



## **The immigrant justice movement calls for descheduling, not rescheduling**

The federal government is moving to decrease the criminal penalties for marijuana use by changing its legal status within the Drug Enforcement Administration’s (DEA) listings or schedules of drugs, a process dubbed “rescheduling.” Merely rescheduling marijuana under federal law does not go far enough to reflect evolving opinion on marijuana use or protect people from harsh criminal consequences. To really decriminalize marijuana, marijuana must be completely descheduled.

As long as marijuana remains on the federal schedules in the Controlled Substances Act (CSA), it is a federal offense to possess, gift, sell, grow, transport, import, or export marijuana. For immigrants, this means that they are not only at risk for criminal prosecution, but also that they risk the double punishment of deportation and immigration detention as a result of marijuana-related conduct. Full descheduling and decriminalization of marijuana is necessary to prevent continuing harm to immigrant communities. Simply moving marijuana from Schedule I to Schedule III is not enough, as it does not remove the immigration or criminal consequences of marijuana use, possession, or employment in the rapidly expanding lawful cannabis industry.

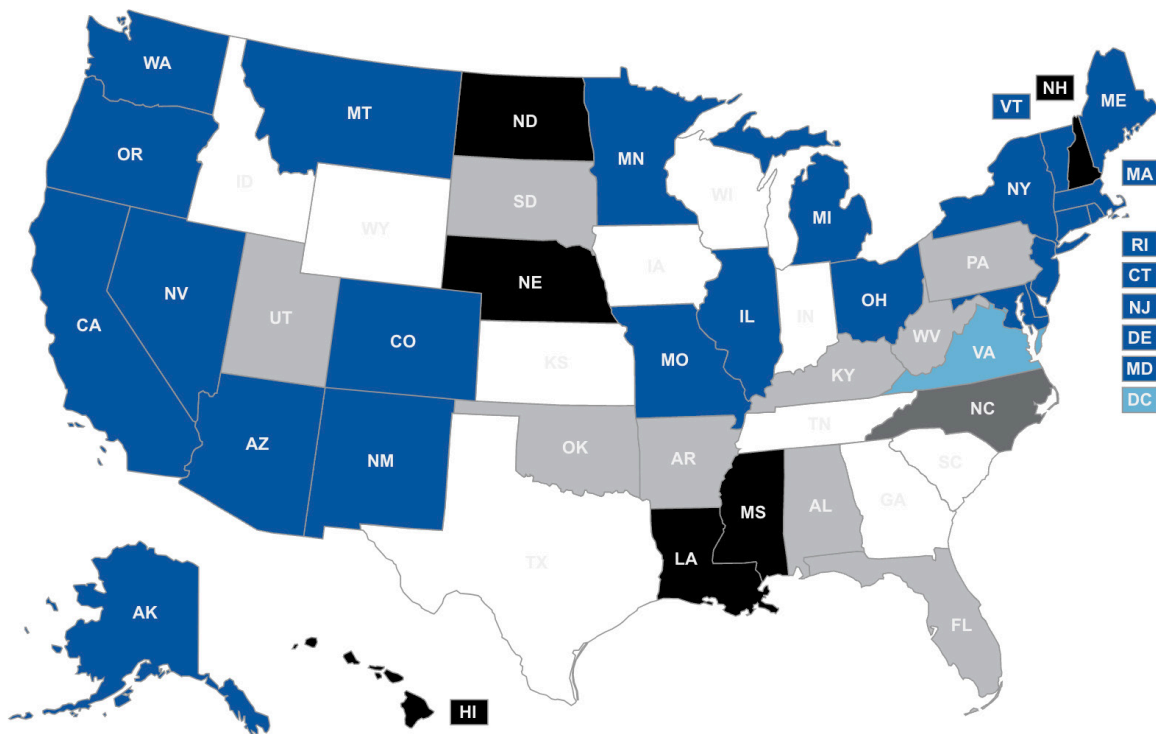
Public opinion and state laws are moving toward widespread acceptance of the use of medical and adult recreational use marijuana. Medical professionals cite the health benefits of marijuana treatment for serious conditions like PTSD, depression, cancer, chronic pain, and others. Federal law must follow suit.

