



IMMIGRANTS AND SUBSTANCE USE DISORDERS: A LEGAL AND MEDICAL PERSPECTIVE

Part II. Applying Medical Evidence and Expertise on SUDs to Immigration Cases

By Michelle Lough, MD, MPH; Triveni DeFries, MD, MPH; and Kathy Brady & Ann Block, Immigrant Legal Resource Center

Also Read:

- Introduction: Substance Use Disorder is a Public Health Issue
- Part I: Immigration Law Penalties for Substance or Alcohol Use Disorder

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This Advisory is a collaboration between experts in immigration law and in medicine, published in two parts. **Part I (the prior Part) is entitled *Immigration Law Penalties for Substance or Alcohol Use Disorder***. It reviews the several immigration law penalties associated with substance use disorder and alcohol use disorder (SUD and AUD, respectively), the role of scientific standards in these determinations, and possible legal defenses.

Part II (this Part) is entitled *Applying Medical Evidence and Expertise on Substance Use Disorders to Immigration Cases*. It reviews current medical information about these disorders and how this information addresses questions that arise in different types of immigration applications. For example, what established risk factors put individuals more at-risk for developing substance use disorders?

Parts I and II both appear at <https://www.ilrc.org/resources/immigrants-and-substance-use-disorders-legal-and-medical-perspective-0>.

Part II. Applying Medical Evidence and Expertise on Substance Use Disorders to Immigration Case

A. Substance use disorder is a medical condition

Takeaway: Specific criteria are the bases for finding a SUD under the *Diagnostic and Statistical Manual on Mental Disorders—5th Edition*.

Decades of scientific and medical research show that substance use is a health condition that results from altered brain circuitry involved in self-regulation and reward processing.¹ SUD is a chronic health condition that requires lifelong treatment and management, just like other health conditions such as asthma and diabetes. As such, individuals with opioid use disorder who are not currently using illicit substances are now protected under the federal Americans with Disability Act.² Despite this, society is slow to change its viewpoint that substance use is a moral failing due to a “lack of willpower” or a “character flaw.”

Any substance use does not mean that an individual has a substance use disorder. People use drugs and/or alcohol for many different reasons, for recreation, to cope with stress or trauma, or to stay alert in unsafe situations. Using drugs or alcohol can be recreational or intermittent in nature without any problematic pattern of behavior.

For example, alcohol use is very common in the U.S. population. 86% of the U.S. population, 139.7 million people, reported using alcohol at least once in their lifetime.³ However, only a minority of those individuals have problematic drinking, and even fewer meet criteria for alcohol use disorder⁴.

¹ Volkow, Nora D. “Stigma and the Toll of Addiction.” *The New England Journal of Medicine*, vol. 382, no. 14, Massachusetts Medical Society, 2020, pp. 1289–90, <https://doi.org/10.1056/NEJMp1917360>.

² U.S. Department of Justice, Civil Rights Division. “Opioid Use Disorder.” Published 13 Feb. 2023. Retrieved from <https://www.ada.gov/topics/opioid-use-disorder/> on 8 July 2023.

³ Han, B. Substance Abuse and Mental Health Services Administration. (2020). *Key substance use and mental health indicators in the United States: Results from the 2019 National Survey on Drug Use and Health* (HHS Publication No. PEP20-07-01-001, NSDUH Series H-55). Rockville, MD: Center for Behavioral Health Statistics and Quality, Substance Abuse and Mental Health Services Administration. Retrieved from <https://www.samhsa.gov/data/>.

⁴ Han, B. Substance Abuse and Mental Health Services Administration. (2020). *Key substance use and mental health indicators in the United States: Results from the 2019 National Survey on Drug Use and Health* (HHS Publication No. PEP20-07-01-001, NSDUH Series H-55). Rockville, MD: Center for Behavioral Health Statistics and Quality, Substance Abuse and Mental Health Services Administration. Retrieved from <https://www.samhsa.gov/data/>.



90% of people who use drugs do not meet the criteria for a substance use disorder.

*Source: unodc.org/documents/wdr2015/WDR15_Drug_use_health_consequences.pdf

To learn more about statistics and general SUD information, please visit Drug Policy Alliance, "Substance Use Treatment," <https://drugpolicy.org/issues/SUD-treatment> (accessed January 8, 2023).

A substance use disorder is diagnosed when there is a problematic pattern that leads to significant impairment or distress within a 12-month period. Healthcare professionals and mental health clinicians use the *Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5)* diagnostic criteria⁵ shown below to determine if an individual meets criteria for an SUD.

If an individual has 2 or more manifestations, they meet criteria for having a SUD and would benefit from treatment. *Mild SUD* is diagnosed when 2-3 manifestations are met, *moderate SUD* is when 4-5 manifestations are met, and *severe SUD* is when 6 or more manifestations are met. This criteria can be applied to alcohol or any drug.

- Often taken in larger amounts or over a longer period than was intended.
- A persistent desire or unsuccessful efforts to cut down or control use.
- A great deal of time is spent in activities necessary to obtain, use, or recover from the substance's effects.
- Craving or a strong desire or urge to use the substance.
- Recurrent use resulting in a failure to fulfill major role obligations at work, school, or home.
- Continued use despite having persistent or recurrent social or interpersonal problems cause or exacerbated by its effects.
- Important social, occupational, or recreational activities are given up or reduced because of use.
- Recurrent use in situations in which it is physically hazardous.
- Continued use despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by the substance.
- Tolerance (using increasing amounts to obtain effect).
- Withdrawal (physical symptoms with cessation of use).

