

“Disrupt and Vilify”

The War on Immigrants Inside the US War on Drugs

Background

This factsheet summarizes marijuana-related findings from a new report, “Disrupt and Vilify,” by the Drug Policy Alliance and Human Rights Watch on immigration and the drug war. By analyzing new federal government data between October 2002 and February 2020, the report found that the United States (US) government deported over 47,000 people for marijuana use or possession.

A series of federal laws since the 1970s have made it almost impossible for immigrants with drug-related convictions to avoid a second penalty in the immigration system after punishment under criminal law.

Although the majority of Americans live in states where marijuana use is legal, federal immigration law continues to impose draconian immigration penalties on non-citizens, including those with legal status, for marijuana-related activity. Convictions of even the most minor drug offense—for example, possessing a small amount of marijuana—can carry devastating consequences that far exceed the severity of the criminal sentence imposed.

The report focuses on deportations from states with large immigrant populations including California, Illinois, New York, and Texas. These states, except for Texas, have legalized marijuana.

The failure to reform federal immigration law to keep up with state drug policy reforms means even more people with deep connections to the United States have been deported.

Marijuana Prohibition: Deportations & Disproportionate Punishment

Decriminalization and legalization of marijuana are more popular than ever. Today, more than half of US residents live in a state where adult-use marijuana is legal, and 74 percent live in a state where marijuana is legal for adult or medical use.

Despite marijuana being legal in many states, it is still one of the most arrested offenses in the United States. Individuals who have suffered from the impact of a marijuana arrest or conviction are still affected by the many unique collateral consequences of harsh enforcement of marijuana laws—collateral consequences that include difficulty securing or maintaining employment, housing, federal financial aid, nutritional assistance, the ability to vote, or a valid driver’s license, as well as severe immigration-related consequences for noncitizens. Even in states where marijuana has been legal for years, immigration authorities can order people deported, deny lawful permanent residency or naturalization, or detain immigrants because marijuana is still a controlled substance at the federal level.

The report details the stories of impacted individuals who have suffered the harsh consequences of punitive drug policies; one of them is James T., a lawful permanent resident who is unable to become a US citizen due to a conviction of marijuana and paraphernalia possession. James came to the US from Australia for college and earned his Bachelor of Fine Arts (BFA). After living in California, he moved to Arizona, where he had his first interaction with law enforcement. Police pulled him over and found a small amount of marijuana and a pipe in his car. They arrested him, and he was convicted of marijuana and paraphernalia possession.

James moved on with his life. He had a child and moved back to California with his partner. The marijuana industry was in its early days then, and James decided to start farming. Because marijuana was legalized, he expected to pay taxes and be part of a legitimized system. It never occurred to him that the government would continue to penalize immigrants for legal conduct.

James was one of the first people in California to get a marijuana permit. A few months later, he received a letter from the county tax office charging him a fee in error. After six months of multiple appearances before the county board, the fee was retracted. Still, immigration authorities could now link James' earlier conviction with his permit battle and could deny his citizenship application if he ever applies.

To complicate matters further, any involvement in state-legal marijuana programs can put noncitizens—from consumers to workers—at risk of suffering immigration consequences, such as being unable to adjust their status or being put on a path to deportation. This is because marijuana remains prohibited at the federal level.

James explains:

“I’m not able to live and operate without fear because I’m not a citizen....I’ve lived here for more than twenty years now. This is my home. I have children here. I want to be a citizen, and I’m making every effort to do that. But it seems like that’s not going to be possible.”

Ending marijuana prohibition on the federal level requires descheduling it and removing it from the federal drug schedules of the Controlled Substances Act (CSA). Countless individuals have been impacted by marijuana criminalization at the state and federal law, suffering both criminal consequences and civil systems consequences that make it difficult for people to secure housing, maintain employment, receive federal financial aid, vote in elections, hold a drivers' license, and receive nutritional assistance, among other consequences. It is therefore imperative that ending marijuana prohibition include addressing both criminal and civil punishments, and providing reparations for the harms criminalization has caused to lives and communities. This would be a significant step toward grounding US drug policy in human rights.

Federal Consequences

- Between 2002 and 2020, 127,387 people were deported for marijuana-related offenses, accounting for 35 percent of people deported by ICE whose most serious conviction was drug-related. About 42 percent of deported people whose most serious conviction was marijuana-related were convicted for possession/use.
- More than one in four general arrests in the US (27 percent) are for marijuana possession. In 2021, over 170,000 people were arrested for marijuana possession by state and local law enforcement agencies. Prohibition has a discriminatory impact on people of color, with Black people in the US getting arrested 3.5 times more than white people for possessing, despite nearly identical marijuana usage rates for both white and Black people, according to US government data.

