

July 22nd, 2024

Administrator Anne Milgram
Drug Enforcement Agency
8701 Morrissette Drive
Springfield, VA 22152

Re: Docket DEA-1362, Notice of Proposed Rulemaking Federal Register Number 2024-11137

The Immigrant Justice Network (IJN) submits the following comment in response to the Drug Enforcement Administration's Notice of Proposed Rulemaking, *Scheduled or Controlled Substances: Rescheduling of Marijuana*. IJN urges the DEA to reconsider its proposed rule and issue a new rule descheduling marijuana from the Controlled Substances Act (CSA). Merely moving marijuana from Schedule I to Schedule III will not remove the harms caused by marijuana prohibition to immigrants, workers, or patients, nor will it address the harms caused by years of criminalization to people who have been arrested, incarcerated, deported, or denied citizenship, public benefits, housing, or employment as a result of using marijuana. Only removing marijuana from the CSA altogether can end these past and ongoing harms, which are disproportionately borne by people of color, especially black men and women.

Introduction

The Immigrant Justice Network (IJN) is a leading advocacy voice against the criminalization of immigrants in the United States. Grounded in racial justice values, we build power to defend the dignity of all immigrants. We fight for a world where our communities are thriving and free from policing, deportation, and imprisonment. IJN

seeks to address the needs of people caught in the intersection of the criminal and immigration systems. Through advocacy, education, technical assistance, training, communications, and litigation, we provide strategic assistance and support for grassroots and larger advocacy groups. IJN also works with organizations, coalitions, and networks regionally and nationally to create models and policies that mitigate and/or stop mass detention and deportation efforts.

IJN comprises nine members: Families for Freedom, Grassroots Leadership, the Immigrant Defense Project (IDP), the Immigrant Legal Resource Center (ILRC), Just Futures Law (JFL), Puente Human Rights Movement, the National Immigration Project (NIPNLG), Southeast Asia Resource Action Center (SEARAC) and the Washington Immigrant Solidarity Network (WAISN). IJN is also guided by the leadership of an Advisory Board, a group of five movement leaders who have worked closely with individuals and have themselves been impacted directly by the systems we seek to dismantle.

We aim to support the work of the movement against mass incarceration and increase cross-movement connection. We combat the criminalization of immigration communities through advocacy on a multitude of issues. We have long focused on the devastating impacts of the War on Drugs on communities of color across the country. Through our [New Way Forward](#) campaign we seek to address the harm of draconian drug policy by repealing immigration law that subjects immigrants to prolonged incarceration without the possibility of bond and to deportation, which for many people is a permanent exile that separated families and communities.

IJN and our partners across the country have seen the devastating impacts of marijuana prohibition. These impacts are multiplied for immigrants, who face exceptionally harsh immigration penalties on top of the already unjust criminal system penalties for marijuana-related conduct. One of our key goals is to elevate the stories of individuals impacted by the results of immigration policing triggered by the criminal legal system. We support complete descheduling of marijuana, rather than moving to Schedule III as the Drug Enforcement Agency (DEA) has proposed.

Marijuana must be descheduled and decriminalized in order to address harms faced by immigrant communities

Without descheduling, noncitizens face the threat of deportation even when they obey their state's marijuana laws. Marijuana's place on federal drug schedules – regardless of schedule – means that noncitizens who work legally in the legitimate cannabis industry, and pay state and federal income taxes on their work, are punished as “drug traffickers” under immigration laws. Immigrants who use marijuana in their own home in accord with state law are punished for admitting to a federal drug offense.

Immigrants who actually have been convicted for possessing marijuana face a second, double punishment of extreme immigration penalties, including ICE detention without possibility of bond and deportation. Between 2002 and 2020, 127,387 immigrants who were deported had a marijuana offense as their most serious conviction..¹ These make up roughly 20% of all deportations during the same time

¹ [“Disrupt and Vilify”: The War on Immigrants Inside the US War on Drugs | HRW](#)

period.² The only way to truly protect noncitizens from harsh immigration consequences is to completely remove marijuana from the federal drug schedules.

