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Medical Cannabis Regulation in Brazil: Patients' Demands Through the Courts of Justice

RESEARCH

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ABSTRACT

This article examines the regulation of medical cannabis in Brazil, focusing on the judicialization of this issue in the country. To do so, we conducted ethnographic fieldwork with the actors involved in these processes, especially patient-litigants, their families, and lawyers. Since the 2010s, there has been a change in the regulation of medical cannabis in Brazil, especially due to legal actions in the courts by patient-litigants seeking access to cannabis. Although Congress resists changes to the drug law, reaffirming its prohibitionist stance, these actions were essential in ensuring access to cannabis. Initially, they aimed to import products containing cannabis extracts. As demand increased, the government assumed a more adaptable attitude and altered the legal classification of two plant constituents: CBD and THC. This enabled them to be sold locally in pharmacies but, due to the high cost of cannabis-based treatment for most people, legal measures were enacted to allow access to medical cannabis and its cultivation within the country. In this context, patient-litigants have employed various judicial strategies to secure access, ranging from lawsuits demanding that the Brazilian government cover importation costs to applying for writs of habeas corpus that permit home cultivation without fear of arrest, despite the prohibition on cultivation. Thus, based on the explanation of these processes and employing the categories of 'running after' (*correr atrás*) and 'taking legal action' (*entrar na justiça*), we seek to describe how the regulation of medicinal cannabis in Brazil has positioned patient-litigant within the judiciary as a central element of this regulatory process in the country.

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INTRODUCTION

Ten years ago, the discussions surrounding the medicinal applications[1] of cannabis took center stage in Brazil following the release of the documentary 'Ilegal: A Vida Não Espera' ('Illegal: Life Doesn't Wait') (2014), directed by Tarso Araujo and Raphael Erichsen. The movie depicts mothers facing challenging battles as they strive to overcome bureaucratic hurdles and prejudices to obtain cannabis-derived medications for treating serious illnesses affecting their children. At the time, legal channels for acquiring these medications were nonexistent. Therefore, the solution they resorted to was importing cannabis-based oils illegally.

The rise of these 'mothers,' a global phenomenon spanning across all Latin America, as highlighted by Díaz (2022, p. 391), evoked a profound emotional response throughout Brazil. The documentary, focused on the Fischer family's struggle as they initiated the first legal action demanding oil importation, has become a sort of paradigm not only for public discourse but also for scientific articles that consistently refer to the film to revisit the ongoing process of regulating the therapeutic uses of cannabis in Brazil.

Beginning in the 2010s, prompted by the emotional upheaval portrayed in the documentary, the National Health Surveillance Agency (ANVISA), the Brazilian governmental institution responsible for health regulation, gradually initiated a series of changes that eased access to cannabis in the country. In 2014, following the Fischer family's legal action, the agency started authorizing the importation of cannabis-derived products for individual patients with a medical prescription. In 2015 and 2016, the agency removed the two primary components of cannabis, namely cannabidiol (CBD)[2] and tetrahydrocannabinol (THC),[3] from the list of prohibited substances in the country. In 2017, ANVISA granted authorization for the registration of the first, and thus far only, cannabis-based medication in the country, Mevatyl, internationally recognized by the trade name Sativex.[4] In 2017, the first patient association also secured legal authorization to cultivate and distribute cannabis derivatives to its members.[5] In 2019, the agency began approving cannabis products[6] to be sold in pharmacies, requiring a medical prescription. Currently, 35 cannabis products are available for purchase in the country's pharmacies.[7]

However, the substantial cost of these medications—whether imported, available in Brazilian pharmacies, or supplied by associations—continues to pose a significant barrier to more widespread access to cannabis. With prices ranging from five hundred to four thousand Brazilian reais per month, and the current minimum wage standing at R$1,412.00 monthly, affordability remains a pressing concern.[8]

1 In this article, we opted for the term 'therapeutic use' instead of 'medicinal use' because we consider it more inclusive, acknowledging that the regulation of this usage extends beyond strictly medical knowledge. Furthermore, aligning with the prevailing tendency to refer to 'marijuana' as 'cannabis' in the context of its therapeutic applications, we have employed the term 'cannabis' throughout the text. However, it is important to note that this distinction reinforces the misleading notion of two separate substances: cannabis, understood as a medicinal product associated with health and healing, and marijuana, linked to so-called recreational use, addiction, and social stigma. In this article, we will not delve into the disputes surrounding these categorizations, as previously addressed (Policarpo and Martins, 2019). Nevertheless, we emphasize that the use of these terms remains contested and is shaped by ongoing debates.

2 More information can be found at: https://bvsms.saude.gov.br/bvs/saudelegis/anvisa/2015/rdc0017_06_05_2015.pdf (Accessed January 02, 2025).

3 More information can be found at: https://bvsms.saude.gov.br/bvs/saudelegis/svs/1998/prt0344_12_05_1998_rep.html (Accessed January 02, 2025).

4 More information can be found at: https://antigo.anvisa.gov.br/resultado-de-busca?p_p_id=101&p_p_lifecycle=0&p_p_state=maximized&p_p_mode=view&p_p_col_id=column-1&p_p_col_count=1&_101_struts_action=%2Fasset_publisher%2Fview_content&_101_assetEntryId=3190981&_101_type=content&_101_groupId=219201&_101_urlTitle=agencia-aprova-primeiro-remedio-a-base-de-cannabis-sativa&inheritRedirect=true (Accessed January 02, 2025).

