



“Disrupt and Vilify”

The War on Immigrants Inside the US War on Drugs

Background

This factsheet summarizes 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 thousands of people are being deported from the United States (US) every year for drug offenses. And, in many cases, these offenses are no longer even a crime under state law, such as marijuana possession.

Unjust provisions of US immigration law penalize immigrants, including those with legal status, after they have served their sentences for drug convictions by subjecting them to often extended detention and ultimately deportation.

A 35-year-long legal framework has facilitated—within the war on drugs’ broader criminalization of Black and brown citizens—the systematic criminalization of disproportionately Black and brown immigrants throughout the United States and the deportation of thousands of immigrants ever since.

Recent state and federal drug law reforms have not altered federal immigration law’s draconian approach to drugs. As a result, conviction of even the most minor drug offense carries devastating consequences that may far exceed the severity of the criminal sentence imposed.

The failure to reform federal immigration law means even more people have been deported.

Deportations & Disproportionate Punishments

US federal immigration law takes US criminal law applicable to drug offenses, already shown to be racially discriminatory, and adds harsh, often disproportionate immigration consequences and punishment. Those federal immigration consequences include deportation away from family, community, and home; return to danger and persecution in countries of origin; bars against naturalization to US citizenship; and detention in prisons and ICE detention centers where conditions can be abusive, and where perpetrators can abuse immigrants with impunity.

Deportation is a severe civil penalty that is often disproportionate to the drug offense triggering the deportation. Put simply, the punishment does not fit the offense. This disproportionality violates human rights, including rights to liberty and family life because mitigating and aggravating factors are not given individualized consideration in US immigration law.

The report finds that:

Between October 2002 and February 2020, the US government deported over 500,000 people whose most serious criminal conviction was a drug offense, totaling more than 2,400 people per month on average.

- More than 30 percent of deportations for drug offenses between 2002 and 2020 were due to drug use or possession **alone**. Marijuana use or possession was used as the reason to deport over 47,000 of those people, despite most people in the US living in a state that has decriminalized or legalized marijuana.
- There are significant racial disparities in the imposition of immigration penalties. More than one out of every five non-citizens facing deportation before US immigration courts on criminal grounds are Black. But Black people account for just 7.2 percent of the non-citizen population in the US.
- Of all immigrants deported for various criminal offenses, people with drug-related offenses had lived in the US for the longest periods of time.

Federal Immigration Law & the War on Drugs

Federal immigration law has not been materially amended or reformed since these laws were passed over 35 years ago. Lawmakers laid the blueprint for today's severe civil immigration penalties for drug offenses in the 1980s and 1990s—decades that saw the simultaneous rise of the myth of the “criminal alien” and the widely-discredited, racially discriminatory “war on drugs,” first declared by President Richard Nixon in 1971. Following Nixon, President Ronald Reagan made drugs a priority when he took office in 1981, just as crack cocaine emerged. As more people started using the drug, an alarmist narrative in the media and politics bred hysteria, which built up support for more policing and harsher sentences for drug use and sales. The following laws were part of this framework which has served as a tool to deport non-citizens:

- Anti-Drug Abuse Act (ADAA II) of 1988: Developed for the first time in US immigration law the concept of “aggravated felonies,” which originally referred only to murder, federal drug trafficking, and illicit trafficking of certain firearms and destructive devices. Congress has since increased the crimes classified as “aggravated felonies” several times, but has never removed a crime from the list. Today, the definition of “aggravated felony” covers more than thirty types of offenses and subjects immigrants to mandatory detention and deportation with few procedural rights.
- Immigration Act of 1990: Eliminated “Judicial Recommendations Against Deportation,” which previously allowed judges to make recommendations against deportation for non-citizens, and disqualified non-citizens with “aggravated felony” convictions who had served at least five years in prison from 212(c) relief.

- Anti-Terrorism and Effective Death Penalty Act and the Illegal Immigration Reform and Immigrant Responsibility Act (AEDPA) of 1996: Dramatically broadened the list of “aggravated felonies” adding new categories of crimes, including minor drug offenses, and created one of the most extreme aspects of modern US immigration law: mandatory deportation.

Exclusion from Policy Reforms

The report focuses on the states of California, Illinois, New York, and Texas – states with some of the largest immigrant populations that have advanced drug policy reforms. However, state drug policy reform is most often overridden by federal immigration law, depriving immigrants of the benefit of reforms that benefit citizens. Non-citizens 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.

