

# A Menthol Cigarette Ban Could Lead to Significant Unintended Consequences

FUELING CRIMINAL ACTIVITY AND PUTTING CONSUMERS AT INCREASED RISK

Illegal cigarette sales are already widespread in the U.S. and will most likely grow if menthol cigarettes, which represent over 35 percent of the current cigarette market, are banned.

- Per the U.S. Department of State, “cigarette smuggling is a growing threat to U.S. national interests...and fuels transnational crime, corruption and terrorism.”<sup>1</sup>
- The National Academies Press estimates up to 21 percent of cigarettes sold in the U.S. are illicit. And, researchers at the Center for Regulatory Effectiveness (CRE) project that a menthol ban would increase the illicit trade of menthol by 45 percent.<sup>2</sup>



## Adult and Youth Smoking Rates are at Historic Lows; Illegal Menthol Sales could Put Consumers at Increased Risk and Undermine Declining Youth Smoking Rates

- “...counterfeit cigarettes pose a greater health risk than genuine cigarettes. Accordingly, it can be assumed that the greater the market share of counterfeit cigarettes, the greater the public health implications of the illegal cigarette trade.”<sup>3</sup>
- As illegal sales are not subject to age verification and restrictions, youth would likely have easier and greater access to menthol cigarettes.

Civil rights groups have highlighted the need to consider unintended consequences of criminalized menthol sales including the disparate impact on communities of color and law enforcement problems.

“ A menthol cigarette ban would disproportionately impact communities of color, result in criminalization of the market, and exacerbate mass incarceration. It also risks creating large underground illegal markets. In addition, underground cigarette sales would be a massive law enforcement problem for states, counties and cities, since all states treat unlicensed sale of tobacco products as a crime – usually as a felony punishable by imprisonment.”<sup>4</sup>

**ACLU**

and 26 other justice, law enforcement, legal, drug policy and directly impacted organizations

<sup>1</sup> U.S. Department of State et al, The Global Illicit Trade in Tobacco: A Threat to National Security (2015).

<sup>2</sup> Americans for Tax Reform, "Scott Gottlieb's Unprecedented Menthol Ban will Lead to New Illicit Trade Market," (2019).

<sup>3</sup> Kurti et al, "Identifying counterfeit cigarette packs by ultraviolet irradiation and light microscopy," Tobacco Control (2015).

<sup>4</sup> Letter from Am. Civil Liberties Union et al, to Sec. Xavier Becerra (April 26, 2021).