- Immigrants who have lived in the United States since childhood have been deported for marijuana offenses that today would not even be illegal in their states.
- Lawful permanent residents who are lawfully employed in a state’s legal marijuana industry can be barred from becoming citizens—on the grounds that their employment shows they lack “good moral character.”
- Any drug conviction, including simple possession of a small amount of a controlled substance—except for a first offense of possessing a small amount of marijuana—bars noncitizens from being able to apply for many types of relief from deportation. The result is that immigration judges are not permitted to consider any factors such as a person’s family or community ties, length of residence in the country, minor nature of the offense, or hardship faced by family if they are deported.
 - If the conviction is an “aggravated felony”— for example, possession for sale of a small amount of marijuana—it is an absolute bar to almost every form of immigration relief, including asylum and waivers for long-time permanent residents.

Drug Arrests in New York, California, Illinois, and Texas

New York

- In 2022, Black adults were arrested for drug-related offenses at a rate nearly four times higher than white people. Hispanic adults were arrested at 1.8 times the rate of white adults. A subset of arrest data published by the FBI, covering about half of the arrests counted by the state, showed that marijuana sales accounted for 16 percent of drug arrests in New York in 2022.

California

- There were over 150,000 arrests for drug offenses in California in 2022. In this year, drug-related offenses accounted for about 20 percent of arrests in California and were the most common offense for which police arrested people. Over 90 percent of drug arrests in California were for possession or use. Racial disparities in drug enforcement persist. Police arrest Black and Latino people much more frequently for drug offenses than white people in the state.

Illinois

- arrests for drug offenses. In each of the previous 10 years, between 12 and 14 percent of annual arrests in the state were drug related. In 2022, according to Illinois state data, 85 percent of all drug-related arrests in the state were for drug possession or use and 15 percent were for sales.

Texas

- There were at least 24,000 arrests in 2022 for possession or use of marijuana. Black people are arrested at more than double the rate that white people are arrested for drug offenses in Texas—38 per 100,000, compared with 17.8 per 100,000. Operation Lone Star, Texas’s massive border policing regime that involves thousands of National Guard and law enforcement from Texas and other states, has led to injuries and deaths, and repeatedly violated the rights of migrants and US citizens. Texas elected officials promote this type of enforcement as a tough-on-drug-crime policy. Twenty percent of arrests attributed to Operation Lone Star were for possession of small amounts of marijuana.

Exclusion from Policy Reforms

New York, California, Illinois, and Texas have taken action to stem the myriad consequences that flow from past and present drug enforcement. Some have done so by allowing people to expunge, vacate, or apply for clemency for past drug convictions, including for marijuana-related conduct that is no longer illegal.

However, state drug policy reform is most often undermined by federal immigration law, depriving immigrants of the benefit of reforms that benefit citizens. Noncitizens are doubly penalized with federal immigration law continuing to attach immigration penalties even though the state criminal legal system intends to erase the underlying offense. Even though states have decided on new approaches to marijuana policy, for example, many immigrants are still being deported or denied status or citizenship because marijuana is classified as a controlled substance under federal law and because federal immigration authorities interpret immigration law to disregard certain vacatures and pardons.

State Policy Reform

Twelve states have passed “clean slate” laws, which automatically expunge and seal marijuana convictions. Unfortunately, most of these laws do not help noncitizens because they are not given effect under federal immigration law, and unjust provisions of US immigration law continue to penalize immigrants for marijuana-related conduct that is no longer illegal.

California

- California has been a leader in drug policy reform. In 1996, California became the first state to legalize medical marijuana. Adult-use marijuana was legalized 20 years later. Yet these legalization reforms offer no relief for people who may be facing deportation due to marijuana convictions that predate these reforms.
- California is home to the largest marijuana job market in the country. California implemented a first of its kind “social equity” program to help people most impacted by drug prohibition with priority access to loans, grants, training, and licensing to join the legal industry. However, the largely Black and brown communities that are supposed to benefit from this approach have been hindered by the program’s bureaucracy, the enduring structural problem of unequal access to capital for Black and brown people, and the legal and other resources required to get a license. Moreover, as with many state drug law reforms, noncitizens are left behind.
 - Noncitizens employed in California’s legal industry are barred from becoming permanent residents; a permanent resident working in the industry cannot naturalize to US citizen status and in some cases can lose their permanent resident status.