5 Cannabis patient associations in Brazil, commonly referred to as 'cannabis associations' (Zanatto, 2016), are civil society organizations that unite patients and their families, doctors, lawyers, and activists. Their primary focus is on offering support and facilitating access to treatment for the therapeutic use of cannabis. These associations do not advocate for 'recreational use' or 'adult use,' as observed in the practices of Cannabis Social Clubs (Pardal, 2022). Instead, their primary focus is on the patient.

6 ANVISA draws a distinction between 'medication' and 'cannabis products.' Caetano (2023) discusses this difference based on the categories of 'risk' and 'efficacy' invoked throughout the regulatory debate.

7 The list of cannabis products approved by ANVISA can be accessed through the following link on the Agency's website: https://consultas.anvisa.gov.br/.

8 To provide a cost overview, the main product available in pharmacies, Mevatyl, is priced at 3,500 reais; a bottle of imported oil, regardless of the brand, sells for 1,000 reais; and artisanal oil in associations is priced at 500 reais.

In addition to the high cost of treatment, the regulatory process is further constrained by a lack of support in the National Congress, which is hesitant to establish clear and definitive legislation on the matter. There is no legal provision for the therapeutic use of cannabis; it remains categorized as an illegal drug, regulated specifically by Article 28, addressing 'user,' and Articles 33 and 35, about 'trafficking' and 'association with trafficking', of Law No. 11.343/06 (Brasil, 2006). This legislation, commonly referred to as the 'new Drug Law' in Brazil, eliminates imprisonment for the 'user' but raises the minimum sentence for the 'trafficker' compared to the previous law (Law No. 6,368/76). Various researchers have identified this as one of the central factors contributing to the increase in incarceration rates in the country[9] (Azevedo and Cifali, 2017; Brasil, 2006; Campos, 2019).

In this context, the Supreme Federal Court advanced a more objective distinction. Through the judgment of Extraordinary Appeal (RE) 635659, the court determined the decriminalization of cannabis possession for personal use, establishing limits of 40 grams and six female plants as objective criteria to differentiate between 'user' and 'drug dealer.' However, subjective criteria, such as the location and circumstances of the seizure, continue to play a role. In response, the Brazilian National Congress proposed a Constitutional Amendment to classify drug use as a crime in the Federal Constitution (Brasil, 1988), reaffirming its prohibitionist stance. Consequently, the practical effects of this decision remain uncertain (Policarpo, 2024). Concerns persist, particularly regarding the effects of this prohibition on the incarceration rates of poor and Black individuals in the country (Ipea, 2023).

Regarding therapeutic use, one of the key legislative gaps in the National Congress refers to the cultivation of the cannabis plant, even for therapeutic purposes. Currently in progress is Bill No. 399,[10] initiated in 2015, which seeks to regulate the cultivation of cannabis for therapeutic purposes and the commercialization of cannabis-derived medications. However, the bill does not contemplate the cultivation of cannabis by individuals at home; in other words, it is restricted to legal entities and only after obtaining public authorization. This aspect has faced criticism from various activists in the country.

Amidst the ongoing disagreement between legislators tasked with creating laws and ANVISA's technical experts and bureaucrats overseeing technical regulations, patients and their families, despite recent changes, still face substantial costs to obtain cannabis-derived products. Additionally, they lack the assurance of a clear and definitive law regarding the cultivation of the plant. As a result, they have increasingly resorted to the courts to secure this access in the name of patients' 'right to health' (Policarpo and Martins, 2019), compelling the executive branch to ensure the supply of cannabis-derived products. In 2023 alone, this type of judicialization cost the Brazilian government 40 million reais, reflecting a 377.9% increase compared to the previous year.[11]

In this article, we aim to demonstrate that, within the Brazilian context, the primary avenue for accessing cannabis for therapeutic purposes is through the judiciary, which plays a leading role in the regulatory process. To achieve the article's goal, we will begin by revisiting the key points that have shaped the Brazilian academic debate, elucidating the context and the contribution we aim to make with this work. Subsequently, we will explain the research methodology and provide details about how the data was produced. Lastly, we will describe what we are referring to as the 'process of judicialization' of these demands by delving into a specific case within this process. More precisely, we will detail the use of 'supply actions' and the *habeas corpus* petitions, employing the categories *to run after* (*correr atrás*[12]) and *to take legal action* (*entrar na justiça*). For this purpose, we will shed light on cases drawn from ethnographic research, seeking to add more depth to the text.

9 In 2005, drug trafficking accounted for 12.91% of the total crimes of incarcerated individuals; in 2013, it was 27.20%. The latest data released by SISDEPEN, in 2023, suggests that this percentage has remained basically the same: 26,71%. In relation to women, this law had an even more significant impact, as the female incarcerated population for drug-related offenses in 2023 accounts for 50.86% of the total (SISDEPEN, 2023).

10 More information can be found at: https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=947642 (Accessed: January 02, 2025).

11 Data from a survey made by the newspaper O Globo. Available at: https://oglobo.globo.com/saude/medicina/noticia/2023/12/14/cannabis-medicinal-decisoes-judiciais-para-obrigar-fornecimento-saltam-3779percent-e-estimulam-leis-para-inclusao-no-sus-entenda.ghtml (Accessed: January 10, 2024).

