



FDA CENTER FOR TOBACCO PRODUCTS: LISTENING SESSION TRANSCRIPT

June 15, 2022

The U.S. Food and Drug Administration (FDA) Center for Tobacco Products (CTP) recently proposed two product standards: one that would prohibit menthol as a characterizing flavor in cigarettes and another that would prohibit characterizing flavors (other than tobacco) in all cigars.

From 10 a.m. to 4 p.m. EDT on June 15, FDA held a virtual listening session to give the public an opportunity to verbally provide open public comment on the proposed product standards.

FDA invited members of the public to either comment (utilizing their video camera or audio-only) during a Zoom meeting or to participate by just viewing and listening to the meeting.

FDA aimed to make the sessions as inclusive as possible and to create an opportunity to hear a range of ideas and perspectives. While anyone could have requested to provide open public comment during the sessions, FDA was especially interested in hearing from those with relevant lived experience and those who may be less likely, or less able, to provide formal written comments through the standard docket submission process.

The following is the written transcript of the June 15, 2022 listening session.

Commenter	Organization (if applicable)
Tony Daniel	
Maritza Perez	Drug Policy Alliance
Vonetta Dudley	NYC Smoke-free at Public Health Solutions
Angela "Jackie" Kaslow	Red Medicine Tobacco Prevention Project
Yael Ossowski	Consumer Choice Center
Bria Gamble	Truth Initiative Student Ambassador
Alexandria Duruji	
Shannon Campagna	Convenience Distribution Association
Anne DiGiulio	American Lung Association
Mark Mitchell	Commission on Environmental Health, National Medical Association
Rahn Bailey	
Joseph Golden	
David Hancox	
Stacey Gagosian	Truth Initiative
Laura Turner	
Maia Murphey	Action on Smoking and Health
Stephanie Huang	
Rukaya Alrubaye	
Amanda Gray	Arizona Petroleum Marketers Association
Guy Bentley	Director of Consumer Freedom at Reason Foundation
Catherine McMahon	American Cancer Society Action Network
Mary Peterson	
Stella Adams	
Gloria Solis	
Andrew Barnes	
Zoey Duan	Youth Advocate, Coalition for a Tobacco Hawaii Healthy Youth Council
John Boyd	Founder and President of the National Black Farmers Association
Mario San Bartolome	Practice Management and Regulatory Affairs Committee, American Society of Addiction Medicine; California Society of Addiction Medicine
Jon Adler	President: Federal Law Enforcement Officers Association (FLEOA) Foundation
Wayne Harris	Law Enforcement Action Partnership
Jeffrey Wigand	Brown Williamson Tobacco Corporation
Briana Brooks	Youth Activist, Truth Initiative
Matt Myers	President, Campaign for Tobacco-Free Kids
Amaya Wooding	LGBTQ Minus Tobacco
Kim Ard-Elutilo	
Liz Scott	
Rod Lew	Executive Director of APPEAL, Asian Pacific Partners for Empowerment, Advocacy and Leadership
Alejandra Rocha	
Jared Walczak	Tax Foundation

Commenter	Organization (if applicable)
Randy Fulk	Bakery, Confectionery, Tobacco Workers and Grain Millers' International Union
Thomas Briant	Executive Director, National Association of Tobacco Outlets
Lincoln Mondy	
Pebbles Fagan	
Allegra Taylor	
Akelei Davis	
Dr. Harold Farber	Associate Medical Director, Texas Children's Health Fund; Section on Tobacco Control, American Academy of Pediatrics; Tobacco Action Committee, American Thoracic Society
Jiles Ship	
Dr. Lynne Braun	
Adriane Casalotti	NACCHO
Ronald Hampton	National Black Police Association; Blacks in Law Enforcement of America
Alix Winston	Parents Against Vaping E-Cigarettes
James Newman	
Pamela Granger	
Enid Neptune	American Thoracic Society
Corey Pegues, Individual/Retired Law Enforcement	
Charles Taylor	SAC Village Advocates
Beth Farrell	North Carolina Department of Agriculture and Consumer Services
Rheta William-Ellas	

NECOLA STAPLES: Welcome to today's listening session about FDA's proposed product standards to prohibit menthol as a characterizing flavor in cigarettes and characterizing flavors and all cigars. I'm Nicola Staples with the office of health, communications and education at FDA center for tobacco Products, or CTP. I am one of several moderators that will serve as hosts for today's listening session. Thank you so much for joining us. The purpose of today's meeting is for FDA to hear comments about the agency's recently proposed product standards, which were issued under the federal food, drug and cosmetic act. I'm happy to share that we have individual speakers, as well as several groups represented in today's call, including members of the law enforcement community, national public health, community and faith-based organizations, state and local public health, healthcare, academia, research, as well as different sectors of the industry. I want to note that we received many requests to speak and we're not able to accommodate all of them. It was critically important for us to hear all voices who would like to comment on the proposed rules. So, I would like to emphasize that the docket is open, and every person group or organization can provide written comments through July 5, 2022. As I want to acknowledge also, that FDA has received a number of requests to extend the comment period beyond July 5, 2022. At this time, FDA cannot provide an update on those requests. All comments are given careful consideration when deliberate and write writing or verbally. As a reminder, the links and information to submit a written comment are listed on the screen and are available on multiple pages on our website. In just a moment, I will turn it over to Michele Mital, CTPs, acting Director and Rear Admiral Richardae Araojo, FDA associate commissioner for minority health and Director of FDA's Office of minority health and health equity for brief welcome. Then we will hear from CTPs Office of Regulations, Eric Mandel and eight nice regulatory councils, who will share a high-level overview of proposed rules we're discussing today. Our priority for today is to hear from the public. So, we will keep our introductions brief, and the introductions overview to after that we will invite our confirmed speakers to provide their comments. As a reminder, this meeting is being recorded and a transcript will be added to the dockets of the proposed rule as well as to the CTP website. Finally, today's session will be closed captioned, and an ASL interpreter will be on the call as well. With that it is my pleasure to introduce CTPs acting Director Michele Mital.

MICHELE MITAL: Thank you, Necola. Welcome, everyone. Thank you for being here to provide comments on FDA's to propose product standards, one that would prohibit menthol as a characterizing flavor in cigarettes, and another that would prohibit characterizing flavors other than tobacco flavor and all cigars. These proposed product standards are part of FDA's commitment to making tobacco related disease and death part of America's past and addressing health disparities. If the proposed rules become final, they will help prevent youth from becoming the next generation of smokers and help current smokers quit. These actions are an important step forward to reduce the appeal of tobacco products, protect youth, advance health equity and save lives. When we propose regulatory actions, we consider how they will impact people who currently use tobacco products, as well as those who do not use any tobacco products and broader communities and populations at large. An important part of this process is considering comments from stakeholders, including individuals sharing their own perspectives, organizations with expertise in public health, social justice and health equity, academia, as well as different sectors of the industry. While we know many individuals and groups have already provided written comments to the docket, we are pleased to be able to conduct these listening sessions, which provide an alternative format for individuals, communities and organizations to share their perspectives with FDA. Years of scientific research and analysis stand behind these proposed rules as to voices from a wide array of affected communities seeking better health and health equity. I'm proud to be part of this important step in the process, and grateful to everyone who takes the time to comment on the rules. We look forward to hearing a broad representation of ideas and perspectives during these listening sessions. Thank you for your participation in the rulemaking process. It is now my pleasure to introduce Rear Admiral Richardae Araojo to provide some opening remarks.

RADM RICHARDAE ARAOJO: Thank you, Michele, and thank you to everyone for joining us today, and FDA is office of minority health and health equity, we aim to promote and protect the health of diverse populations through research and communication of science that addresses health disparities. Our office works collaboratively with FDA centers and offices such as CTP to address health disparities and ensure that FDA's health equity goal is prioritized throughout all of our work. We have made significant progress over the past 55 years and encouraging people to stop smoking, but the reality is that not everyone has been included in that progress. For far too long, certain populations, including communities of color, low-income populations, and LGBTQ+ individuals have been disproportionately impacted by tobacco use, and despite our progress, we know that each year 480,000 lives are lost prematurely from a smoking attributable disease, making tobacco use the leading cause of preventable death and disease in the United States. An estimated 18.6 million people currently smoke menthol cigarettes in the United States. These smokers include people from all walks of life, and all demographic backgrounds, but the prevalence and the public health burden of menthol cigarette use is not the same across different communities. Nearly 85% of all black or African American smokers use menthol cigarettes compared with just 30% of white smokers. It is also important to note that in the United States significantly fewer African American smokers report long-term quitting compared with non-Hispanic white smokers. Furthermore, African American smokers are more likely to die of tobacco related disease than white smokers. As for cigar use, data show that flavored cigars are disproportionately popular among youth, young adults and communities of color, and some research demonstrates that among past 30 days, cigar users Hispanic Latino, black African American and Asian young adults have greater odds of using flavored cigars compared to their non-Hispanic white peers. I know some are concerned that these actions if finalized can result in increased state and local policing actions and even criminal penalties and some of the very same communities that have advocated for these rules and are expected to see major health benefits as a result. We take these concerns seriously. It is important to remember that the FDA's enforcement authority is limited to manufacturers, distributors, wholesalers, importers and retailers only. Consumer possession will not be governed by this rule. We encourage the public to submit comments on how FDA can clarify the respective roles of FDA and state and local law enforcement within the rules. If finalized these rules, rules will represent powerful science-based approaches that will have significant and long lasting public health impact, including helping to significantly reduce youth initiation and address tobacco related health disparities. These product standards will save lives and improve the public health of our country. That's why I'm pleased to be part of today's listening session and hear your perspectives and about FDA's proposed product standards. Our next speaker is Eric Mandle from CTP's Office of Regulations.

ERIC MANDLE: Thank you and good morning, I will provide a brief overview of the tobacco products standard for menthol, and cigarettes proposed rule. The proposed rule would menthol as a characterizing flavor in cigarettes. Menthol is minty flavor and sensory effects reduce the harshness of cigarette smoking and make it easier for new users to continue experimenting and progress to regular use. By prohibiting menthol as a characterizing flavor in cigarettes. FDA expects a significant reduction in the likelihood of youth and young adults' initiation and progression to regular cigarette smoking, which is expected to prevent future cigarette related disease and death. In addition, the proposed standard if finalized would improve the health and reduce the mortality risk of current menthol cigarette smokers by substantially decreasing cigarette consumption and increasing the likelihood of cessation. The proposed rule would prohibit menthol as a characterizing flavor in cigarettes as well as cigarette components and parts, including the tobacco filter, wrapper, paper and menthol flavoring separate from the cigarette. The proposed rule would also prohibit persons from manufacturing, distributing, selling or offering for distribution or sale within the United States the cigarette or cigarette component or part that has not been compliance with the product standard, as others have emphasized, FDA enforcement will address manufacturers, distributors, wholesalers, importers and retailers, not individuals. FDA is proposing the menthol product standard would be effective one year after the publication of the final rule and is requesting comments and

whether earlier effective date is necessary for the protection of public health. Thank you, and I will now turn it over to my colleague Nathan Mease.

NATHAN MEASE: Thank you, Eric Mandle, I'm Nathan Mease I will give a brief overview of the proposed rule tobacco product standards for characterizing flavors in cigars. The proposed rule if finalized would prohibit characterizing flavors other than tobacco, and all cigars and their components and parts. Under the proposed rule, no person may manufacture, distribute, sell, or offer for distribution or sale within the United States, a cigar or any of its components or parts that has a characterizing flavor other than tobacco. Again, consumer possession will not be governed by this rule. Characterizing flavors and cigars and other tobacco products play a key role in how users and non-users particularly youth initiate progress and continue using tobacco products. Characterizing flavors and tobacco products increase the appeal of those tobacco products to youth and promote youth initiation, resulting in the increased likelihood that youth and young adults experimenting with flavored cigars will progress to regular cigar smoking. If finalized, the proposed rule would reduce the appeal of cigars, particularly to youth and young adults, and thus decrease the likelihood of experimentation, development of nicotine dependence progression to regular use and the resulting tobacco related disease and death. If finalized, the proposed would improve public health by increasing the likelihood of cessation among existing cigar smokers, and it would improve health outcomes within groups that experience disproportionate levels of tobacco use, including vulnerable populations, thus, advancing health equity. Thank you. I will now pass it back to our moderator, Necola Staples.

NECOLA STAPLES: Thank you, Nate, and thank you to all the speakers today. You're ready to begin the next portion of our agenda, and welcome each of our confirmed speakers to provide their comments on FDA has proposed product standard to prohibit menthol as a characterizing flavor and cigarettes and or FDA is proposed product standard to prohibit characterizing flavors in all cigars. Before we get started, I'll provide you with a few details about the process we're planning to follow for today. For each speaker. First as a reminder, we will ask each speaker to limit your remarks to five minutes or less. To assist commenters with timekeeping. We will notify you at the one-minute remaining mark in order to be fair, and equitable in all speakers. If your remarks do continue past the time limit, we will need to move on to the next speaker so your line will be muted. We recognize there are some strongly held and differing perspectives on the topic of menthol cigarettes and flavored cigars, and we look forward to hearing all points of view. We ask that all remarks be focused on the FDAs proposed product standards to prohibit menthol as characterizing flavor in cigarettes, and to prohibit characterizing flavors in all cigars. At the start of your comment, please clearly state your name and the organization you represent or note that you are speaking in your individual capacity. Let's get started. Once your name is called, you will be unmuted so that you can make your comments up first. We're hear from Tony Daniel, you have up to five minutes for your comments. Please proceed. Tony Daniel. Tony Daniel OK. Up, next.

TONY DANIEL: Did I hear you?

NECOLA STAPLES: Tony?

TONY DANIEL: I'm sorry. Yeah, OK. Oh, that's great. Please proceed. Alright. I'm on Fantastic. OK. Yeah. By way of introduction. I'm Tony Daniel held a PhD in American politics, and I've been trained in the deployment of advanced statistical methods as well as the study of public policy. I'll be commenting primarily with respect to the proposed prohibition on menthol flavoring, and I'm here representing a resource from the 30,000-foot view. It seems evident that these prohibitions will come at the expense of workers, small business retailers and the very communities these proposals are meant to serve. The goal of the flavoring bans is doubtless well intentioned, the communities they're meant to serve are themselves underserved, but the data are clear that we are facing historic

declines in underage use of traditional tobacco products. Underage use of all cigarettes and menthol cigarettes is at generational lows. Total cigarette usage trends continue to decline and all of these public health gains have occurred without prohibition-based policies, but rather with underage prevention, education, and cessation support, all of which would be doubled down upon.

This proposal hurts workers. Today these tobacco products are made distributed and sold through the regulatory system, with 1000s of union workers making it happen. These menthol cigarettes and flavored cigars are made in FDA regulated facilities. 1000s of workers have good thing Japanese facilities, legal regulated retailers employ over 2.3 million Americans. These American workers ensure that tobacco products in the US are made distributed and sold in full compliance with regulations. This ban, on the other hand, will cause as we've seen with the list of drugs and alcohol prohibition of black market to arrive, and there's no credible argument then illicit market won't arise, and it likewise strains credulity that law enforcement organizations will not respond to individual possession as a result. This, these proposals will hurt small business or sailors. Proposed mental ban would have a negative impact on retailers and will create a market that will criminalize people of color. Massachusetts banned the sale of menthol cigarettes in 2019. The drop in cigarette sales led to a 32 million dollar drop in the state's tobacco excise, and while some would argue that this is evidence demand work is intended. Data show that decline in sales merely moved to neighboring states. These proposals will hurt people of color. Everyone on this call supports efforts to address health issues associated with tobacco use, and I'm a firm believer in enhancing public health outcomes for Americans, but this is deeply concerning that a federal prohibition on menthol cigarettes, presently being considered carries too many similarities to the failed drug policies that have led to the over policing and incarceration of millions of people of color. Over the past decade. The ACLU, the drug policy alliances, the national association of social workers, many other organizations have rightly pointed out that such a ban will have a disproportionate oppressive devastating effect on communities of color. According to the CDC, approximately 80% of blacks 35% of Latin X who choose to smoke are menthol cigarettes. These are the communities who have lived with the consequences of these failed war on drugs policy. Now, even his work is being done to repair the damage wrought by these policies. This proposal threatens to create another systematic mechanism that will fuel criminalization and over incarceration. It is clear ban will have the effect of promoting cessation among some persons of color, but this will come at the expense of others who will suffer negative public health outcomes as a result of prosecution, and I share your alarm with respect to the teen initiates whose first choice is menthol flavor, but this is not the best practice. We have proven methods to reduce adolescent adoption and promote cessation, and none of those methods include prohibitions. Other countries from Canada to United Kingdom have tried to criminalize the same tobacco products, and it has not led to any dramatic public health improvements. These proposed bans will move us in the wrong direction. They will create illicit markets in these products, ship these products out of regulated domestic manufacturing spring state budgets, weaken small businesses, promote incarceration, all of this despite historic lows and underage tobacco use. Please reconsider. Thank you, Dr. Daniel for the record.

NECOLA STAPLES: Thank you. Up next, Maritza Perez. You are free to unmute your line. You have five minutes to make your comments.

MARITZA PEREZ (DRUG POLICY ALLIANCE): I believe I was muted. So... Hi everybody. Today I'm going to be giving remarks on behalf of the Drug Policy Alliance. My name is Maritza Perez. I'm the Director of the Office of National Affairs at the Drug Policy Alliance, based in Washington DC. Today, I respectfully submit comments on the proposed tobacco products standard for menthol and cigarettes. DPA is the leading organization promoting equitable drug policies and alternatives to the war on drugs. DPA envisions a world where the regulation of drugs is grounded in health, equity and human rights. The proposed FDA ban on menthol cigarettes is a step back, not forward for public health and sound drug policy. We urge the FDA to replace this proposal with a proposal that

supports a harm reduction approach. A ban on menthol cigarettes would give way to inherently dangerous, unregulated drug markets. When an individual does not know or cannot know what is in the substance that they are consuming, they are putting themselves at risk for serious health consequences. We have observed this trend many times in this country's history. Most recently with the introduction of unregulated fentanyl, and its analogs to the illicit drug market that is currently a driver of overdose.

Unregulated fentanyl made its way to the illicit street supply after a crackdown on pharmaceutical grade ethanol. Illustrating once more the consequences of drug prohibition. Without FDA regulation, unregulated manufacturing, illegal importation and unregulated sales, all create opportunity for harm. There is already a large illicit cigarette market in the US that would be able to supply new demands if the FDA's proposal went into effect. In fact, illegal cigarette sales comprised between 8.5% and 21% of the US cigarette market. The FDA's proposed ban would leave 18 million adult menthol smokers with no legal way to access their products and it would deliver them to the illicit market doorstep. Moreover, the FDA's ban of menthol cigarettes is targeted towards youth and young adults. Yet by regulating menthol cigarettes, the FDA has largely been able to prevent younger individuals from obtaining them. In fact, cigarette use for 18- to 25-year-olds has declined from 40.8% in 2002 to 13.8% in 2020. More specifically, underage menthol cigarette smoking is the lowest in a generation point 8%. This decrease is a result of public health efforts such as education, cessation support and raising the national minimum age to 21 years old, not a result of prohibition efforts. In addition to being dangerous to one's health. The proposed FDA, the adult menthol cigarettes is dangerous. Dangerous from a criminal justice perspective. An FDA ban would criminalize the sale, distribution and possession of menthol cigarettes under federal, state and local laws. If this ban goes into effect, all 50 states would treat possession as a crime. This criminalization could result in mandatory minimum sentences, revocation of parole, fines, and even the loss of one's right to vote or even deportation, among other criminal legal consequences. Because the majority of people who smoke menthol cigarettes are black, this would further criminalize a population that is already over criminalized. Black people and other people of color have historically borne the brunt of disproportionate consequences in the criminal legal system. For instance, the Anti-Drug Abuse Act of 1986 was one of the first federal laws to differentiate between powder and crack cocaine. Establishing a stroke 100 to one weight ratio for mandatory sentencing, in order to target black people who are perceived to be the primary users of crack cocaine. Proponents of the law claimed that crack cocaine was more dangerous than powder cocaine, resulting in this 100 to 1 sentencing disparity for the substances. This ratio has lessened over time 1801 via the Fair Sentencing Act of 2010, but the disparity still exists to this day. Specifically in 2003, black people accounted for over 80% of those sentenced. Of those sentenced for crack offenses. Even the white and Hispanic individuals accounted for over 66% of people who use crack. There has been no evidence to support the claim that crack cocaine is more dangerous than powder cocaine. Eerily similar to how menthol cigarettes are not associated with higher disease risk or smoke toxicity than non-menthol cigarettes. DPA urges the FDA to invest in harm reduction approaches for menthol cigarettes, smoking cessation rather than prohibition. Harm reduction does not impose new burdens on the criminal justice system, and it protects people who use menthol cigarettes, both from health and legal repercussions. It offers adult consumers the option to engage in alternatives to smoking menthol cigarettes. Because state, and local communities, and law enforcement deal with the fallout of this proposed ban, not the FDA. State and local communities should be given the appropriate tools and resources to implement harm reduction initiatives that support menthol cigarette smoking cessation. We implore the FDA to pursue community based, evidence-based and equity-based, public health initiatives such as, educational and cessation campaigns. Instead of a blanket ban on a menthol cigarettes, and thank you for this opportunity.

NECOLA STAPLES: Thank you. Up next, Joelle Fathi. You have 5 minutes to comment. Commenters, when you begin, please be mindful of the speed with which you speak. We have captioners and

interpreters here to capture what you're saying, and we wanna be mindful to make sure we have equal access for all. Thank you. You may begin. Joelle Fathi. Joelle Fathi. OK. Flecia Brown, you are up next to speak. You have up to 5 minutes. Flecia Brown. James Brown. You're up next to speak. You have up to 5 minutes for your comments. James Brown. Alright. Vonetta Dudley. You are up next to speak. You have up to 5 minutes for your comments. Vonetta Dudley. Remember commenters, you have to take yourself off mute. Vonetta Dudley. Alright.