New York

- New York passed the Marijuana Regulation and Taxation Act (MRTA) in 2021, a law that provides a model for building an equitable and diverse marijuana industry, including a social equity licensing program that prioritizes state residents disproportionately impacted by marijuana prohibition in the past. The law also automatically expunged most prior marijuana offenses and created procedural vehicles to reopen legally invalid prior marijuana convictions, a provision that also provides relief for noncitizens with such marijuana convictions. These provisions acknowledge the ongoing harm

of criminalization and provide an avenue for individuals to clear their records for the purposes of immigration, housing, employment, and child welfare. This reform will keep thousands of people out of the criminal legal system and its pipeline to deportation. However, because marijuana remains a federally controlled substance, lawfully using or participating in New York’s regulated cannabis industry may nonetheless be risky for some immigrants.

Texas

- Seven Texas counties near large metropolitan areas—Harris, Travis, Dallas, Bexar, El Paso, Hays, and Nueces—have diversion programs for marijuana arrests. The Travis County District Attorney’s office, which includes the city of Austin, has a policy of declining to prosecute people who possess a small amount of drugs. Five cities have passed local ordinances to decriminalize low-level marijuana possession, however, earlier in 2024, Texas Attorney General Ken Paxton sued to block the ordinances.

Illinois

- Illinois legalized marijuana in 2020. While the law has some notable carveouts, like prohibiting public consumption of marijuana, the law set up an expungement and vacatur process for past marijuana convictions. Like the laws in California and New York, Illinois’s law includes multiple equity provisions—job training and low-interest loans for formerly incarcerated people and residents of neighborhoods with the highest historic rates of drug policing. The rollout of the financing program has not been without its challenges, with Black and brown business owners still noting structural barriers to accessing capital.
- To speed up and expand post-conviction relief for people with past marijuana convictions, Illinois Governor J.B. Pritzker issued over 11,000 pardons for “low-level” marijuana convictions in 2019, and an additional 9,000 pardons in 2020. These pardons have limited impact for immigrants, because immigration authorities do not honor state pardons for people charged with controlled substance offenses.

Federal Policy Reform

- US President Joe Biden’s categorical pardons for federal marijuana possession and use excluded immigrants who are not lawful permanent residents, and did not clarify whether immigration authorities would honor the pardon for lawful permanent residents. As a result, noncitizens with these federal marijuana convictions have remained vulnerable to immigration detention and deportation.
- Under President Biden, the US Drug Enforcement Administration (DEA) announced its plans to reschedule marijuana from Schedule I (most restrictive) to Schedule III (less restrictive) under the Controlled Substances Act (CSA). Unfortunately, this move is largely symbolic rather than substantive and would perpetuate the federal criminalization of marijuana. Rescheduling does not change any of the harsh marijuana-related penalties for noncitizens. As long as marijuana remains in the CSA, noncitizens can still face detention, deportation, ineligibility for citizenship or residency, and bars to asylum in connection with marijuana-related activity.

Recommendations for Policymakers

To mitigate the harms caused by the compounding effects of marijuana criminalization and immigration law going forward, the benefits of drug reform need to apply to all immigrants, not explicitly exclude them as has been the case in recent federal and state actions. This report makes federal and state/local policy recommendations for marijuana to protect immigrants from being caught in the deportation machine. Some of the recommendations are highlighted below:

To the United States Congress:

Immigration Law

- Eliminate immigration penalties from US law for any drug-related conduct that is no longer penalized under state or federal law, including for marijuana-related conduct that has been legalized under state law.
- Pass the New Way Forward Act, or similar legislation, which begins to take steps toward ending the immigration penalties faced by immigrants based on drug-related conduct or offenses.

Drug Law

- Remove marijuana from the Controlled Substances Act to federally decriminalize marijuana.

To the US Executive Branch:

The President should:

- Support removing marijuana from the Controlled Substances Act (“descheduling”) since marijuana’s status as a federally prohibited substance continues to be a driver of deportation.

The Department of Homeland Security should issue agency guidance to:

- Exercise discretion to refrain from immigration policing actions based on drug-related arrests, charges, or convictions, including issuing detainers and arrests, initiating removal proceedings, and executing removal orders.
- End enforcement actions based on expunged, vacated, and pardoned convictions, including drug convictions.

To State and Local Governments:

Criminal Legal System

- End mandatory minimums and disproportionate sentencing for drug offenses.
- End the criminalization of the personal use of drugs and the possession of drugs for personal use. In the alternative, decline to prosecute drug possession cases.
- More assertively use the clemency power to pardon drug convictions.
- Create pre-arrest and pretrial diversion programs that do not use coercive tactics, such as the requirement of a guilty plea or admission of guilt, as an incentive to complete programs successfully.

For a full list of detailed policy recommendations, visit [the report](#):



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