

# SNAPSHOT: THE WAR ON DRUGS MEETS THE IMMIGRATION SYSTEM

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The United States simultaneously holds itself out as a land of opportunity where “everyone” is welcome but also unjustly blames and demonizes certain immigrants for various societal problems. For over one hundred years, certain classes of immigrants have been falsely associated with drug use and activity.

The underlying assumptions behind this reasoning and resulting policies are that immigrants, particularly immigrants of color, are dangerous, undesirable people who bring drugs into the country that harm U.S. citizens (read: white U.S. citizens); people who use drugs need to be removed from our communities and, when possible, country; and an immigrant cannot be a good community member if they use drugs or have a criminal record. This mentality has helped to create the world’s largest immigrant exclusion, detention, and deportation apparatus.

Drugs have been used to stigmatize immigrants and prevent immigration into the United States for nearly 120 years. The nation’s first restrictive immigration laws, the Page Act of 1875 and Chinese Exclusion Act of 1882, drew heavily on negative public attitudes towards Chinese immigrants, including association with opium, to justify banning their entry into the country.<sup>1</sup> In 1875, the same year as the Page Act, the city of San Francisco passed the country’s first drug criminalization law, an ordinance prohibiting opium dens, based on the false rationale that Chinese people were corrupting white people with opium.<sup>2</sup>

In the 1930s, federal laws criminalizing marijuana were enacted with the support of racist propaganda linking

the drug with “dangerous” immigrants from Mexico.<sup>3</sup> This rhetoric was echoed by past president Donald Trump in 2015 during his candidacy when he asserted that, “When Mexico sends its people, they’re...bringing drugs. They’re bringing crime. They’re rapists. And some, I assume, are good people.”<sup>4</sup> These characterizations continue to drive immigration policy today.

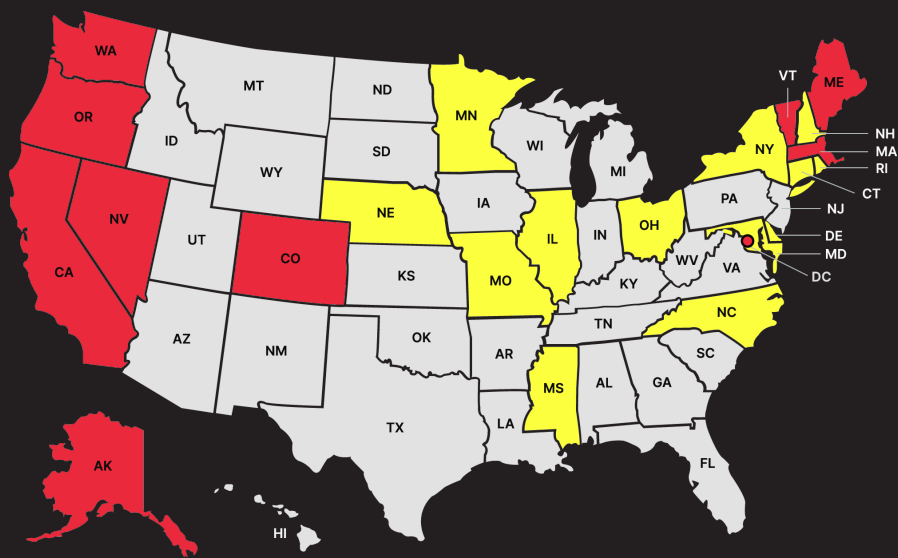
Though criminalization of drugs and immigration restrictions have been enforced for over a century, both were greatly ramped up in the 1980s and 90s, in large part through the the Illegal Immigrant Reform and Immigrant Responsibility Act (IIRIRA) and the Anti-Terrorism and Effective Death Penalty Act (AEDPA). Again, these policies were justified by unfounded stereotypes blaming immigrants (as well as U.S.-born people of color) for drugs and violence.<sup>5</sup> Law enforcement disproportionately focused domestic enforcement of the drug war in Black, Latinx, and Indigenous communities, including immigrant communities, and international enforcement in Mexico, the Caribbean, and Latin America.<sup>6</sup> This helped solidify assumed connections between immigrants and people of color with drugs and crime.<sup>7</sup> In turn, increased deportations, the militarization of the U.S.-Mexico border, and expanded enforcement of and incarceration for immigration offenses reinforced these connections in the public’s eye.<sup>8</sup>