The DSM-5 criteria allows for clinically accurate identification of a substance use disorder. Note that the above criteria can be applied to each individual substance, and people can have multiple SUDs. In fact, concurrent use of multiple substances is common. For example, a person may have an alcohol use disorder in sustained remission and an active marijuana use

⁵ American Psychiatric Association. *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)*. American Psychiatric Association, Arlington, VA, 2013.

disorder. Additionally, there is a difference in diagnosis of a use disorder between an individual who may use, for example, cannabis occasionally versus an individual who uses fentanyl daily.

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According to the CDC Technical Instructions for Physical and Mental Disorders with Associated Harmful Behaviors and Substance-Use Disorders for Civil Surgeons and Panel Physicians (medical doctors employed by immigration authorities to examine applicants for lawful permanent residency),⁶ the DSM-5 criteria is the standard that U.S. consulates and USCIS must use to determine if an individual has a substance use disorder. An individual is considered inadmissible if they meet DSM-5 criteria for a SUD of any severity (even mild) relating to a federal controlled substance⁷ as they meet criteria for a current “drug abuse” according to the CDC Technical Instructions. However, immigration advocates report that at some U.S. consulates, including in Ciudad Juarez, an applicant may be found inadmissible under this ground if they simply *used a controlled substance once within the prior year*, regardless of whether they come within any DSM-5 criteria. See discussion at Part I, above.

PRACTICE TIP: Immigration advocates must understand that these established criteria are used by healthcare professionals to make diagnoses of substance use disorder(s). If a medical diagnosis needs to be made, then the client should be seen by a clinician. When it comes to immigration applications, *a finding of just 2 manifestations (a “mild” SUD) by the doctor retained to examine immigrants is sufficient to find a noncitizen inadmissible under the “addict”/“abuser” ground.*

Advise clients that drug and alcohol use may mean denial of the visa. Advise them that the medical interviewer for immigration purposes is going to ask them about drugs and alcohol, and that this is not an opportunity to chat with or get advice from a doctor. If they are experiencing unhealthy substance use, they should be advised to discuss with a treating doctor at a medical visit and should be informed that treatment is available.

Finally, many clients who live in states where marijuana is legalized are very surprised to learn that marijuana is a federal controlled substance, and that disclosing use has serious immigration consequences. Disclosing “lawful” (under state law) use of marijuana, and even

⁶ Centers for Disease Control and Prevention. “Immigrant, Refugee, and Migrant Health- Technical Instructions for Physical and Mental Disorders with Associated Harmful Behaviors and Substance-Use Disorders for Civil Surgeons” and similar Instructions for Panel Physicians. Last Reviewed 1 July 2021. Retrieved from <https://www.cdc.gov/immigrantrefugeehealth/civil-surgeons/mental-health.html>

⁷ Centers for Disease Control and Prevention. “Immigrant, Refugee, and Migrant Health- Technical Instructions for Physical and Mental Disorders with Associated Harmful Behaviors and Substance-Use Disorders for Civil Surgeons” and similar Instructions for Panel Physicians. Last Reviewed 1 July 2021. Retrieved from <https://www.cdc.gov/immigrantrefugeehealth/civil-surgeons/mental-health.html>

working or planning to work lawfully in the legitimate cannabis industry, can be a basis for permanent denial of the application for permanent residency, as well as temporary denial of naturalization.⁸

See additional legal advice in Part I, above.

B. Substance use disorder: A potent trauma response

Takeaway: Studies show that SUD is a common response to severe trauma. It is important to educate immigration judges and officials that in many cases, first comes the mental health sequelae of trauma, and then the medical condition of SUD as an attempt to self-medicate. SUD should not be a negative factor in discretion, but rather a factor that explains why the person engaged in past conduct and how they will be able to change in the future.

Risk factors for SUD arise from a variety of factors, alone or in combination:^{9,10}

Individual	Relationships	Community	Society
<ul style="list-style-type: none"> • Mental health condition • Physical or emotional trauma • Posttraumatic Stress Disorder (PTSD) • Genetic predisposition 	<ul style="list-style-type: none"> • Family history of SUD • Child abuse or neglect • Familial financial obligations • Lack of parental supervision 	<ul style="list-style-type: none"> • Poverty • Violence • Lack of adequate school structures • Availability of substances 	<ul style="list-style-type: none"> • Racism • Lack of economic opportunity

Immigration-related experiences can cause stress, uncertainty and social disruption that makes an individual more susceptible for substance use disorder. A 2019 study showed that Latino-identifying U.S. citizens with a family member or friend in detention or in deportation proceedings had an increased risk of having a substance use disorder compared to White and Black study participants.¹¹

Trauma and posttraumatic stress disorder (PTSD) are risk factors for substance use. PTSD occurs after exposure to a traumatic event, and is characterized by re-experiencing, avoidance, and increased agitation or arousal.¹² PTSD is very common among refugees and

⁸ See discussion at ILRC, *Immigrants and Marijuana* (June 2021), <https://www.ilrc.org/resources/immigrants-and-marijuana>.