Under current immigration law, virtually any controlled substance offense can impact a person's immigration status. These harsh immigration penalties are triggered by reference to the Controlled Substances Act and cover offenses involving any substance listed anywhere on the federal drug schedules. Immigration penalties for marijuana include the following:

- *Deportation:* Any marijuana offense apart from a single conviction for simple possession of less than 30 grams for personal use will render an immigrant deportable. This includes lawful permanent residents and others who have lived in the United States for decades.
- *Detention:* People who have not been officially admitted to the U.S., which is true of many undocumented people, will be subject to mandatory detention for *any* marijuana conviction.
- *Bar to becoming a lawful permanent resident:* People can be denied lawful permanent residency for any marijuana conviction, though a very difficult to obtain-waiver may be available for a single conviction for simple possession of less than 30 grams for personal use. We have seen this come up in some parts

² [“Disrupt and Vilify”: The War on Immigrants Inside the US War on Drugs | HRW](#)

of the labor market outside of farming. For example, a California applicant had their application for lawful permanent residency denied based on having installed and maintained a security camera system for a cannabis grower participating in the regulated cannabis industry that is legal in California.³

- *Bar to becoming a citizen:* A lawful permanent resident can be denied naturalization for any marijuana conviction, for personal use of marijuana without a conviction, or for legal work within the industry.
- *Not permitted to enter the U.S.:* A person, including a lawful permanent resident, can be denied entry to the U.S. due to a conviction for *any* marijuana offense, though a difficult-to-obtain waiver may be available to some people for a single conviction for simple possession of less than 30 grams for personal use. A person who works in the industry⁴, or even provides a service to cannabis business, may also be denied entry on suspicion of being a drug trafficker.

All of these consequences attach even if the conduct occurred in a state where it was legal at the time. As long as federal law continues to criminalize marijuana and it remains on a controlled substance schedule, immigrants will continue to face these very harsh consequences. Removing marijuana from the federal drug schedules altogether would remove many of these immigration consequences.

³ *Voronin v. Garland*, Case No. 2:20-cv-07019-ODW (AGRx) (C.D. Cal. Apr. 20, 2021)

⁴ [Legal immigrants with jobs in the marijuana industry are being denied US citizenship - ABC News \(go.com\)](#); [Biden's Administration Says Immigrants Working in Legal Cannabis Are 'Drug Traffickers' - POLITICO](#)

The Impact of Moving Marijuana to Schedule III

There is perhaps some symbolic impact of moving marijuana to Schedule III of the Controlled Substance Act. This change is an acknowledgment that marijuana has an accepted medical use and lower abuse potential than its current Schedule I categorization belies. Moving marijuana to Schedule III also acknowledges that there is widespread therapeutic medical use for marijuana for the treatment of a multitude of physical and mental health conditions. It also recognizes that marijuana does not present the same potential for abuse and dependence as other Schedule I substances. However, it will have very little practical impact, except for tax benefits for some cannabis businesses. While these are important developments in the way we think about marijuana, Schedule III classification does not go far enough to address the harms that marijuana prohibition has had on immigrant communities.

Moving marijuana to Schedule III does not change the criminal penalties imposed on marijuana-related conduct under federal law or state laws that continue to prohibit its use. These criminal penalties can also serve as the trigger for harsh immigration consequences such as prolonged incarceration in immigration detention without possibility of bond and even deportation. For many people deportation can mean separation from their families and communities and indefinite exile to a country and culture they may no longer identify with. These severe consequences have devastated many lives as one of the many long lasting effects of the War on Drugs.

