as well as the administration, to determine how the menthol ban can be implemented in a way that improves health outcomes without increasing biased enforcement in Black communities.

When finalized, this proposed rule will ensure the tobacco industry will no longer be permitted to use menthol cigarettes to profit at the expense of the health of our youth and Black Americans. The compelling and consistent 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. We urge the FDA, HHS, to continue to follow the science and protect our youth and the Black community by finalizing this 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, protecting our children, ending tobacco use, and preventing tobacco-caused diseases and premature deaths.

Sincerely,

/s/  
Robin L. Kelly  
Member of Congress  
Chair, CBC Health Braintrust

/s/  
Joyce Beatty  
Member of Congress  
Chair, CBC

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<sup>12</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)

<sup>13</sup> CDC, National Vital Statistics Report, Vol. 68, No. 9. Table 10, 2019 [https://www.cdc.gov/nchs/data/nvsr/nvsr68/nvsr68\\_09-508.pdf](https://www.cdc.gov/nchs/data/nvsr/nvsr68/nvsr68_09-508.pdf)

<sup>14</sup> Mendez, D and Le, TT, “Consequences of a match made in hell: the harm caused by menthol smoking to the African American population over 1980-2018,” *Tobacco Control*, published online September 16, 2021

<sup>15</sup> 87 Fed. Reg. 26455 (May 4, 2022)

<sup>16</sup> Delnevo, CD, et al., “Banning Menthol Cigarettes: A Social Justice Issue Long Overdue,” *Nicotine & Tobacco Research*, 22(10): 1673-1675, 2020

/s/  
Karen Bass  
Member of Congress

/s/  
Barbara Lee  
Member of Congress

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Lisa Blunt Rochester  
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/s/  
Eddie Bernice Johnson  
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