⁹ Substance Abuse and Mental Health Services Administration. (2019). *Risk and Protective Factors*. Retrieved from <https://www.samhsa.gov/sites/default/files/20190718-samhsa-risk-protective-factors.pdf> on 16 May 2022.

¹⁰ National Institute of Drug Abuse (NIDA). “What are risk factors and protective factors?” Published May 25, 2020. Retrieved from <https://nida.nih.gov/publications/preventing-drug-use-among-children-adolescents/chapter-1-risk-factors-protective-factors/what-are-risk-factors> on May 17, 2022.

¹¹ Pinedo, Miguel. “The Impact of Deportation Policies on the Substance Using Behaviors of US-Citizen Latinos.” *The International Journal of Drug Policy*, vol. 75, Elsevier B.V, 2020, pp. 102605–102605, <https://doi.org/10.1016/j.drugpo.2019.11.013>.

¹² Blanco C, Xu Y, Brady K, Pérez-Fuentes G, Okuda M, Wang S. Comorbidity of posttraumatic stress disorder with alcohol dependence among US adults: results from National Epidemiological Survey on

asylum seekers.¹³ Numerous clinical and epidemiological studies demonstrate a strong association between PTSD and unhealthy alcohol and drug use.^{14,15} According to the International Society for Traumatic Stress Studies, “one-quarter to three-quarters of people who have survived abusive or violence traumatic experiences report problematic alcohol use.”¹⁶ Also, men and women who have survived sexual abuse have higher risk of alcohol and drug use disorder than those who have not,¹⁷ as alcohol and drug use can sometimes be used as coping mechanisms.

Adverse experiences in childhood are strongly linked with risk for SUD. These stressful experiences are prevalent among immigrant minors such as refugees. A 2011 systematic review looking into the psychological distress faced by refugee children found that 19-53% of these children suffer from PTSD¹⁸ due to pre-migration factors, such as chronic poverty, home country violence and trauma experienced during migration. Numerous studies identify strong associations between unhealthy substance use and mental health conditions with adverse childhood experiences (ACEs).^{19,20} ACEs fall into seven categories of childhood experiences: “physiological, physical or sexual abuse; violence against mother; living with household members who had substance use disorders; mentally ill or suicidal; or ever imprisoned.”²¹ The

Alcohol and Related Conditions. *Drug Alcohol Depend.* 2013 Oct 1;132(3):630-8. doi: 10.1016/j.drugalcdep.2013.04.016.

¹³ Blackmore, Rebecca, et al. “The Prevalence of Mental Illness in Refugees and Asylum Seekers: A Systematic Review and Meta-Analysis.” *PLoS Medicine*, vol. 17, no. 9, Public Library of Science, 2020, pp. e1003337–e1003337, <https://doi.org/10.1371/journal.pmed.1003337>.

¹⁴ Substance Abuse and Mental Health Services Administration. (2019). *Risk and Protective Factors*. Retrieved from <https://www.samhsa.gov/sites/default/files/20190718-samhsa-risk-protective-factors.pdf> on 16 May 2022.

¹⁵ Flanagan, Julianne C., et al. “Concurrent Treatment of Substance Use and PTSD.” *Current Psychiatry Reports*, vol. 18, no. 8, Springer US, 2016, pp. 70–70, <https://doi.org/10.1007/s11920-016-0709-y>.

¹⁶ International Society for Traumatic Stress Studies. “Traumatic Stress and Substance Abuse Problems.” Substance Abuse and Mental Health Services Administration. Retrieved from <https://www.samhsa.gov/resource/dbhis/traumatic-stress-substance-abuse-problems> on 22 May 2022.

¹⁷ Blanco C, Xu Y, Brady K, Pérez-Fuentes G, Okuda M, Wang S. Comorbidity of posttraumatic stress disorder with alcohol dependence among US adults: results from National Epidemiological Survey on Alcohol and Related Conditions. *Drug Alcohol Depend.* 2013 Oct 1;132(3):630-8. doi: 10.1016/j.drugalcdep.2013.04.016.

¹⁸ Bronstein, Israel, and Paul Montgomery. “Psychological Distress in Refugee Children: A Systematic Review.” *Clinical Child and Family Psychology Review*, vol. 14, no. 1, Springer US, 2011, pp. 44–56, <https://doi.org/10.1007/s10567-010-0081-0>.

¹⁹ Felitti, Vincent J., et al. “Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study.” *American Journal of Preventive Medicine*, vol. 14, no. 4, Elsevier Inc, 1998, pp. 245–58, [https://doi.org/10.1016/S0749-3797\(98\)00017-8](https://doi.org/10.1016/S0749-3797(98)00017-8).

²⁰ Hughes, Karen, et al. “The Effect of Multiple Adverse Childhood Experiences on Health: a Systematic Review and Meta-Analysis.” *The Lancet. Public Health*, vol. 2, no. 8, Elsevier Ltd, 2017, pp. e356–e366, [https://doi.org/10.1016/S2468-2667\(17\)30118-4](https://doi.org/10.1016/S2468-2667(17)30118-4).