VONETTA DUDLEY (NYC SMOKE FREE AT PUBLIC HEALTH SOLUTIONS): Good afternoon, everyone. Sorry about that, I was switching over. My name is Vonetta Dudley, and I am the Director of NYC Smoke free at Public Health Solutions. Public Health Solutions PHS, is the largest, not for profit health agency in New York City. Supporting vulnerable New York City families in achieving optimal health and building pathways to reach their potential. NYC Smoke Free is a program of DHS where we work to foster environment supportive of policies that reinforce the tobacco free norms in communities throughout New York City. NYC Smoke Free utilizes its Youth Action Arm Reality Check to engage community partners and organizations across NYC to raise awareness about the negative health and social impacts of the presence and use of tobacco. At NYC Smoke Free, we educate communities about the dangers of tobacco product use. We work closely with our youth to build awareness that the tobacco industry targets them to use these products that are harmful to their health. Many times, we hear the youth tell us how they see these products in the community - colorful products, which looks like candy that have been added with flavors that are used to attract them as new customers. Menthol is a derivative of the mint plant, a green, leafy herb that can be used to heal the sick. It is found in gum, mouthwash and candy. When menthol is combined with tobacco products like cigarettes and cigars, it can be harmful to one's health. Why is something that is meant to heal combined with deadly products like cigarettes and cigars? Currently in New York City, 8000 public high school students smoke cigarettes. In New York City two out of three young smokers start with menthol flavored tobacco products. According to the New York City Department of Mental Health and Hygiene, 85% of black smokers and 64% of Latino smokers use menthol cigarettes. The menthol flavor additive helps to mask the harshness of the tobacco products. It gives a cooling sensation and numbs the throat. So, it is easier for the smoker to ingest. Tobacco companies add flavors to their products to attract more youth and teens, as well as to mask the taste of the products. This company know that their products are harmful and dangerous to our youth but find ways to disguise and appeal to the younger generation. Because of the misleading nature of menthol tobacco products, smokers who use these products take in more nicotine and have a harder time quitting. Menthol cigarettes are deadly and highly addictive. Menthol cigarette smokers are found to be more nicotine dependent, and it is much harder for them to quit smoking than those who smoke traditional cigarettes. About 25% of all cigarettes sold in the US are menthol cigarettes. There are about 30 to 70% more toxins found in menthol cigarettes than non-menthol cigarettes, and this includes tar and nicotine. New York City youth are tired of seeing these products in their community. They know that the more times younger audiences see these products in the community, the more opportunity there is for them to starting it. Let's remember the average age of the smoker is 13. Here are some words from our youth, (UNKNOWN), 18 years old. The Bronx, New York. Menthol tobacco products have a negative impact upon the community I live. I see this when I'm walking home. I see people smoking cigarettes and e-cigarettes that contain menthol. I also see a lot of advertisements for menthol tobacco products. It affects my school community because some of my peers who do smoke, smoke e-cigarettes, which contains the menthol flavor. One time I saw a classmate smoking an e-cigarette and I told her what menthol tobacco products really are. She said she never realized how dangerous it was and she quit. I feel like it's very important to educate the youth on menthol tobacco products. Many of them don't know that using it makes them more hooked to it. Janaya Tolbert, 17 years old, Staten Island. I think this discussion around the negative impact of menthol tobacco products is very much needed and overdue. So many communities, specifically the blacks, are continuously taken advantage of by the tobacco industry, by using their menthol tobacco products. We need to continue educating them on the facts. Our students are

alarmed because they know a new smoker can easily be their friend, and most teenagers start with a flavored tobacco product like menthol. They talk about their peers who started smoking because the tobacco products had a flavor in it, and it's harder for them to quit. They can provide more education, but when addiction has taken over, how do they help that friend, or relative, or school peer no longer fall prey to these tobacco products? It's time that we get a change in our community and a change for our youth's future. Thank you for the opportunity to speak.

NECOLA STAPLES: Thank you. Up next, Angela Jackie Kaslow. You may unmute your line. You have up to 5 minutes for your comments. Angela Kaslow.

JACKIE KASLOW: Good morning. Can you hear me?

NECOLA STAPLES: Yes.

ANGELA "JACKIE" KASLOW: Thank you. Thank you. I wasn't able to get on to zoom. So, I'm calling in by phone. My name is Jackie Kaslow. I would first like to state that I'm a direct descendant of the Lone Band of Miwok Indian. I'm also a familial related to the Pitt River Tribe of Bernie, and this is my do. These are all California Indian tribes. I'm also the Director of the Red Medicine Tobacco Prevention Project. Red Medicine is housed within the Native [UNKNOWN] Foundation, which is a tribally led non-profit organization located in Porterville, California. I respectfully appreciate the opportunity to provide public comments on the standards on your review and would like to state that I support the FDA ban on menthol and flavorings in commercial tobacco products. Given their impact on, given the impact of these additives on youth and young adult commercial tobacco use. First, I would like to mention that I have first-hand experience with the devastating impact of smoking on health. Having lost my own mother to lung cancer when she was 59 years old. This all happened after her lifelong addiction to cigarettes, two packs a day for over 40 years. I have experience observing her struggle with addiction to nicotine and her inability to quit, despite countless attempts to do so. I have also viewed a similar issue of tobacco, commercial tobacco addiction with my father, who also lost to a tobacco related cancer. This experience did little to prevent my own uptake of cigarette smoking in my youth and young adulthood, due to the normalization and socially accepted circumstances of commercial tobacco products. The experience only changed, or my experience might be the only change after having a child of my own and wanting a better, healthier life for him. Today, my comments are related to my current work when addressing commercial tobacco use disparities among American Indian in Central California. Were absolutely informed by my personal experiences. The Red Medicine Tobacco Prevention Project addresses commercial tobacco use and smoking disparities among American Indians and tribal communities in two ways. Through youth prevention, and youth and young adult prevention, and through building agency capacity, and that would be tribal agency capacity to support cessation. When we look at the prevalence of smoking in California, we see a state that has had great success in reducing smoking rates. However, when we disaggregate the data and we look at American Indian data, that prevalence is uneven and has not impacted native populations in a similar fashion, and in fact, when we look at the data for the area that I cover in my program, the disaggregated data shows that smoking rates are around 41% for adult American Indians. This is a social justice issue for the program, and it causes a great deal of alarm and need for us to address this problem. Because not only does it affect our young persons, but it also affects the entire communities of all ages. When we think about the products that are made available and are emerging on the market, we see a great deal of concern expressed by our community members about the flavorings in particular. Whether they're menthol or all flavors. These products appeal to young people, and we have already struggled with a history of commercial tobacco, misappropriation and corruption impacting our communities by using a culturally, traditionally spiritual product, turning it into a commercial product that produces addiction and dramatic health disparities. So, I'm urging the FDA to consider the effect of these products on our communities here in California, our tribal communities. I in

particular, work on re-educating my community about the traditional use of tobacco, and separating out these products, so that we can prevent another generation of addicted and addicted people, tribal people, who experience all the dramatic and devastating effects from these products. Thank you very much for allowing me the time to speak on this.

NECOLA STAPLES: Thank you. Up next, Rukaya Alrubaye. You may unmute yourself. You have up to 5 minutes for your comments. Rukaya Alrubaye. Rukaya Alrubaye. Alright. Up next. Yael Ossowski. Ossowski, excuse me. Yael Ossowski. You're up next to speak. You may unmute your line.

Yael OSSOWSKI: Hello? Yael Ossowski here. OK. I shall begin. So, my name is Yael Ossowski. I'm Deputy Director at the Consumer Choice Center. We're a consumer advocacy group that fights for lifestyle, freedom, innovative technologies and smart policies. So, we strongly oppose the FDA's proposed ban on flavored cigars and menthol cigarettes, and the reason is very simple. By rendering flavored tobacco products illegal, the FDA is depriving adult consumers of a chosen product category in flavor, rather than offering concrete solutions to get adults to switch to less harmful alternatives. Rather than tinkering on the edges, the FDA can actually take a definitive step taken by other global public health regulators. They can embrace and promote less harmful nicotine alternatives. It's as simple as that. Flavored vaping devices, nicotine pouches, snus nicotine gums, lozenges, and much more. These products exist, and they've been embraced by millions of consumers. They save lives. These products did not result from millions of dollars of government grants. They were not concocted, and, you know, large boardrooms funded by tons of government dollars. Nor were they the result of any government agency or anti-smoking group. Many of which might applaud your actions today. Rather, these were products that were introduced by entrepreneurs and innovators who saw a market opportunity, and that's the 31 million Americans who still smoke and want a way out. The fact remains that many of these products are much more effective at reducing smoking than bans, restrictions or the long arm of the law. The second reason is that by rendering these products illegal today, the FDA will create an incentive for illicit markets, where there are no regulations, there are no rules, no product standards, and no one checks for ID at all. When I spoke to the FDA's May 2019 meeting on cannabis products, the argument that I had then was exactly the same as today. We should champion smart policy that encourages competition and choice. Fact based evidence on harm reduction and eradicates the black market. Back then, it was to address the largely illegal cannabis market in the United States, and thankfully, our country has learned a lot since then, and we've begun to undo many of those punitive and socially damaging restrictions in our country, and many states are leading the way, but we're still living with those consequences. How bad will the situation be once we've entered the territory of nicotine prohibition? If the FDA's law aiming to outlaw flavored cigars and menthol cigarettes goes forward, it will indeed create a large black market. This rule will cut off legal supply, sure, but it will do nothing to address the demand for these products. We saw the same in 2019 in Massachusetts, where we have the task force admitting that the ban created entirely new market of hundreds of millions of dollars' worth of illicit counterfeit tobacco products brought in from other states. Studies have shown it's the same, in Canada and in Poland, and many of your former researchers from the FDA have done those studies, and what we've found is that at the very least, former menthol smokers have switched to using those menthol cigarettes. Is that a victory for public health or is it an abject failure? Why is the FDA looking to replicate this? Is this the flag that you wish to plant for a public health regulator? The last few years have been very testing for the Food and Drug Administration. We know that, with the pandemic, with the test, with the delays, the blocking of test that we're supposed to come to market with everything that's happening today with the baby formula crisis, we know that the eye has been off the ball on what really public health should be about. Has the FDA considered that a menthol ban will not achieve its primary aim? It might actually end up pushing smokers to use other tobacco products. When Congress gave the FDA authority to regulate nicotine products, it was with the expectation that your agency would both discourage youth use, and help adults quit, but sadly, today, the FDA has done neither on both counts. That's why we believe that a ban on menthol flavor

and in flavored cigars would really do nothing for consumers. It would do nothing for giving them a healthier option, a less harmful option, and it will do nothing to help increase the process that we have between law enforcement, minority communities and everything more. I know the FDA says that there will be no consumer penalties, but states write the majority of criminal laws in our country, and they will be following the incentive of the FDA, the incentives that they've seen with the drug war and the incentives that they've seen with the current ongoing prohibition. So, we urge you to rewrite these roles, start it over, and be sure that we focus on things that can actually help our communities, harm reduction, thank you.

TRACY GALLOWAY: Thank you. Hello, my name is Tracy Galloway from the FDA. As a reminder, please be mindful of your speed. The interpreters and campaigners are working hard to ensure they provide equal access for all listeners. Up next, we have Dashed Milligan. Dashed Milligan, Dashed Milligan.

Up next, we have Bria Gamble. Please state your name and organization or share that you are speaking as an individual. Bria Gamble, Bria Gamble.

BRIA GAMBLE: Yes, good morning. This is Bria.

TRACY GALLOWAY: Good morning, you have five minutes to provide your comment, please proceed.

BRIA GAMBLE: So, I am a student, a former HBCU college attendee, and I also worked for the Truth Initiative as one of the ambassadors in 2020, as well as in 2021, and I wanted to just talk a little bit about my reason, my wife, for having a passion to want to make these efforts happen in terms of menthol being banned. When I was a truth ambassador, one of the things that I really wanted to do with my time and resources there was to work with black communities, to begin to have conversations with families, basically intergenerational conversations about how menthol cigarettes may be used by older generations and the amount of smoking may be decreasing amongst youth like myself, but the fact that it is a public health issue when addiction is still present in the family. It has a strong hold on, not only the financial implications of what a family's able to do and move forward, but also on the physiological and emotional health and the well-being of generations to come, and when I was having those talks, I brought in public health professionals also from HBCU's to just break down the history of why menthol was being used and why it has been targeted amongst black people, and how we didn't necessarily, as a black community, ask for this to be brought on in more so, that we may see how banning menthol is taking us a few steps back, but really we cannot begin to put reforms in place to help with criminalization and other things like that. If we don't first address the fact that addiction is the key issue with these flavors being still present. I understand that it may be hard to see how, you know, this ban is going to take a step back, take us a step back, like I said, but I want people to know that if you are dealing with addiction at the severity of cigarette smoking, you are not able to sometimes move forward in your life when it comes to having a family properly or having to educate your own younger family members on what it means to deal with stress and other things like that, and that's truly why I am a passionate person when it comes to cigarette reform and other changes in policy. It may not seem as though young people care, but we care about our family members, even if we aren't the ones that are smoking cigarettes and other things like that. So, this is why I'm in support of the ban on menthol flavors. I understand that there are also many other flavors that have been in the rotation of being sold at lots of different stores, but they have now been banned as well. So, if we can ban flavors already from in other places, why can menthol not be included in that number, and finally, I'll just state, I'll just end with if you do not understand the history, you are bound to repeat it. It may not be menthol for the youth coming up, it could be something else that takes a hold on minority communities, and I would hate for us to not take this moment to begin to make those changes in the right direction, and this would just be one step in that right direction. Thank you.

TRACY GALLOWAY: Thank you. Up next, we have Alexandra Duruji, Alexandria Duruji.

ALEXANDRIA DURUJI: Morning. I'm Alexandria Duruji from Bowie, Maryland. Thank you for having me. For context, I'm a class of 2016 high school graduate and class of 2020 college graduate who studied Health and Human Services. I am now looking to transfer from my Master's in Health Promotion Management to a different master's focus on connecting health and technology. Since 2018, I have both interned and worked intermittently on various issues affecting the health of people who have smoked, including flavors in the vaping epidemic with younger millennials and Gen Z. I was also a Truth Initiative intern in 2019 and Truth Ambassador in 2021. Throughout my life, I have seen first-hand how menthols have been destructive to the African American community. I was born and raised in Prince George's County, a predominantly African American suburban county, and from my perspective in my lifetime, I've seen how years of unjust targeting and menthol advertisement have resulted in adverse health conditions of older adults and senior citizens in my community. I, myself and many friends of mine have relatives who have smoked for years and many who have thankfully successfully quit, but after many years of struggling to quit. Menthols have made starting cigarettes easier and quitting harder. To eliminate them is not to criminalize the black community. It is to protect our community from decades of harmful, targeted marketing and long-term adverse health disparities as soon as possible. The claim that banning menthols will open the door for harsher treatment and racial profiling from law enforcement truly grieves me as I find it deceptive. FDA has made it clear since April 20, 2021, when it pledged to begin within a year the process of proposing rules that prohibit the sale of menthol cigarettes and flavored cigars. The enforcement of the rules would be focused on manufacturers and retailers, not individual consumers. I believe this distinction should continue to be emphasized as the projected fear about harsher law enforcement is a distraction to the progress we are making to protect black health right now. Also, these two persons can coexist, that is, protecting our community from the lifelong health effects of menthols and reforms to ensure that our community is not racially profiled amongst law enforcement. Racial profiling and law enforcement is an overarching issue that transcends the menthol issue and should therefore be focused on at large, without being used as a scapegoat. That takes away from the progress we are making in this crucial area that can have such a positive impact on the black health now. Thank you.

TRACY GALLOWAY: Thank you. Up next, we have Shannon Campagna. Shannon Campagna, you have five minutes to provide your comments. Shannon Campagna.

SHANNON CAMPAGNA: Can you hear me? Hello?

TRACY GALLOWAY: Yes, we can. Yes.

SHANNON CAMPAGNA: OK, great. Pardon, good morning, thank you. I'm speaking for the Convenience Distribution Association today. The trade organization working on behalf of the (UNKNOWN). The convenience distribution sector represents more than \$102 billion in US convenience product sales, serving a wide variety of small retail formats. They directly employ nearly 59,000 people and support over 170,000 jobs and the sector contributing a collection of \$30 billion in tobacco excise taxes and 2.3 billion in tax revenue for federal state and local governments. Licensed horse distributors are facing major headwinds. Supply chain crises, labor shortages, inflation, fuel prices and economic uncertainty, while still dealing with the lingering effects of the pandemic. According to the National Association of Convenience Stores, 93% of Americans live within ten minutes of a convenience store, including 86% of rural Americans. For many Americans, their closest source of groceries, over-the-counter medicines and supplies is served by our members, yet the FDA is proposing to ban legal age restricted products sold only to adults 21 and older that will cause significant economic harm to responsible distributors and their retail partners. CDA strongly opposes these actions. More than, the more than 195,000 retail outlets selling tobacco,

many of them CDA member customers will experience a significant financial impact as menthol cigarettes and flavored cigars are, and on what smokers spend on cigarettes, they spend an additional \$0.25 on ancillary sales. 37% of the annual 56.1 billion in cigarettes sales are menthol. The ban would result in a sales decrease of 20.75 billion. The decrease in sales will not only impact thousands of small businesses around the country, but there would be a corresponding decrease in tax revenue. The Tax Foundation estimates that a ban on menthol cigarettes will result in a combined impact of federal, state and local governments of more than \$6.6 billion in the first full year following prohibition. A ban would result in federal revenue decline of 1.9 billion in the first full year, and at the state level, the decline in excise tax revenue would be 2.6 billion, the decline in sales tax revenue would be 892 million, and the decline in master settlement agreement payments would be 2.2 billion, for a state revenue loss total of 4.7 billion. The federal prohibition on the sale of menthol cigarettes [UNKNOWN] an Illicit Trade. GAO describes illicit trade as a whack a mole problem, stating that although illicit trade may decrease immediately following successful law enforcement efforts, these activities usually resume after a period of time. Illicit trade in tobacco is often connected to other crime, and criminals may use proceeds from illicit trade and tobacco to fund other crimes. A 2015 report from five federal agencies entitled The Global Illicit Trade in Tobacco: A Threat to National Security outlines these issues. A ban on menthol would send these products to this market, further exacerbating the challenges to national security created by illicit trade, among them funding terrorist activity, money laundering, human trafficking and other crimes. There are also public health implications of products are pushed out of legitimate streams of commerce into illicit trade. Products sold outside the purview of FDA and ATF can easily be adulterated, creating health risks from products that can't be traced through the supply chain or recalled, and they're outside of the tax system. Wholesalers take their role in the supply chain of tobacco very seriously. When a licensed wholesaler has paid a state excise tax for tobacco products, they receive a stamp from the state to affix to the tobacco product in order to sell it at retail. Tax to answer evidence of the payment of packs and calls with LNB prior to the rule's publication, CDA members explain that wholesale distributors are responsible for saying a physical stamp to each individual pack of cigarettes at significant cost. The process requires within warehouses, human capital software and special equipment. The category of product is banned, the assurance of responsible sales, safety and compliance is eliminated. CDA's, a long-standing supporter of the weak card program that trains and educates retailers to prevent attempts by minors to purchase age restricted products. Youth use of cigarettes is at the lowest in a generation at approximately 1.5%. Options other than prohibition are available to FDA that support its intention to reduce youth experimentation and addiction and increase the number of smokers who quit. These bans are poorly timed and ill advised. They will have far reaching unintended consequences on tax revenue, small business and a wide swath of communities and populations. Further, it's not likely to result in decreased smoking, initiation or higher rates of cessation. We urge FDA to redirect efforts to focus on cessation, support education, underage prevention and harm reduction, rather than prohibiting a legal product distributed within a highly regulated system. Thank you for your time.

TRACY GALLOWAY: Thank you. Up next, we have Anne DiGiulio. Anne DiGiulio, you have up to 5 minutes for your comment. Please proceed.

ANNE DIGIULIO: Well, thank you so much for having me. My name is Anne Digiulio, and I'm the national Director of Lung Health Policy with the American Lung Association. Today, I'm asking FDA to finalize two proposed rules. The first, to end the sale of menthol flavored cigarettes, and the second, to end the sale of flavored cigars. I'm asking that both rules be finalized by the end of 2022. The science is clear, menthol in cigarettes makes it easier for individuals to start using the products and become addicted and makes it harder for people, especially black Americans, to quit. The tobacco industry has long targeted black Americans and other vulnerable populations, causing significant health disparities. Evidence shows menthol cigarettes increase addiction and reduce smoking cessation, particularly among black smokers. Conversely, data strongly suggests that finalizing this

proposed rule to end the sale of menthol cigarettes will result in significant numbers of menthol smokers quitting smoking. Research from Canada, which ended the sale of menthol cigarettes in 2017, has found an increase in quit attempts in cessation among menthol smokers. We anticipate similar results in the United States, especially among the black community, which uses menthol cigarettes at a disproportionately high rate. Please remove all menthol cigarettes from the marketplace, including those that have received modified risk or exposure orders and authorizations. It is important that this regulation is comprehensive and not exclude any product. As for flavored cigars, I urge you to remove all flavored cigars from the marketplace, regardless of the type of cigar, its cost or other factors. If loopholes are created, the industry will find a way to exploit them. Additionally, I encourage FDA to extend this proposed rule to include prohibiting the sale of flavored hookah, water pipes and pipe tobacco. Research shows flavored cigars are popular among youth, playing a critical role in attracting new tobacco users and increasing the likelihood of long-term addiction. Additionally, research shows that no matter what the tobacco product is, flavors appeal to youth and young adults. All cigar smokers are exposed to hazardous levels of disease, causing toxins and addictive levels of nicotine. Even if so-called premium cigars have different use patterns, they do not significantly reduce the health risk to users to justify permitting the use of flavors. Both of these policy changes, ending the sale of menthol cigarettes and flavored cigars have the possibility to encourage more people to quit tobacco products. The best thing a tobacco user can do for their health, and it is important to note that these smokers, again, of both menthol cigarettes and flavored cigars, want to quit for good and not switch to other harmful tobacco products. As a result, it is vital that these people are guided towards the current seven FDA approved cessation medications and proven effective counseling. This has been repeated by the United States Preventive Services Task Force and other public health guidelines and medical guidelines that, this is the most effective way to overcome addiction to nicotine. By using and building upon the existing cessation infrastructure for state quit lines, tobacco cessation coverage through insurance plans. We have the capacity to help individuals who want to quit and are currently using menthol cigarettes and flavored cigars to quit for good. Additionally, it is important to continue to research to find new, safe and effective medications that will gain FDA approval to help smokers quit for good, and it is especially important to do this for the US population. I encourage FDA to finalize both of these rules by the end of 2022 and to follow the science for the protection of the public health. Thank you for the opportunity to provide comment.

TRACY GALLOWAY: Thank you. Up next, we have Mark Mitchell. Mark Mitchell, you have up to 5 minutes for your comment. Please proceed. Mark Mitchell. Mark Mitchell.

MARK MITCHELL: Can you hear me now?

TRACY GALLOWAY: Yes, I can.

MARK MITCHELL: OK. My name is Dr. Mark Mitchell. I am a public health physician, and I am an assistant professor of climate change, energy and environmental health equity at George Mason University. I am also the co-chair of the Commission on Environmental Health at the National Medical Association. The National Medical Association is the Organization of African American Physicians representing the interests of our 45,000 African American physicians and our patients. We are also a plaintiff with the lawsuit with the African American Tobacco Control Leadership Council. The Action on Smoking and Health and the American Medical Association. So, the National Medical Association supports both the proposed rules to ban menthol and the menthol characterization in cigarettes and in all flavored, and all flavored tobacco for cigars and cigarillos. So, as we know, 85% of African Americans smoke menthol. African Americans are more likely to die from the causes of cigarette smoking, such as many types of cancer, heart disease, lung disease, and also suffer other consequences, such as permanent disability and preterm birth.

As you've heard previously, menthol makes cigarettes easier to start and harder to quit, and we find that African Americans have both of these, that they are more likely to start and will find it harder to quit smoking. The tobacco industry has targeted the African American community with menthol cigarettes for many decades, starting in the 1970s, and has funded African American organizations also since that time. They try to sow doubt about the issues of cigarettes and change the subject to other things like criminalization and freedom restrictions. Don't be fooled, these are red herrings. The issues that we deal with are racism in health and health disparities and cigarette smoking, now particularly that, with menthol promotes these health disparities. In the 1980s, I started being active in tobacco control, and they said that we could not stop smoking in restaurants, in bars, that it would be impossible to stop smoking in prisons because it would promote criminalization and reduce the freedoms. We have done all of those things and we have not seen an increase in criminalization around tobacco. There is no right to smoke. So, again, we support these rules. We, but we ask three things. One, that there be no added menthol at all as the definition of the characterizing flavor. Sometimes menthol is not defined as part of the flavor but is added. So, we believe that there should be no added menthol. We believe that one year to finalize the rule is too long. For our second point, we believe that there have been several previous hearings and that a three-month time to finalize the rule after these hearings is sufficient, and we believe that the ban on menthol should not just be for cigarettes and cigars, that it should also be for e-cigarettes, and so with those comments, we appreciate the opportunity to present today. Thank you.

TRACY GALLOWAY: Thank you. Up next, we have Rahn Bailey. Rahn Bailey, you have up to 5 minutes for your comment. Please proceed.

