

**Congress of the United States**  
**Washington, DC 20515**

April 21, 2021

Dr. Janet Woodcock  
Acting Commissioner  
Food and Drug Administration  
10903 New Hampshire Avenue  
Silver Spring, MD 20993-0002

Dear Acting Commissioner Woodcock:

We call on the Food and Drug Administration (FDA) to protect both public health and racial equity by banning menthol-flavored cigarettes. FDA has committed to a federal court that it will decide whether or not to permit menthol-flavored cigarettes to remain on the market by April 29, 2021.<sup>1</sup> We believe there are strong reasons to ban menthol-flavored cigarettes, and we urge FDA to do so.

Smoking-related illnesses rank as the number-one cause of death among African Americans.<sup>2</sup> Big Tobacco companies have for decades bombarded African Americans with tobacco ads featuring mentholated cigarettes. According to the Centers for Disease Control and Prevention (CDC), those ads have been “targeted heavily towards African Americans through culturally tailored advertising images and messages.”<sup>3</sup> The end result: seven in ten African American youths aged 12–17 who smoke use menthol cigarettes.<sup>4</sup> FDA has recognized for years that “menthol products disproportionately and adversely affect underserved communities” and “exacerbate troubling disparities in health related to race and socioeconomic status.”<sup>5</sup>

FDA has acknowledged that menthol-flavored cigarettes are harmful to public health and are particularly harmful to African Americans.<sup>6</sup>

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<sup>1</sup> *African American Tobacco Leadership Council v. United States Department of Health and Human Services*, N.D. Cal., Civ. Act. No. 20-cv-04012.

<sup>2</sup> Campaign for Tobacco-Free Kids, *Tobacco Use Among African Americans* ([www.tobaccofreekids.org/assets/factsheets/0006.pdf](http://www.tobaccofreekids.org/assets/factsheets/0006.pdf)) (accessed Apr. 14, 2021).

<sup>3</sup> Centers for Disease Control and Prevention, *African Americans and Tobacco Use* (online at [www.cdc.gov/tobacco/disparities/african-americans/index.htm](http://www.cdc.gov/tobacco/disparities/african-americans/index.htm)) (accessed Apr. 14, 2021).

<sup>4</sup> *Id.*

<sup>5</sup> Food and Drug Administration, *Press Release: Statement from FDA Commissioner Scott Gottlieb, M.D., on Proposed New Steps to Protect Youth by Preventing Access to Flavored Tobacco Products and Banning Menthol in Cigarettes* (Nov. 15, 2018) (online at [www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-proposed-new-steps-protect-youth-preventing-access](http://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-proposed-new-steps-protect-youth-preventing-access)).

<sup>6</sup> *Id.*

The CDC has stated that menthol flavoring:

- “leads people—especially young people—to experiment with smoking” because “tobacco companies add menthol to make cigarettes seem less harsh and more appealing to new smokers and young people”;
- “could increase a young person’s risk of becoming dependent on nicotine”; and
- produces a more potent form of addiction, in that users of menthol cigarettes have “a harder time quitting smoking than those who use non-menthol cigarettes.”<sup>7</sup>

Menthol-flavored cigarettes are a popular on-ramp into smoking for children. Menthol-flavored cigarettes are more addictive and more dangerous than non-menthols. According to the CDC, “Menthol in cigarettes is thought to make harmful chemicals more easily absorbed in the body, likely because menthol makes it easier to inhale cigarette smoke.”<sup>8</sup>

FDA has publicly agreed, stating over two years ago that:

- “menthol-flavored products represent one of the most common and pernicious routes by which kids initiate on combustible cigarettes,”
- “menthol serves to mask some of the unattractive features of smoking that might otherwise discourage a child from smoking,”
- “the popularity of menthol cigarettes with youth is especially troubling,” and
- “youth smokers are more likely to use menthol cigarettes than any other age group.”<sup>9</sup>

The European Union banned menthol cigarettes a year ago.<sup>10</sup>

So why, then, have we lagged so far behind our European counterparts? The Trump Administration twice made bold promises to address the menthol problem. Yet, both times, it scrapped those plans without public explanation. On November 15, 2018, then-Commissioner

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<sup>7</sup> Centers For Disease Control and Prevention, *Menthol and Cigarettes* (online at [www.cdc.gov/tobacco/basic\\_information/tobacco\\_industry/menthol-cigarettes/index.html](http://www.cdc.gov/tobacco/basic_information/tobacco_industry/menthol-cigarettes/index.html)) (accessed Apr. 14, 2021).

