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Reverend Al Sharpton, President & Founder
Reverend Dr. W. Franklyn Richardson, Chairman

April 14, 2022

Ambassador Susan E. Rice
Director
Domestic Policy Council of the United States
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Ambassador Rice:

In the spirit of the Biden-Harris Administration's whole-of-government effort to advance equity and racial justice, I am writing on behalf of the National Action Network (NAN) and its 132 local community chapters to urge the U.S. Food and Drug Administration (FDA) to consider in the most serious way the unintended consequences of a menthol ban before advancing proposed tobacco product standards to prohibit menthol as a characterizing flavor in cigarettes. A menthol ban would severely target and harm African American smokers, who overwhelmingly prefer menthol cigarettes.

While NAN supports the FDA's efforts to reduce tobacco-related disease and promote public health, we are very concerned about the negative impact a menthol ban would have on African Americans, at-risk youth (i.e. Black and Hispanic males) and other underserved populations. In the U.S., it is estimated that there are nearly 18.6 million current smokers of menthol cigarettes. Of the total number of menthol smokers, 85% are African Americans, so the proposed Biden-Harris Administration action will put African American smokers at risk of racially discriminatory government action while leaving all other cigarette smokers to enjoy the product of their choice safe and at peace. Research shows that there has not been a decline in Black youth preferring to spoke menthol cigarettes between 2011-2018. The days of Black Americans going to the back door of the store to make purchases should be in our rearview mirror.

A menthol ban would impose serious risks, including increasing the illegal sale of smuggled, black market menthol cigarettes as well as the street sales of individual menthol cigarettes--"loosies" and in turn place menthol smokers at a significant risk of entering the criminal justice system. The FDA's proposed rule to ban menthol would expand the illicit market for menthol cigarettes in African American communities throughout the country. Specifically, there would be a number of economically challenged consumers that would not comply with the ban and instead increase engagement in less regulated (but dangerous) activities like tampering with cigarettes to

create their own menthols and switching to unregulated herbal menthol cigarettes. This would expose consumers to dangerous contraband cigarettes, increase youth access to cigarettes and promote criminal activity. Further, a menthol ban would exacerbate existing, simmering issues around racial profiling, discrimination, and policing.

My recommendation is that the Biden-Harris Administration establish a commission to review and study the racial and criminal justice impact a menthol ban would have on the African American and other underserved communities. Such a review has not happened to date. This commission or working group should include federal, state, and local law-enforcement officials and other agencies that enforce illicit tobacco sales, including the U.S. Department of Justice Civil Rights Division and possibly its state level counterparts. Other stakeholders should be groups, such as the Circle of Mothers, National Organization of Black Law Enforcement Executives, American Civil Liberties Union, and National Action Network. Such a study or review commission should not be led by the U.S. Department of Health and Human Services or FDA. It should be headed by one of our federal law enforcement agencies that have the professional experience in hands on street level enforcement in illicit tobacco sales to avoid what happened in the 1990's with the federal crime bill that introduced many African Americans to the criminal justice system.

In closing, no other country has a well-documented history of selective enforcement and over-representation of African Americans in the criminal justice system. When the menthol ban was proposed in New York City, NAN leaders met with the police commissioner, who stated, "If there's a ban in place, his officers would have to enforce the illegal sale of tobacco products." The New York City Council did not pass a menthol ban to avoid unintended consequences in black areas of the city. We at NAN are in the business of making sure fairness and equality are paramount in America, and therefore urge the FDA to refrain from advancing the menthol ban and instead strongly review the heavy unintended consequences that would arise from the enforcement of a menthol ban in black and brown communities, particularly the guaranteed increase in street sales of loosies if the proposed rule becomes the Biden-Harris menthol cigarette ban.

Sincerely,



Reverend Al Sharpton
Founder & President
National Action Network

cc: The Honorable Shalanda Young, Director of the Office of Management and Budget
Cedric Richmond, Senior Advisor to the President, The White House
Robert M. Califf M.D., Administrator of the U.S. Food and Drug Administration