

EXECUTIVE SUMMARY

IMMIGRATION IMPACT:

THE ADULT USE OF MARIJUANA ACT

ANALYSIS OF CALIFORNIA'S PROPOSITION 64

KATHY BRADY, SENIOR STAFF ATTORNEY
ANGIE JUNCK, SUPERVISING ATTORNEY
NIKKI MARQUEZ, LAW FELLOW



THE IMPACT OF MARIJUANA OFFENSES ON IMMIGRANTS

The Adult Use of Marijuana Act (“Prop. 64”) presents a timely and important opportunity to address one devastating effect of the failed “War on Drugs.” By legalizing marijuana for adults 21 and older, Prop. 64 will prevent the destruction of thousands of California families and will prevent loved ones from being detained or deported for minor marijuana offenses.

California is the most immigrant rich state in the country. It is home to more than 10 million immigrants, or a quarter of the total foreign-born population in the U.S. Mixed-status families (composed of various configurations of immigration status) is the norm in the state. For example, one out of every two children in California lives in a household headed by at least one foreign born person; the vast majority of these children are U.S. citizens.

Over half of all California immigrants are Latino, and over 90% are persons of color. Along with other persons of color, California immigrants may be targeted disproportionately in drug arrests due to implicit bias and racial profiling practices in policing. Arrests relating to marijuana comprise nearly half (45%) of all drug arrests nationally.

For immigrants, the disproportionate impacts of a marijuana conviction are far more damaging than for most citizens, because the immigration consequences that flow from any drug conviction (including marijuana possession) are some of the most punitive, unforgiving penalties under federal law, often with no recourse. These consequences can include: detention by immigration authorities for months or years; loss of current “green card” or other lawful immigration status; ineligibility to apply for lawful immigration status; and deportation that causes permanent family separation, often with no consideration of humanitarian factors.

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Consider the following scenarios:

- A legal permanent resident, including one who may have lived in the U.S. for years with extensive family and community ties, can lose her status and be deported for a single marijuana conviction. The only exception is for a single conviction of possessing 30 grams or less of marijuana.
- An undocumented person with a single marijuana conviction generally will not be able to legalize his immigration status and remain in the U.S., even if he is married to a U.S. citizen and is the father and financial support of U.S. citizen children. The only exception is if the person has a single conviction for possessing 30 grams or less of marijuana, and can show extreme hardship to certain family members. This is a standard that many immigrants cannot meet.

The effects of these harsh federal laws are compounded by record numbers of deportations in the U.S. over the last eight years and the frequency by which the federal government deports immigrants for drug offenses. Possession of a drug, in particular marijuana, is one of the most common bases for deportation based on a criminal conviction. A report released in 2015 by Human Rights Watch found that deportations based on drug possession increased 43% from 2007 through 2012. During that period more than 260,000 people were deported for a drug offense and, though these statistics are incomplete, at least 38% or over 100,000 such cases involved possession of drugs for personal use.



While it is impossible to quantify the impact Prop. 64 will have on California's immigrant community, it is clear that **Prop. 64 will significantly mitigate the immigration consequences of some marijuana-related drug offenses.**

ANALYSIS OF CALIFORNIA'S PROP. 64

Prop. 64 provides a much needed state solution to a broken federal immigration system. By decriminalizing certain offenses, including possessing, carrying, sharing, or growing a small amount of marijuana meant for personal use, for persons age 21 and older, Prop. 64 will provide reprieve for both legal and undocumented immigrants.

In particular, under Prop 64:

- Some immigrants with legal status, including lawful permanent residents (or green card holders), will avoid being deported because their marijuana conduct will not result in a criminal conviction.
- Some immigrants who are undocumented and/or seeking another lawful immigration status will not be barred from obtaining such status and consequently, deported.
- Finally, some immigrants will avoid a super penalty under immigration law based on a conviction for growing a small amount of marijuana for one's own use that leads to nearly certain deportation and possible persecution in the home country – based on race, religion, or political belief – regardless of individual circumstances including long time legal status and residence in the U.S.

In addition, Prop. 64 will ensure access to some humanitarian programs for immigrants. One such program is Deferred Action for Childhood Arrivals (DACA), which provides temporary protection against deportation for some people who were brought to the U.S. as children and who have attended high school or served in the military in the U.S. In California, over 340,000 people are potentially eligible for DACA. By removing or reducing the level of certain marijuana offenses – from felony to misdemeanor, misdemeanor to infraction, and removing specific criminal penalties all together – and by providing some post-conviction remedies to clear one's record, Prop. 64 will help young people remain eligible for DACA.

- Prop. 64 provides that for persons age 18 to 20, certain marijuana offenses will remain an offense but will only be an infraction. While we do not yet have an immigration ruling, it is possible that a California infraction will be held not to be a conviction for any immigration purpose, thereby avoiding certain penalties under immigration law.
- Prop. 64 also provides forms of post-conviction relief to clear up one's record of prior marijuana convictions. Again, while we do not yet have an immigration ruling, it is possible that immigration authorities will hold that this relief means that an immigrant will not be deported or prevented from obtaining lawful immigration status based on the conviction. This may further reduce the number of people subject to deportation for marijuana-related conduct, while opening up opportunities and providing family security for immigrants with past marijuana convictions.

By decriminalizing certain marijuana offenses in California, Prop. 64 is expected to decrease the number of immigrants subject to deportation and detention and increase the number of immigrants who may be able to obtain lawful immigration status but for a marijuana conviction, keeping families and communities intact across California. This potential change in the law is significant for immigrants, especially Latinos, given the large immigrant population in California, the record number of deportations with no federal relief in sight, the high number of arrests and convictions for marijuana offenses, and the severe and automatic immigration penalties that flow for conviction of almost any offense relating to drugs, including marijuana.

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