RAHN KENNEDY BAILEY: Morning. Can you hear me?

TRACY GALLOWAY: Yes, we can. Please proceed.

RAHN KENNEDY BAILEY: Get my volume up. Can you hear me?

TRACY GALLOWAY: Yes, we can. Yes.

RAHN KENNEDY BAILEY: OK, good morning. I'm, my name is Rahn Kennedy Bailey. I'm a clinical forensic psychiatrist here in New Orleans, Louisiana. I'm a national consultant, a speaker, an author on issues of gun violence, and I've written books on gun violence and personal violence, health disparities, [INAUDIBLE] African American adults and youth, but I also focused on the criminalization of Black males. My copy of my CV is attached. I've been asked by [INAUDIBLE] to share my experience on these issues across the full board. The health issues, the disparity issues, the legal issues, criminalization issues regarding [INAUDIBLE] ban on menthol cigarettes, and I plan to do that in my 5 minutes today. I'll begin by saying that there are many prior speakers, some that I know have spoken, I think, eloquently and correctly about issue regarding the health concerns and I agree with all of those. People whose actually worked in my career in addiction medicine and I've actually worked to get people to stop smoking cigarettes, and I think that actually is the best decision for their health, but I actually speak today in a different role as a [INAUDIBLE] psychiatrist. My concerns are about the legal issues, particularly the risk of hyper-criminalization of African American males, particularly as I've worked in that venue for the better part of 30 years. I think as a doctor, we've addressed this issue of [INAUDIBLE] often OR unintended consequences of issues or legal issues like this. I note that if you spent your career working to lessen disparities, it's actually a bit troubling that there would be attempts to create laws that, although on one face are likely to try to help persons health, but I experience there often in American society has been indirectly they're used incorrectly, in my opinion, but consistently to over criminalize young African American males. I spent a lot of my career working to address that, but today I speak against the ban for that reason and that reason primarily. [INAUDIBLE] smokers' issues regarding cigarettes of choice. So, with more African

Americans smoking menthol cigarettes, I think over 80%, the data shows consistent data sets of the risk that that group will be unfairly targeted for [INAUDIBLE] concerns me. Issues regarding eliminating all cigarettes of someone arguing that will be very different than issues regarding eliminating only some types of cigarettes, but again, black patients, very often [INAUDIBLE] tend to use, I find it objectionable. [INAUDIBLE] issues regarding public health. My experience, unfortunately as a psychiatrist for 30 years has been [INAUDIBLE] laws and legality don't change consumer habits or behavior. People [INAUDIBLE] drinking alcohol or using toxic substances [INAUDIBLE] other aspects of use. [INAUDIBLE] issue regarding marijuana with some settings we're legalizing now has been illegal for decades, century or more. We really saw decreases in use. We saw different attempts to use, use in different settings, different pathways, which I find to be key. Again, [INAUDIBLE] this terms unintended consequences that I'm particularly sensitive to in this regard. So more about the criminal issues, I think that the FDA's ban clearly says there's not going to be a force against users, but I just frankly [INAUDIBLE] in my experience in this setting. The fear is that [INAUDIBLE] case, too many individuals, local policemen, local law enforcement at the local level, at the grassroots level, will attempt to capture someone and engage with them as a reason to stop them because they're looking for issues [INAUDIBLE] access to menthol cigarettes. That [INAUDIBLE] African Americans that I speak against that today. [INAUDIBLE] it's also true that we've had other laws throughout my entire career [INAUDIBLE] law enforcement all too often targets people in these communities. [INAUDIBLE] lacking resources that might have the attempts and (INAUDIBLE) to limit access and chances where [INAUDIBLE] access them, and I think that very often puts them at a greater risk. So again, [INAUDIBLE] spoken eloquently about the fact that that should not happen, but my experience of the 30 years of practicing black psychiatrist is that it does, and that's where my fear or concern comes. [INAUDIBLE] will actually happen in this regard, I think, over time. I know that there's a lot of discussion about [INAUDIBLE] contraband laws [INAUDIBLE] today have tried to do this, and they've really done it unsuccessfully because it's just so difficult to change these large patterns of systemic activities, systemic behavior. [INAUDIBLE] states have actually imposed laws which impose penalties for incarceration, property forfeiture, [INAUDIBLE] possession of issues regarding contraband like tobacco. Obviously, this is occurring more of the same. I'd also say that we also note that the case of (INAUDIBLE), which has been mentioned today, I think is instructive because the reality is once these conflicts happen [INAUDIBLE] police to stop someone, especially African Americans (INAUDIBLE).

TRACY GALLOWAY: Thank you. Up next, we have. David Hancox. David Hancox, you have up to 5 minutes for your comment. Please proceed.

JOSEPH GOLDEN: Can you hear me?

TRACY GALLOWAY: Yes, we can. Please proceed.

JOSEPH GOLDEN: Hello. My name is Joseph Golden and I'm a rising junior in college and a public health intern for US Park. I want to share my experience and observations as a young person here. My first experience with flavored cigars was a college-sponsored event during my freshman year. I was in a group with my male friends, and we were encouraged to smoke cigars as a bonding experience. It may seem like a small thing, but it's indicative of a larger problem. Young men are smoking cigars at a much higher rate compared to young women. We're conditioned to believe smoking cigars is a cornerstone of manhood, and I think tobacco companies pushed that narrative along, that appealing flavors create a new generation of [INAUDIBLE] smokers. As the FDA itself notes, nearly 74% of youths aged 12 to 17 who use cigars say that, say that they smoke them because they kind of natural flavors that they enjoy. Similarly, menthol cigars are another tool tobacco companies use to hook kids into becoming lifelong customers. Menthol in cigarettes soothes the back of the throat and provides a cooling sensation that makes it easier for kids to start and continue smoking. A concerning trend I see among [INAUDIBLE] people my age, including some

of my friends, is that smoking cigarettes is starting to be seen as cool again. That cool image, coupled with menthol flavoring, is a dangerous mix. Taking menthol in cigarettes and flavored cigars off the market are important ways the FDA can limit appeal of tobacco products to younger people and to protect the next generation of kids from tobacco-related diseases and illness. Thank you so much for your time.

TRACY GALLOWAY: Thank you. Up next, we'll have Dave Hancox. Dave Hancox, you have 5 minutes to provide your comment. Please proceed. Dave Hancox? Dave Hancox?

DAVID HANCOX: Yes. Can you hear me?

TRACY GALLOWAY: Yes, we can. Thank you. Please proceed.

DAVID HANCOX: Thank you. I'm David Hancox, and I was the Director of State Audits in the New York State Comptroller's Office. I've written and taught on issues focused on assessing government programs and policies such as the proposed regulation The FDA is considering, banning menthol cigarettes. I've also consulted with the tobacco industry on various tobacco issues. The FDA has received an incredible amount of public feedback on the proposed ban on menthol cigarettes, both for and against it, but in my comments today, I want to focus on three points that were not touched on in Monday's listening session. First, a study published just this month in the European Journal of Public Health indicates that at best, the evidence is mixed on whether a menthol cigarette ban in Poland has worked as intended. According to the study's authors, among them, Dr David Levy, whose study has been cited by the FDA to support the menthol ban here. Poland is one of the first countries with a large menthol cigarette market to attempt the ban on the sale of menthol cigarettes. Menthol cigarettes make up 28% of Poland's cigarette sales before the European Union banned menthol in 2020. The study's authors suggest that the effect of the ban on menthol in Poland may provide a more accurate model of how the US cigarette market may change should menthol be banned here, then, is the effect of the Canadian menthol ban, where menthol sales made up about only 5% of the cigarette market when the country banned menthol sales. In Poland, it turns out sales of menthol cigarettes declined by 97% after the ban. That, of course, is to be expected when legal sales of a product are banned, but more importantly, sales of regular cigarettes in Poland increased nearly 38% in the same time period. The bottom line is the study found, quote, total cigarette sales did not significantly decline after the menthol cigarette ban. To illustrate this, in Poland, for every 100 cigarettes sold before the ban, 72 would be regular tobacco and 28 would be menthol. An increase of 38% for the 72 regular cigarettes is 27 more cigarettes. So, the hundred regular tobacco cigarettes sold remain about the same as before the ban. Second, the FDA and many of the proposed rule supporters have pointed out that the menthol rule itself does not criminalize an individual's possession or use of menthol cigarettes, but will be enforced against manufacturers, retailers, wholesalers, importers, and distributors. This is certainly true based on the text of the rule. However, the rule ignores the fact that tax laws in all 50 states do in fact make it a crime to possess untaxed or unstamped cigarettes. Third, assuming this menthol ban worked perfectly, and every menthol smoker today gave up smoking entirely, the effect has serious financial implications for the federal government and the governments of all 50 states. State budgets will lose more than 5.9 billion dollars in state excise tax, 2.9 billion dollars in master settlement agreement payments, and 1.5 billion dollars in sales tax. Cigarette excise tax and MSA payments, which are based on the size of the nation's cigarette market, are dedicated to important state programs, including health, social services, education, debt payment, and tobacco cessation programs. My state, New York, dedicates 76% of these revenue sources to health care [INAUDIBLE] that provides support for healthcare programs. [INAUDIBLE] medical education, [INAUDIBLE] debt and charity care, child health plus the elderly Pharmaceutical Insurance Coverage Program and Family Health Cost Program. California dedicates an even higher percentage. 97% of its tobacco revenue goes to Medicaid, social services,

and other health programs. Banning menthol cigarettes is not in the public interest. Thank you for listening.

TRACY GALLOWAY: Thank you. Up next, we have Mario San Bartolome. Mario San Bartolome. Mario San Bartolome. Up next, we have Stacey Gagosian. Stacey Gagosian, you have up to 5 minutes for your comment. Please proceed.

STACEY GAGOSIAN: I am unmuted. Can you hear me?

TRACY GALLOWAY: Yes, we can. Please proceed.

STACEY GAGOSIAN: Sorry. Thank you. I'm Stacey Gagosian with Truth Initiative, and I am speaking today in support of both the menthol rule and the rule removing cigar flavors from cigars. These rules are two of the most important things that FDA could possibly do to not only improve public health generally, but more specifically to improve health disparities in, related to tobacco use. Menthol, as many speakers have noted, menthol cigarettes have been systematically targeted to African Americans, to the LGBTQ class community, to other communities, and this is no accident that these groups, these same groups use menthol at much higher rates than the general public and there, as well as their white counterparts, and so we strongly support these rules in order to prevent or, excuse me, in order to reduce health disparities. Also, we very strongly support the factors that FDA has listed that they will take into consideration when determining whether or not a product has a characterizing flavor. It's very important for FDA to have flexibility around this because the industry has been well known to find loopholes in policies in order to continue to put deadly products on the market, and so it is important that FDA has the flexibility it needs to prevent those kinds of loopholes from being exploited. Also, for the cigar rule, we are very supportive of extending that to hookah and pipe tobacco, that it is important that all combustible products have flavors removed. We know that youth use flavored products, all of these products, cigars, menthol cigarettes, hookah, and other products at very high rates, and so these are all starter products for youth and bringing young people into tobacco addiction, and these are obviously the most harmful products on the market as well, and so we want to ensure that these are no longer available to entice our young people. We will be submitting comments to the record that go into other areas in more detail, but I wanted to stress today just the importance that these rules will have on reducing tobacco disparities, and we fully support these rules and hope that FDA will finalize them as soon as possible. We cannot wait. There are entire communities who are experiencing death and disease from these products, and we must remove them as soon as possible. Thank you very much.

TRACY GALLOWAY: Thank you. At this point, we have gone through the list of confirmed speakers for this period. We are interested in hearing from those whose organizations have not been represented today. If you were on the line and would like to speak and your organization has not had an opportunity to comment, please respond in the chat with your name and affiliation. We will go in order of those who signed up until noon today.

Laura Turner. Laura Turner, you have up to 5 minutes for your comment. Please proceed.

LAURA TURNER: Hello. Can you hear me, OK?

TRACY GALLOWAY: Yes, we can. Please proceed.

LAURA TURNER: Hi. Thank you for letting me speak. My name is Laura Turner, I'm from Saint Louis, Missouri, and I just wanted to make a few points about why it's so important for this proposed rule to move forward. The thing I want to focus on is how menthol has impacted black Americans and has been disproportionately marketed towards the community. As a volunteer smoking cessation

counselor, I have seen this first-hand with many people in the black community having a very difficult time quitting and having started out and continuing to use menthol. For decades, we've seen that the tobacco industry has targeted black Americans with marketing for menthol cigarettes and this targeting does continue today, and this deliberate targeting of the black community has led to a dramatic increase in the prevalence of the use of menthol cigarettes in that community. Starting from in the 1950s, only 5% of black smokers to 85% today compared to just 29% of white smokers, and having seen this first-hand, I know that black smokers are less likely than white smokers to successfully quit smoking. Tobacco use is also the number one cause of preventable deaths among black Americans, and it claims 45,000 black lives every year, and tobacco use is a major contributor to three of the leading causes of death among black American's heart disease, cancer, and stroke, and they die from these conditions at far higher rates than other Americans. So, there's many more statistics I could share but the bottom line is my big ask is please remove all menthol cigarettes from the marketplace, including those that have received modified risk or exposure orders and authorizations.

And we urge the FDA to finalize this rule before the end of 2022, and I just want to mention, too, that we know that we've heard a lot of different points on this but we know that it would not overwhelm our capacity to provide cessation services to menthol smokers who would want to quit and that that capacity can and should be expanded to meet the need, and it will not cause an increase in police abuse of black people in other communities of color because the FDA has made it clear, as we've heard many times, that it will be enforced only against commercial entities, not individuals, and it will not be enforced by local police, and I just want to encourage the FDA that given the continuing toll on public health from menthol tobacco products and the fact that FDA has consistently maintained since 2013 that prohibiting menthol as a characterizing flavor in cigarettes would promote public health, a proposed rule should be issued without further delay. Thank you for your time.

TRACY GALLOWAY: Thank you. Up next, we have Maia Murphy. Maia Murphy, you have up to 5 minutes for your comments. Please proceed.

MAIA MURPHY: Hello. Can you hear me?

TRACY GALLOWAY: Yes, we can. Please proceed.

MAIA MURPHY: My name is Maia Murphy and I'm with Action on Smoking and Health. Thank you for allowing me to speak today. You've no doubt heard menthol described as making the poison go down easier. Nothing is more true, but I'd like to suggest an additional analogy. The tobacco industry are hunters. Children are their prey. Flavors are the salt lick. Congress got rid of most flavors in 2009 but left menthol, the biggest, most effective salt lick of all untouched. FDA has taken far too long to move to rectify that omission. Hundreds of thousands, if not millions of lives, have been or will be lost as a consequence. Please move forward as this was an emergency because it was, and it is. Every day that passes allows the industry to hunt down more children. To complete the analogy, in most states, salt licks are illegal. Menthol should be too. Thank you for your time.

TRACY GALLOWAY: Thank you. Again, we want to hear from as many different organizations as possible. If your organization has not had an opportunity to speak, please put your name in the chat. Stephanie Huang. Stephanie Huang, you have up to 5 minutes for your comment. Please proceed.

STEPHANIE HUANG: Can you hear me?

TRACY GALLOWAY: Yes, we can. Please proceed.

STEPHANIE HUANG: Thank you. Good morning. I am Stephanie Huang, a high school student in Houston, a youth, and I strongly agree with the FDA proposed rules today. Thank you for the opportunity for me to listen to you today including mothers, ministers, prevention societies, reproductive health organizations, medical societies, law enforcement, tax companies, and more, but today, I noticed a lack of comments and opinions from those that this rule will protect the most, youth. Youth like me. The tobacco industry needs youth to start smoking to replace old smokers and their performance depends on youth getting addicted. To do this, Big Tobacco has consistently found loopholes to target and intentionally market to the youth and to minorities. The lives of my peers, the lives of my siblings, and the lives of my community are not statistics and certainly not revenue. How much longer do we have to wait for change? Menthol could have been banned in cigarettes in 2009. While this 2009 ban on flavored cigarettes was in fact a major milestone, from 2009 to 2022 how many more youth have become addicted to this deadly, lifelong habit? I've seen it at schools, schools surrounding my neighborhood, and even middle schools in my community. Leaving menthol out in 2009 was a direct target to youth like me and has had a devastating and disproportionate impact on the health of black Americans and worsened health disparities. I've seen it with my own eyes as I moved from the historically low-income and disadvantaged Houston neighborhood in [UNKNOWN] where 21.9% of adults smoke to a more affluent neighborhood of River Oaks in Houston where 9.8% of adults smoke. This is our chance to fix the 2009 bill that excluded menthol. Menthol, which only has one purpose, makes smoking easier to start and harder to quit. Big Tobacco knows this. As youth, we are afraid of the loopholes that Big Tobacco creates. I ask that the FDA should edit the legislature to ban menthol as an ingredient, not just a characterizing flavor. Make it clear and comprehensive so that they cannot find loopholes and target us youth even more. Thank you for the opportunity to speak today as we take a powerful step for prevention. Consider the position of the youth and don't make us wait any longer. Thank you.

TRACY GALLOWAY: Thank you. Up next, we had Rukaya Alrubaye. Rukaya Alrubaye, you have up to 5 minutes for your comment. Please proceed.

RUKAYA ALRUBAYE: Hello. Can you hear me?

TRACY GALLOWAY: Yes, we can. Please proceed.

RUKAYA ALRUBAYE: Thank you. Hello. My name is Rukaya Alrubaye, and I am a substance misuse and abuse prevention from northwest Arkansas. I have been working in prevention for almost four years now to help stop the spread of tobacco in communities across the globe. I was recently honored as a National Youth Advocate by Tobacco-Free Kids, and I'm a tobacco-free ambassador. I also recently received the Outstanding Youth Award from the Arkansas Prevention Network. I am honored to be able to speak to you today about this pressing issue, an issue that will negatively affect generations to come if we do not stop it. It is the issue that has plagued every single country around the world. An issue that has torn families apart and leave children growing up sooner than they should. When I was two years old, my family and I moved from the war-torn country of Iraq to this land of opportunities. From a young age, my parents emphasized being tobacco-free because they had grown up in a society where there was a culture of tobacco use. My grandfather used to smoke two packs of cigarettes a day for roughly 30 years, leaving my father and his five siblings with secondhand smoke-related issues. Why must we live in a society where parents fear that one day their child will not come home due to an overdose from some sort of nicotine? When our youth have to speak up to fight for their futures, then there is not enough being done. Why is the tobacco industry promoting products that they don't even take or want their children to? When asked why none of the tobacco company's executives smoked, an RJ Reynolds executive responded and I quote, "We don't smoke that shit, we just sell it. We reserve the right to smoke for the young, the poor, the black, and the stupid." It is not only offensive but goes against all of our country's principles and ethics to tolerate this hypocrisy and prejudice. The tobacco industry has also stated the base of our

business is the high school student. Our youth are not old enough to vote, and yet we are supposed to believe that they should be allowed to have access to products that could kill them. The tobacco industry then started using menthol in their products to make it easier for children to handle. The menthol provides a cooling effect that masks the harsh taste of tobacco. If a child were to try plain tobacco, they would never come back to it because the taste would just not be worth it. On the contrary, if something tastes like bubble gum or blue raspberry, or even just a mint, which are all familiar flavors to kids, then they would be more inclined to use it no matter how detrimental it could be. A human brain isn't fully developed until they are around 25 years old. When people are exposed to these products at such an early age, not only are they more likely to become addicts later in their lives, but they are also permanently altering their cognitive development. I dream of a world where our children's lives are worth more than the tobacco industry. Walt Disney once said, "all of our dreams can come true if we have the courage to pursue them." I consider this fight as the most important fight of my life. Thus, I'm willing to walk the extra mile to achieve my goal in creating a tobacco-free world. I know that there are many influential people who are listening to me in this call. Therefore, I call upon anyone who is willing to help me in this fight for the first tobacco-free generation. I will leave my contact information in the chat, so please reach out to me if you can support me in any way. I urge you to prohibit the use of menthol in flavored cigarettes and to help me in the fight for tobacco-free future. Thank you.

TRACY GALLOWAY: Thank you. Up next, we have Amanda Gray. Amanda Gray, you have up to 5 minutes to provide your comment. Please proceed. Amanda Gray.

AMANDA GRAY: Good morning. Can you hear me?

TRACY GALLOWAY: Good morning. Yes. Please proceed.

AMANDA GRAY: Thank you so much for your time. My name is Amanda Gray, the Executive Director of the Arizona Petroleum Marketers Association. APMA is a non-profit trade association representing gas stations, convenience stores, and the fuel industry across the state. We own, operate, and supply more than 1,200 fueling locations in rural and urban parts of Arizona. Our convenience store members also sell tobacco products, and roughly 30% of their in-store sales on average are cigarettes and other tobacco products. So, it's a significant and sort category for our members. We have a number of grave concerns regarding the FDA proposed rules relating to the ban of menthol cigarettes as well as flavored cigars. First and foremost is the concern that a ban is not going to be effective. History shows us that prohibition won't work, and it's not realistic to expect that millions of current menthol customers are going to stop or switch smoking. We have a concern that many current users will look for the same products in the illicit market and here in Arizona as a border state, that's a big concern for us. Today, you know, as the situation exists now, 37% of all tobacco sales in our state are illicit. That's about double the national average and it's the fourth-highest rate in the United States. Those illicit sales of tobacco products are costing Arizona taxpayers roughly \$174 million each year. That's the eighth highest rate in the nation, and we know that these illegal activities are not victimless. They can fund nefarious crimes like terrorism and human trafficking.

We see the illicit market as one of the major concerns with the proposal. In addition to that, you know, APMA members are responsible retailers of tobacco and vapor products. We take our role as gatekeepers of age-restricted products seriously. Our members check ID and only make sales to customers who are over 21, the federal age of purchase. Our members are not selling other illegal products in the manner that other illicit sellers do. We see retail as the safer spot. For the sale of age-restricted products because our members are part of the communities where they operate and there are penalties for mistakes. So, with that I would just say that we have a number of concerns with the proposal and that concludes my comment.

TRACY GALLOWAY: Thank you. Up next, we'll hear from Guy Bentley. Guy Bentley, you have up to 5 minutes for your comment. Please proceed.