The devastating impact of marijuana prohibition on immigrant communities

The Immigrant Justice Network has supported the campaigns of many immigrants fighting deportation based on interactions with the criminal legal system. IJN has worked with Alex Murillo to highlight the devastating impacts of harsh marijuana policy on immigrant communities. Alex was born in Mexico and migrated to Phoenix, Arizona as a toddler.⁵ He grew up in Phoenix and enlisted in the Navy shortly after he graduated from high school.⁶ When Alex's parents applied to become naturalized U.S. Citizens he told them not to spend the extra money to include him because he believed his service in the Navy made him a citizen automatically.⁷ Alex served two tours in Iraq as a jet mechanic.⁸ Alex believed because he completed these tours for the Navy that he was a United States Citizen.

Later in his life, Alex was arrested for a marijuana-related crime and after he completed his criminal sentence he was transferred to the custody of Immigration and Customs Enforcement.⁹ During his immigration court proceedings he was deeply confused because he believed as a veteran and a long time legal permanent resident there could be no way he would be deported to Mexico.¹⁰ Unfortunately, he was mistaken and he was deported because his crime was considered an aggravated felony

⁵ [Deployed. Then Deported: How US Vets Who Served Their Country Get Kicked Out | Phoenix New Times](#)

⁶ [Deported Veterans Long to Return From Exile. Some Will Get the Chance. - The New York Times \(nytimes.com\)](#)

⁷ [Deported Veterans Long to Return From Exile. Some Will Get the Chance. - The New York Times \(nytimes.com\)](#)

⁸ [Deported Veterans Long to Return From Exile. Some Will Get the Chance. - The New York Times \(nytimes.com\)](#)

⁹ [Deported veteran allowed back in US now fights for those stranded south of the border \(borderreport.com\)](#)

¹⁰ [Deported veteran allowed back in US now fights for those stranded south of the border \(borderreport.com\)](#)

under immigration law. This restrictive category makes virtually all immigration relief inaccessible and applies to all controlled substance crimes related to transport and sale.

While he was born in Mexico, Alex spent most of his life in the United States and identifies as American because his family and community are all in the Phoenix area. Alex was deported right before Christmas in 2011¹¹. He was driven to the border on a bus and dropped off near a chain link fence in a country where he had no memories.¹² Alex spent 11 years in Rosarito, Mexico working a job at a call center and coaching youth flag football teams. While he made a life for himself in Mexico, Alex was waiting to be able to return to the United States to reunite with his loved ones and the community and city he called home.¹³ Alex was able to return to the United States after 11 years in Mexico through diligent advocacy and his work as part of a group advocating for deported veterans.¹⁴ Now, Alex lives in the United States without the ability to return to Mexico to see the people he developed connections with during the 11 years he lived there.¹⁵ The consequences of something that happened over a decade ago still impact Alex's everyday life and his ability to move freely and interact with the people who have supported him throughout his life. Alex's story illustrates the extreme toll that harsh marijuana related policies have on immigrant families across the United States and why marijuana must be descheduled, rather than rescheduled to Schedule III.

¹¹ [Deployed, Then Deported: How US Vets Who Served Their Country Get Kicked Out | Phoenix New Times](#)

¹² [Deployed, Then Deported: How US Vets Who Served Their Country Get Kicked Out | Phoenix New Times](#)

¹³ [Deported veteran allowed back in US now fights for those stranded south of the border \(borderreport.com\)](#)

¹⁴ [Deported Veterans Long to Return From Exile. Some Will Get the Chance. - The New York Times \(nytimes.com\)](#)

¹⁵ [Deported Veterans Long to Return From Exile. Some Will Get the Chance. - The New York Times \(nytimes.com\)](#)

Conclusion

Marijuana must be descheduled so more families do not suffer the same pain the Murillo family suffered. Moving marijuana to Schedule III is not a sufficient remedy for the devastating impact that detention and deportation have had on thousands of immigrant families. The DEA should remove marijuana from the federal schedules under the Controlled Substances Act entirely in order to take the first major step towards decriminalization of marijuana and reinvestment in communities that have suffered the most harm from the War on Drugs. If you have any questions please contact omerino@ilrc.org.

Sincerely yours,

Oliver Merino

Immigrant Justice Network Coordinator