²¹ Flanagan, Julianne C., et al. “Concurrent Treatment of Substance Use and PTSD.” *Current Psychiatry Reports*, vol. 18, no. 8, Springer US, 2016, pp. 70–70, <https://doi.org/10.1007/s11920-016-0709-y>.

more ACEs an individual encounters in their childhood, the higher likelihood they will have substance use disorder, mental health conditions, and sexual risk taking later on in their adult life.²² One study found that individuals with four or more ACEs were more than twice as likely to be current smokers or heavy drinkers and almost six times as likely to have unhealthy alcohol use than those who had no ACEs.²³

Example: C was raised in extreme poverty in a small coastal town in Honduras. By the time he was 11 years old, both his father and mother had left to go to the United States. He was left in the care of an abusive uncle. At age 16, he and his friend were attacked by MS13 gang members. They murdered the friend as C ran for his life. At age 17, he traveled with a coyote to try to join his parents in New York. During the trip he was sexually assaulted. In the U.S. he turned to alcohol and drugs to cope with his fear and shame, which led to arrests for using drugs, driving under the influence, and battery.

A psychological report for C's immigration case revealed that he suffered from PTSD and depression, for which he now is being treated. This diagnosis helped to persuade the judge to grant C asylum as a matter of discretion, because it explained his substance use and contacts with law enforcement in the context of a mental health condition. The judge also noted that C was in counseling and had stopped using drugs.

When after a year C applies for adjustment of status to permanent residency, he will have an advantage by applying as an asylee as opposed to on a family visa: he will be able to apply for a waiver of inadmissibility for his admission that he used a controlled substance, if necessary for any continuing substance use disorder. See INA § 209(c). The waiver can be granted based on public interest, humanitarian or family unity grounds.

Note that PTSD often is seen in immigrant victims of abuse, persecution, and domestic violence. For that reason, this analysis may inform cases of asylum, refugee, special immigrant juvenile, Violence Against Women ACT, and U and T visas, where the victim suffers from an SUD. Note that while people with PTSD have a significant risk factor for SUD, not all people with PTSD will have a SUD.

Another cause of trauma and SUD may be the experience of living in the United States. It has been long documented that first-generation immigrants tend to have better health statuses than their U.S.-born counterparts and lower rates of substance use compared to second- and third-generation immigrants.²⁴

²² International Society for Traumatic Stress Studies. "Traumatic Stress and Substance Abuse Problems." Substance Abuse and Mental Health Services Administration. Retrieved from <https://www.samhsa.gov/resource/dbhis/traumatic-stress-substance-abuse-problems> on 22 May 2022.

²³ International Society for Traumatic Stress Studies. "Traumatic Stress and Substance Abuse Problems." Substance Abuse and Mental Health Services Administration. Retrieved from <https://www.samhsa.gov/resource/dbhis/traumatic-stress-substance-abuse-problems> on 22 May 2022.

²⁴ Salerno, Stacy, et al. "Immigrant Generation, Stress Exposure, and Substance Abuse Among a South Florida Sample of Hispanic Young Adults." *Socius: Sociological Research for a Dynamic World*, vol. 5, SAGE Publications, 2019, p. 237802311984301–, <https://doi.org/10.1177/2378023119843017>.

PRACTICE TIP: For any application for asylum, withholding, or the Convention Against Torture, the advocate should have a healthcare professional conduct an evaluation of their client to determine whether the client is experiencing a mental health disorder such as PTSD, severe depression, bi-polar disorder, or a SUD. In addition, the attorney should request the client's medical, including psychological records, from ICE detention. There is a stigma around mental health and many clients do not feel comfortable revealing symptoms, (e.g., hearing voices) to their attorney, but may have revealed it to a mental health professional in custody.

C. Language matters: The impact of stigma and bias

Takeaway: Experiencing a SUD is not a moral failing. Introducing accurate, medically based language in a case can help an immigration judge or official understand that suffering from a SUD is a medical condition, often arising as a response to trauma or mental health issues. As a medical condition, it should not be a basis for a negative discretionary finding.

Stigma towards people who use substances is a societal norm that harms individuals and families and serves as a barrier towards addiction treatment. The language and words we use cultivate an environment of stigma—"negative attitudes toward people based on distinguishing characteristics"²⁵—around those who use substances, leading to barriers to care and decreased willingness to access needed treatment.²⁶ A 2013 web-based U.S. national survey found that the American public holds substantially more negative attitudes towards people with "drug addiction" than those with mental illness.²⁷ For example, 68% of respondents were more likely to view discrimination against persons with "drug addiction" as "not a serious problem," and 78% were unwilling to work closely with a person with a "drug addiction."²⁸

Terminology used to describe substance use should be person-first, non-stigmatizing and clinically accurate. Many national public health and healthcare organizations, media outlets, professional societies and academic centers have issued recommendations to ensure that such terminology is adopted. The National Institute of Health's National Institute on Drug Abuse (NIDA) recommends the following language to reduce stigma and negative bias when discussing substance use disorders:

Instead of ...	Use ...
Addict, user, abuser	Person with substance use disorder

²⁵ Volkow, Nora D., et al. "Choosing Appropriate Language to Reduce the Stigma Around Mental Illness and Substance Use Disorders." *Neuropsychopharmacology (New York, N.Y.)*, vol. 46, no. 13, Nature Publishing Group, 2021, pp. 2230–32, <https://doi.org/10.1038/s41386-021-01069-4>.

²⁶ National Harm Reduction Coalition. "Respect to Connect: Undoing Stigma." 2 Feb. 2021. Retrieved from <https://harmreduction.org/issues/harm-reduction-basics/undoing-stigma-facts/> on 18 May 2022.