GUY BENTLEY: Hello. Thank you so much for your time. I really appreciate the opportunity to give comments on behalf of the Reason Foundation regarding the proposed rule to prohibit menthol cigarettes and flavored cigars. Firstly, I just want to start off with some of the underlying assumptions FDA uses in terms of what the projected benefits are of this rule from a public health standpoint, in particular, using the process of expert elicitation to model what the potential number of lives and life-years saved will be based partially on the experience of Canada. Now, when it comes to expert elicitation, one of the primary rules in using expert elicitation effectively is that those contributing to that type of study and modeling actually represent a broad range of views on what the implications of the policy are and what its justification is. This expert solicitation was modeled on everyone who contributed agreed on the policy. So, this presents a very biased view in terms of what the likely effects are going to be. Secondly, expert solicitation is most effectively used where there are no real-world examples of the policy or proposal taking place in the real world. That's why we have it to provide a best as we can guesstimate in terms of what the likely effects will be but, in fact, we have quite extensive experience on what prohibitions of this kind will bring about. The most extreme being the Kingdom of Bhutan, which actually outlawed all cigarettes entirely and in fact that did not decrease tobacco consumption significantly because there was such a huge illicit market and Bhutan in fact recently relegalized the sale of tobacco products. Secondly, when we're talking about menthol cigarettes specifically, we have the experience of Canada which we see that the vast majority of Canadian menthol smokers continue to smoke and that a significant proportion of those continue to purchase menthol cigarettes on the illicit market, and in fact, compared to non-menthol smokers, menthol smokers did not quit at higher rates than menthol smokers although there were more quit attempts, but even in that underlying study, it is not clear whether menthol smokers were attempting more quit attempts at baseline. So, the effects are very minimal at best and also it should be noted that Canada's menthol market was around 10% or less, so less than a third the size of the US market. If we look at a more recent example, for instance, from the European Union, a study was recently published by Alex Liber and colleagues in the European Journal of Public Health showing that Poland, which had the largest menthol cigarette market in the entire EU at around 28% and not too dissimilar from the United States compared to other countries. They found that after the implementation of the menthol ban, there was no statistically significant decrease in tobacco consumption, and in fact, that might be an underestimate because as they disclosed in their study, they were not able to sufficiently track the illicit market. So, in fact, tobacco consumption it is quite conceivable, could even perhaps rise by an influx from the illicit market. We also see throughout the European Union a number of substitutes that consumers are now using to flavor their cigarettes such as flavor cards, sprays, filters, and other mechanisms essentially nullifying a lot of the projected benefits of this prohibition. I would also say in terms of the alleged appeal of menthol for youth, FDA has not sufficiently explained if menthol is so appealing to youth, why the majority of youth who currently smoke, which is at a historic low, choose a non-menthol product and also why menthol smokers tend to start later in life than non-menthol smokers, and also, in terms of addictive and potential liability of menthol, FDA does not explain why menthol smokers smoke fewer cigarettes per day than non-menthol smokers. So, the alleged case that these are particular threats to youth I think should be more questioned by FDA. We have conducted an analysis at the Reason Foundation showing that there is an inverse correlation between states that consume the most menthol cigarettes and youth smoking, i.e., the states with the highest amount of menthol cigarettes consumption have the lowest youth smoking rates. That should be at least somewhat dispositive of claims that menthol is particularly threatening or addictive for youth. It should also be noted that the most recent study of quit rates between menthol and non-menthol smokers, I believe it's from Vanderbilt University, shows no difference in quit rates between menthol and menthol smokers and no difference between African American and Caucasian smokers, but with that, we will be submitting further written comments outlining these points.

TRACY GALLOWAY: Thank you. Up next, we'll hear from Catherine McMahon. Catherine McMahon, you have up to 5 minutes to provide your comment. Please proceed. Catherine McMahon.

CATHERINE MCMAHON: Great, can you hear me?

TRACY GALLOWAY: Yes, we can. Please proceed.

CATHERINE MCMAHON: Thank you. My name is Catherine McMahon. I'm with the American Cancer Society Cancer Action Network. We are the advocacy affiliate of the American Cancer Society. I would like to thank the FDA for hosting this listening session on these two proposed rules and we support both rules to prohibit menthol as a characterizing flavor in cigarettes and all characterizing flavors in cigars. In order to maximize the public health benefits of these rules, we believe FDA should: One, finalize these two rules quickly without allowing any exemptions or loopholes for the tobacco manufacturers to exploit. Two, to start outreach for cessation support to people who smoke menthol cigarettes and flavored cigars now in anticipation of the rules becoming effective, and then three, ensure the equitable enforcement of these rules including clarifying that no law enforcement agency has the authority to enforce these rules against individual consumers. Tobacco use is the number one cause of cancer in the US. Innovations in cancer prevention, detection, treatment, and survivorship have come a long way, but not everyone has benefited equally. While overall cancer mortality rates in the US are dropping, populations that have been marginalized are bearing the disproportionate burden of cancer. For example, black people have the highest death rates and shortest survival rates of any racial or ethnic group in the US for most cancers. Lung cancer is the most common cause of cancer death among black men despite black men having overall lower lifetime smoking rates. More than 25,000 black people will be diagnosed with lung cancer this year, and more than 14,000 will die from lung cancer. Additionally, black individuals also experience more illness, worse outcomes, and premature death compared to white individuals. People who identify as lesbian, gay, bisexual, transgender, or queer may have higher risk of getting cancer than those people who identify as heterosexual. The American Cancer Society estimates there be 1.9 million newly diagnosed cancer cases and more than 600,000 cancer deaths this year, and for LGBTQ population, this could mean approximately 140,000 new cancer cases and more than 45,000 cancer deaths this year. These cancer disparities are largely driven by social mechanisms like structural racism but are also the direct actions of the tobacco industry in designing products and targeting its marketing to specific communities. To reduce deaths from tobacco-related cancers, everyone must not only have the ability to benefit from the advances in prevention and treatment of cancer but also be protected from the predatory action of the tobacco industry. Taking actions that protect those individuals that are bearing the disproportionate burden of cancer by the design of the tobacco industry meets the FDA standard for the protection of public health. Prohibiting menthol as a characterizing flavor in cigarettes and all characterizing flavors and cigars are some of the most important actions FDA can take to reduce initiation, promote cessation, and reduce tobacco-related health disparities. Given the role of flavors, there's no rationale for permitting any flavored product on the market. The FDA should not permit any exemptions and to comprehensively define characterizing flavors so a manufacturer cannot find a way to evade the attention of the prohibition and still attract youth and target specific populations. All cigars should be included in the rules. Cigars are sold in many flavors that are appealing to young people such as banana, mango, grape, and chocolate. All cigars expose users to hazardous levels of cancer-causing toxins and addictive levels of nicotine. Regular cigar smoking increases the risk of lung, oral cavity, larynx, and esophageal cancer. People who smoke cigars are 4 to 10 times more likely to die of these cancers than people who do not smoke cigars. People, especially young people, misperceive cigars and especially flavored cigars as less harmful than cigarettes. Additionally, FDA must outreach to people with resources for free, accessible, and culturally appropriate cessation and counseling services. There are evidence-based proven resources available, including medications, counseling, and quitlines. The FDA should immediately implement new and improved outreach to these populations with

evidence-based cessation resources in anticipation of the rules being finalized. Implementation of the rules are for the protection of public health because they will reduce cancer disparities by protecting those individuals that are bearing the disproportionate burden of cancer due in part to the direct actions of the tobacco industry. Thank you for the opportunity to speak in support of these rules, and we look forward to working with the FDA. Thank you.

TRACY GALLOWAY: Thank you. At this time, we will take a short break and we will resume our commenting period at noon at 12:00 noon. Thank you.

ANDREA TAKASH: Good afternoon, everyone. As we get back from break, I just wanted to let everybody know as a reminder, if you're logged in via Zoom, please make sure to enter your name as you are registered, and so now we're getting back to our confirmed speakers for this timeslot, and Mary Peterson, you're up next. Mary, if you can unmute your line. Mary Peterson. Mary, can you unmute your line? You're on.

MARY PETERSON: Am I unmuted now? Can you hear me?

ANDREA TAKASH: Yes, we can hear you. Please proceed Mary.

MARY PETERSON: My name is Mary Peterson and I'm from Iowa City, Iowa and I speak as an individual person hopefully representing the voice of many who don't have the opportunity it means to be on this type of call. I appreciate the FDA for allowing us to do this and I as an individual. I appreciate the comments from Guy Bentley and also Cancer of the Americans Cancer Society, but my major point is my personal freedom. I have the right to make my own choices just like individual states can make their own rights. We can legalize marijuana but now you're taking away my menthol cigarettes. My choice, my problem. I'm also very concerned about the discrimination against the queer community and black community. They are pushed down every day and now you choose to take away menthol cigarettes. Don't we have more pressing things to look at? It is just so obvious there that this is a power thing, and we don't understand. So many of us white people are white privileged and don't get probably the higher health reasons for black communities because they don't get good health care in the first place. They don't get regular health care because they can't afford it. They don't have health insurance, etc. So, there's lots of pieces to this puzzle. Again, I feel like I am my personal freedoms and you're telling me what I can and cannot do in my own home and that's not what America was founded on. It's that simple. Thank you.

ANDREA TAKASH: Thank you, Mary. Cookie Tucker, you are up next to speak. Cookie Tucker, please unmute your line. Cookie Tucker. OK, moving on. Next is Stella Adams. Stella Adams, you are up next to speak. Please unmute your line. Stella Adams.

STELLA ADAMS: Good afternoon.

ANDREA TAKASH: Good afternoon, please proceed.

STELLA ADAMS: Thank you. My name is Stella Adams, and I am the executive, I am the CEO of S J Adams Consulting, a firm that focuses on fair housing, fair lending, and civic engagement for people of color. I am here today because I believe the FDA is making an error. I am going to ask for one second to pull up my remarks. I'm having visual impairment issues today and I am trying to pull up my, OK, I've got it now. Thank you. My name is Stella J Adams. I am a lifelong activist in the struggle for civil and human rights. I am the CEO of S J Adams Consulting, focusing on fair lending, fair housing, and civic engagement for communities of color. I formerly served as Chief of Equity and Inclusion for the National Community Reinvestment Coalition. I have always worked to protect the civil rights of vulnerable communities, and I'm very concerned that the consequences of this

menthol ban will be dire for people of color. This is the wrong policy being advanced at the wrong time. We've seen this play out before. Remember America's decades-long war on drugs was a failure that imprisoned millions of Americans, especially from black and Latin communities. Fueling over-policing, mass incarceration, disproportionate disenfranchisement, and the lawful enslavement of millions of Americans. For example, the penalties for the distribution of crack cocaine were ten times the penalties for the distribution of cocaine. This was the intentional criminalization of culture targeting black and Latin communities where crack was more prevalent, versus white communities where cocaine was more prevalent. Now, even as we work to fix the drug on wars damage to Americans of color, the FDA is about to reboot drug-war era policies and inflict the same harm on black and brown Americans this time criminalizing tobacco products predominantly used by black and brown Americans. Why should these products be criminalized while tobacco products predominantly used by white Americans remain legal? I find it ironic that while 37 states plus the District of Columbia have chosen to begin to undo the societal harms caused by cannabis and establish legal pathways for the sale and distribution of cannabis, the FDA is criminalizing menthol cigarettes. While the FDA has claimed it will not enforce this ban on menthol cigarettes, it will cause harm to communities of color resulting in disenfranchisement in the states that remove the right to felony convictions, deportation even for persons with legally issued visas and permanent residents. This is the wrong policy at the wrong time, and I urge the FDA to withdraw this rule. Thank you. I will be submitting more substantial comments in the future. Thank you.

ANDREA TAKASH: Thank you. Allegra Taylor, you are up next to speak. Alegria Taylor, please unmute your line. Allegra Taylor. OK, up next, we have Gloria Soliz. Gloria Soliz, please unmute your line. Gloria Soliz.

GLORIA SOLIS: Yes. My name is Gloria Solis.

ANDREA TAKASH: Thank you, Gloria. Please proceed.

GLORIA SOLIS: Alright, Zoom is challenging sometimes. I'm speaking out of my own experience as a national certified tobacco treatment provider who has conducted over 200 multi-session stop-smoking classes. 183 hours, workshops helping 5,000 smokers in my 27-year career, I also teach others to help people become non-smokers. You, the FDA, know a lot more about the chemical and biological addictive nature of nicotine and menthol, as well as the detrimental health impact of menthol. You also know nicotine and menthol make cessation extremely challenging. You know that menthol is in almost all cigarettes. I'm no scientist, not a researcher. I'm a community based and clinical provider. I do know that as long as nicotine and menthol remain unregulated in tobacco products, you allow tobacco industry, the tobacco industry, to addict children and youth and vulnerable people in our society. Slowly, tobacco kills Americans at an alarming rate each day, every day today. People struggle to become non-smokers, making multiple attempts. I've watched their health fail, the quality of their life deteriorates before my eyes. I have watched people attempt to quit, who have lost their toes and other parts of their bodies. I have watched people who need inhalers and oxygen to breathe and come to classes. I have lost class participants because they quit by dying. In the past two years, 1 million deaths have been attributed to COVID 19 in the United States. There has been an amazing effort and funding to address this pandemic since 9/11. In 2001, 10 million people have died from tobacco related diseases in the United States. How many more children will get addicted and eventually die on your watch? You regulate tobacco products, you lower the level, you can lower the level of nicotine in tobacco products. You can take menthol out of tobacco products. You can be heroes. Protect the health of young and vulnerable Americans. Save lives. Do what's right. Eliminate menthol from tobacco products now. Thank you for this opportunity to address the FDA.

ANDREA TAKASH: Thank you. Up next, we have Andrew Barnes, Andrew Barnes, please unmute your line.

DR. ANDREW BARNES: I'm coming in. Hey, everybody. Good afternoon. Thank you. Sorry about that. So good afternoon. Thank you for the opportunity to comment. I want to first center my comments by telling you who I am and why I support FDA's proposed rules for menthol cigarettes and flavored cigars. My name is Dr Andrew Barnes. I'm a professor of health, behavior and policy at Virginia Commonwealth University and a cancer prevention and control researcher at our cancer center, Massey Cancer Center, and I'm a scientist funded by the FDA and the NIH at our Center for the Study of Tobacco Products. I have studied tobacco policy and its effects on public health for nearly a decade, and I want to comment on the FDA, FDA's proposed menthol standards and flavored cigar standards as a tobacco policy expert, but also and this is important as a husband, as a father and as a neighbor. Lemme first start by speaking as a husband. My wife's mother, Linda, smoked Kool, menthol cigarettes for decades here in New Jersey, which ultimately contributed to her death when my wife was barely older than my six-year-old son is now. Make no mistake, the evidence is clear that menthol cigarette increases, menthol increases addictiveness in cigarettes and menthol smokers like my mother-in-law, Linda, have a more difficult time quitting cigarettes than non-menthol smokers. Menthol cigarettes are deadly. They kill our families, and the FDA should ban them. As a father, we are a transracial family. I am the proud adoptive parent of two beautiful black children. My wife and I were chosen by the respective first families to raise them from birth. It is hard to ignore the clear evidence that menthol cigarettes are easier for kids to start smoking versus non-menthol cigarettes, and menthol cigarettes increase the likelihood that children will start smoking and as a result, addicting many children like yours and mine to a lethal vehicle for administering a drug. The FDA should ban them. As a neighbor, we live in the east end of Richmond, Virginia. Ours is a historically and proud, predominantly black neighborhood. Many of the families here have been in their same homes for generations. Most of the city's public housing courts are in our neighborhood, as are most of the jails. Our community is awash in advertising for menthol cigarettes. Empty green packs of Newports and schools litter our streets and playgrounds. For too long, the tobacco industry has segmented its drug market to discriminate prices and products, specifically by targeting black and other communities of color, further contributing to widening gaps in opportunities to thrive within our own communities. As a neighbor, I see the effects first-hand. My neighbor, Keith, who is a friend who lives next door, he is 60 years old, still smokes half a pack of Kool a day. He started smoking in his 20s when he would get a pack of Marlboros after ending his shift at the factory here. I recently interviewed him for work about what he would do if the FDA were to ban menthol cigarettes. He told me without a doubt in his mind, he would finally quit smoking cigarettes for good. The evidence is clear that many menthol smokers, like my neighbor, will quit after a federal ban. A national menthol ban will decrease the overall number of cigarette smokers, increase the number of cigarette smokers who quit, and decrease the number of children who start smoking. We have been quick to intervene over the past few years when white children get addicted to e-cigarettes and we banned flavored JUUL products, JUULpods and other e-cigarette products, and that's a very good thing, but for decades, we have not done enough to demonstrate that black health matters just as much. I am here to say that my kid's health matters just as much. My neighborhood's health matters just as much. The time is now. These proposed rules on menthol cigarettes and flavoured cigars must move forward quickly with a guide and the goal of improving public health equitably. Finally, as a tobacco policy scientist, I strongly support the menthol ban. The science on menthol cigarettes is clear and supports the FDA's conclusions that a menthol ban is appropriate for the protection of public health and will reduce tobacco health related disparities. With my remaining time, I would like to highlight a few comments on specific provisions of the proposed rules for menthol cigarettes and flavored cigars. First and foremost, I urge the FDA to do everything within its power to support cessation by individuals who smoke menthol cigarettes and flavored cigars. They should strongly support no extensions to the comment period. Support,

ensuring that any products or accessories sold to add menthol flavoring to cigarettes after a ban should be subject to enforcement under the proposed rule.

Importantly for both the proposed menthol cigarette and flavored cigar rules, I support using characterizing flavor as the basis of the product standard but urge the FDA to use a broad interpretation when enforcing it. Finally, you have heard already today and yesterday, and on Monday a lot of misinformation and wrong information that these proposed rules to improve public health by banning flavored tobacco products will somehow criminalize people of color. The FDA proposed rules focus on retailers, not consumers. For those who have issues with this forum, with policing, I urge them to engage reforming how we police our communities, but not disrupt the good work of public health regulators to remove lethal products such as menthol cigarettes and flavored.

ANDREA TAKASH: Thank you, Andrew. Just a quick reminder for everyone to please be mindful of your speed when you're making your comments. The interpreters and captioners are working very hard to ensure they're providing equal access to all of our listeners. Up next is Zoey Duan. Zoey Duan. You can unmute line, Zoey.

ZOEY DUAN: Hello. Just to test. Can everyone hear me?

ANDREA TAKASH: Yes, please proceed.

ZOEY DUAN: Awesome. Thank you so highly, everyone. My name is Zoey Duan, a youth advocate from Hawaii and a member of the Coalition for a Tobacco Hawaii Healthy Youth Council. I'm here today to speak in support of the FDA's recent proposed tobacco product standards to end the sale of menthol cigarettes and flavored cigars. As a youth that has personally seen the impacts of tobacco on my friends and family members, namely my grandpa who passed away from smoking cigarettes, I strongly support the proposed tobacco product standards. Menthol cigarettes and flavored cigars will only attract more kids like me and my peers to meet the same tragedy that my grandpa experienced. It is crucial for the FDA to end the sale of these products. We already see the damage that it can do to the precious people around us, especially in my home state. First, we see that according to the Tax Foundation, menthol cigarettes account for 68% of the market in Hawaii, the highest in the country, disproportionately impacting native Hawaiians and other Pacific Islanders. The majority of youth smokers also smoke menthol cigarettes, and 78% of native Hawaiian and Pacific Islander smokers smoke menthol cigarettes, causing heart and lung disease that takes the lives of many. Despite this, the industry continues to aggressively promote these products in these communities. Second, cigars are now the second most used tobacco product by youth with cigar flavors like grape, strawberry, purple swish and twisted cherries that are sold in packs of two for less than a dollar. It's no wonder that you see these empty wrappers around parks and schools as they are clearly targeting kids. Ending their sell will curbs youth smoking rates further. There are countless peer reviewed studies that support the FDA's proposal to end the sales, menthol cigarettes and flavored cigars. The opposition, however, only has scare tactics, trying to convince people not familiar with the FDA's proposal that it somehow criminalizes menthol cigarettes use and possession, and would lead to more encounters between people of color and law enforcement, when in fact communities of color would benefit the most from these regulations saving hundreds of lives. The only people against the proposals are those that profit from their customers addiction and those hopelessly addicted to these deadly products. I urge the FDA to quickly adopt your proposed tobacco product standards to end the sale of menthol cigarettes and flavored cigars and work towards a future where all flavors are removed from all products. Protect all people. Thank you for the opportunity to speak today.

ANDREA TAKASH: Thank you, Zoey. Up next is John Boyd. John Boyd, please unmute your line. John Boyd.

JOHN BOYD: Yes. John Boyd, founder and president of the National Black Farmers Association. Thank you for giving me this time to speak this afternoon. The National Black Farmers Association has over 116,000 members in 47 states. I am a fourth-generation farmer from Baskerville, Virginia. I raised [UNKNOWN] tobacco for about 32 years. My forefathers grew tobacco, John Boyd, Senior and my grandfather, Thomas Boyd, was a tobacco farmer. Tobacco has put our children through school and raised many generations. My grandfather raised 15 children and put on tobacco production, and banning menthol is not the right thing to do. Many people know that it's blacks that smoke menthol and you should have a choice, and eliminating menthol is the wrong thing to do and will have the effect of a negative effect on the black community. Black farmers in this country at the turn of the century owned over 20 million acres of land, today, with that down to less than 5 million acres of land in this country. We've represented 1 million farmers in this country we have some 50,000 black farmers in this country. Banning menthol will only lead to less black tobacco farmers in this country, hurting and taking away income from rural communities. Tobacco still is a major crop in states like Virginia, Kentucky and North Carolina and tobacco producing states. So, eliminating menthol tobacco is the wrong thing to do. Education, investing more in education is the right thing to do. For decades, blacks in this country have always been told what they can't and what they can't do. The discrimination as a black farmer in this country, the USDA discriminated against thousands of black farmers, helped lead to this land loss and the loss of our black farmers in this community. We cannot allow the FDA in this case to eliminate not one black farmer, that one more black farmer in this country. By eliminating menthol, we should be allowed to continue to grow tobacco and be a contributor and America's agricultural policy in this country. So those are my remarks today, and I hope that the FDA will take a strong look at the stance of the National Black Farmers Association, who represents black farmers in this country and speaks for black farmers. Who are totally opposed to any type of ban on menthol? Thank you.

ANDREA TAKASH: Thank you, Mr. Boyd. Up next, we have Mike Bartlett. Mike Bartlett, please. unmute your line. Mike, if you are with us today, please unmute your line. OK. Moving on to Mario San Bartolome. Mario, please unmute your line.

DR MARIO SAN BARTOLOME: Thank you. Can you hear me?

ANDREA TAKASH: Yes. Please proceed.

DR. MARIO SAN BARTOLOME: Thank you for the opportunity to speak to the FDA's proposed rules prohibiting menthol cigarettes and flavored cigars. My name is Dr Mario San Bartolome, and I'm a board-certified addiction medicine and family medicine doctor. I'm also the vice chair of the Practice Management and Regulatory Affairs Committee at the American Society of Addiction Medicine and a board member of the California Society of Addiction Medicine. The American Society of Addiction Medicine, also known as ASAM, is a national medical society that represents over 7,000 physicians and other clinicians who specialize in the prevention and treatment of addiction. ASAM believes in a future in which addiction prevention, treatment, remission and recovery are accessible to all, and that people with addiction deserve compassionate, evidence-based care. ASAM defines addiction as a treatable, chronic medical disease involving complex interactions among brain circuits, genetics, the environment and an individual's life experiences. Addiction involving nicotine is not uncommon, and cigarette smoking causes almost 500,000 deaths per year in the United States, more than any other substance. I would like to commend the FDA on its proposed rule to remove menthol cigarettes and flavored cigars from the market and speak in support of the proposed rule. Over the last few decades, menthol cigarettes have caused millions of people to take up cigarette smoking and caused hundreds of thousands of premature deaths. This is because menthol makes it easier to smoke by cooling and numbing the throat and masking the taste of tobacco. Half of all kids who have tried smoking started with menthol cigarettes. The menthol flavor makes it easier for youth to begin smoking and become regular cigarette smokers. Eliminating flavored cigar cigars, which have

flooded the market in recent years, will also protect kids who often choose them because of their flavors. Menthol flavored cigarettes have long been known to be associated with disturbing health inequities, and menthol has had a devastating and disproportionate impact on the health of black Americans. Black communities have been deliberately inundated with marketing from menthol cigarettes for 60 years. This is the primary reason why menthol cigarettes use its highest among black Americans, and they are disproportionately harmed by menthol cigarettes. The proposed rule will improve the lives of people from other groups the tobacco industry has targeted as well, including people who are Latinas, lesbian, gay and bisexual, people who live in poverty and pregnant people who smoke menthol cigarettes at disproportionately higher rates. When policy follows scientific evidence, we can reduce harm to the public, reduce health inequities, and save lives. The evidence base for elimination of menthol as a characterizing flavor in cigarettes and flavored cigars is overwhelming. ASAM is grateful for the action, which is long overdue. The FDA should finalize and implement this lifesaving policy without delay. I thank you for the time.