The drug war has provided a primary mechanism for removing immigrants. A conviction for a drug offense can cause extremely serious immigration consequences, including making a person deportable, inadmissible (unable to enter or reenter into the U.S.), ineligible for

citizenship, and ineligible for other forms of relief, including asylum.<sup>9</sup> “Aggravated felonies,” a category of crimes established by the Anti-Drug Abuse Act of 1988 and greatly expanded in 1996, created a legal category for which non-citizens (both documented and undocumented) can be deported under immigration law. Certain convictions for drug offenses that many would consider to be low level may be considered an “aggravated felony,” including possessing ten dollars’ worth of marijuana for sale.<sup>10</sup> Aggravated felonies are perhaps the most detrimental convictions for immigration purposes, and “a drug trafficking aggravated felony conviction is perhaps the single most damaging type of conviction after murder.”<sup>11</sup> Still further, non-citizens who have been convicted of drug offenses may be subject to mandatory detention, which requires them to be incarcerated in

immigration detention facilities without bond hearings for the duration of their removal proceedings.<sup>12</sup>

Consequences based on drug convictions or alleged drug activity can apply regardless of immigration status, from undocumented to lawful permanent residents (green card holders). They can be triggered many years, even decades, after a conviction or alleged drug activity occurs. In some cases, a conviction is not even needed for harsh immigration consequences based on suspected drug activity to apply.<sup>13</sup> Once facing immigration proceedings, non-citizens are not guaranteed a lawyer nor afforded many of the due process protections that exist in criminal court.<sup>14</sup> Many are left to figure out an extremely complex system by themselves, often facing language barriers and extended time in detention.

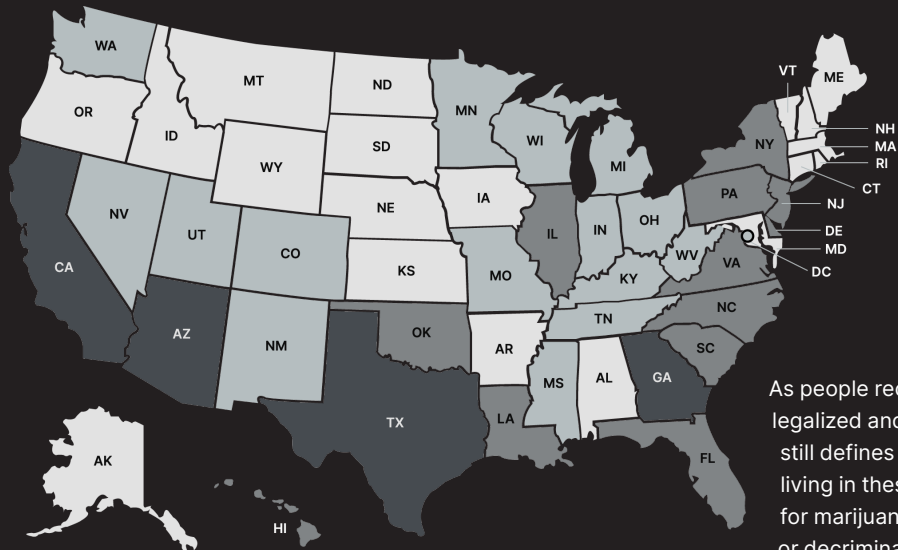


## LEGAL STATUS OF MARIJUANA AS OF MAY 2018

- Legalized
- Decriminalized
- Illegal

For purposes of cross-comparison with the accompanying map, this map only includes legal status of marijuana through May 2018. Legal status of marijuana has since changed in some of these states.