12 There is no single expression in English that fits well in all instances where 'correr atrás' is used in this article. Since the expression 'correr atrás' is treated as a category, adapting the phrase based on the specific meaning in each context was not an option. Therefore, 'to run after' is used as the best approximation for this article's purposes (TN).

1. THE ACADEMIC DEBATE

As mentioned in the introduction, the growing discussions on the therapeutic use of cannabis since the 2010s (Oliveira, 2016) have opened new avenues for research. Fraga *et al*. (2023), in their 'state of the art' review of Brazilian research on the subject, came to the same conclusion:

> The surveys show a notable rise in the production of master's and doctoral theses in the fields of Humanities and Applied Social Sciences related to the cannabis/marijuana theme. Two social phenomena were crucial in driving increased interest in the subject: the advocacy for the legalization of marijuana/cannabis and the pursuit of access to the benefits of medicinal cannabis. This interest notably surged, especially in the second decade of the 21st century (2023: 248 – free translation).

Due to the mobilization of patients and their families, cannabis is no longer exclusively viewed as an 'illegal drug' but is also recognized as a 'medication.' In other words, it transitioned from being a 'crime' to being perceived as a 'right' (Policarpo and Martins, 2019). This shift impacts research in the field of social sciences, giving rise to new 'obligatory problematics' (Bourdieu, 2015). These problematics are linked to the domain of cannabis but diverge from traditional approaches of pathologization and penalization (Silva, MBB and Delduque, 2015) that were prevalent in the past.

Sérgio Vidal's research, carried out in the mid-2000s, can be seen as a precursor in this direction, initiating an exploration of a new set of questions. These include the practice of cannabis cultivation viewed as a social phenomenon, divorced from the legal/illegal dichotomy. His research focuses on the Growroom website, concentrating on what he termed the 'grower community.' This community plays a key role in disseminating 'cannabis culture' and promoting 'cannabis cultivation in Brazil.' Delving into the discussions of virtual forums, his work is the pioneer in detailing the rise of indoor cannabis cultivation in Brazil. Unlike the outdoor cultivation predominant in Brazil's Northeast region, known as the 'Marijuana Polygon' (Fraga and Martins, 2020; Fraga, 2007), indoor cultivation does not require vast planting areas and sunlight.

Veríssimo's (2017) research aligns with the questions posed by Vidal. Utilizing cultivators as interlocutors, many of whom had been on the website, the study discusses the 'cannabis culture'. For the process of domesticating the plant in indoor cultivation to be successful, Veríssimo argues that cultivators must also be domesticated, acquiring technical knowledge in fields like botany, biology, chemistry, and electricity, alongside adopting moral values that put the illegality of the practice into perspective, imbuing cultivation with a positive value. Ribeiro (2016) similarly focuses on cultivation, drawing from the same material as Vidal. His research underscores the early discussions surrounding the notion of the 'responsible user' and the role of cultivation as a pathway to engage with the public sphere. These studies are pivotal as they provide the initial insights into practices and concepts related to indoor cultivation, laying the groundwork for the development of medicinal cannabis and the legal strategy of habeas corpus, as elucidated in the methodology.

As portrayed in the documentary 'Ilegal,' the discussions surrounding medicinal cannabis reached Brazil due to the demands of middle-class families living in major cities. Monique Oliveira (2016) addresses this topic by following the journey of Anny Fischer's family, whose use of CBD to treat seizure episodes linked to a severe form of epilepsy gained significant attention throughout Brazil. In this study, the debate between proponents of the molecular perspective endorsed by the pharmaceutical industry and those advocating for the use of the entire plant is already apparent—the latter stance is embraced by the patients and their families aligned with cannabis activism. While the molecular perspective continued to be confined to research centers and the business sector—driving product imports and the development of cannabis derivatives sold in pharmacies (Caetano, 2023)—the advocacy for the use of the entire plant gave rise to what is known as 'cannabis associations' (Zanatto, 2016), which unite patients and their families, alongside activists, doctors, and lawyers.

These associations, as mentioned earlier, come together due to shared interests among patients and their families, as well as activists, doctors, and lawyers working toward the regulation of legal access to cannabis in Brazil. On the one hand, the sharing of caregiving experiences involving patients, particularly children, played a vital role in families' political

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activism (Barbosa, 2021; Campos, 2019; Nelvo, 2020; Oliveira, 2016). Conversely, the growing discussion surrounding 'medicinal cannabis' broadens the networks of cannabis activism, rooted in a logic of solidarity involving cultivators (Motta, 2020; Veríssimo, 2017) and activists, as well as participants in Marijuana Marches (Brandão, 2019; Silvestrin, 2013). This encounter is so significant that, starting in 2014, editions of the Marijuana March throughout the country include a special 'medicinal section' with patients and their families. In addition to participating in marches and public events, patients and their families started sharing the daily activities of activists, doctors, and lawyers in the associations. They organized sessions offering support and medical and legal assistance to new participants (Policarpo, 2020b).

It is important to emphasize that all associations depend on judicial authorizations to ensure the secure cultivation and distribution of cannabis to their members.[13] Given cannabis' ongoing prohibition, activities linked to it often face suspicion and threats from state agencies (Reed, 2023). Therefore, resorting to the judicial system is not only part of the associations' repertoire but also a day-to-day reality for patients and their families. A crucial role is thus played not only by doctors who provide prescriptions for patients but also by lawyers. Suspicion toward cannabis has been decreasing as associations spread across the country. In 2020, an estimate by Motta (2020, p. 140) indicated that the number of legally registered associations in the country was already close to 100. Although this number is significant, most associations lack authorization for cultivation. The most recent survey conducted by a consultancy in the sector reveals that there are 16 associations with judicial authorization to cultivate and distribute cannabis derivatives to their members, and the number of patients continues to increase (Kaya Mind 2023, p. 115).