ANDREA TAKASH: Thank you, Mario. Up next is Vincent Bonetti. Vincent Bonetti if you're online, please unmute your line. Vincent Bonetti. OK. Up next is Shontrice Patillo, Shontrice Patillo. Shontrice Patillo, if you are online, please unmute your line. Shontrice Patillo. OK. Up next is Jon Adler. Jon Adler, please unmute your line.

JON ADLER: Good afternoon. By the time I finish my five-minute remarks, thousands of loosies will have been sold in lower income neighborhoods in the US. Distributors of illicit menthol cigarettes will be making thousands of dollars tax free, and zero arrests will be made for cigarette trafficking. If the proposed FDA ban is imposed, this harsh reality will increase exponentially. I oppose the proposed ban. I oppose the sale of illicit menthol cigarettes. I oppose empowering cigarette trafficking and I oppose redirecting government tax revenue to tax cheats. Alternatively, I support working with community groups, faith-based leaders, and law enforcement officials to create a proactive, strategic plan to educate minority youth regarding the use of menthol tobacco products. My name is John Adler, and I am currently the national president of the Federal Law Enforcement Officers Foundation, which provides support to 30,000 federal officers from 65 different federal agencies. I'm also the former Director of the Department of Justice Bureau of Justice Assistance, the federal agency administering the largest grant programs for the criminal justice system. I also retired as the senior criminal investigator for the United States Attorney's Office in the Southern District of New York after 26 years of law enforcement experience, perhaps of equal relevance, I grew up in a New York City public housing co-op, and for the past 12 years I've lived in an apartment that is within a hundred yards of a New York City public housing project. While I'm not currently a cigarette smoker, I do live in an area that can be described as the land of loosie. Based on my collective life experience, I have no doubt that the proposed ban will fail. First, the limited data available regarding the sale and use of loosie menthol cigarettes in low-income neighborhoods does not reflect reality. I offer any FDA official the opportunity to come walk with me through my neighborhood to experience first-hand who's buying menthol loosies and how they're being sold. A ban of menthol cigarettes will only increase the demand for loosies, drive up the price and increase the violence committed by competing street gangs selling it. It will also increase the profits for bodegas, selling the loosies and the traffickers who bring the illicit product to them. This dismal reality will not help our minority youth at all. In my former capacity as a Director of the Department of Justice Bureau of Justice Assistance, I oversaw multi-million-dollar grant programs that focused on drug use and treatment. What we've learned from the drug courts and innovative treatment programs is that we can't arrest our way out of the drug problem. Similarly, we can't ban our way out of the menthol cigarette problem. Through our enlightened research and innovative programs. We've learned that educational programs and early intervention are wise approach to sustainable solutions. As the former lead federal criminal investigator in the United States attorney's office in New York City, I can state emphatically that law enforcement does not have the resources to pursue traffickers of illicit tobacco products. As an example, it is frustrating knowing from sources in the Southern District of

New York that China was smuggling millions of illicit cigarettes into the city, and we didn't have the resources to investigate this. The FDA proposed ban calls for six investigators nationwide to help sanction the distribution of illicit menthol cigarettes on a retail level. That's like blindfolding and handcuffing an investigator and telling them to go find a needle in a haystack. A ban will empower the traffickers and further diminish law enforcement's capacity to pursue them. Prior to publishing, it's proposed ban on menthol cigarettes, the FDA did not convene the national law enforcement organizations to get a professional assessment of the prospective consequences of their proposed ban. The FDA should withdraw its proposal immediately and initiate a meeting with a diversified group of law enforcement experts to get their perspective and insight. The FDA does not have the means of projecting the impact of its proposed ban limited data alone. Perhaps FDA personnel might benefit from police ride-along and walk-along engagements in lower-income neighborhoods, but in-person exposure to what's happening there realistically. I implore the FDA to rescind their proposed ban and work with law enforcement and community leaders on practical strategies that produce sustainable solutions for our youth in all neighborhoods. Thank you for the opportunity to express my view and perspective.

ANDREA TAKASH: Thank you, Jon. Up next, we have Wayne Harris. Wayne, you may now unmute your line. Wayne Harris.

WAYNE HARRIS: Hello can you hear me?

ANDREA TAKASH: Yes. Thank you, Wayne. Please proceed.

WAYNE HARRIS: Hi. Good afternoon and thank you to the FDA for allowing me the opportunity to speak today. My name is Wayne Harris and I come to you as a retired deputy chief of police with over 30 years of experience. I am the current board chair for the Law Enforcement Action Partnership, and I'm here today in opposition to FDA's proposed prohibition of menthol, flavored cigarettes, and flavored cigars. My opposition lies in much of what we have heard today as far as the illicit markets that will develop from the prohibition of illegal cigarettes. Like I said, I'm concerned today because of a couple of things. Not only will this prohibition bring problems in our African American communities and by the way, you know, thank you to all of the champions that have spoken out, you know, for the African American community, but as a man of color, the person that has worked for decades in the African American communities will tell you that this prohibition is going to have dire consequences, and I guess I'm also concerned with the mischaracterization of how law enforcement is going to intersect in this capacity. Yes, it's true that FDA has put in place a rule stating that they don't have the ability to enforce this particular law, but the illicit markets have been created again the activity that will develop based on this is something that's very real. The violence that comes along with the activities in all of its forms is going to impact those communities where police are in on a daily basis. So, the notion that you know, we are not going to be enforcing this, is false, and it needs to be stated that there is going to be an intersection of the police and community with regard to the prohibition of menthol tobacco products, but it's going to come in the form of violence. It's going to come in the form of follow-up investigations. It's going to come in the form of police officers approaching individuals on the streets and doing something that has been legal to do for almost a century. As the board chair for LEAP do supports some of the suggestions that you've heard today, that being the convening of a panel, not just of law enforcement professionals, but also for socioeconomic individuals in our communities, so that the FDA and the American government, the Biden administration, or whatever administrations from following can actually take a look to see what the consequences of legislation like this law such as this will be. We need to be able to take a look to see how it's going to impact us amicably we need to take a look at how it's going to impact this inform of justice system. We need to look at how it's going to impact us disproportionately based on demographics, and right now, it does not appear as though the FDA has actually done anything to understand the reasons why they want to do this, where all the people

excuse me that are in support of this particular law, but I don't think we've taken close enough look at all the nuance of this particular conversation. Strongly urge the FDA to pause this particular ruling to take a very, very close look at the consequences that would develop based on this. I'd like for them to consider this in terms of Eric Garner who died for selling used cigarettes. Like to view this in terms of Floyd who was killed by a police officer following the purchase of cigarettes with a counterfeit \$20 bill. Well, I'd like us to look at this in terms of the violence and the unrest that took place, and it's going to follow and follow. We're at a critical crossroads of police-community relations right now, and legislation such as this, a law such as this, will further exacerbate the problem. Thank you for giving me the opportunity to speak today. We will be submitting written documentation and written remarks at a later date. Thank you.

ANDREA TAKASH: Up next is Jeffrey Wigand. Jeffrey Wigand. You are up next. Please unmute your line. Jeffrey Wigand?

JEFFREY WIGAND: Yes. Can you hear me?

ANDREA TAKASH: Yes. Please proceed.

JEFFREY WIGAND: Thank you. You're welcome. Thank you for the opportunity to share my thoughts on FDA's proposed tobacco products standards. By way of introduction, I am Dr. Jeffrey Wigand, former vice president of research and development for Brown Williamson Tobacco Corporation, part of the world's second-largest tobacco (UNKNOWN). I am well-versed in menthol and other additives and their uses in tobacco products, in particular Kool, Newport, and Salem, and to separation from the company, I served as an expert adviser to the former commissioner of the FDA, Dr. David Kessler. I tuned to the FDA on additives, nicotine manipulation, tobacco science, and cigarette design. For the past two decades, I have focused my efforts on a worldwide basis, speaking to ministers of health of numerous countries, most notably Canada, and testifying at the New Zealand politics theory and then a catalyst for the 2025 Tobacco Free New Zealand. I applaud the Biden administration to restrict the sales of menthol cigarettes and flavored cigars. I will use the term additive or ingredient interchangeably in my presentation and not delve into the politics of semantics. Menthol is an egregious additive and ingredient that has aesthetic and antimicrobial effects and is used in numerous medical products. Tobacco industry intentionally uses menthol to reduce the irritating effects of tobacco aerosol on airways, thus promoting a greater puff [UNKNOWN] of smoke, a mixture of nicotine and a combustion by products deeper into the lungs. Tobacco products are broadly classed menthol and non-menthol. The distinguishing characteristic is the concentration of menthol 5 to 9% weight basis for menthol and less than 1% for non-menthol products. Before menthol is sprayed on a specific tobacco blend of barely flue-cured and Oriental tobacco, components of the blend go through a series of manufacturing operations called casing where additives such as chocolate, licorice, honey, and sugars are added to smooth out the smoky characteristics of the finished product. These additives all GRAS approved but were never intended to be paralyzed and then inhaled. Their individual and collective paralytic state remains unresolved as well as their toxic effects on health. The tobacco industry uses novel approaches to harness the attributes of menthol, such as embedded in the tobacco rod, a crushable menthol capsule, and menthol coating of the packaging materials and the cellulose acetate filters. Menthol makes or [UNKNOWN] to the pack or rod through a mass transfer. The intended outcome is delivery of menthol to increase puff (UNKNOWN), enhance strengthen nicotine addiction, facilitate initiation by children, target at groups of vulnerable populations, foster believes that menthol cigarettes are healthier, and affords the industry with a cost-saving measure to use lower-grade tobacco while controlling nicotine delivery. The proposed menthol ban can be strengthened by banning the outright use of the additive menthol, as well as other additives in all types of tobacco products, present, and future to include e-cigarettes, vapor products, and heat-not-burn. Many countries have

paved the way for banning menthol, such as the European Union, Brazil in 2012, Turkey, Moldova, Ethiopia, and five provinces in Canada.

Canadian legislation is the most comprehensive, prohibiting menthol as an additive in cigarettes, mostly cigars, and (UNKNOWN). There is preliminary evidence that the complete menthol adult ban can have smokers quitting rather than switching to non-menthol brands. It is critical to have an extremely high product standard that is not laid with any loopholes that the backbones will almost certainly exploit and find a way to get around. It is without the politics of semantics. To be clear, this current standard will extinguish several menthol brands and account for about 20% of the market a significant revenue source. I would urge you to strengthen this further by banning the outright use of all additives, including menthol in all types of tobacco products present and future. Thank you.

ANDREA TAKASH: Thank you, Jeffrey. Up next is Briana Brooks. Briana Brooks, please unmute your line, Brianna.

BRIANA BROOKS: Hello, everyone. My name is Briana Brooks, and currently I'm a youth activist with Truth Initiative. I'm here to commend the FDA for their proposed rule of banning menthol and cigarettes currently. As an African American woman, I have several family members that smoke menthol cigarettes, and I know that they smoke this because of the soothing effects that the menthol causes to them, and a lot of them want to quit. A lot of them see the harm that it's caused them in their lives, but they can't quit because of the addicting powers of the menthol cigarettes. A lot of them are now coming down with cancer and other health-related diseases based off of smoking on these cigarettes, and so as a concerned family member, as someone who's seen the harmful effects that menthol cigarettes can have on the African American community, my cousins, my uncles, and my aunties, I'm here to say that I support the proposed rule of banning menthol and cigarettes, and I thank the FDA for this opportunity to speak and to share my story. Thank you.

ANDREA TAKASH: Thank you, Briana. Just as a reminder for those still on the line, we are looking to hear from organizations, as many organizations as possible if your organization has already provided comments, we will not be able to offer additional speaking spots to those organizations or the representatives, and then up next is Matt Myers. Matt Myers, please unmute your line. Matt Myers?

MATHEW MYERS: Thank you very much for allowing me to talk today. Can you hear me, OK?

ANDREA TAKASH: Yes.

MATHEW MYERS: Great. My name is Matthew Myers. I'm the president of the Campaign for Tobacco-Free Kids, and we urge the FDA to move without delay to finalize the proposal with regard to both menthol cigarettes and flavored cigars. During my lifetime, we have made historic progress towards the goal of reducing smoking among both youth and adults to the maximum extent possible, and we are closer today than ever to reaching that goal, but the scientific evidence and the real-world experience makes it clear that both menthol cigarettes and flavored cigars are major impediments to that progress, particularly among youth, black Americans and among other underserved, populations, where smoking prevalence is high. Let's be candid. The major scientific evidence about the impact of menthol cigarettes were answered by FDA and many others long ago. It's time to finalize and implement these rules as quickly as possible. What is the evidence? The evidence is clear. Despite the Reason Foundation's comments, menthol cigarettes do increase youth initiation. Close to half of all, you start with menthol cigarettes, and the evidence is clear that kids who start with menthol cigarettes are more likely to become heavily addicted. The evidence is also clear, the menthol interacts with brain receptors to make the addictions more intense, and that makes it harder for menthol smokers to quit. As TPSAC found, as FDA found, and as every independent researcher has found, this has significant consequences. The longer a person smokes,

the greater the risk of disease. The argument that menthol doesn't increase the risk of disease is false and deceptive. Menthol increases the risk of many diseases because it prolongs the period of time menthol smokers continued to smoke. You've also heard a great deal about free choice in adult use. What it ignores is the fact that the tobacco industry has targeted its marketing at youth, the African American community and other underserved communities, and it further ignores the fact that virtually every menthol smoker starts as an adolescent as a result of that targeted marketing. There's nothing inevitable about either youth or African American smoking menthol cigarettes. 60 years ago, fewer than 10% of African Americans smoked menthol cigarettes. Today, it's over 80%, not because of some unique factor about menthol, but because the tobacco industry, the same industry that funds many of the opponents who you've heard from, targeted those community like a laser beam with a product that, because of the menthol, means that many of them, by the time they're old enough to purchase cigarettes legally, are already heavily addicted. I want to address a couple of the arguments made by the tobacco industry-sponsored allies who you've heard from today. You know, the truth of the matter is, every time any major public health measures to reduce tobacco use is proposed, whether it's higher taxes, stronger health warnings, new limits on marketing, or limits on flavored tobacco like FDA is doing today, the tobacco industry argues that it will produce draconian, unintended results. It's the argument the industry drags out when it has no public health argument. It is always exaggerated, and it is, in this case, first...

There is no evidence that prohibiting menthol cigarettes will cause the level of illicit market that will nullify the public health gains. Indeed, Canada's experience has been entirely positive in the fact that the country with the longest border fighting [INAUDIBLE] already bans the manufacture of menthol cigarettes, and the sale of those products will make our job even easier. Second, preventing police abuses in our communities is a high priority for virtually every organization that supports this proposed rule. FDA is laser-focused on manufacturers, distributors, and retailers, and not on individuals. Makes the likelihood of police abuse in black and other communities of color far less than is being portrayed, but it is something that we all need to make sure we work closely on as we move forward. Third, the claim that this will reduce revenue ignores the extraordinary public health burden that tobacco imposes on every governmental entity as well as individuals. It will, in fact, produce a boost in the economy of every state in this nation. Thank you very, very much.

ANDREA TAKASH: Thank you, Matt. Up next, we have Amaya Wooding. Amaya Wooding. Amaya, you can now unmute your line.

AMAYA WOODING: Great, thank you very much. Good morning from California, and Happy Pride Month. My name is Amaya Wooding and I use she/her pronouns. I work as Project Coordinator for LGBTQ Minus Tobacco. With this comment, I hope to touch on several things. Policies ending the sale of menthol cigarettes and flavored cigars are important for LGBTQ people. Those policies are feasible and have been implemented in many jurisdictions. The enforcement windows for those policies need not be too long, and finally, concerns about criminalization during enforcement, while reasonable, have available remedies at the local level. Stress from the implicit and explicit effects of homophobia and transphobia in society leads LGBTQ people to smoke and vape at higher rates than the general population. Different slices of the LGBTQ demographic have been found to use menthol cigarettes at higher rates than straight and cisgender people. While documents already provided during rulemaking show the FDA understands those use disparities among much of our population, data on transgender people like myself is sparse. So, I want to highlight the results of the 2019-2020 California Student Tobacco Survey, which found much higher rates of menthol cigarette and flavored large cigar use among transgender and gender diverse high schoolers in California relative to their cisgender peers. LGBTQ Minus Tobacco recognizes our community's disproportionate health burden from tobacco and works to reduce those burdens in the San Francisco Bay Area. In the nine counties of the Bay Area, over 50 jurisdictions already do not allow the sale of menthol cigarettes or flavored cigars. I will be sharing some lessons learned with the focus on policies in Alameda County, where our staff members have worked extensively to educate on policies that create a healthier retail

environment and prevent youth tobacco addiction. In Alameda County, 1.4 million people live in ten jurisdictions with currently active policies that prohibit any tobacco retailer from selling any flavored tobacco product, including both menthol cigarettes and flavored cigars. In 2023, that number will increase to 11 jurisdictions when the city of San Leandro will no longer allow menthol cigarettes to be sold. The effective dates for those policies have ranged from immediately to six months after adoption, with a median and mode of one month. The length of time between adoption and enforcement has ranged from three to 11 months, with a median and mode of six months. The jurisdiction with an 11-month enforcement window chose it not for logistical or public health reasons, but for political ones to coincide with the possible effective date of a flavored tobacco sales referendum that will be before California voters in November. In terms of exemptions, no Alameda County jurisdiction with a policy of ending the sale of flavored tobacco exempts select classes of stores such as adult-only stores or tobacco-only retailers. However, from 2017 through May 2020, the City of Oakland allowed stores that limit entry to persons aged 21 and older to continue to sell flavored tobacco. During this period, the number of adult-only stores in the city increased from five to 56. The exemption was regarded as unsuccessful and was closed by Emergency Ordinance in May 2020. Also, tobacco retailers designated as adult-only have among the worst youth sales rates in California. The 2018 California Young Adult Tobacco Purchase survey found that 30.2% of vape shops and 36.0% of tobacco stores that were visited sold to an underage decoy. Those numbers do not support exemptions for those retailers. In California, flavored tobacco sales restrictions and other policies like a minimum price and a minimum pack size for tobacco products are typically implemented as terms of local tobacco retail licenses that cities or counties require of stores seeking to sell tobacco. I mention this to draw parallels to Part 1B of the Supplement for The Proposed Rule on Menthol Cigarettes, which says that "This regulation does not include a prohibition on individual consumer possession or use, and FDA cannot and will not enforce against individual consumers for possession or use of menthol cigarettes." Likewise, local enforcement of Bay Area tobacco sales restrictions occurs at retailers and consists of going to the retailer and verifying that restricted products are not being sold. What this means is that enforcing agencies, which may be environmental health, public health, code enforcement, the district attorney's office, the sheriff's department, or local police are not able to penalize individuals for purchase, use, or possession of any tobacco unless that person is a tobacco retailer selling restricted products. Finally, I want to close this comment in honor of my grandpa Frank, who died before I was born. He was addicted to menthol cigarettes and chain-smoked two to 2.5 half packs a day by the time he died of a heart attack in his early fifties, making him one of the 370,000 premature deaths due to menthol cigarettes in this country between 1980 and 2018. In his memory, thank you very much.

ANDREA TAKASH: Thank you, Amaya. Next up, we have Pebbles Fagan. Pebbles Fagan, if you are on the line, please unmute your phone. Pebbles Fagan? OK, Twiggy? Twiggy Billue. Twiggy Billue, if you are on the line, please unmute your phone. Twiggy? OK. Up next, we have Kim Ard-Elitulo. Kim Ard-Elitulo, if you are on the line, Kim, please unmute your phone. Kim, if you are on the line, Kim, please unmute your line. OK, we are going to take a quick break and we will be back.

ASHLEY ROBERTS: Welcome back. My name is Ashley Roberts from FDA. Kim Ard-Elitulo, you are up next. You have five minutes to speak. Please go ahead and unmute your mic.

KIM ARD-ELITULO: Can you hear me?

ASHLEY ROBERTS: I can hear you now, yes.

KIM ARD-ELITULO: Oh, praise God for that. OK, hello. My name is Kim Ard-Elitulo, peace and blessings. The first thing I wanted to mention is that I listened to a lot of the testimonies on Monday, and hearing people of other races say that they wanted to help us in our community, but the effects that this ban is going to have on the community, they have totally no clue of what's going on in our

community, and I thought that was kind of out of line and disrespectful for them to even say anything about something they knew nothing about. So, like I said, I'm a concerned African American woman representing our community, and my spirit keeps alerting me to inform you of the danger lurking to haunt America across the country on your watch. Please pay close attention to what I have to say in regard to the unintended consequences that is already happening in the different cities and states that have some type of ban in place for tobacco products. Focus your attention on the underground black market that sells cigarettes not only to adults but also makes it easier for children to have access to them. For example, at least twice a week I frequent the homeless camps to feed the people. I was an eyewitness to a U-Haul truck pulling up, out jumps two armed men who were collecting money from the street vendor and the other was issuing out crates of cartons of Newport cigarettes. This is not a joke. No doubt, crime will increase because of this. So, take the time to research the existing data on this matter. Now, the other consequence is the loss of revenue. There are federal laws in place that prevent children from purchasing cigarettes or any other tobacco product. 1998 Master Settlement Agreement, you listed all of that there yourselves. Smoking is no way good for your health, but it is an adult freedom of choice, and we as black and brown people do not need to have more police contact because they are smoking cigarettes. No, they will not be arrested for it, but however, we have witnessed within the last few years of many police chokings, shootings, beatings of African American men that have resulted in death or serious injuries from incidences that have escalated from a mere traffic stop or the sales of [INAUDIBLE] cigarettes, such as in the case of Eric Garner. Let us not forget the recent chasing and beating of 14-year-old Elijah Tufono by Officer Brian Fowell who has flavored - he had a flavored cigarette in his hand in Rancho Cordova, California. You do really need to look deeper into this matter, research and statistics and data on how this will really affect our black and brown communities throughout America. I ask that you allow HBCU to conduct a true, paid study on how this ban will directly affect us. Then put some money into what the root of the health problems and disparities are, and then come up with a plan to fix the problem. That's one of those things. The other thing is that the FDA should not be spending more time and taxpayer money on flavored tobacco products because we already know history shows that bans and prohibitions do not work, and speaking of taxes, Miss Carol McGruder, founder of the African American Tobacco Control Leadership Council, who testified on Monday, had the nerve and the audacity to say that Reynolds is paying and the other tobacco companies are paying, they're funding the law enforcement agencies that are against the ban, but she forgot to mention her own organization being funded by former mayor of New York, Bloomberg, and taxpayer money, and to my recognition, this same woman, on one of her own national conventions, that was held in 2006, she said that tobacco is not a public health problem. There she wants to fit the script in which she got the funding from Bloomberg and the taxpayers, she comes out and wants to rage all about the war on tobacco companies. What a hypocrite! There's no doubt this ban is racist. It's targeting black and brown people yet allowing white people to continue exercising their rights to freedom of choice [INAUDIBLE] menthol, you know, non-menthol cigarettes, and I truly believe this is a racist issue, and I've never seen one and it's not deniable that this is racist and it needs to be addressed properly. That's my saying for today. I'll be back.

ASHLEY ROBERTS: Thank you. Up next, we have Liz Scott. Liz Scott, you have five minutes for your comments. Please unmute your mic and proceed.

LIZ SCOTT: Hi, can you hear me?

ASHLEY ROBERTS: Yes.