²⁷ Barry, Colleen L., et al. "Stigma, Discrimination, Treatment Effectiveness, and Policy: Public Views About Drug Addiction and Mental Illness." *Psychiatric Services (Washington, D.C.)*, vol. 65, no. 10, American Psychiatric Association, 2014, pp. 1269–72, <https://doi.org/10.1176/appi.ps.201400140>.

²⁸ Salerno, Stacy, et al. "Immigrant Generation, Stress Exposure, and Substance Abuse Among a South Florida Sample of Hispanic Young Adults." *Socius: Sociological Research for a Dynamic World*, vol. 5, SAGE Publications, 2019, p. 237802311984301–, <https://doi.org/10.1177/2378023119843017>.

	Person with OUD or a person with opioid addiction (when substance in use is opioids) Patient/client
Former addict, reformed addict	Person in recovery or long-term recovery Person in remission
Junkie	Person in active use; use the person’s name, and then say “is in active use”
Alcoholic	Person with alcohol use disorder
Drunk, drunkard	Person who misuses alcohol/engages in unhealthy/hazardous alcohol use
Former addict	Person in recovery or long-term recovery
Abuse	For illicit drugs: <ul style="list-style-type: none"> • Use For prescription medications: <ul style="list-style-type: none"> • Misuse • Used other than prescribed
Clean	For toxicology screen results: <ul style="list-style-type: none"> • Testing negative For non-toxicology purposes: <ul style="list-style-type: none"> • Being in remission or recovery • Abstinent from drugs • Not drinking or taking drugs • Not currently or actively using drugs
Dirty	For toxicology screen results: <ul style="list-style-type: none"> • Testing positive For non-toxicology purposes: <ul style="list-style-type: none"> • Person who uses drugs
Addicted baby	Baby born to mother who used drugs while pregnant Baby with signs of withdrawal from prenatal drug exposure Newborn exposed to substances

Table reproduced from NIDA’s “Words Matter” online article.

(Accessed from <https://nida.nih.gov/nidamed-medical-health-professionals/health-professions-education/words-matter-terms-to-use-avoid-when-talking-about-addiction>).

Unfortunately, language that currently appears in the immigration statute lags behind developments in scientific and medical understanding of SUD as a chronic health condition.²⁹ “Under the Immigration and Nationality Act (INA) of 1952 ... being a ‘drug abuser or addict’ (stigmatizing terms without clear diagnostic criteria) can bar immigrants from obtaining permanent residence in the United States, even for those previously granted refugee status or asylum after escaping persecution.”³⁰ Medical and immigration law advocates have long argued that the law should use science-based rather than socially stigmatizing terms to describe these illnesses.³¹ The impediment that substance use poses for noncitizens to prove

²⁹ Sharpless, Rebecca. “ADDICTION-INFORMED IMMIGRATION REFORM.” *Washington Law Review*, vol. 94, no. 4, Washington Law Review Association, 2019, pp. 1891–946.

³⁰ DeFries, Triveni, et al. “Immigration Status Matters: The Intersectional Risk of Immigration Vulnerability and Substance Use Disorder.” *Addiction (Abingdon, England)*, 2022, <https://doi.org/10.1111/add.15800>.

³¹ See, e.g., DeFries et al. and Sharpless, cited above.

"good moral character" is an example of a stigmatizing attitude towards substance use.^{32, 33} "Immigration law imposes severe consequences for a drug and alcohol addiction...[implying] people suffering from substance use disorder are undesirable and should be denied entry into, and deported from, the [U.S.]."³⁴

D. Barriers to SUD treatment

Takeaway: There is insufficient access to treatment for SUD in the United States, and immigrants face additional barriers to accessing treatments. This can help to explain past conduct. However, treatments can be very effective. If an immigration advocate can connect a client with treatment and the client participates, that is a positive factor in discretion and evidence for a potential better future for the client. SUD is a chronic, treatable health condition. Many evidence-based treatments have been shown to assist an individual in decreasing their substance use, decreasing harms of their use, and/or abstaining from use completely. Treatment helps individuals stabilize their lives.

For example, for opioid use disorder, there are FDA-approved, prescribed medications such as buprenorphine, methadone, and naltrexone. These medications can also help to reduce all-cause mortality (e.g. overdose, complications from SUD, or accidents) by 50%.³⁵ "Long-term pharmacotherapy for opioid use disorder doubles the rate of abstinence relative to behavior therapy alone".³⁶ Patients treated with buprenorphine maintenance also show improved social functioning compared to people receiving counseling alone (so-called "detox and rehab"), with

³² DeFries, Triveni, et al. "Immigration Status Matters: The Intersectional Risk of Immigration Vulnerability and Substance Use Disorder." *Addiction (Abingdon, England)*, 2022, <https://doi.org/10.1111/add.15800>.

³³ INA 101(f)(1), (3); 8 CFR 316.10(b)(2)(iii), (iv), (xii).

³⁴ Sharpless, Rebecca. "ADDICTION-INFORMED IMMIGRATION REFORM." *Washington Law Review*, vol. 94, no. 4, Washington Law Review Association, 2019, pp. 1891–946.

³⁵ Sordo, Luis, et al. "Mortality Risk During and after Opioid Substitution Treatment: Systematic Review and Meta-Analysis of Cohort Studies." *BMJ*, vol. 357, 2017, <https://doi.org/10.1136/bmj.j1550>.