These numbers confirm the consolidation of cannabis associations. Alongside cannabis-derived products available in pharmacies since 2017 and streamlined import procedures (Caetano, 2023; Reed, 2023), these associations have helped expand legal cannabis access in Brazil. However, the average treatment cost remains a challenge for many Brazilians, primarily due to the prohibition on cultivation in the country. This situation has led patients to become litigants, driving the regulation of cannabis through the judicialization of their demands.

Resorting to the judiciary is not exceptional. Following the end of the last period of dictatorial rule (1964–1985) in Brazil, the enactment of the new constitution, referred to as the 'Citizen Constitution,' in 1988, established several rights that, for most Brazilians, are only effectively ensured through the judiciary. Even though 'judicialization' is a relatively recent phenomenon, there is already an extensive body of academic literature dedicated to this theme, largely attributed to the exponential increase in judicial actions across various domains over the past three decades. Although the subject is complex, the literature converges on the basic definition of 'judicialization': the judiciary plays a central role in decision-making when responding to legal actions, intervening in the responsibilities of the executive and legislative branches (Barroso, 2012). Variation lies in the nature of the demands presented in the legal actions and the specific areas to which they are directed. Examples include the 'judicialization of politics,' 'judicialization of law,' 'judicialization of education,' and 'judicialization of the environment.'[14]

Regarding the judicialization of the right to health, academic studies offer differing interpretations of this phenomenon: some view it as detrimental to the planning of comprehensive public policies, while others see it as an expression of citizenship (Asensi and Pinheiro, 2015; Biehl and Petryna, 2016; Flores, 2016; Leitão *et al.*, 2012). As highlighted by the research of Menicucci & Machado (2010) and Vieira (2023), the individual exercise of the right to health through judicialization can lead to imbalances in citizenship practices, not to mention the fiscal and financial challenges arising from judicial decisions. Nevertheless, as we will demonstrate in this article, the judicialization of access to medical cannabis has become an undeniably nationwide phenomenon, driven by the urgency of cases and the severity of patients' health conditions.

Thus, a more radical alternative to facilitate legal access to cannabis through the judicial system is by filing a habeas corpus petition for the domestic cultivation of the plant. This approach to accessing cannabis, unlike others, takes judicialization as a starting point. Its main objectives are to reduce treatment costs and challenge the prohibition of cultivation within the Brazilian

13 All associations, at some point, had their authorization revoked and had to appeal to the courts to overturn the decision. The latest instance occurred with APEPI, a Rio de Janeiro-based association with over eight thousand patients. Its authorization was revoked in December 2023 after three years of legal cultivation.

14 For a discussion on these distinct judicialization processes, refer to the compilation edited by Oliveira (2019).

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territory. Therefore, beyond the broader controversies surrounding the judicialization of access to health care in Brazil, we examine individual cases, drawing on Biehl's (2013) concept of the 'para-infrastructure'—a space where the visibility of individual legal claims emerges, with people 'turning to the courts.' Within this space, various actors—patients, activists, doctors, and lawyers, who are our research interlocutors—interact and develop diverse strategies to realize their right to health through access to medical cannabis.

In a preliminary analysis of this process, Policarpo and Martins (2019) observed the central role taken by the category 'dignity,' as therapeutic use has been justified in courts with reference to the 'principle of human dignity.' In this article, we will explore two additional characteristics of this process of judicialization, specifically 'to run after' and 'to take legal action.' These categories are based on ethnographic data and are presented next.

2. METHODOLOGY

The discussion in this article draws on the research conducted by the three co-authors who, at certain points, shared the same field and interlocutors. We will focus on the activists' *habeas corpus* legal strategy for cultivating cannabis. We collected ethnographic data for this article through interactions with patients and their families, as well as lawyers and activists. Next, a synthesis of the fieldwork conducted by each of the co-authors will be provided.

In 2014, one of the co-authors initiated fieldwork by participating in the Marijuana March in Rio de Janeiro to observe the demands articulated by activists. During that time, the co-author aimed to shift the focus of his research from institutional settings like the justice system (Policarpo, 2016) and healthcare services (Policarpo, 2020a) to social movements. In 2013, Uruguay legalized cannabis, raising expectations among Brazilian activists for potential legislative change. This anticipation was primarily fueled by the Uruguayan government's central justification, emphasizing the benefits of reducing drug trafficking—a cause particularly important to the cannabis movement. However, the co-author's interlocutors highlighted another emerging demand within the cannabis movement, already present in public discourse, known as 'medicinal cannabis.' In response to this suggestion, the co-author joined a group of activists dedicated to the medicinal agenda. In March 2015, these activists played a key role in founding the first patients' association in Rio de Janeiro, one of the first in Brazil. After that, the fieldwork explored here began, and we will discuss its implications for other networks and locations within cannabis activism.

The founding group of the association involved around 20 individuals. The president was the mother of a patient, and the board included a doctor and a lawyer. Association meetings occurred weekly, and through consistent attendance, the co-author earned the group's trust. As a result, the co-author obtained access to the documents generated by the association and participated in occasionally intense discussions among its members. He was also invited to informal gatherings in members' homes, connecting with a diverse network of cannabis activists from different parts of the country. This exposure provided insights into the interests and goals of his initial interlocutors, and it facilitated obtaining their consent to invite other researchers to conduct studies within the association.