LIZ SCOTT: Wonderful. Hi, my name is Liz Scott and I live in Bethesda, Maryland. I am asking the Food and Drug Administration to remove all menthol cigarettes and flavored tobacco products from the marketplace without creating loopholes. The only tobacco product I ever purchased was a pack of clove cigars over a decade ago while in college. I had friends who had picked up the habit of smoking

while walking home after a night out, and I found it hard to resist the smell. I consumed a total of three, maybe four from the pack I bought, and when I went for a quick run the next day, I was in shock at how terrible it went. I am not a pro runner by any stretch of the imagination, but what should have been an easy, consistent run instead had me taking frequent stops to catch my breath. I came home and threw the pack in the trash. If that was my reaction to just a handful, I was not prepared to live like that for the long-term. Flavored cigars and menthol cigarettes are marketed to be more attractive to young people. Thankfully, in my case, I'm too Type A of a person to be thrown off course and was able to quit before it got the better of me, but due to a myriad of reasons, many young people are not in a position to make the same choice I did. Whatever the reason is that they turned to smoking, I refuse to just sit by and say, oh well, that's a personal choice, when instead I can urge regulators to take away the harmful products that are specifically targeted towards kids in the first place. I support the Lung Association's ask to urge the FDA to define characterizing flavor in a way that makes its prohibition absolutely clear. This means that flavor should not be found in any component of the product, including the packaging and marketing or in the smoke or aerosol. I ask that FDA also include flavored hookah and pipe tobacco in addition to premium cigars in the final rule and to avoid the creation of any loopholes that would give industry an opportunity to exploit them. I also want to comment on the proposal to ban menthol cigarettes. I have worked with numerous current and former smokers who preferred menthol. Similar to flavors, menthol in cigarettes makes it easier to start smoking and to become addicted. Menthol smokers are also less likely than non-menthol smokers to successfully quit smoking, despite having a higher urge to end their tobacco dependence. I have also read that the tobacco industry has long targeted black Americans and various underserved populations, which exacerbates significant health disparities. Removing all menthol cigarettes from the marketplace, including those that have received modified risk or exposure orders, will reduce smoking initiation and increase cessation efforts. This will also help reduce the health disparities and advance health equity. My husband is a former smoker, and before we were dating, he was one of those co-workers I mentioned. One day he told me that he wanted to quit and wanted my help to do it. He gave me his packs and I kept them in my desk. Any time he felt the urge, he would come to me and ask for one. I'd then tell him to go back to his computer and wait for my email, in which would be photos of damaged lungs, an individual with a stoma, or a headline showing how the US spends hundreds of billions of dollars each year in smoking-related health care costs. He'd come back out and say, Yeah, OK, thanks, I don't need one. That was just the beginning of his long road towards quitting, but he's now been smoke-free for seven years. If it were humanly possible, I would do the exact same thing for every single person in the country that smokes, but I'm just one person with very little power. So, I'm asking the FDA to join me in helping people quit smoking by removing all menthol cigarettes and flavored cigars from the marketplace without the creation of loopholes, and to finalize these rules before the end of 2022. Thank you so much for your time.

ASHLEY ROBERTS: Thank you. Up next, we have Paul Cummings. Paul, you have five minutes for your comments. Please unmute and proceed now. Paul, you are up next. Please unmute and proceed when ready. OK, up next, we have Harold Farber. Harold Farber, you have five minutes for your comments. Please unmute your mic and proceed. Harold Farber, you are up next. You have five minutes. Please unmute your mic and proceed. OK, Rod Lew, you are up next to speak. You have five minutes for your comments. Please unmute your mic and proceed.

ROD LEW: Can you hear me, OK?

ASHLEY ROBERTS: Yes, I can hear you.

ROD LEW: OK. Thank you very much for the opportunity to respond to the FDA's proposed rulings to prohibit menthol cigarettes and flavored cigars. My name is Rod Lew, and I'm the Executive Director of APPEAL, Asian Pacific Partners for Empowerment, Advocacy and Leadership. APPEAL is a national

health justice organization with over 1,000 network members in nearly every state and the six Pacific Island jurisdictions such as Guam. For nearly 30 years, APPEAL has worked to protect our communities, particularly Asian-Americans, Native Hawaiians, and Pacific Islanders from the harmful impact of commercial tobacco products. The product when use as intended is harmful. These products, particularly when added with menthol, has had a devastating impact. In 2010, I provided testimony to the FDA's Tobacco Products Scientific Advisory Committee about excluding menthol because of its harm and the focus of this as a social justice issue. The tobacco industry targeting of communities of color with this deadly product is racist. It's been a long 12 years but thank you for the FDA's leadership in proposing this ruling on menthol cigarettes and flavored cigars. We had appeal wholeheartedly support the FDA's proposed ban on menthol and on flavored cigars. It's been stated clearly numerous times that black Americans face a great disparity around menthol in flavored little cigars and has been the main killer of that community. Menthol makes the poison go down easier. Flavored tobacco only provides an immense attraction to youth and younger folks. What has not been shared and what I would like to add is the impact on my community, the Asian-American community, and the Native Hawaiian and Pacific Islander community, and according to the National Adult Tobacco Survey, Native Hawaiian Pacific Islanders have the second highest percentage of menthol use as for smokers at 46%, and for even for Asian Americans as a whole which often is masked by vulnerable subgroups. The rate is 31% who smoke menthol. Filipinos a subgroup has a high use of menthol at 45%, and according to a 2012 to 14 study, nearly two thirds of Asian American youth smokers, smoked menthol, the second highest rate to black youth. According to the National Youth Tobacco Survey from 2014 to 2017, Native Hawaiian Pacific Islander middle and high school youth had the highest use of cigars at 11.1%, more than twice the rate of the general youth population. Knowing that menthol use is high among that population, and its actively market in place like the Pacific Islanders. Concerns about flavored cigars is very real for Native Hawaiians and Pacific Islander communities, and for both Asian Americans and Native Hawaiian Pacific Islanders, we've heard many stories about the impact of menthol and flavored cigars on that community on those communities. So, it must be stopped. Now it will not lead to unintended consequences, like some say about opening the door for illicit products. That will be a more dangerous product and current menthol cigarettes because there has not been the regulation of menthol cigarettes to this date, and yes, there are policies such as raising ages that may be helpful, but that alone will not solve the issue of menthol cigarettes and flavored cigars. Taking these dangerous products off the market is the only answer to the most devastating issue in our communities. In addition to our complete support for the FDA's proposed ban, I would like to add a few additional points. One is removed menthol from all tobacco products as an ingredient just lowering the characterizing flavor will not addictive properties of menthol to still be active. Secondly, stop the production of menthol tobacco is for export. The current rule states that menthol can still be produced for sale overseas. This just ensures that other vulnerable populations, like our Asian American and Pacific Islander populations will be targeted and killed with the deadly products. This has had particularly impact because many of our communities still have family over in Asia and the Pacific. Thirdly, culturally, tailored cessation services and other commercial tobacco control programs need to be provided to those smokers disproportionately impacted by menthol and cigar use. In the 13 years since the passing of the Family Smoking Prevention and Tobacco Control Act, we have seen many successes. The study showed that 567,000 youth were prevented from starting up smoking, what we know about menthol and flavors addicting smokers, you just think if we had acted, how many youths of color would have been prevented.

ASHLEY ROBERTS: Thank you, Rob. Up next, we have Alejandra Rocha. Alejandra Rocha, you have up to five minutes for your comments. Please unmute your mic and proceed. Up next we have Alejandra Rocha.

(CROSSTALK) Hi, Alejandra, we can hear you.

ALEJANDRA ROCHA: Sorry. Alright. My name is Alejandra Rocha, and I'm not affiliated with any organization and just a Latina that has spent her whole life in the US and who has dealt with discrimination from society and the cops based on my ethnicity. I am speaking up because I have the privilege to do so when so many of my friends and neighbors don't have the same opportunity. Now, before I start, please understand that I understand that smoking is bad for your health. I don't think that anyone should smoke, nor do I think it is good for you. However, the menthol and flavored cigarette ban is racist. Yes, I understand that the tobacco companies did bad stuff to get to target our communities in the past, but that's the past, I'm dealing the present. My generation is dealing with the present, and at the present being black or brown in America as a crime simply being poor as a crime. brown and black people are more than twice as likely to be poor than a white person. Latinos are twice as likely to be pulled over by the police. Latinos are more likely to be harassed, put in jail, convicted based on their interaction with the police. I live in my brown skin every day, I live with my surname that tells everyone even before they speak to me that I'm a Latina, I live with people thinking that mentioning the word La Vega will make me run out of the room. The menthol ban means that this type of racial profiling will only increase, black and brown people are already more likely to be harassed based on the color of their skin or because of our last names. Now you're going to add something else to the next. This doesn't, the FDA have something better to do. Why not focus on lowering the price of food or going after big corporations that are gouging consumers and making it so that the average person in this country can afford groceries? My point is in my life, the life of my family and the front lives of my friends are already difficult enough without the government making something else illegal, but the majority of my people use, there are 57 million Latinos in the US. We are overrepresented... We are underrepresented, or we are overrepresented in prisons and food pantries. This menthol ban will make living as a brown American more difficult. Our criminal justice system is not reformed. Even after we marched for Black Lives Matter. There's plenty of evidence of how our criminal justice system already discriminates against poor people, communities of color, and the foreign born, you should just leave this people, these people alone. Why don't you try to regulate what will be done with the private? Why are you trying to regulate what would be done with the privacy of someone's health? If the government really wants to save brown lives or black lives, then the government should work with DHS to get those kids out of cages in the border and reunite families that have been torn apart not by cigarettes but by our own government policies? You know, I'm listening to the session right now, and do you think that this is right? There is a huge digital divide in this country yet the only way our voices can be heard is by logging into a zoom via zoom, laptop or commenting on your website. Many people in the US don't have or can't afford the Internet, especially people brown people. These are the exact people who will be most affected by this ban black and brown people the statistics are appealing, according to the Pew Charitable Trusts 80% of white adults on a desktop or a laptop computer, compared with only 69% of black adults and 67 for Latino adults, and 80% of adults have broadband at home while only 71% of black and 65% of Latinos have broadband. So, when you take into account race, ethnicity, socio economic status, plus owning a laptop having broadband internet and having enough time and money to take off work to comment. This listening session is only for the elite in our society. By its very nature, it is exclusive and not inclusive. My abuelita smokes, my abuela [UNKNOWN] smokes, they have spent their whole life smoking, if this ban goes into effect, will you arrest my grandmother? Will you arrest my whole family? This menthol ban then is racist. Thank you.

ASHLEY ROBERTS: Thank you, Alejandra. Up next is Kara Boyd, Kara Boyd, you have five minutes for your comments. Please unmute your mic and proceed. OK, Jared Walczak, you're up next. Jared Walczak, you have up to five minutes for your comments. Please unmute your mic and proceed.

JARED WALCZAK: Thank you for the opportunity to speak this afternoon. My name is Jared Walczak. I'm Vice President of State Projects at the Tax Foundation, a nonpartisan tax policy research organization. Given the high level of taxation on tobacco products, where excise taxes alone tend to

comprise about 40% of the retail price. A prohibition on menthol products will certainly reduce revenues for federal and state governments, but it's less clear that the policy will yield significant benefits in terms of smoking cessation. Under a menthol ban, federal and state governments combined stand to lose more than \$6.6 billion per year, prohibiting flavors and combustible tobacco products is not without precedent, multiple international jurisdictions have already banned the sale of non-tobacco flavored cigarettes, among them the European Union in Canada. In the US, several localities have banned the sale as well as have Massachusetts in the District of Columbia. The major difference between the US and most other tobacco markets is one of market share of both in Canada and Europe, not tobacco flavors make up less than 10% of the market. So, the ban impacted a relatively minor consumer group. In the US menthol flavored cigarettes make up more than 1/3 of the total market. Now if consumption truly disappeared as a result of prohibition, and taxes on tobacco and nicotine products were just really intended to account for the harms caused by these products. No one would be worried about the loss of revenue. If consumption is gone, then so are the societal costs associated with consumption. If, however, consumption does not disappear, and the revenue from taxes on tobacco products are rarely used to offset the harm caused by the consumption, and this is an issue. The Massachusetts ban, which is the largest US experience to date has not achieved its goals. After one year, sales in the state dropped 24%, but 90% of that decline in sales merely represented purchases shifting to neighboring states, the result of the policy has been a fairly stable level of consumption, but a \$125 million decline in excise tax revenue. In other words, Massachusetts has stuck with the cost associated with tobacco consumption without the revenue from taxing tobacco products. Now of course, Massachusetts consumers can easily purchase menthol cigarettes from other states, nationwide ban does increase the cost of acquiring the products, but we can extrapolate trends observed in the European Union, and we can estimate how consumers react to a nationwide ban. In Europe, approximately 90% of cigarette consumers continue to consume, but either engaged in cross border trade or switch to other flavored tobacco products were started smoking non flavored cigarettes. Among the relatively small group of menthol smokers, about 8% of consumers reported quitting after the ban. Now we can assume that in US more than half the market would remain tax, but slightly more than 40% of consumption would move into other legal tobacco or nicotine use some taxed at lower rates or not at all, or into illicit tobacco use. Around 20% of current menthol cigarette consumption would likely move to completely untaxed consumption. A similar experience was observed in Canada, even though in Canada there still is limited access to illegal market. There are 60% of menthol smokers switched to on menthol, 21% either quit tobacco or switch to non-combustible and 20% continue to consume menthol. While cross border trade is obviously more difficult under a nationwide ban, we would expect significant growth in illicit sales. We've experienced this with cannabis and with other products. Illicit trade is already a major issue in many states and offering competitive advantages to smugglers only makes the issue larger, especially since the FDA does not intend to enforce against possession or consumption. A nationwide ban would result in federal revenue decline of \$1.9 billion per year. In the States, the excise tax revenue declined will be 2.6 billion. There'll be another 892 million in sales tax revenue lost and \$1.2 billion in MSA payments for a total state revenue loss of \$4.7 billion. Now the federal government spends excise tax revenue mainland health care costs. State spend them on a wide variety of priorities, though not a lot on cessation programs. MSA payments in particular are varied in their uses from early childhood education to conservation projects, to cancer screenings and even economic development. In addition to health care to general fund and sometimes smoking cessation, the law of unintended consequence a year the goal is to reduce smoking. The effects, however, may simply be to shift consumers to other products or to illegally acquired ones. That's a particularly good big issue given that even if the federal government does not enforce that ban against individuals states often do and they have severe sentencing requirements for the possession of illicit tobacco products. If a national ban proves even a fraction as ineffective as the Massachusetts ban, it becomes an expensive exercise in narrowing a tax base, effectively leaving fewer taxpayers to cover the cost of the externalities associated smoking while

doing little to reduce the incidence of smoking. We have more research and testimony on our website. Appreciate the opportunity to speak.

ASHLEY ROBERTS: Thank you. As a reminder, please be mindful of your speed when making comments. The interpreters and captioners are working very hard to ensure they're providing equal access to all of our listeners. Up next, we have Sarah Mills. Sarah Mills, you have up to five minutes for your comments. Please proceed. Sarah Mills, you're up next. You have up to five minutes for your comments. Please unmute your mic and proceed. OK, Randy Fulk, you are up next. Randy Fulk, you have up to five minutes for your comments. Please unmute your mic and proceed.

RANDY FULK: Hello.

ASHLEY ROBERTS: I can hear you.

RANDY FULK: Yes, my name is Randy Fulk. I am an international representative for the BCTGM. They want to thank you for the opportunity to speak today on the proposed menthol ban. The Bakery, Confectionery, Tobacco Workers and Grain Millers' International Union welcomes opportunity to come in because we represent 1000s of workers here in the United States. For companies in the tobacco industry, such as Altria, Philip Morris, Imperial Tobacco, ITG Brands, Liga tobacco Alliance one and I want to say that they are stakeholders to the BCTGM, and these workers strongly oppose these proposed product standards and urges the Food and Drug Administration to refrain from implementing each of these proposals. Now why the the workers again in the United States are some of the country's highest paid workers. Their members are a good middle class manufacturing jobs in the United States. The workers are in strong middle-class wages, pension health benefits, and they play an important role in maintaining strong communities. I myself worked in the tobacco industry for 36 years my wife worked in the banking industry. These are good jobs, good paying jobs and have would have a devastating impact to carry out this ban on menthol. Why? Approximately 40% of the product grown by the tobacco companies is menthol cigarettes. We're talking about the jobs that are directly manufacturing and producing cigarettes, but you've also got the paper, the folds, the inks, the labels, other materials, that untold number of employees there that supply these products to to make the cigarettes. The employees at the tobacco companies are anywhere from 40 to 60% African American so the ban would affect the same people that this proposal to ban menthol is supposed to help. It would hurt them because they in turn would lose their job. None of the manufacturers or the cigarette companies can stay in business here in the United States if they lose 40% of their business. So, what would happen, as has been stated by Elliot Bowles, police officer and many others, it would create a black market. It would create the cigarette companies moving their production out of the United States and to facilities and countries around the globe. Many of the tobacco companies already have factories overseas. So, again, should the Food and Drug Administration ban or severely restrict the production and sale of menthol cigarettes consumers will turn to other potentially illegal sources for the menthol products that they they desire. So, having said all of this, who is it that loses? It's the workers in the United States when the production moves overseas or the black market comes in, it is the workers who lose in...Let me say in closing, the reality is menthol smokers will find their product, but it will not come from the tobacco industry in the United States, which is already regulated by the FDA. The tobacco company is in. So, there will be, as was said earlier today, crime will increase with this proposal. If this carried out, crime will increase. Again, the BCTGM and its many tobacco workers and many who are African American oppose this ban. Again, I thank you for the opportunity to speak, and we are stakeholders, too. Thank you.

ASHLEY ROBERTS: Thank you. Up next, we have Thomas Briant. Thomas Briant. You have up to 5 minutes for your comments. Please unmute your microphone and proceed.

THOMAS BRIANT: My name is Thomas Briant and I am the Executive Director of the National Association of Tobacco Outlets, a national retail trade association with 65,000 retail member stores. Thank you for the opportunity to speak today. Licensed and responsible retailers have been instrumental in preventing the sale of tobacco products to youth, resulting in the lowest tobacco use rates in history. However, if these proposed product standards go into effect, the supply of menthol cigarettes and flavored cigars will shift from licensed and regulated retailers to the illicit marketplace. The end result will be a less effective regulatory system and potentially enormous costs and unintended public health impacts, including sales to underage youth through the illicit market, significant retail sales revenue declines and lost jobs in the marketplace. To put these potential impacts into perspective, consider the following data. 18 million adult consumers buy menthol cigarettes. Approximately 4.7 million adults purchase flavored cigars. Also, more than 196,000 convenience stores, tobacco stores and grocery stores sell menthol cigarettes and flavored cigars. In the proposed menthol product standard, the FDA claims that the effects of an illicit market in menthol cigarettes, quote, would be minimal. Close quote This country already has a large illicit cigarette market, primarily caused by high taxes. The Institute of Medicine estimates that between 8.5% to 21% of the current cigarette market consists of smuggled cigarettes. In 2015, the federal government issued a report titled The Global Illicit Trade in Tobacco A Threat to National Security. The report concluded that, Consumers, retail outlets, manufacturers and governments are all harmed by the illicit trade in tobacco products." In fact, the report estimates that cigarette trafficking reduces federal, state and local excise taxes and sales taxes by up to \$7 billion annually, and funds criminal activities, including money laundering, weapons, drugs and terrorist groups. A ban on menthol cigarettes and flavored cigars will exacerbate this existing illicit market in the United States, magnifying each of these impacts. The federal government should not adopt regulations that foster criminal behavior. As stated before, the outcome of the Massachusetts ban of flavored tobacco products led to menthol cigarettes sales increases, equating to 90% of the lost menthol sales in Massachusetts. Those sales went to neighboring states. This means that the vast majority of Massachusetts consumers sought out alternative sources for menthol cigarettes, including traveling to other states. With some 22 million adults who buy menthol cigarettes and flavored cigars, this sheer number of adult consumers will demand these tobacco products and the illicit marketplace will seize the opportunity to meet that demand. In terms of retail impacts, the 196,000 stores across the country that sell tobacco products will experience significant financial impacts from the proposed regulations. The FDA's claim that menthol cigarettes being banned would not result in retail sales declines because consumers would spend the money, they save on menthol cigarettes on other items in the store is unsubstantiated and is simply not true. With billions of dollars in potential lost sales by retail stores, convenience retailers will be forced to reduce employee hours, lay off workers and tobacco stores could go out of business. That's because convenience stores have 36% of in-store sales in tobacco products and almost 90% of sales in tobacco stores are tobacco related. Now, based on studies of annual retail sales margin losses, retailers would not be able to maintain current employment levels, and our association estimates that at least one employee from each convenience store or upwards of 150,000 employees could lose their jobs. The job losses would even be more severe for tobacco stores as their sales would be decimated by the proposed product standards. For all of these reasons, the National Association of Tobacco Outlets asked the FDA to seriously consider not proceeding with these proposed product standards. Thank you again for the time to speak today.

ASHLEY ROBERTS: Thank you. Up next, we have Lincoln Mondy. Lincoln Mondy, you have up to 5 minutes for your comments. Please unmute your microphone and proceed.

LINCOLN MONDY: Hello? Can you hear me?

ASHLEY ROBERTS: Yes, we can hear you.

LINCOLN MONDY: Awesome. Thank you. I am speaking as an individual, my name is Lincoln Mondy and I've been researching this issue for years. My short film, "Black Lives/Black Lungs explores all the routes that the tobacco industry took to infiltrate the black community with menthol cigarettes.

This film unpacks how a flavor additive was manufactured and fed back to black people my people (UNKNOWN). How an industry in broad daylight and for decades without oversight, yielded its immense power to successfully transform menthol into a black cigarette. In 1953, only 5% of African American smokers reported smoking menthol.

By 1968, that number rose to 14%, and by 1976, it tripled to over 42%. Now we have today, where nearly 90% of African American smoker's smoke menthol cigarettes compared to just 23% of their white peers. This is the impact of a 50+ year corporate plan, laser focus on transforming menthol into a "black cigarette". Today, tobacco related diseases are the number one cause of death in the black community. That is the impact of this 50+ year corporate strategy focused on transforming, again, menthol into a black cigarette. Growing up, I just assumed the menthol was part of my culture without question it. I laughed at the black people of menthol jokes. All my black family who smoked, smoked menthol whereas my white family who smoked, smoked non-menthol or used chewing tobacco. During the research for the film, I was really fortunate to have an archive of thousands of tobacco industry documents detailing their advertising plans in their own words. I was struck by memos that called for ethnic field trips and talked about black people as being poor and dumb and the perfect target for addiction. The tobacco industry's product has always been doubt. Early advertisements featured doctors recommending menthol cigarettes for people with asthma, and the rollout of menthol cigarettes was specifically damaging. I want to be clear that the tobacco industry has been successful and any time there's a mention of a menthol ban or any set of restrictions that would hurt their bottom line, it's immediately decried as racist. I am someone who, as an individual, works for black liberation and is focused on reimagining what our criminal justice system is in this country. I know very well that this country has a deep and connected history with white supremacy and police brutality. At the same time, the tobacco industry is using this valid anxiety and fear that we have when it comes to police as a reason to keep their corporate stood up, their corporate interests stood up with menthol. Menthol bans target the point of sale, not individuals. Retailers who sell menthol risk losing their licenses and facing fines, but individuals possessing, or smoking menthol cigarettes do not face punishment. I believe that the tobacco industry is 3,000 steps ahead and for decades exceeding this talking point with black law enforcement officers, with op-eds, by donating to black led organizations, but at the end of the day, the science is the proof. The science shows that menthol is uniquely damaging and that flavors encourage and motivate addiction. I don't believe that for my people to live free and safely in this country, that that means the corporate industry needs to maintain a product. It needs to maintain their profit source. I am very, very clear that a menthol ban is not the only action that needs to be taken or isn't the last step. We need holistic approaches to public health, and we need investment in our communities. What we don't need is industries being allowed to have unfettered access to poison our communities for decades and then skirt regulation and skirt restriction from it. I've heard a lot of speakers speak to the fact that we have an issue with police brutality in this country. True, very true. At the same time, if we had any law proposed in this country that, say, focuses on everyone watering their plants at a certain amount of time, if there is police brutality and black people walk outside their house to water their plants, that will still be a real fear and a valid concern. It's not focused on ignoring the issue of police brutality it's focused on righting the wrongs of the past 60 years, that's government, and, I want to say the FDA has been asleep at the wheel because evidence time and time and again shows that menthol is uniquely damaging, and that black people's lives will be saved if it was taken off the market. Thank you.