<sup>8</sup> Centers for Disease Control and Prevention, *African Americans and Tobacco Use* (online at [www.cdc.gov/tobacco/disparities/african-americans/index.htm](http://www.cdc.gov/tobacco/disparities/african-americans/index.htm)) (accessed Apr. 14, 2021).

<sup>9</sup> Food and Drug Administration, *Press Release: Statement from FDA Commissioner Scott Gottlieb, M.D., on Proposed New Steps to Protect Youth by Preventing Access to Flavored Tobacco Products and Banning Menthol in Cigarettes* (Nov. 15, 2018) (online at [www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-proposed-new-steps-protect-youth-preventing-access](http://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-proposed-new-steps-protect-youth-preventing-access)).

<sup>10</sup> *Ban on Menthol Cigarettes: European Union Member States Shall Prohibit the Placing on the Market of Tobacco Products with a Characterizing Flavour*, European Network for Smoking and Tobacco Prevention (July 1, 2020) (online at [www.ncbi.nlm.nih.gov/pmc/articles/PMC7549510/](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC7549510/)).

Scott Gottlieb announced that FDA would introduce a rule to ban menthol cigarettes.<sup>11</sup> Yet President Trump's FDA never followed through. Again, on September 11, 2019, the former President, then-Secretary of the Department of Health and Human Services, and then-Acting-Commissioner of FDA announced that they would clear the market of all flavored e-cigarettes, *including those flavored with mint and menthol*, and that they would do so within "a couple of weeks."<sup>12</sup> After a four-month delay, replete with industry lobbying and White House interference, the Trump Administration bowed to industry pressure and abandoned its promise to ban menthol e-cigarettes.<sup>13</sup>

These failures to protect children, particularly African American children, from a path to addiction are inexcusable. It is time to remedy the broken promises of the last administration by banning menthol cigarettes today. And, indeed, it is your duty. As one of his first acts in office, President Biden instructed you, along with all agencies, to consider racial equity in your policymaking.<sup>14</sup>

FDA's decision on April 29 is a major early test of the Biden FDA's commitment to racial equity in public health. And the test has a clear right answer. If you end menthol-flavored cigarette sales, you pass. If you allow menthol-flavored cigarette sales to continue, you fail.

Sincerely,



Raja Krishnamoorthi  
Chairman  
Subcommittee on Economic and Consumer Policy  
Committee on Oversight and Reform



Richard J. Durbin  
United States Senator



Bobby L. Rush  
Member of Congress

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<sup>11</sup> Food and Drug Administration, *Press Release: Statement from FDA Commissioner Scott Gottlieb, M.D., on Proposed New Steps to Protect Youth by Preventing Access to Flavored Tobacco Products and Banning Menthol in Cigarettes* (Nov. 15, 2018) (online at [www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-proposed-new-steps-protect-youth-preventing-access](http://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-proposed-new-steps-protect-youth-preventing-access)).

<sup>12</sup> The White House, *Remarks By President Trump in Meeting on E-Cigarettes* (Sept. 11, 2019) (online at <https://web.archive.org/web/20200701052631/http://www.whitehouse.gov/briefings-statements/remarks-president-trump-meeting-e-cigarettes/>).

<sup>13</sup> Food and Drug Administration, *Enforcement Priorities for Electronic Nicotine Delivery System (ENDS) and Other Deemed Products on the Market Without Premarket Authorization* (Jan. 2020) (online at [www.fda.gov/regulatory-information/search-fda-guidance-documents/enforcement-priorities-electronic-nicotine-delivery-system-ends-and-other-deemed-products-market](http://www.fda.gov/regulatory-information/search-fda-guidance-documents/enforcement-priorities-electronic-nicotine-delivery-system-ends-and-other-deemed-products-market)).

<sup>14</sup> Exec. Order No. 13985, 86 Fed. Reg. 7009 (Jan. 25, 2021).

Dr. Janet Woodcock

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cc: The Honorable Michael Cloud, Ranking Member  
Subcommittee on Economic and Consumer Policy  
Committee on Oversight and Reform