At this point, it is essential to highlight two aspects that characterize the information channels we have consistently prioritized throughout the research, guiding our focus on the legal strategy of *habeas corpus* for cannabis cultivation. First, it became notable that there was an internal subdivision within the association, imperceptible to outsiders, distinguishing cultivators from others. During each informal gathering at an associate's residence, this subgroup became apparent as the same individuals attended, and the conversation consistently centered around cultivation. When a doctor or patient attended these informal meetings and gatherings, their stay was brief. Hence, it became evident that the connection among these cultivators traced back to the early 2000s when they initiated cultivation and established connections through the internet (Ribeiro, 2016; Vidal, 2010). Cultivation remained the central interest that brought them together through ties of affinity and solidarity, as they engaged in a common illegal practice. Because of this complicity, this subgroup, comprising approximately 10 individuals, notably held more prestige and legitimacy in discussions and decision-making during the meetings. For this subgroup, the focus of the 'medicinal cannabis' agenda and the establishment of an association was primarily on achieving the regulation of self-cultivation for each patient.

The second aspect was noticing that there was a significant legal focus in the association's activities, consistently emphasizing the generation of legal documents to formalize its members. This can be attributed to the active involvement of cultivators who were also lawyers. Thus, another subgroup comprised three lawyers who were also cultivators, aiming to bring a more legal and formal perspective to the association. Initially, cultivators welcomed and even celebrated this focus on the legal dimension. Ultimately, it was the lawyers who devised the legal strategy of *habeas corpus* for domestic cultivation.

During this time, internal disputes, driven by tensions between cultivators advocating for self-cultivation and other members seeking only cannabis oil, resulted in the dissolution of the association. Some cultivators lost interest in public debate, others disengaged from collective participation, and patients gathered to form another association. We continued to follow the group of lawyers and the implications of the *habeas corpus* strategy for legal access to cannabis in Brazil.

More recently, in 2023, one of the co-authors conducted fieldwork in a city in the interior of Minas Gerais to explore how cannabis is accessed in other regions of the country. He engaged in dialog and conducted interviews with key figures involved in this process, including lawyers, doctors, patients, and their families. Specifically, he was in contact with mothers and doctors involved in a support group for parents of individuals with autism. While this group is not formally a 'cannabis association,' the use of cannabis-extracted oil is widespread among some of its members.

Following the suggestion of Laura Nader (1972), we also aimed to 'study up' in our anthropological research and engage with 'those up.' We conducted fieldwork in spaces of the Brazilian judiciary, such as the Court of Appeals and Criminal Appeal Panels in Rio de Janeiro, attending hearings and trials. We also interviewed judges, prosecutors, and public defenders involved in cases related to drugs and *habeas corpus* petitions for the cultivation of domestic cannabis. Some of these interviews took place between 2016 and 2017 when there were just over a dozen *habeas corpus* cases. Others were conducted more recently as this type of legal action became better known among members of the judiciary.

Finally, in our current research efforts, we have explored not only the regulation and control of 'drugs' but also the impacts of prohibition, particularly in prisons and socio-educational units. The intention is to understand the phenomenon of incarceration in Brazil. One of the co-authors conducted her research in these settings, actively participating in collective projects that brought together the university and activists, especially those involved with the issue of drugs. In this context, she consistently engaged in dialogue with the Legal Network for Drug Policy Reform (REFORMA) and the National Network of Anti-Prohibitionist Feminists (RENFA), essential national actors devoted to the processes of cannabis regulation. REFORMA, in particular, is a collective of lawyers working on cases related to drug laws. Among the founders are our initial contacts since 2015, the lawyers who were also cultivators and played a role in founding the first association in Rio de Janeiro. They crafted the legal strategy for using *habeas corpus* petitions for domestic cannabis cultivation.

In this regard, with research conducted since 2015, the issue of legal access to cannabis has become increasingly apparent. Specifically, we have closely monitored the dynamics related to the use of *habeas corpus* petitions from the very beginning. This article thus results from these accumulated research efforts, using the ethnographic method as a methodology. This approach enables us to foster dialog and trust with various actors involved in these processes. Therefore, we focus on qualitative analysis, utilizing fieldwork as the primary tool. This involves participant observation, semi-structured interviews, and informal conversations with the mentioned actors. Furthermore, we collected and analyzed documents shaping these processes, such as *habeas corpus* petitions.

3. PROCESSES OF JUDICIALIZATION

3.1. TO RUN AFTER

> When I began to understand more about autism, and have a better grasp of the situation, my son was five years old, that was when I decided to create a group, something to share experiences. The first mother I had contact with, close contact, was when I was leaving work, I saw the boy (her son) clinging to the pole, *I ran a lot*

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> and managed to get on the bus behind that mother, then I noticed she had a special card, and he was making a sound, it was the same sound my son used to make, I sat in front of them, waited a bit, gathered my courage, took a deep breath: "Madam, excuse me for asking, is your son autistic?" She replied yes, which relieved me, because approaching people like that, right? And right there we talked...