ASHLEY ROBERTS: Thank you. Up next, we have Pebbles Fagan. Pebbles Fagan, you have up to 5 minutes for your comments. Please unmute your microphone and proceed. Pebbles Fagan, you are

up next. You have up to 5 minutes for your comments. Please unmute your microphone and please proceed.

PEBBLES FAGAN: Can you guys hear me?

ASHLEY ROBERTS: Yes, we can hear you.

PEBBLES FAGAN: OK, thank you for the opportunity to speak today. I am going to speak about three things today, which is that we congratulate the FDA for moving forward with proposing these two product standards, but we still have much progress to make. One, I would like to suggest that the specific language and proposed product standards include a prohibition on flavors and any type of additives, constituents, chemicals or components that impact multi-sensory effects that include touch, sight and hearing, and also to consider for additives, constituents, chemicals or components that impact multisensory effects that we prohibit their sales, distribution and packaging where any tobacco products or components are sold, and, also prohibit the use of artificial or synthetic additives, constituents, ingredients or chemicals at any level in tobacco products. I want to just provide a rationale for why this is important for consideration. First of all, flavor includes taste and smell, but we are very much aware that menthol is not just a flavor compound. It is a pharmacological agent that imparts cooling, minty taste and smell, and it, particularly those aspects of cooling and refreshing are distinguished from the flavor aspects of menthol, and so, there are lots of cooling agents that have been developed for many years, starting with the 1960s [UNKNOWN] Company via research from Hugh Watson began to develop compounds with menthol cooling effects, but no odor and low volatility. Companies like RJ Reynolds and Philip Morris began to develop WS compounds like WS14 in cigarettes in the 1970s and eighties, and since that time, other companies such as [UNKNOWN] with the Cimcool trademarked products, advanced biotech with Coolatta and [UNKNOWN] with coolant companies, began producing cooling agents. For example, Coloatta is a term used to describe multiple types of cooling agents produced by advanced biotech, and it's available online to be purchased oftentimes with e-cigarette liquids. However, the availability of these particular cooling agents, like Coolatta 23, Coolatta MMS natural, clean, fresh that has a clean and fresh odor and appeal to it that these particular products can be added to cigarettes or used with cigarettes and cigars, and so, it is important that we take into consideration all types of cooling agents that don't necessarily fit the traditional definition of flavor, which is taste and smell. We also know, as mentioned, that Cimcool makes quite a few products that do not have taste and odor to them, and, if we ignore the fact or exempt these particular products from consideration that our young people are populations that are disproportionately impacted by menthol and other flavors. Such as African American, native Hawaiians, women, LGBTQ+ populations, other groups will still be attracted to use these particular products because they will still have that refreshing and cooling effect. So, I urge the FDA to consider expanding in the title that they intend to prohibit flavors and any type of components that impart multi-sensory effects such as touch, sight, smell. Thank you very much.

ASHLEY ROBERTS: Thank you. Up next, we have Allegra Taylor. Allegra Taylor, you have up to 5 minutes for your comments. Please unmute your microphone and proceed. Allegra Taylor, you are up next. Allegra Taylor, you have up to 5 minutes for your comments. Please unmute your microphone and proceed.

ALLEGRA TAYLOR: Can you hear me?

ASHLEY ROBERTS: Yes, we can hear you, Allegra.

ALLEGRA TAYLOR: OK, sorry for the delay on that, [INAUDIBLE] here. So, I am calling to speak in opposed to the passing of this on the basis of hypocrisy. So, you constantly talk about the effects of

menthol and flavored cigarettes to the health and welfare of people, and particularly everybody is speaking of black people. Yet, there was a write up in the HHS Public Access in 2016 that was actually named "MENTHOL AND NON-MENTHOL CIGARETTE SMOKING: All-cases, cardiovascular disease and other causes of death among blacks and whites." In this report, the highest users of menthol cigarettes is actually Native Americans, and the effects of... the health effects, there is no difference between the health effects of use of menthol cigarettes versus non-menthol cigarettes. So, the targeting of the non-menthol use of cigarettes to me is an infringement upon the rights of people who do not... The rights of the people who take away their right to choose whether or not they want to smoke menthol or non-menthol cigarettes. That's an overreach, just like the abortion rights. So, what right are you going to take away next? Now, let me clear the record. I'm not saying that I am promoting smoking. I am not. I am a smoker with the plan to quit smoking. I originally was a menthol smoker. It was my choice to choose to smoke non-menthol cigarettes. I think it's a choice. It's a right, it's a choice of an individual to choose what they want to do, and, when the government reaches to infringe upon the rights upon people, it is wrong. We don't want to even talk about the... how this is going to affect the underground market. There is going to be underground market sales of menthol cigarettes because people are going to get what they want one way or another. That will increase crime regardless as to what people think. We've seen it. It does exist. It's happening right now. With the sales of cigarettes underground, menthol cigarettes are being sold today. They will be sold tomorrow. So, if you really are concerned about the health and welfare of people who smoke, ban all of the cigarettes, and as a smoker, I'm saying that, yes, I am, because you don't have the right to just pick and choose which group of people you want to infringe upon. If this is truly an issue where you are concerned about the health and welfare of American people, then let's talk about banning all cigarettes.

ASHLEY ROBERTS: Thank you. Up next, we have Akelei Davis. Akelei Davis, you have up to 5 minutes for your comments. Please unmute your microphone and proceed.

AKELEI DAVIS: Can you hear me?

ASHLEY ROBERTS: Yes, we can hear you.

AKELEI DAVIS: OK. Thank you. Good afternoon. My name is Akelei Davis, and I grew up in North Carolina. I'm a political science junior at Howard University. First, I want to say thank you for conducting this listening session. It is admirable that the FDA and other people I heard speak on Monday and today want to ban menthol as a way to help the black community. However, with all due respect, I find that pretense disingenuous. If the FDA really wanted to help the black community, then you will be banning all cigarettes to help all communities. Since 85% of menthol smokers are black, this ban would disproportionately affect them. Banning only menthol and flavored cigarettes means that the people of color communities will once again be targeted by the government. We urge you to carefully consider dispensing with this ban. How can you? How can the FDA outlaw something the majority of black people smoke without knowing how this ban will be implemented? Does this mean more black police presence in black neighborhoods? Does this mean another stop and frisk policy or another reason for my friends, family, and neighbors to be pulled over by cops? How will police even know that a cigarette contains menthol before arresting someone? Can you guarantee that making menthol cigarettes illegal won't lead to more police brutality or worse, another killing at the hands of the police like Eric Garner or George Floyd? Rest in peace. We still do not have criminal justice reform. While you say that the menthol ban will only apply to manufacturers, I've heard current and former police say that once this ban becomes law that menthol cigarettes and flavored cigars will become illegal and they will have to enforce the law. If you're black, you definitely know what that means. Being black in America already means we are five times more likely to be stopped by police, five times more likely to be incarcerated, and three times more likely to be killed by police. Like I said earlier, it is admirable that the FDA wants to,

quote-unquote, help the black community decrease their cigarette smoking. However, criminalizing menthol is not what's going to help. The day after this ban becomes law, people aren't just going to magically quit smoking. They will just move to any other type of tobacco product or get their cigarettes illegally. Just like the alcohol prohibition in the 20s didn't stop the use of alcohol and the war on drugs did not stop people from using weed and other drugs. The whole point of legalizing alcohol and weed was to decriminalize it and to stop the incarceration of people in color. Instead of a ban like the FDA, the FDA should be looking to stop the problem at the source. Many black Americans smoke as a means of self-medication. If the government wants the black community to stop using menthol, perhaps they should be looking at the reasons why a community smokes in the first place. According to the census, blacks are represented... represent 13.2% of the total population in the United States, but 23.8% of the poverty population. Focusing on the root cause of poverty in the health disparities in the US would be much more effective. The mental health and psychological turmoil that black Americans go through makes them want to smoke. Perhaps the FDA and government should focus on reducing poverty and improving public education and awareness towards cutting back on cigarette smoking. I'm in no way encouraging people to smoke. I would not recommend anybody to smoke. However, it is unethical to criminalize smoking menthol cigarettes when you're only banning something that the majority of black people smoke. We in the young black community will be most affected. So, we ask you, the FDA, to consider the consequences that you will unleash upon us if you were to make menthol cigarettes illegal. You will be criminalizing a whole new generation of black people. The repercussions of your decisions will affect generations to come. Generations that could be locked up in jail for the decisions that you make. Thank you.

ASHLEY ROBERTS: Thank you. Up next, we have Katya Vernet Jones. Katya Vernet Jones, you have up to 5 minutes for your comments. Please unmute your microphone and proceed. Up next, we have Katya Vernet Jones. Katya Vernet Jones, you have up to 5 minutes for your comments. Please unmute your microphone and proceed. OK. Up next, we have Harold Farber. Harold Farber. You have up to 5 minutes for your comments. Please unmute your microphone and proceed.

DR HAROLD FARBER: Alrighty. Hello. Thank you. Thank you so very much for the invitation just to speak. I'll try to keep my comments brief. I'm Dr. Harold Farber. I hold the academic rank of professor of pediatrics at Baylor College of Medicine. I serve as a pediatric pulmonologist at Texas Children's Hospital and as an associate medical Director for Texas Children's Health Fund. I have previously served as policy chair for the section on tobacco control of the American Academy of Pediatrics and as Chair of the Tobacco Action Committee of the American Thoracic Society. I'm a member of the pediatric advocacy of the American Thoracic Society. I very strongly support the FDA Center for Tobacco Products' proposed product standards to prohibit menthol as a characterizing flavor in cigarettes and to prohibit characterizing flavors other than tobacco in all cigars, and although I'm not speaking as a representative of these organizations, I do know that the AAP and the American Thoracic Society also strongly support these proposed product standards. I do want to stress that these are standards with enforcement against the industry, against the market, and against the... That prohibit sale. These are not against... These are not... Does not make the users or does not make anything illegal for the users. I want to stress that I've seen first-hand the toll the tobacco and nicotine addiction takes on our young people and how the tobacco industry designs and markets products that appeal to and addict our young people. Banning menthol and characterizing flavors and cigarettes is important to protect our youth and let me start with a personal story to illustrate why. When I was 13 years old, I had my first cigarette. I was handed a full-strength cigarette, and because the smoke was so harsh, I could not inhale it. That initial aversive experience saved my life. It kept me from ever picking up another cigarette and thank God I wasn't handed a menthol cigarette. Menthol has anesthetic and cooling properties that makes the smoke much easier to inhale. It makes it easier to start, easier to get addictive, and much harder to stop. Flavors in cigars do much the same thing, basically making the cigar a highly addictive candy. The only reason to have fruit and candy-flavored cigars is to have an introductory product that appeals to

young people. A former U.S. tobacco company, which is now part of Altria sales representative, was quoted as saying, quote, Cherry Skull is for somebody who likes the taste of candy, if you know what I'm saying." Unquote. In 1972, advisers to Brown and Williamson stated, quote, It's a well-known fact that teenagers like sweet products." Unquote. A 1974 R.J. Reynolds Tobacco Company meeting noted a cigarette should be, quote, Low in irritation and possibly contain added flavors to make it easier for those who never smoked before to acquire the taste of it more quickly." Unquote. Tobacco dependence in young people is much easier to prevent than to treat. Smoking is one of the most important preventable causes of severe chronic illness and premature death. At least half of smokers will die because of their smoking. Almost all smokers become addicted before they reach the age of 18, and there's only one reason to have menthol and characterizing flavors in cigarettes and cigars, and that's to get kids hooked. Although it doesn't go far enough, bans on menthol and characterizing flavors should apply to all tobacco products. Implementation of the proposed product standards will protect our young people and is a critical part of the FDA's Center for Tobacco Products, fulfilling its responsibility to adopt evidence-based tobacco product standards appropriate for the protection of public health. Thank you so very much, and I yield the rest of my time.

MEGAN HICKS (MODERATOR): Thank you. Up next, we have Beth Ferrell. Beth Ferrell, you have up to 5 minutes for your comment. Beth Ferrell, you may now speak. Up next we have Lynne Braun. Lynne Braun, you have up to 5 minutes to speak. Let's go back to Beth Ferrell. Beth Ferrell, you're up to speak. Beth Ferrell, you may unmute your line. We move on. Jiles Ship, you are up next to speak. Jiles Ship, you may now unmute your line.

JILES SHIP: Hello? Can you hear me now?

MEGAN HICKS: Yes, we can. Thank you.

JILES SHIP: Thank you. Thank you. Alright. First of all, thank you for the opportunity to speak today. I wanted to first talk about I've heard a lot of anecdotal information. I've heard some statements that unfortunately can't be refuted because it's not that type of forum, but I'm sure many have heard about the master settlement agreement, which happened in 1998. There were 52 state and territory attorney generals. They signed a master settlement agreement with the four largest tobacco companies in the United States and settled dozens of state lawsuits brought to recover billions of dollars in health care costs associated with treating smoking-related illnesses, prohibiting tobacco companies from taking any action to target youth in the advertising, promotion or marketing of tobacco products. So that rule and law is already in place. That was banning the use of cartoons in advertising, promotions, packaging, or labeling of tobacco products, also prohibiting tobacco companies from distributing merchandise bearing the brand name of tobacco products. Illegal. It's illegal to give out free cigarettes. Also, it prohibited tobacco brand name sponsorships of events with significant youth audiences or team sports. That happened in the 60s and the 70s. It happens no more. It's illegal now. Tobacco advertising is monitored closely. Companies are heavily penalized and fined for non-compliance to the master settlement agreement. They continue to pay, since 1998, millions of dollars to states for past targeted advertising. When is the last time that you saw an ad or billboard of tobacco ads targeting anybody? I am a 37-year-old law enforcement official, and I am a certified community policing practitioner by the Department of Justice. I'm a past national president of NOBLE, which is the acronym for the National Organization of Black Law Enforcement Executives, and currently an executive board member. I'm a lecturer. I have taught a number of criminal justice courses at Rutgers University. Let me give you a little historical evidence. I'll be speaking to you not only from a law enforcement perspective, but also from the perspective of someone who grew up in an African American community, lived in an African American community, and worked in an African American community. Historical evidence, when you ban a product, an inferior product appears on the black market more unhealthy than the regulated product. What does that mean? That means that this will create an underground economy where cigarettes will be sold when somebody has an

addiction to any type of substance, they're going to find a way to get that substance. That's what my over 27 years in working in a patrol division of policing has taught me. Individuals not of color advising what goes on in communities with no lived experience in neighborhoods of color, it is... Number one, it's insulting, and number two is disingenuous. Reasons for tobacco-related deaths and illnesses go beyond smoking. There's racist healthcare systems best predictor of healthcare outcomes focused on social determinants of health, lack of access to quality health care, food deserts, unemployment, unsafe communities, lack of health, education, and police violence. The American Public Health Association in many cities have labeled violence a public health crisis. The cause of poor health and premature deaths of African Americans are due to the lack of health insurance, lack of access to health services, poverty, racism. Smoking is a symptom. Root causes are poverty, racism, societal injustices, and inequalities. Lastly, let me say that former New York City Mayor Bloomberg, author of the Stop and Frisk Policy to Reduce Crime in New York City, failed miserably and resulted in thousands of arrests of black and Hispanic New Yorkers. Mayor Bloomberg ended up publicly apologizing for failed policies because he admitted that he did not understand the impact of stop and frisk on communities of color, and I want to take this opportunity to thank you, and please feel free to call on me for any further information that you would care to discuss about this subject.

MEGAN HICKS: Thank you. Up next, we have Susan Morabito. Susan Morabito, you may unmute your line. Susan Morabito, you are next to speak. We will return to Beth Ferrell. Beth Ferrell, you may unmute your line. You are next to speak. Beth Ferrell, you may now speak. Lynne Braun, you are next to speak. You may unmute your line. Lynne Braun, you may now proceed.

DR. LYNNE BRAUN: Hello? Can you hear me?

MEGAN HICKS: Yes, we can.

DR. LYNNE BRAUN: My name is Dr. Lynne Braun. I'm professor emerita and a retired nurse practitioner from Rush University in Chicago. I've specialized in prevention my entire career. Further, I volunteered for the American Heart Association for more than four decades, advocating for healthy lifestyles. Tobacco use, particularly smoking cigarettes, is the number one preventable, number one cause of preventable deaths. Smoking is a significant cause of heart disease, lung diseases, including lung cancer and several other forms of cancer. Tobacco use remains a significant problem for adults and youth in 2020. 24% of high school students and 6.7% of middle school students used any tobacco products. The proposed FDA rules prohibiting menthol as a characterizing flavor and cigarettes and prohibiting all characterizing flavors in cigars will undoubtedly prevent children from initiating smoking and becoming the next generation of smokers, and it will also help adults quit smoking. Menthol, a flavor additive, provides a minty taste and reduces the burning and harshness from smoking. This flavor additive makes cigarettes easier and more pleasant to use by youth and young adults, thus helping to addict them to smoking regularly. Menthol also makes it more difficult for smokers to quit because it's appealing for them, partly because it interacts with the nicotine in the brain. It is so important that we focus on health equity and addressing disparities that exists among members of black communities. Eliminating menthol flavoring of cigarettes has the potential to quickly impact...The health of black smokers. As almost 85% of non-Hispanic black smokers use menthol cigarettes compared to 30% of non-Hispanic white smokers. This proposed rule will improve health and reduce mortality risk of menthol cigarettes smokers and improve the likelihood of smoking cessation. The second proposed rule eliminates flavors in cigars such as strawberry, grape and cocoa, which would clearly reduce the appeal of cigars and experimentation among youth and young adults and prevent nicotine dependence. According to the 2020 National Youth Tobacco Survey approximately 3.5% of middle and high school students smoked a cigar or some form of cigar in the preceding 30 days. In the black community, this increases to 6.5%. Further, more young adults tried a cigar for the first time versus a cigarette. Therefore, flavorings in cigars must be addressed

and eliminated as well as menthol flavoring in cigarettes. Therefore, I fully support the FDA's actions to ban menthol flavoring of cigarettes and all flavors in cigars as strategies to reduce smoking-related illnesses and save lives. Particularly, among those disproportionately affected by cigarettes and cigars. It will be critically important to ensure equitable access to tools and resources to help addicted smokers quit as these public health measures are implemented. Thank you very much for this opportunity to provide comments on these important issues and proposals.

MEGAN HICKS: Thank you. Next, we have Julio Diaz. Julio Diaz you now have 5 minutes for your comments. You may unmute your line. Julio Diaz you are now up to speak. Rheta-William Ellas you may now speak. Rheta-William Ellas you may now proceed. Do we have Rheta-William Ellas on the line? You need to unmute your line, please. Can you please unmute your line? Up next, we have Adriane Casalotti. Adriane Casalotti, you may now proceed.

ADRIANE CASALOTTI: Hi, can you hear me? Yes, we can. Great. Thank you. Hi, my name is Adriane Casalotti, and I'm commenting on behalf of the National Association of County and City Health Officials or NACCHO. We are the Association of the nation's nearly 3,000 local health departments. NACCHO strongly supports the two recently proposed tobacco product standards and urges FDA to finalize both as proposed. Tobacco is a leading cause of preventable death and disease in the United States and may local health departments develop and engage in tobacco control, cessation and prevention efforts to promote health in their communities. According to a 2019, NACCHO profile study, which is a census of all local health departments, in ten local health departments provide direct program support for tobacco prevention and cessation. A rate that remains relatively consistent across size of population served and degree of urbanization. Nearly all 92% of local health departments are involved in policy efforts related to tobacco, including efforts to reduce the sale of nicotine products to minors, promote indoor smokefree spaces and regulate cigarettes and synthetic nicotine. Over 40% gauge in direct tobacco retail regulation, and we expect that that has gone up over time. This is also one of the top areas where local health departments have engaged in policy change efforts, as the research is clear in the heart of these products and their impact on health. 92% of local health departments have been engaged in this work, including policy efforts to reduce sales to minors as well as the impact of disease, but despite all this work, local health departments believe that more must be done, including at the federal level, to prevent smoking initiation and help people quit no matter where they live. As part of engaging with NACCHO, local health department experts have identified the restriction of flavored tobacco, including products with menthol as key public health needs. The research is clear that removing menthol cigarettes and flavored cigars from the market is good for the health of individuals and public as a whole. Flavorings mitigate harshness of tobacco smoke, making it easier for new users to experiment with tobacco and become addicted and harder for existing users to quit. Flavored cigars, which are currently sold in candy and fruit flavors pose a unique risk to children and youth. Children and youth tobacco users have consistently reported using flavored tobacco products. 81% of youth who have ever used tobacco initiated with a flavored product, and in 2021, 44% of youth cigar smokers reported smoking flavored cigars. Meanwhile, the continued sale of menthol cigarettes exacerbates health disparities. The tobacco industry has heavily marketed menthol cigarettes to black Americans and communities of color, leading to the highest prevalence of menthol use among any racial or ethnic groups in the United States. Local health departments seek to promote safe and healthy living through coordination, collaboration among multi-sector stakeholders and community organizations to implement tobacco prevention and control programs at the local level. The Health Tobacco Cessation Programs and Counselors that offer members in the community a resource to help them quit smoking. At the community level, the tobacco safety net is made up of public health and other providers who are there to assist individuals to keep them from becoming smokers or help them quit. The success of these programs is limited via the continued availability of menthol flavored tobacco products, and patchwork rules across the country. Recognizing the public health harms of flavor tobacco products, local health departments across the country have worked with their

jurisdictions to enact restrictions on these products to protect the health of their communities. To date, over 300 cities and counties have enacted restrictions on the sale of flavored tobacco products, and at least 150 of those restrict the sale of menthol cigarettes, including highly populated areas like Los Angeles and San Francisco, but despite the policy progress at the local level, federal action is needed to fully protect the public from the negative public health harms of menthol cigarettes. Current local and state comprehensive flavored tobacco sales restrictions being those that prohibit sales of all types of flavors across products, cover less than 5% of the US population, and continued availability of flavored cigars and menthol cigarettes throughout most of the country undermines and limits the success of local health departments tobacco prevention and cessation efforts. Finalizing the two proposed tobacco standards and removing menthol cigarettes and flavored cigars from the market is an important step forward in improving public health that will save lives, prevent disease, improve the health of our communities. Therefore, NACCHO strongly urges FDA to finalize the standards without carving out loopholes or any delays. Thank you very much.

MEGAN HICKS: Thank you. We have gone through the list of confirmed speakers and wait list speakers for today. If you are on the line and would like to speak and importantly, we have not heard from your organization during either of the listing sessions please respond in the chat with your name and organizational affiliation. Again, we are interested in hearing from those whose organizations have not been represented today. We will go in the order of those that sign up and talk for... Enid Neptune. You may proceed with your comment. Ronald Hampton, you are next to speak. Ronald Hampton you unmute your line, and you have up to 5 minutes for your comments.

RONALD HAMPTON: OK. Can you hear me now? Can you hear me?