State Policy Reform

- Today, more than half of US residents live in a state where adult marijuana use is legal – including California, New York, and Illinois – and 74 percent live in a state where marijuana is legal for adult or medical use. Yet, federal marijuana prohibition means non-citizens are still subject to automatic detention and deportation for marijuana activity.
- 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.
- Twelve states have passed “clean slate” laws, which automatically expunge and seal many drug convictions. Unfortunately, most of these laws do not help noncitizens because they are not given effect under federal immigration law.
- California has advanced meaningful drug policy reforms. For example, defendants can enter a “not guilty” plea in pretrial diversion cases for minor drug offenses. In addition, prosecutors have the option to offer a non-controlled substance plea as a substitute for certain drug-related offenses. These changes are critical for immigrants, making it possible to avoid the conviction that would trigger deportation. Sentencing enhancements for certain drug offenses also have been reduced in the state, but this type of reform does little to protect against deportation in federal immigration law since deportation is triggered by admissions of guilt, convictions, or by the length of a sentence.
- New York’s notorious Rockefeller drug laws, passed in 1973, were among the harshest in the country, handing out a minimum sentence of 15 years to life for a single drug possession conviction. It took over 35 years for the state to end these mandatory minimums and expand access to treatment, when the successful campaign to “Drop the Rock” repealed and revised the draconian Rockefeller drug laws in 2009. Nevertheless, non-citizens with drug convictions that predate these reforms cannot benefit from them.

Federal Policy Reform

- US President Joe Biden’s categorical pardons for federal marijuana possession and use did not include 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, non-citizens with 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 non-citizens. As long as marijuana remains in the CSA, non-citizens can still face detention, deportation, ineligibility for citizenship or residency, and bars to asylum.
- Immigrants were also excluded from some of the most impactful provisions of the most recent congressional criminal justice reform bill, the First Step Act of 2018. The law excluded certain non-citizens from earning new time credits and participating in the Residential Drug Abuse Program, which helps people work toward early release from federal prison.

Weaponizing Rhetoric

Some policymakers have used the current drug overdose crisis as an excuse to escalate the drug war instead of investing in an evidence-based public health response. Deportation fails to address the underlying social and economic factors that contribute to the challenges that neighborhoods across the US are experiencing, including the unprecedented overdose crisis. The findings in the report show that the offenses for which people have been deported tend to be for drug use or possession. This indicates that drug enforcement is focusing on targeting low-level activities that do not disrupt local distribution networks, deter drug use, or enhance public safety. Instead, we are putting people who have lived in the US for long periods of time at risk of separation from their homes, communities, and loved ones.

Turning to deportation as the default solution distracts the US from solutions that could address the root causes of the overdose crisis and concerns with community safety.

Recommendations for Policymakers

Amid an unprecedented overdose crisis, the false associations between immigrants and drugs are distracting policymakers and the public from evidence-based solutions that actually address the root causes of this public health crisis. To mitigate the harms caused by the compounding effects of the drug war 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 actions. This report makes recommendations for federal and state/local policy reform that protect immigrants from being caught in the deportation machine, some of which 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.
- Ensure all non-citizens in deportation proceedings, including those with convictions for drug offenses, have access to an individualized hearing where the immigration judge can weigh the harms of deportation and evidence of rehabilitation, family ties, and other equities and choose to decline deportation.
- Pass legislation to provide for time limits—akin to a statute of limitations—after which non-citizens may not be removed on criminal grounds, including for drug offenses or convictions.
- 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

- Eliminate criminal penalties for possession of personal-use quantities of controlled substances.
- Remove marijuana from the Controlled Substances Act to federally decriminalize marijuana.
- Shift federal resources away from criminal enforcement strategies and toward supportive initiatives to protect public health and safety, including by shifting regulatory authority over drugs from the Drug Enforcement Administration to a health agency.
- Expand access to voluntary and culturally responsive substance use disorder treatment like medications for opioid use disorder (MOUD) in different settings such as community-based programs, harm reduction programs, outpatient clinics, and carceral settings.
- Protect and fund harm reduction services to increase access points to substance use treatment and reduce barriers to health care and support that people who use drugs encounter due to language differences, stigma, racism, discrimination, or immigration status.

To the US Executive Branch:

The President should:

- Pardon all federal simple drug possession convictions regardless of immigration status.
- 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:

Treatment and Comprehensive Care

- Expand and better fund voluntary evidence-based drug treatment that is culturally and linguistically responsive, including a wide range of housing options for individuals who use drugs or are in recovery; accurate, fact-based drug education for youth and adults; access to harm reduction resources, such as life-saving drugs like naloxone, methadone, and buprenorphine; drug checking that can detect adulteration in the drug supply; syringe exchange services; and overdose prevention centers, where trained professionals can reverse fatal overdoses and connect participants with health care, and ensure that immigrants can access these services without fear of immigration arrest or penalty.

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.
- 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.
- More assertively use the clemency power to pardon drug convictions.

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



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