This account comes from an interview with Caroline,[15] a mother of three children, two of whom have been diagnosed with autism spectrum disorder (ASD) and are currently receiving cannabidiol treatment. Her account introduces a category that she frequently invokes: *to run after*. In the situation described, she *runs after* another mother and her son, who apparently had characteristics similar to her own son's. The same category is used when referring to other situations, such as *running after* information about her son's behaviors from an early age, initially through the internet and later through a doctor who diagnosed him with ASD; establishing a group that brought together parents of individuals with autism to exchange experiences; and *running after* other treatments when she discovered the possibility of using CBD.

During fieldwork with patients and their families, our interlocutors frequently employed the same category to attribute meaning to how they pursue access to cannabis for therapeutic purposes. In this context, *to run after* refers to the actions and feelings that patients and their families mobilize to express the demands and dynamics involved in their struggles to secure legal access to cannabis.

Initially, *to run after* is associated with seeking information about diseases. During this process, cannabis emerges as a new treatment option.

> There was a time when I saw some news about cannabidiol for the treatment of autism because I've always *run after* [things] (*eu sempre corri atrás*), I've always researched, always studied. So, I saw this when my son was five years old, but I saw it as a very distant possibility... Then, two years later, I'm watching a live session with Dr. F., and he talked about cannabidiol, about the people from the first group he studied, and about the treatment for autism. So, I said, "Wow, does it really work then? It's possible, right?". Like, here, in Brazil.

The statement above is from another mother who, when dealing with her child's illness, starts *running after* information and comes across cannabis as a potential way to improve the quality of life. In another interview, a patient expressed this sentiment when talking about using different medications for his treatment but feeling more worried not just about the medications not effectively controlling his seizures but also about the side effects they brought along:

> In the beginning it was good, but later I started gaining a lot of weight, losing my libido... my quality of life was getting worse, and I started questioning this and *running after* [things] (*e correr atrás*), but the doctor wouldn't let me stop. At this point, I read an article in the O Globo newspaper in 2013, saying: American scientists discover that cannabis calms mental waves and is very good for epilepsy.

After *running after* information and realizing that cannabis is a potential treatment option, patients and their families begin *to run after* access to it. This reflects the second sense in which the category is used, encompassing various actions like seeking a doctor who prescribes cannabis and even *running after* other people who have children with various health conditions and are also using the plant.

The situation described at the beginning of this subsection creates the foundation for Caroline to establish a support network and facilitate the exchange of experiences among caregivers and doctors treating children with autism. As mentioned earlier, by *running after* another mother who had a child with autism, she started connecting with people and actively sought to assist more families. That is how the idea of starting a group on two social media platforms came up for people to connect more easily. The group was not initially focused on the therapeutic use of cannabis. However, it was precisely by sharing experiences and *running after* new information that she eventually discovered the potential of using oil extracted from the plant in the treatment of autism.

15 All names in this article are fictitious.

In that moment, Caroline learned that a doctor who advocates for the therapeutic use of cannabis in cases of autism would be giving a lecture in her city. Already deeply engaged in initiatives related to the topic, she started *to run after* people involved with the event. After meeting another mother and a doctor, she offered to help them with the event and extend invitations to other mothers to participate. As she said, 'That's when we united, and we've been united ever since.' From that point on, she began sharing the cannabis treatment option with other mothers in her group who were *running after* new possibilities.

Even though the therapeutic use of cannabis is not the primary focus within the group created and led by Caroline, her case shows how *running after* information about their children's illness and treatment options not only leads them to discover the therapeutic use of cannabis but also brings together people who are eager to share their experiences and build networks around the use of this plant.

From that moment on, our interlocutors seek access to therapeutic use, or, as they said, they start *to run after* becoming cannabis patients. This access can materialize through various means. The first option, as mentioned, involves importing or purchasing from pharmacies in Brazil. This path is frequently associated with a medical prescription, as it specifies the brand of the product to be used, whether importation is required, or if it is available in the country. As mentioned earlier, to proceed with importation, obtaining authorization from ANVISA is necessary. Currently, this process is quick, and the commercial representatives of the company responsible for manufacturing the product assist with the request. However, once again, the high cost of the medication remains a significant barrier to access.

In this situation, an alternative method for gaining access to treatment with cannabis comes into play, where patients or their parents *run after* access with the assistance of a lawyer, filing legal actions to compel the Brazilian state or private health insurance to cover the costs of the medication and its importation. A request of this nature is submitted in courts through a 'supply action,' which has established legal precedents in the Superior Courts for approval.

This is the case for Júlia. Her daughter was diagnosed with autism at the age of two years and six months, but despite undergoing various medications and treatments, her severe autism did not show improvement. When the child was seven years old, the mother discovered the potential benefits of using cannabis and connected with a doctor who was already prescribing the medication for similar cases. Initially, access to cannabis extract was usually clandestine and inconsistent. The other option would be to import the medication, but because of the high cost, she chose to seek legal avenues. She filed a legal request on behalf of her daughter. First, she requested the medication from the state of Minas Gerais, but the request was denied under the allegation that there were other effective drugs available in the Unified Health System (SUS) for her daughter's condition. Next, she decided to seek the assistance of the Federal Public Defender's Office to pressure the state to cover the costs of importing the oil. This request was submitted in 2020, and since then, the process has progressed slowly; it was initially denied, with an appeal to the second instance, a medical examination, and once again, denied. One of the reasons cited for denying the request is her daughter's illness: 'It's because it's just autism, because here they only approve it for refractory epilepsy'.