RONALD HAMPTON: Yes. Yes, I can hear you. Hello? Yes. We can hear you. Alright. So, I can go ahead now? You may. OK. Thank you. My name is Ronald Hampton. I'm a retired D.C. Metropolitan Police officer, former Executive Director of the National Black Police Association and a member of Blacks in Law Enforcement of America.

I've listened patiently to this and familiarized myself with the policy of the ban, and this reminds me of the war on drugs that was initiated in June 18th of 1971, which at that time the Nixon presidency and his colleagues struck out to initiate a war on drugs in our society, in our nation, and half of the reason for that had to do with protecting black and brown communities from the scourge of drugs, which at that time was heroin and crack, but ultimately, what happened was, is that the overwhelming damage that the war on drugs did in our community, not only in terms of the human cost of the impact of the war on drugs, but the institutional impact and agencies and services in our cities and black folk, which they would say that they were implementing or utilizing the war on drugs was for the benefit of black and brown folk and in the communities that they live, which was devastated by the drought, but the war on drugs was even more devastating than the effort to rid our communities of drugs. Because the police action was so indiscriminate that it impacted every single person, because the police could not differentiate between who was good and who was bad, but they assumed that everybody black was using drugs, and so this whole idea of banning cigarettes because its impact on black and brown communities reminds me of that. I have to say that I support the gentleman earlier today, Mr. Order who talked about that and suggested that the FDA should have consulted with law enforcement organizations about ultimately the impact of these policies and practices on our community. I've seen it first-hand as a police officer. I've seen it first-hand as a person who works and still works in my community, and the indiscriminate actions on the part of police officers when it comes to stop and frisk, when it comes to the law surrounding a traffic, and now to add this to their bailiwick in terms of the things that they're going to be allowed to do, and we've already seen the negative impact that this idea that the police somehow novel can ask you what kind of cigarettes are you smoking or the impact of illegal cigarettes or possession of illegal cigarettes is, again, going to bring even more pressure. More damage to our community, as well as

not only the personal damage that it's going to bring, but it's going to bring the institutions and it's going to strip our communities not just on their terms of human beings, but what the structures of our community, and we'll be right back where we started. Whilst the war on drugs have never, ever ended. It still takes place now and the same strategies are being employed in our community. So, organizationally and individually, I just think that this is unfair. It will hurt our community. Thank you very much.

MEGAN HICKS: Thank you. Alex Winston, you are next to speak. Alex Winston you may unmute your line.

ALEX WINSTON: Good afternoon. Thank you, Miss Hicks and the rest of the staff that's supporting everything in the background today. I appreciate your time. My name is Alex Winston and I'm with Parents Against Vaping E-cigarettes or PAVe, and I support the proposed FDA rules prohibiting menthol cigarettes and flavored cigars. I would like to share my personal story regarding menthol cigarettes with you. My husband William was mixed race black and Native American, two of the highest risk populations to suffer from tobacco related health disparities, and the predatory marketing of menthol products by the tobacco industry. William was able to purchase menthol cigarettes in his predominantly black neighborhood of Richmond, California from the young age of nine. He did not know at the time nor did many of his friends, family and neighbors that the tobacco industry designed a type of cigarette just for him. He didn't know that the tobacco industry had done lab experiments on animals and learned that there was a relationship between melanin and nicotine. As was discovered and reported on by UCSF's Dr. Valerie Harper and Dr. Ruth Malone in their published literature review of tobacco industry documents. The National Institute of Health States that nicotine may be accumulated in human tissues containing melanin and retention in these tissues may increase melanin synthesis. Meaning the darker the skin is it absorbs and retains nicotine. Furthermore, several studies have been published that prove that menthol increases cell permeation of several types of drugs, including nicotine. The combination of these two scientific facts made people of color the ideal marketing target of tobacco companies. I would like to urge the FDA to also prohibit menthol as an ingredient, not only as a characterizing flavor. As this leaves a huge loophole for tobacco companies to continue to use menthol to addict new users. My husband, William, was trying hard to quit smoking menthol cigarettes and bought into the false narrative that vaping would help him with cessation. He started vaping menthol e-cigarettes and died less than a year later in 2019 at age 42 of a severe heart arrhythmia. With the equivalent of three packs of cigarettes worth of unregulated nicotine in his system. Leaving me a single mother of four kids. His life mattered. This is a now problem and a public health emergency, and 2017, my son had started vaping menthol nicotine products at his high school at age 15 and still does nearly four years later. I am not a failure as a parent because he was targeted and sold these addictive products that were designed for him by the tobacco industry and sold to him by a local retailer where we live in Vallejo, California. It is the duty of the government to protect all of its citizens. This proposed rule is an important step toward righting the wrongs of the past. However, tobacco in general should be taken off store shelves in this country. Especially all flavored tobacco, including e-cigarettes. These products serve no purpose whatsoever but to addict and destroy for profit. The FDA should prohibit all menthol cigarettes and all menthol and flavored tobacco products which have proven to addict its users in greater numbers, including e-cigarettes. My husband is gone, along with millions of others and my son is already addicted. Please use this rule and continue to push the ball forward to do more. In addition to public health and the social and justice issues, the cost to our taxpayers and government to carry the burden of tobacco related disease, death and loss of productivity is enormous, and can be improved with more regulation and oversight. Thank you so much for your time today.

MEGAN HICKS: Thank you. James Newman, you are next to speak. James Newman, you may unmute your line. James Newman, can you please unmute your line.

JAMES NEWMAN: Hello? Can you hear me?

MEGAN HICKS: Yes, we can.

JAMES NEWMAN: OK. Good afternoon. Thank you. My name is James Newman, and I want to thank you for the opportunity to speak this afternoon. I'm a retired federal agent from the bureau of alcohol, tobacco, firearms and explosives with many years of experience conducting illicit tobacco investigations. While I understand the health concerns surrounding the proposed policy, the broader law enforcement community needs to be engaged before you reach a final decision. This approach will not only do little to stop the usage of tobacco products, but it would also enable an influx of organized crime and illicit smuggling in communities across the country. While conducting illicit tobacco investigations, I've witnessed that illicit tobacco products are just as valuable and sometimes more valuable than currency when traded for cocaine, heroin, marijuana and firearms. I've seen illicit tobacco products even exchanged for motor vehicles. In a time when law enforcement agencies nationwide are looking for ways to develop strong relationships with the communities that they serve, and most law enforcement resources are stretched. I think we need to be concerned about how this will affect the relationships between the police and their communities. Street corner, loose tobacco sales that look very similar to a drug transaction to a police officer will surge. Now, this puts the police in a precarious position. Did that officer just observe a cigarette sale or a drug transaction? If a concerned citizen observed a similar transaction and notified law enforcement, did they observe a cigarette sale or drug transaction? And unfortunately, this scenario could play out in our black and brown communities more than any other community. I would hope that the FDA considers bringing a broader group of law enforcement professionals to the table so that a strong law enforcement strategy can be part of the plan moving forward. Thank you.

MEGAN HICKS: Thank you. Pamela Granger, you're up next to speak.

PAMELA GRANGER: Good afternoon. My name is Pamela Granger, although I am a former six-year employee with the American lung association and currently a volunteer chair of tobacco free Sonoma and smoke free Marin. I'm speaking today as a grandmother of five with big tobacco targets on their foreheads, saying future customers for life. You will not be surprised that I'm speaking in favor of the proposed rules to restrict the sale of menthol cigarettes and flavored cigars as soon as possible with no exemptions. It is through that youth concern perspective that I have listened with interest to reasons that have been given by those in the tobacco industry for keeping minty menthol flavoring in cigarettes and flavors such as cherry, grape and honey in cigars. 58 years, as I comment further, please keep that number in mind. First of all, I find it incredulous, mind blowing, actually, that anyone in the tobacco industry, from farmers to manufacturers and retailers had expressed surprise or indignation that the public health and environmental protection communities are doing everything in their power to reduce the harmful effects of tobacco and nicotine in all its delivery methods. Including working towards the end game of tobacco. Ever since the curtain was pulled back in 1964, when the surgeon general's report late cigarettes to lung and heart disease, the tobacco industry has got to have known that these days were coming for years. That's a 58-year warning. Because you can't tell me that anybody in the industry didn't see this time coming because they sure have worked hard to think of new ways to sidestep and bypass lifesaving regulations. As an example, when a local jurisdiction in our area proposed increasing the age to purchase tobacco products to 21 long before the state of California, followed by the federal government, they were threatened with a lawsuit. Obstruct, obstruct, obstruct.

Several tobacco industry advocates commented that we should be focusing on harm reduction. I'm unclear as to why we would let an industry that addicts and benefits from maintaining that addiction decide what is best for public health. They're happy to mention smokeless tobacco and heat, not burn alternatives. Note, none of these products have been evaluated or approved by the FDA as

cessation devices. I completely support tobacco cessation. However, my focus is on keeping kids from starting in the first place and those pushing harm reduction seem to skip right past that. I'm also unclear why anyone wants to work so hard to support an industry with strongest marketing strategies addiction. Why does anyone want to work to support the manufacture and sale of products with no socially redeeming qualities? I'm unclear as to why anyone would be proud of supporting products that target kids, my grandkids, so they can make money. Today, I've also heard several individuals say that a reason we should keep minty menthol and flavored cigars is because of a fear of a loss of revenue. These same commanders choose to ignore the results from studies such as the one done in California prior to the passage of our flavored tobacco ban. The findings show that a comprehensive flavor ban would lead to a reduction into tobacco tax revenue but improve as a result of the decrease in tobacco use. Adults would quit smoking and young people would be deterred from initiating in the first place. My recommendations to protect all children are first, the FDA should prohibit menthol and menthol analogues as ingredients, not just as characterizing flavors. They should prohibit flavors not only in cigars, but also in hookah, all cigars and all electronic smoking devices, and enact these regulations within three months, waiting is lives lost. Thank you.

MEGAN HICKS: Thank you. Up next, we have Enid Neptune. Enid Neptune, you may now unmute your mic.

ENID NEPTUNE: Hi, can you hear me?

MEGAN HICKS: Yes, we can. Thank you.

ENID NEPTUNE: Oh, great. My name is Enid Neptune, and I am affiliated with the American thoracic society, which supports the proposed role. However, my comments reflect my personal sentiments. I am an African American woman physician, a lung specialist, and a long-term NIH funded scientist who studies the disease consequences of chronic tobacco use. I manage scores of patients with lung diseases caused by chronic tobacco abuse, many of whom are African American. Most wish that they could stop smoking and or that they had never started. They enter their middle-ages, not with enthusiasm for retirement, but with fears about whether they can get enough oxygen, whether they'll have access to their needed inhalers, or whether they will be able to get a lung transplant as their disease progresses. The African American community knows when it's being played. We all saw the ads in the magazines. We all saw the coupons at sports events and concerts. The tobacco industry and their mouthpieces want us to look away and think that menthol is something good that should be protected by our community. Let me be clear, menthol is a vehicle to get people addicted to nicotine and become lifelong smokers. That is the singular aspiration that the tobacco industry has for the African American community. We know that, and we reject it regardless of how popular, how ubiquitous or how brown their advocates might be. I would like to address the misinformation that is being trotted out by big tobacco. Some reflect their old hits, such as concerns about an illicit tobacco market that they've used since the seventies, but have never complicated any tobacco regulation in a meaningful way. The Canadian data persuasively shows that an illicit market has not emerged as a consequence of the implementation of their menthol ban. A second note of misinformation is that over policing will result from this policy. This is a scare tactic being used to enable African Americans to reject a regulation that will benefit the health of the community. The regulation by the FDA is targeting manufacturers and commercial distributors of menthol cigarettes. That is the only way that these rules would be effective. It is uniquely shameful to exploit the tragedy of Eric Garner in order to ensure that more African Americans will become nicotine addicted and suffer the dire health consequences of chronic tobacco use. I also want to provide some clarity as to what menthol is. Menthol is a drug. It is regulated as a drug in your mouthwash, in your toothpaste, but not in your tobacco product until now. The African American community has a long history of drugs being targeted to our community, and we welcome the FDA action as supporting our efforts to rid our community of toxins that promote disease. Recently, the Black Lives Matter

movement has enabled a heightened awareness of various challenges in the African American community, especially disparities in criminal justice and health care and voter suppression. Approximately 50,000 African Americans die each year from tobacco caused diseases. We need to ask every opponent of the ban, especially the civil rights leaders who marched, speak and ostensibly care about black bodies, but who surprisingly oppose menthol regulation. Why don't those 50,000 African American lives matter? Who supports menthol regulation? The NAACP, the national urban league, the national medical association, the African American tobacco control leadership council. The association of black cardiology, black women's health imperative, delta sigma theta Sorority, the lynx. Several of these organizations have historically gotten funds from the tobacco industry. Courageously, they have been willing to lose this funding in order to support the health of their communities. The ACT, the American thoracic society, supports both elements of the proposed rule. The first to eliminate menthol and other coolants and combustible tobacco products. The second, to eliminate flavorings in cigars, we hope these are accepted and implemented as soon as possible. Thank you for this opportunity.

MEGAN HICKS: Thank you. Next, we have Corey Pegues. Corey Pegues can you unmute your line. Corey can you please unmute your line.

COREY PEGUES: Good afternoon. Can you hear me?

MEGAN HICKS: Yes.

COREY PEGUES: Yes. Hi. My name is Corey Pegues. Thanks for bringing me on. I'm a retired executive from the New York City police department. I'm also a black man. So, I wanted to speak from these two perspectives, and I'll start off as a black man. As a black man and I have black children, black sons and daughters. Most importantly, my sons. The black and brown community has been over policed since the days of slave patrols. That's what police have started as slave patrol, slave catchers, and we have been dealing with that for over 100 years. The slave patrol, over 150 years. The NYPD was in existence. The menthol ban would definitely have an effect. So, I heard a lot of people in the last few days, if you're not black, especially if you're not a black man or a black mother, you don't understand this, and I get that, but as a black man, I understand that cinema child to the prom, he or she might not get back home since my daughter for a coffee run, she might not make it back home. You know, your previous speaker brought up Eric Garner. Well, she forgot Sandra Bland refused to put her Newport out and supposedly she hung herself in a cell. More importantly, George Floyd allegedly was using a counter bill to buy menthol cigarettes also. So, these are this isn't a one off, Eric Garner. This is systemic stuff, and we only know about those three cases because we saw more video. Think of cell phones, a video, but we won't even know about that, but what about the countless men and women who have been brutalized and killed by the police because of a menthol cigarette, refusing to put them down, and as an executive in the New York City police department for 21 years, I understand when you give a cop a tool, they put it in a tool belt, and everybody's talking about the FDA is going to be talking to the manufacturer. Well, I guess they was targeting a manufacturer of cocaine also during the war on drugs, but they never seem to get the manufacturers of the cocaine or crack and the war on drugs, and guess who was in prison and who's still dealing with that right now? The black and brown community. We're still dealing with people in jails, families disbanded. Alright. So, I've been going around the country speaking to different forums, different panels about this menthol ban, which and let me just put this misnomer that I don't smoke. I don't care about smoking. I wish you ban all cigarettes, but if you're going to ban a cigarette, why would you only ban one segment of the community? I'm not buying the cancer, I'm not buying any of that because the number one killer in black and brown communities, diabetes. So, the FDA wants to do something in the black and brown community to get rid of the super gulps. They get rid of these McDonald's and all of this other sugar that's killing America's much higher than smoking and menthol cigarettes, and it's been legal for so long. If I'm 21 years old and I have a vise, I

want to smoke a cigarette, why shouldn't I be able to smoke a cigarette? You know, and prohibition, prohibition don't work. We know it, we know it from the liquor with the Rockefellers and the Kennedys and everybody who was making millions, millions of dollars into the government say, hey, we got to get in on this, and so if you, I promise you, if you get this ban to go through, we're going to have chaos in our community. There's no difference in selling a valid crack or a [INAUDIBLE] cigarette. It all looks the same, and you know that from that regard, it all looks the same, and police officers will use the menthol ban to start engaging young men and women. It had never been an arrest about the cigarette, it would be an arrest for disorderly conduct. We refused no lawful order to disperse resisting arrest. We don't need that, prisons are not filled with murders, prisons are filled with small crimes, such as a menthol ban, and we see somebody that refused to put the cigarette down that they're going to end up getting locked up for menial crime. I really, really hope that the FDA reaches out. You have noble, you have a black police association. You got to reach out to all these law enforcement associations. As I said, been going around the country, speaking into the matter of a man and the woman. Every single police department don't want anything to do with this. If you're going to do a ban, why wouldn't you consult with the biggest police, the FOP. They don't want anything to do with it. You need to consult with law enforcement because law enforcement will be the basket that's going to have to deal with this, and it's going to look like this, it's going to look like three people in front of your house. You're not going to know what it is and the cops are going to get there. They're going to find out they're selling loose cigarettes. So, what are they going to do, say, no, that's not the manufacturers are not going to do anything. No, they're going to have to get rid of those people, and hopefully it doesn't end up with one of them being killed. Thank you very much.

MEGAN HICKS: Thank you. Charles Taylor, you are up next to speak. Charles Taylor, you have 5 minutes.

CHARLES TAYLOR: Hello? Can you hear me?

MEGAN HICKS: Yes.

CHARLES TAYLOR: Hello. Good afternoon. I'm Charles Taylor, SAC Village Advocates. I'm against the ban on menthol, not because of the menthol, but because of the ban itself. If you are a fan of substance, white tobacco, the menthol tobacco, why not ban all tobacco? If you're doing heart surgery or cancer surgery, you don't do part of the surgery, you do the whole thing. You cut the whole cancer out. You don't just cut out part of, because of that part's effecting a certain part of the country or a certain type of person, whatever that is, whatever that happens to would be the whole thing that you don't piece it out. I can get on a topic that's relevant to what we're talking about with the menthol, the gun laws, with one of that AR 15. It's not just the AR 15 that are killing people. It's a major cause, but all guns kill, and so we're going to stop that. Are we going to go from AR 15 to 20 calibers or 38 to 45? Where does it start and where does it stop? We need to do what's best for the people. If I'm a smoker and I'm going to smoke, whether I smoke menthol, I smoke the regular tobacco cigarettes, I'm going to smoke that, and if I can't get one, I'm going to find something that's going to give me that same urge with that same feeling. So, what do we do? Where does it stop and who do we affect? Who [INAUDIBLE] effect, it's affecting our community? Yes, but it's also affecting other communities, but tobacco, it's just the tobacco. It's not just the menthol of tobacco history itself. So, the ban on just menthol is not going to solve the problem. That's going to create a bigger problem. That's almost like telling people, you know, whether you want to drive a Ford or Chevy if you put the Ford company out of business, people are going to go to the Chevy. So, they're going to find the advice, whatever it is. So, let them have what they have and do what they're going to do, rather than trying to drive them to something that could be more detrimental than the menthol. That's all I got to say.

MEGAN HICKS: Thank you. Up next, we have Beth Farrell.

BETH FARRELL: Good afternoon. I am Beth Farrell, agricultural program specialist at the North Carolina department of agriculture and consumer services. I appreciate the opportunity to share what a menthol ban would be to our state. Agriculture and agribusiness are North Carolina's number one industry contributing nearly \$93 billion to the state's economy in 2020. This represents a \$3 billion decline from 2019, largely due to pandemic impacts. From farms to manufacturing, tobacco remains vital to North Carolina agriculture and our state's economy. We're deeply concerned a ban on menthol would have many negative consequences to our state. While we appreciate and support FDA efforts to protect public health, unreasonable regulation of the tobacco industry will result in significant unintended consequences. The intent of the family smoking prevention and control act of 2009 was to substantiate regulation of tobacco products based on scientific evidence. Without sound science to support such an action, this ban on illegal products seems misguided and an overreach. FDA science led to the approval of a menthol cigarette as a modified risk tobacco product in late December 2021. Tobacco remains a legally and highly controlled product, while North Carolina's agricultural industry is highly diversified. The significant impact of tobacco on our economy is still widely felt, especially in rural areas where agriculture is often the main industry. Last year, farmers in our state produced over £252 million of tobacco, valued at over 500 million at the farm level. Factoring in multipliers, the economic impact of North Carolina tobacco was over \$1 billion, supporting over 15,000 jobs. Additionally, tax revenue from the legal sale of tobacco products in our state is over \$240 million per year. Tobacco is not the only crop grown on a tobacco farm. These farms also grow sweet potatoes, soybeans, corn, cotton, cucumbers and other commodities, in addition to many have in livestock operations. These farms produce tobacco that is the most traceable, compliantly produced tobacco in the world through good agricultural practices, including a third-party verification process. Tobacco grown in the United States is held to a certification standard that are often more stringent state or federal laws in regards to crop production, environmental stewardship and labor. Given the fluctuations of commodity markets, tobacco provides financial stability for many of these farmers to remain in production. Without the profitability offered from tobacco, many would not be able to stay in business. As we've learned throughout the COVID 19 pandemic, agriculture is an essential business, and we must protect our food supply. If the FDA was to ban menthol cigarettes, we are concerned that the impacts on the farm level could lead to many farming operations in our state ceasing to exist. Simply stated, when we lose a tobacco farm, we also lose domestic food production and food security. One of the most important unintended consequences to a menthol ban is the development of illicit trade. An illicit market includes no taxes, no traceability, and no assurance of quality. This creates a public health concern, as well as negative impacts to farmers and the agricultural economy. North Carolina is the largest tobacco producing state in the nation. The creation of an illicit market in the United States due to a menthol ban would increase criminal activity, further strain law enforcement and the court system. As well as add undue burdens, border patrol and customs agents, as these illicit cigarettes may very well be manufactured in other countries and smuggled into the United States. Tobacco grown and manufactured domestically is traceable, compliant and highly regulated. This higher standard also leads it to be the most expensive tobacco produced and sold in the world. An illicit market would utilize foreign tobacco that is not produced in compliance with the same high standards regarding crop production practices, environmental stewardship or human rights.' This includes subjecting the public to illegal pesticide residues as well as a product that may be grown and or manufactured under child forced or unregulated labor. This would negatively affect the bottom line of tobacco farmers in the United States who have diversified farming operations that contribute to food availability and security. Additionally, FDA has the authority to regulate and oversee domestic tobacco manufacturing facilities. This ensures that products offered for sale legally in the United States adhere to good manufacturing practices for tobacco products. Illicit cigarettes would not be held to the same high standards, and it would remove a safeguard to public health. In closing, a menthol ban would have negative impacts on agricultural and rural communities in North

Carolina and other tobacco producing states, reduce tax revenues on the state and federal levels. Empower criminal organizations to develop an illicit market that thrives due to a lack of a legal free market competition and ultimately increase the public health risk due to the availability of an unregulated, unknown product being illegally sold in our country. Thank you for your time.

MEGAN HICKS: Thank you. Up next, we have Rheta William-Ellas. You may now unmute your line. Could you please unmute your line Rheta William-Ellas?

RHETA WILLIAM-ELLAS: Good afternoon. I appreciate being on this call. I just caught by surprise because I was listening, and I was on the wait list. So, I'm going to be very brief. I think that when anything else that, you know, whether the government bans it not, it starts with us, our family. We can control what happens in our household by just informing or being more on top of our family, our friends, our loved ones, mother, father, whomever. To let them know that, hey, we love you and this needs to stop. I think that's the only way, that's the best way that we control our families to tell them to stop and no go to that stage. I think that it will help our source a lot. I'm brief. Thank you. I love everyone and have a good day.

NECOLA STAPLES: Thank you so much for participation in today's listed session about FDA's proposed product standards to prohibit menthol as a characterizing flavor in cigarettes and to prohibit characterizing flavors in all cigars. As a reminder, this meeting has been recorded and a transcript will be added to the dockets of the proposed rules as well as to the CTP website. If you have any additional questions, you may email us at askctp@fda.hhs.com. Goodbye.