Source: NORML (as of May 2018)



## TOTAL ICE ARRESTS FOR MARIJUANA POSSESSION AND SALE, OCT 2014 - MAY 2018

- 0-49 arrests
- 50-149 arrests
- 150-600 arrests
- 600+ arrests

As people recognize the harms of marijuana prohibition, more states have legalized and decriminalized marijuana for adult use. Because federal law still defines marijuana as a prohibited controlled substance, non-citizens living in these states continue to face federal immigration consequences for marijuana possession and sale. In states where marijuana is legalized or decriminalized, **Immigration and Customs Enforcement (ICE) arrests continue**, and immigrants experience the disproportionate, devastating consequences of detention and deportation for marijuana law violations.

Source: TRAC Immigration (as of May 2018)

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Offenses involving drugs are the most common reasons for Immigration and Customs Enforcement (ICE) arrests. In fiscal year 2019, ICE made over 74,000 arrests of people convicted of or charged with driving under the influence and over 67,000 arrests of people convicted of or charged with a non-traffic drug offense.<sup>15</sup> After illegal entry, drug offenses were the most common offense among people who were deported in 2019. Unsurprisingly, deportations for drug possession and sale are by far the highest in states with the most border policing.<sup>16</sup> The drug war has become a principal driver of our deportation machine.

Not only does immigration enforcement rely on drug convictions to target non-citizens, but they have also become deeply entangled with local and state law enforcement operations, the primary enforcers of the war on drugs. For example, the Secure Communities initiative uses fingerprints of arrested people taken by local and state law enforcement and shares them with ICE so they can search for people who are deportable.<sup>17</sup> ICE can then ask the arresting agency to keep the person in custody until they can come and take them for immigration proceedings. Another example is the 287(g) agreement, in which ICE authorizes state and local law enforcement to enforce federal immigration laws.<sup>18</sup> In 2018, law enforcement in 20 states had entered into over 75 such agreements.<sup>19</sup> These policies have neither helped solved cases nor increased public safety, but they have sowed distrust in immigrant communities, where fear of immigration consequences deters many from calling for help during emergencies.<sup>20</sup>

When people are arrested for a suspected criminal offense, the pressure to accept a plea deal is enormous, leading 97 percent of all people facing charges to accept plea deals.<sup>21</sup> For non-citizens, many do so without knowing or understanding the immigration consequences of a conviction. The harm is done, however, and the person becomes subject to being torn from their family and community and exiled to another country. Where diversion programs do exist, they are often not designed in a way to shield from negative immigration

consequences, so even successful completion of the program can still result in immigration enforcement.<sup>22</sup> Many diversion programs require a plea and sentence, and most states do not have mechanisms to expunge criminal convictions to prevent their consideration for immigration purposes.<sup>23</sup> Once a conviction occurs, many non-citizens are left to the mercy of cruel immigration policies and enforcement.

A great irony is that the U.S.'s international drug policy contributes to violence and instability in Latin American countries that drives many people to immigrate to the U.S.<sup>24</sup> Non-citizens are often sent back with no support to the dangerous circumstances they were originally fleeing. Immigrants who use drugs are less likely to receive the adequate healthcare, treatment, and public health services to address their needs after being deported from the U.S.<sup>25</sup> **Instead of cruelly tearing families apart and sending people back to countries where they may not have connections or support, we should prioritize:**

- Eliminating or limiting immigration consequences based on convictions and suspected criminal conduct, especially for drug convictions or suspected drug activity.
- Ending mandatory detention, especially for drug offenses.
- Providing free legal assistance to people with low incomes facing immigration proceedings.
- Prohibiting local and state law enforcement from collaborating with immigration authorities.
- Establishing diversion programs that protect against negative immigration consequences.
- Enacting post-conviction relief processes, such as vacatur, to remove convictions from consideration in immigration enforcement.
- Providing non-citizens with adequate healthcare and social support.

## Endnotes

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- 13 8 U.S.C. § 1182(a)(2)(A)(i) (admitting to committing a drug offense); § 1182(a)(1)(A)(iv) (current "drug abuser or addict"); § 1182(a)(2)(C) ("reason to believe" involvement in drug trafficking).
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