³⁶ Coffa, Diana, and Hannah Snyder. "Opioid Use Disorder: Medical Treatment Options." *American Family Physician*, vol. 100, no. 7, American Academy of Family Physicians, 2019, pp. 416–25.

reduced criminal activity, lower rates of illicit substance abuse, and reduced risk of HIV and hepatitis infection.^{37, 38, 39, 40, 41}

However, despite the efficacy of these medications, only 10.3% of people aged 12 years or older with a SUD receive substance use treatment.⁴² This discrepancy is due to multiple factors. Most parts of the country do not have sufficient access to addiction treatment or specialists. SAMHSA noted that in 2019, the most common reasons people with SUD cited for not receiving SUD treatment—besides not being ready to stop (39.9%)—were not knowing where to go for treatment (23.8%), not having health care coverage, and not being able to afford the cost (20.9%).⁴³ Additionally, U.S. national data from 2017 examining the number of physicians who have the waiver that is required to prescribe buprenorphine, a medication for opioid use disorder, showed that 60.1% of rural counties have no such providers.⁴⁴ This highlights an urgent need in healthcare to support individuals with substance use disorder in light of the growing overdose epidemic.

Regarding methamphetamine use disorder, the most effective treatments available to date are behavioral therapies and interventions, such as cognitive-behavioral and contingency

³⁷ Thomas, Cindy Parks, et al. “Medication-Assisted Treatment With Buprenorphine: Assessing the Evidence.” *Psychiatric Services (Washington, D.C.)*, vol. 65, no. 2, American Psychiatric Association, 2014, pp. 158–70.

³⁸ Kimber, Jo, et al. “Mortality Risk of Opioid Substitution Therapy with Methadone Versus Buprenorphine: a Retrospective Cohort Study.” *The Lancet. Psychiatry*, vol. 2, no. 10, Elsevier Ltd, 2015, pp. 901–08, [https://doi.org/10.1016/S2215-0366\(15\)00366-1](https://doi.org/10.1016/S2215-0366(15)00366-1).

³⁹ Degenhardt, Louisa, et al. “The Impact of Opioid Substitution Therapy on Mortality Post-Release from Prison: Retrospective Data Linkage Study.” *Addiction (Abingdon, England)*, vol. 109, no. 8, Blackwell Publishing Ltd, 2014, pp. 1306–17, <https://doi.org/10.1111/add.12536>.

⁴⁰ Pierce, Matthias, et al. “Impact of Treatment for Opioid Dependence on Fatal Drug-Related Poisoning: a National Cohort Study in England.” *Addiction (Abingdon, England)*, Pierce, M., Bird, S. M., Hickman, M., Marsden, J., Dunn, G., Jones, A., and Millar, T. (2016) Impact of treatment for opioid dependence on fatal drug-related poisoning: a national cohort study in England. *Addiction*, 111: 298-308. doi: 10.1111/add.13193., vol. 111, no. 2, Blackwell Publishing Ltd, 2016, pp. 298–308, <https://doi.org/10.1111/add.13193>.

⁴¹ Schuckit, Marc A. “Treatment of Opioid-Use Disorders.” *The New England Journal of Medicine*, vol. 375, no. 4, Massachusetts Medical Society, 2016, pp. 357–68, <https://doi.org/10.1056/NEJMra1604339>.

⁴² Han, B. Substance Abuse and Mental Health Services Administration. (2020). *Key substance use and mental health indicators in the United States: Results from the 2019 National Survey on Drug Use and Health* (HHS Publication No. PEP20-07-01-001, NSDUH Series H-55). Rockville, MD: Center for Behavioral Health Statistics and Quality, Substance Abuse and Mental Health Services Administration. Retrieved from <https://www.samhsa.gov/data/>.

⁴³ Han, B. Substance Abuse and Mental Health Services Administration. (2020). *Key substance use and mental health indicators in the United States: Results from the 2019 National Survey on Drug Use and Health* (HHS Publication No. PEP20-07-01-001, NSDUH Series H-55). Rockville, MD: Center for Behavioral Health Statistics and Quality, Substance Abuse and Mental Health Services Administration. Retrieved from <https://www.samhsa.gov/data/>.

⁴⁴ Andrilla CHA, Coulthard C, Larson EH. Changes in the Supply of Physicians with a DEA DATA Waiver to Prescribe Buprenorphine for Opioid Use Disorder. Data Brief #162. Seattle, WA: WWAMI Rural Health Research Center, University of Washington, May 2017.

management.⁴⁵ Contingency management treatment centers provide “patients tangible rewards to reinforce positive behaviors,”⁴⁶ such as attendance to medical appointments, nonreactive urine tests, and patient-guided health goals, and have over 20 years of established efficacy. There are currently no FDA-approved pharmacological treatments, but there is promising research into possible medication treatments, such as bupropion and naltrexone combination therapy.⁴⁷

According to Martinez, et al, “[b]arriers to access to treatment are even higher for immigrants with vulnerable legal status who fear legal consequences such as deportation, lack health insurance, and face cultural and linguistic barriers to accessing healthcare.”⁴⁸ Having an ongoing SUD is not due to a “moral failing.”

As a note, be aware of evidence that the countries to which immigrants are deported may have far less, or in some cases virtually no, access to addiction treatment, and/or accessing the treatment may itself lead to abuse. See discussion in Part I, Section E, above.