<b>Descheduling</b>	<b>Rescheduling</b>
<ul style="list-style-type: none"> <li>• End federal marijuana arrests</li> <li>• End state arrests where state law is linked to federal drug schedules</li> <li>• Could allow for people to seek post-conviction relief and release from prison</li> <li>• Restore access to public benefits</li> <li>• Would allow for implementation of federal labor protections for employees of legalized and regulated cannabis business</li> <li>• Would halt the deportation and denial of immigration benefits to non-citizens for marijuana-related activity</li> </ul>	<ul style="list-style-type: none"> <li>• Arrests would continue</li> <li>• Would not release anyone from prison</li> <li>• Access to public benefits will not be restored</li> <li>• Does not create any labor protections for employees of cannabis businesses</li> <li>• Immigrants will continue to be deported and denied immigration benefits for marijuana-related activity</li> </ul>

## BACKGROUND

Over 52% of the U.S. population lives in a state that permits recreational marijuana use, and at least 74% lives in a state where it is legal for recreational use or medical use.<sup>1</sup> In states where use is legal, advertisements usually do not include any messaging or warnings about federal legal consequences. Many people believe that because conduct is legal under the state system, they will not face any negative enforcement action. Unfortunately for immigrants, this is doubly untrue. Immigrants are subject to federal criminal system punishments AND severe immigration consequences, including detention and deportation. With legalization in many states and wide public acceptance of recreational use and health benefits of marijuana, non-citizens may be understandably surprised that not only marijuana-related convictions, but also marijuana-related *conduct* can result in deportation or a denial of status or citizenship.

## MARIJUANA POLICY PROJECT MAP



Source: <https://www.mpp.org/states/>

### LEGEND

- States with medical marijuana laws
- States that have removed jail time for possessing small amounts of marijuana
- States that have both a medical marijuana law and have removed jail time for possessing small amounts of marijuana
- Marijuana is legal for adults and is taxed and regulated similarly to alcohol; state also has a medical marijuana law
- Marijuana is legal for adults (no sales); medical marijuana law

<sup>1</sup> <https://www.hrw.org/news/2024/07/15/us-drug-linked-deportations-soar-despite-state-reforms>

## **EXAMPLES OF THE UNIQUE AND HARSH CONSEQUENCES NONCITIZENS FACE**

If you are arrested, prosecuted, or convicted as a result of marijuana conduct, you may be denied immigration status or be subject to deportation – even if you already faced punishment in the criminal legal system. In some cases, even if you have just admitted to using marijuana but have never had contact with law enforcement, you could face immigration consequences. Some common examples include:

- You are ineligible for a green card if you have a conviction for any marijuana-related conduct
- You are ineligible for a green card if you even admit that you ever used or sold marijuana, even if you were never arrested.
- You could be found to be lacking “good moral character” and denied citizenship for working in the lawful cannabis industry
- You are potentially subject to mandatory detention, which means you will be incarcerated in an immigration prison while you fight your deportation.
- You could be deported if you are convicted of any crime that involved marijuana-related conduct.

These penalties are harsh and impose lasting consequences on immigrant community members. Nearly 20 percent of all deportations from 2002 to 2020 were of immigrants whose most serious convictions were drug offenses. Immigrants who are applicants for immigration status can be denied due to marijuana-related conduct, even when it is not a “plant-touching” role in the licensed marijuana industry. In one case, a contractor who installed security cameras at a dispensary was denied permanent residence status because their security business contracted with a cannabis business. In another case, a permanent resident was denied U.S. citizenship due to her co-ownership of a lawful dispensary in Oregon with her U.S. citizen husband.

## **WHY DESCHEDULING?**

Rescheduling is not enough – rescheduling will not change the severe immigration consequences of a marijuana-related conviction. Descheduling is the only way to remove the harsh and completely disproportionate consequences for noncitizens, and is a step toward decriminalization of marijuana at large.

Rescheduling would fail to end arrests for marijuana-related conduct. It would also fail to release any of the people who are currently incarcerated in the criminal and immigration systems for marijuana-related conduct. It would fail to restore access to life-saving benefits such as housing assistance. Rescheduling would also fail to protect workers in the cannabis industry, and would not end the failed, enforcement-first approach to marijuana policy. It’s clear that rescheduling leaves all of our communities behind and fails to address the devastating harm caused by the War on Drugs. Focusing on enforcement and punishment has failed, and we must adopt a new approach to address substance use disorders through public health and harm reduction measures, rather than draconian penalties that rip apart communities through incarceration and deportation.

Public opinion about marijuana has changed dramatically since the War on Drugs began. Harsh punishments have devastated both individual and community well-being. The disconnect between state legalization and federal criminalization creates a confusing, unfair, and mismatched landscape for noncitizens in the U.S., who live in states where marijuana use, possession, and employment in the industry are all completely legal under state law. We must end federal prohibition and support the descheduling and decriminalization of marijuana in order to cease harming and begin to reinvest in Black and brown communities disproportionately hit by both criminal and immigration consequences.