Recently, in October 2023, Júlia was informed by the Public Defender's Office that the case had been closed without her daughter being able to access the medication. While it is a means for accessing the medication, this process is not straightforward and involves obstacles related to access to the judiciary and the regulations of the Federal Council of Medicine. These regulations restrict the therapeutic use of cannabis to cannabidiol for cases of refractory epileptic syndromes.[16]

Therefore, on the one hand, the action of *running after* allows us to understand how mothers, doctors, and patients mobilize to treat their illnesses. In seeking information, they begin to consider the therapeutic use of cannabis as a more effective treatment option that ensures a better quality of life while facing the various dilemmas related to their illnesses. At this point, *running after* becomes the mechanism through which these individuals get to know each other, make contact, and start *running* together to become cannabis patients.

16 Currently, the resolution of the Federal Council of Medicine (CFM) that outlined the approved cases for the use of cannabidiol is temporarily suspended. In response to calls for a review of the regulation, the CFM decided to reopen the discussion, involving not only medical professionals but also civil society this time.

On the other hand, as described earlier, *to run after* also comes with its constraints, as there is no assurance that legal action to access treatment with cannabis derivatives will always be approved. In response to this situation, lawyers involved in cannabis advocacy crafted the legal strategy we mentioned before. This method emerges as a new way of 'taking legal action' by using *habeas corpus* petitions. This process is a fundamental component of what we term 'processes of judicialization,' a subject we will explore in greater detail next.

3.2. TO TAKE LEGAL ACTION

Having shown how the concept of 'running after' sheds light on the pathways patients-litigants follow to obtain access to medical cannabis, we now turn our attention to a particular case of legal action, which involves the use of a habeas corpus petition for the home cultivation of the plant and the patient's artisanal production of the oil.

Habeas corpus is enshrined in the Federal Constitution and, in general terms, serves as the constitutional remedy activated to safeguard the freedom of movement of the alleged perpetrator of a crime. Hence, for the habeas corpus strategy to succeed, the petitioner must already be cultivating the plant, essentially engaging in a criminal act. The goal is to prevent the patient from being arrested and to avoid the confiscation of their plants. Therefore, it is not about obtaining access to the medication; it is about facilitating the cultivation of cannabis.

As discussed in the literature review, resorting to the judiciary is not uncommon when it comes to securing rights in Brazil, where judicialization is a widespread phenomenon across various domains. For the purposes of this article, *habeas corpus* is a writ in the realm of health. The petition for a writ of *habeas corpus* for cultivation is based on the legal argument of the 'dignity of the human person' in relation to 'quality of life' and the 'constitutional right to health' (Policarpo and Martins, 2019). Similarly to Biehl and Petryna's conclusions (2016), we understand that using *habeas corpus* to authorize cannabis cultivation suggests that the judicialization of cannabis addresses the need for widespread health access in Brazil, not only exceptional cases, such as specialized treatments or high-cost medications.

Additionally, due to high demand and efforts to cut treatment costs, several Brazilian states, starting with São Paulo, are passing laws to allow the distribution of cannabis derivatives through the public health system, SUS.[17] However, since cultivation is still illegal in the country, the raw material, cannabis, will be imported, and the treatment is expected to be available only by the end of 2024. For those who cannot wait or cannot afford the treatment, the only option is 'to take legal action.'

This was true for Jair, a 48-year-old individual who was born prematurely at six months gestation and diagnosed with difficult-to-control generalized epilepsy at nine months old. Throughout his life, he pursued treatment for his condition using various medications. However, not only did these treatments fail to produce positive results, but they also exacerbated epileptic seizures and negatively affected his quality of life. Moreover, he suffered from severe side effects, including depression and anxiety. In July 2015, his neurologist prescribed the use of an imported cannabis oil rich in CBD. At present, the process with ANVISA is quick, but at that time, it was lengthy. Only after three months did he receive authorization to import the oil. Like many others, the high cost of the medication made it impossible for Jair to undergo treatment without significantly impacting his financial stability.

Confronted with this situation, in July 2016, he initiated a legal process through the Public Defender's Office, seeking state coverage for the costs of importation. One month later, the court granted a favorable interim injunction for his request. Initially, the funding he received covered the treatment for six months. However, following the initial payment, the state *stiffened on the payment* and discontinued the funding for the importation. He then started using the oil he produced himself through artisanal methods. Growing cannabis at his home, overseeing his own treatment, and observing excellent results, he still needed assurance. It was crucial to ensure that cultivating cannabis for therapeutic purposes was

17 "Governo de SP regulamenta fornecimento de cannabis medicinal pelo SUS". Available at https://agenciabrasil.ebc.com.br/geral/noticia/2023-12/governo-de-sp-regulamenta-fornecimento-de-cannabis-medicinal-pelo-sus (Accessed January 10, 2024).

not considered a 'crime' but rather a 'right.' For this reason, Jair chose to consult with a lawyer affiliated with the mentioned REFORMA, intending 'to take the law into his own hands' and secure a writ of habeas corpus that would allow him to cultivate cannabis without the risk of arrest.