E. Recovery and Returning to Use: They Can Go Together

Takeaway: Most people who reach full remission have experienced return to use, or “relapses,” along the way. Such occurrences did not indicate a lack of commitment to recovery, but were part of the course of a chronic medical condition.

Having a SUD is a “chronic, relapsing disorder characterized by compulsive drug seeking and use despite adverse consequences.”⁴⁹ It is a chronic health condition that individuals with SUD must learn to manage throughout their life; medications and treatments help to reduce use or stop use but do not “cure” SUD. As a chronic condition, individuals with SUD may relapse, or return to use after an attempt to stop.⁵⁰ When a SUD is compared to other chronic health conditions, like hypertension and asthma, which also do not have definitive medical cures,

⁴⁵ NIDA. “What treatments are effective for people who misuse methamphetamine?” *National Institute on Drug Abuse*, 13 Apr. 2021, <https://nida.nih.gov/publications/research-reports/methamphetamine/what-treatments-are-effective-people-who-misuse-methamphetamine> Accessed 6 Sep. 2022.

⁴⁶ NIDA. “Contingency Management Interventions/Motivational Incentives (Alcohol, Stimulants, Opioids, Marijuana, Nicotine).” *National Institute on Drug Abuse*, 1 Jun. 2020, <https://nida.nih.gov/publications/principles-drug-addiction-treatment-research-based-guide-third-edition/evidence-based-approaches-to-drug-addiction-treatment/behavioral-therapies/contingency-management-interventions-motivational-incentives>. Accessed 8 Sep. 2022.

⁴⁷ Trivedi, Madhukar H et al. “Bupropion and Naltrexone in Methamphetamine Use Disorder.” *The New England journal of medicine* vol. 384,2 (2021): 140-153. doi:10.1056/NEJMoa2020214.

⁴⁸ Martinez, Omar, et al. “Evaluating the Impact of Immigration Policies on Health Status Among Undocumented Immigrants: A Systematic Review.” *Journal of Immigrant and Minority Health*, vol. 17, no. 3, Springer US, 2013, pp. 947–70, <https://doi.org/10.1007/s10903-013-9968-4>.

⁴⁹ National Institute on Drug Abuse. “Drug Misuse and Addiction.” *National Institute on Drug Abuse*, 13 Jul. 2020, <https://nida.nih.gov/publications/drugs-brains-behavior-science-addiction/drug-misuse-addiction> Accessed 22 May 2022.

⁵⁰ National Institute on Drug Abuse. “Treatment and Recovery.” *National Institute on Drug Abuse*, 22 Mar. 2022, <https://nida.nih.gov/publications/drugs-brains-behavior-science-addiction/treatment-recovery> Accessed 22 May 2022.

rates of relapse are similar.^{51,52} Multiple attempts to quit may be required before a patient reaches full remission.⁵³ People who smoke nicotine, for example, require 30 or more attempts before they quit smoking. Recovery experts note that “relapses” are a normal part of recovery⁵⁴ and do not indicate a “failure” or “lack of willpower.”

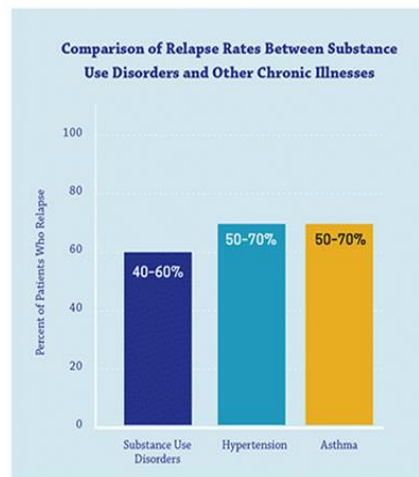


Image from <https://nida.nih.gov/publications/drugs-brains-behavior-science-addiction/treatment-recovery>.

When a person no longer meets DSM-5 criteria for a substance use disorder, they are “in remission.” Remission is classified into two categories by the DSM-5: early remission and sustained remission. *Early remission* is “after full criteria for [a SUD] were previously met, none of the criteria for [a SUD] have been met for at least 3 months but for less than 12 months” with the exception that craving, or a strong desire or urge to use substances, can still be present.⁵⁵ *Sustained remission* is “after full criteria for a SUD were previously met, none of the criteria for [a SUD] have been met at any time during a period of 12 months or longer” with the exception that craving, or a strong desire or urge to use substances, can still be present.⁵⁶ Note, however, that there is a discrepancy between the CDC manual and the DSM-5 on the definition of “sustained remission” in that the CDC manual requires no use of the substance at

⁵¹ National Institute on Drug Abuse. “Treatment and Recovery.” *National Institute on Drug Abuse*, 22 Mar. 2022, <https://nida.nih.gov/publications/drugs-brains-behavior-science-addiction/treatment-recovery> Accessed 22 May 2022.

⁵² Chaiton, Michael, et al. “Estimating the Number of Quit Attempts It Takes to Quit Smoking Successfully in a Longitudinal Cohort of Smokers.” *BMJ Open*, vol. 6, no. 6, BMJ Publishing Group LTD, 2016, pp. e011045–e011045, <https://doi.org/10.1136/bmjopen-2016-011045>.

⁵³ National Institute on Drug Abuse. “Treatment and Recovery.” *National Institute on Drug Abuse*, 22 Mar. 2022, <https://nida.nih.gov/publications/drugs-brains-behavior-science-addiction/treatment-recovery> Accessed 22 May 2022.