> Since the state stiffened on the payment, he found himself in a situation of "look, either I grow it, or I figure out a way to fix this for my health to stay good, otherwise, I don't know what else to do". So, his case had a turning point that was this Pyrrhic victory because he had a legal victory, but the state didn't follow through with the payments. So, you know, even during the oral arguments, I said, look, the inefficiency of the state became evident here, even when a judge recognized this right, the state didn't pay, if he hadn't *run after* [things] (*corrido atrás*) through his own means, using the *habeas corpus* path, his health wouldn't be treated, and it was a case with a risk of death, right? (Jair's lawyer)[18]

However, not everyone who *runs after* the therapeutic use of cannabis is willing *to take legal action* through a *habeas corpus* petition. During the interviews, we asked patients about this possibility, and they often mentioned being aware of the strategy. This is because, when *running after* information on how to access cannabis, they frequently come across news related to the subject. In general, patients choose not to pursue the *habeas corpus* strategy because, unlike other options, it involves cultivating cannabis at home, requiring specific knowledge and coming with inherent risks, which influences the preference for alternative paths.

This strategy involves two aspects. First, in *habeas corpus* petitions, unlike the typical approach in criminal cases related to drugs, where the defense aims to deny or evade involvement in the illicit practice, lawyers adopt an 'affirmative defense' (Figueiredo, 2021). They 'knock on the door' of the courts to show that the petitioners are cultivating cannabis at home (Lambert and Martins, 2018). The second aspect is directly related to the first: *habeas corpus* petitions aim to underscore that individuals using cannabis for therapeutic purposes are not 'drug users-dependent/addicted' but rather 'sick-patients.' In this context, cannabis is not a 'drug;' it is a 'medication' (Policarpo, Figueiredo and Veríssimo, 2017; Policarpo and Martins, 2019).

Jair's case also illustrates how the judiciary is currently the main arena for the regulation of cannabis in Brazil. After Jair had consulted with a lawyer and adopted the strategy of *taking legal action* through a *habeas corpus* petition, the request was initially submitted to a Special Criminal Court (JECrim) in his city. However, this court declined its jurisdiction, deferring the case to the regular Criminal Court. The regular Criminal Court, in turn, indicated that the jurisdiction would be with the State Court of Appeals. As explained by the lawyer, due to a kind of *passing-the-buck* attitude among judges who were reluctant to make a ruling that would deny medication to a patient, the *habeas corpus* petition ended up being reviewed by the Court of Appeals, therefore at the second instance.

The State Court of Appeals is a collegial body formed by a group of magistrates. Jair's *habeas corpus* petition was adjudicated by three appellate judges, with one of them serving as a rapporteur, responsible for the analysis and handling of the case. In the ruling, the rapporteur and the other two appellate judges concurred in granting the *habeas corpus*. However, the discussion focused on the limits of this cultivation, including the authorization period and the allowed quantity of cannabis plants.

The decision by a majority was to authorize the cultivation of 10 cannabis plants. It unanimously set the authorization period for five years. The rationale behind this decision was that, in the five-year period, ANVISA or another government agency could regulate the issue, eliminating the need for Jair to renew his authorization through a *habeas corpus* petition. The last time we spoke with Jair, there was a little over a year remaining until the deadline, but he was already expressing concern about the renewal because the state had not yet regulated cultivation. Jair hopes to continue cultivation as a right, not a crime, and he fears arrest. As he said, 'The habeas corpus petition is like life insurance; you don't want to have to use it.'

18 It is worth noting that in Jair's case, as in others we followed during the ethnographic research, our access to information came not only from interviews with patients, doctors, and lawyers but also from full access to the habeas corpus proceedings. This enabled us to contrast the perspectives of the various actors involved.

CONCLUSION

In this article, we described how the process of cannabis regulation is unfolding in Brazil, emphasizing the crucial role of the judiciary. To achieve this, we began by outlining the current scenario in the Introduction using the 2010s as a reference period. This period marks a significant shift with the emergence of the so-called 'medicinal cannabis' in the country. We underscored the importance of the documentary 'Ilegal', which shows the initial efforts of family members, especially mothers, caring for children with serious illnesses. These families witnessed substantial improvements in their health conditions through the use of cannabis.

Next, we demonstrated the current state of the academic debate on cannabis in Brazil, focusing on discussions about cultivation and the role of associations in this context. We also highlighted the contribution we intend to make in this article concerning the 'process of judicialization.' Moreover, we presented the methodological path we followed to construct this article, highlighting the data derived from both individual and collective ethnographic research. We believe that these data shed light on the unfolding of regulatory processes in the daily lives of individuals using cannabis for therapeutic purposes.

We began with the categories *to run after* and *to take legal action*. The qualitative data show how users of medication, faced with unclear legislation, find alternative paths to ensure oil production. As highlighted on multiple occasions, this medication imposes high costs on most Brazilians, leading to a substantial rise in legal claims for the oil and requiring the Brazilian State to cover the costs of its importation. As evidenced by the cases discussed here, this process is riddled with significant obstacles, and even when court rulings grant access, implementation is not always guaranteed in practice. As in Jair's case, they come to realize that a *habeas corpus* petition is the only legal avenue for obtaining authorization to cultivate cannabis at home for therapeutic purposes. Hence, our goal was to highlight how the absence of clear legislation on plant cultivation, the persistent prohibition under the Brazilian Drug Law, and the restrictions set by ANVISA have prompted many patients to turn to the judiciary to secure their 'right to health.' Throughout the article, we demonstrate that the process of judicialization extends beyond access to medication—specifically, cannabis oil. It also encompasses the regulation of access to the cultivation of medical cannabis in Brazil, going beyond the mere judicialization of health.

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The authors have no competing interests to declare.

AUTHOR CONTRIBUTIONS

A.1, A.2, A.3 contributed to the design and implementation of the research, to the analysis of the results, and to the writing of the article.

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