⁵⁴ Melemis, Steven M. “Relapse Prevention and the Five Rules of Recovery.” *The Yale Journal of Biology & Medicine*, vol. 88, no. 3, YJBM, 2015, pp. 325–32.

⁵⁵ American Psychiatric Association. *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)*. American Psychiatric Association, Arlington, VA, 2013..

⁵⁶ American Psychiatric Association. *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)*. American Psychiatric Association, Arlington, VA, 2013.

all.⁵⁷ Many people have been held not to be in sustained remission by panel physicians in the context of immigrant visa applicants undergoing consular processing, based on an admission of a single use during the period.

According to the National Institute on Alcohol Abuse and Alcoholism, “recovery is a process through which an individual pursues both remission from alcohol use disorder and cessation from heavy drinking.”⁵⁸ Heavy drinking is more than 14 standard drinks per week or 4 drinks on a single day for men and no more than 7 drinks per week or 2 drinks on a single day for women.⁵⁹ Note that this definition of recovery is remission *and* cessation from heavy substance use—and is *not abstinence-based*. However, a practitioner reported that the United States consulate in Ciudad Juarez recently found a visa applicant inadmissible for having an alcohol use disorder because the person reported having 3–4 beers on occasional weekends.

Appendix: What Resources Are There for Me to Help My Clients?

1. Substance Abuse and Mental Health Services Administration (SAMHSA)
2. National Institute on Alcohol Abuse and Alcoholism
3. SAMHSA Behavioral Health Treatment Services Locator.
4. ILRC Immigrants and Marijuana.
5. ILRC Controlled Substances Resources.
6. Drug Policy Alliance: “Rethinking the ‘Drug Dealer.’”
7. Drug Policy Alliance: “Matters of Substance” drug policy education video series.
8. Drug Policy Alliance: “Substance Use Treatment.”
9. Hispanas Organized for Political Equality (HOPE): California Health Care Resource Guide for Undocumented Immigrants- Includes SUD resources throughout California.
10. National Clinician Consultation Center: Warmline for healthcare professionals who are caring for immigrant patients.
11. California Bridge: “Decriminalization of Personal Use and Possession of Small Quantities of Drugs.

⁵⁷ For example, the DSM-5 criteria for alcohol use disorder in sustained remission states, “after full criteria for alcohol use disorder were previously met, none of the criteria for alcohol use have been met at any time during a period of 12 months or longer (with the exception ... [of], ‘Craving, or a strong desire or urge to use alcohol,’ may be met.” (DSM-5: American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition; ICD-10-CM: International Statistical Classification of Diseases and Related Health Problems, 10th Revision, Clinical Modification). In contrast, the CDC Technical Manuals for Civil Surgeons and for Panel Physicians misstate the rule, stating that “the current vision of the DSM defines sustained remission as a period of at least 12 months during which no substance use or mental disorder-associated behaviors have occurred, with the exception of craving in the cause of substance use disorder” (CDC Technical Manual: Mental Health).

⁵⁸ National Institute on Alcohol Abuse and Alcoholism. “What is the definition of recovery from Alcohol Use Disorder?” 2020 Sept. 20. Retrieved from <https://www.niaaa.nih.gov/research/niaaa-recovery-from-alcohol-use-disorder/definitions> on 24 May 2022.

⁵⁹ National Institute on Alcohol Abuse and Alcoholism. “What is the definition of recovery from Alcohol Use Disorder?” 2020 Sept. 20. Retrieved from <https://www.niaaa.nih.gov/research/niaaa-recovery-from-alcohol-use-disorder/definitions> on 24 May 2022.

Authors' affiliations:**Michelle Lough, MD, MPH**

- Board-certified in Addiction Medicine & Family Medicine
- Completed Addiction Medicine Fellowship at University of California, San Francisco - Department of Internal Medicine.
- Currently practicing Family Medicine and Addiction Medicine at Family Health Centers of San Diego, a federally qualified health center.

Triveni DeFries, MD, MPH

- Board-certified in Addiction Medicine & Internal Medicine
- Assistant Professor, Department of Internal Medicine, University of California, San Francisco (UCSF)
- Clinician Consultant, National Clinician Consultation Center Substance Use Warmline
- Director of Education, UCSF Health & Human Rights Initiative
- Director, UCSF Human Rights Collaborative

Kathy Brady, J.D.

- Directing Attorney, Immigrant Legal Resource Center, San Francisco.

Ann Block, J.D.

- Senior Special Projects Attorney, Immigrant Legal Resource Center, San Francisco.

**San Francisco**

1458 Howard Street
San Francisco, CA 94103
t: 415.255.9499
f: 415.255.9792

ilrc@ilrc.org
www.ilrc.org

Washington D.C.

1015 15th Street, NW
Suite 600
Washington, DC 20005
t: 202.777.8999
f: 202.293.2849

Austin

6633 East Hwy 290
Suite 102
Austin, TX 78723
t: 512.879.1616

San Antonio

10127 Morocco
Street
Suite 149
San Antonio, TX
78216

About the Immigrant Legal Resource Center

The Immigrant Legal Resource Center (ILRC) works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training and technical assistance, and policy development and advocacy, the ILRC's mission is to protect and defend the fundamental rights of immigrant families and communities.