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July 24, 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

1. Introduction

The Immigrant Legal Resource Center (ILRC) writes in response to the administration’s notice of proposed rulemaking which would move cannabis from Schedule I to Schedule III of the Controlled Substances Act (CSA). The ILRC is a national non-profit organization that provides legal trainings, educational materials, and advocacy to advance immigrant rights. The ILRC’s mission is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. Since its inception in 1979, the ILRC has provided technical assistance on hundreds of thousands of immigration law issues, trained thousands of advocates, and pro bono attorneys annually on immigration law, distributed thousands of practitioner guides, provided expertise to immigrant-led advocacy efforts across the country, and supported hundreds of immigration legal non-profit organizations in building their capacity.

The ILRC advocates for the complete de-scheduling of cannabis and for reinvestment in the communities that have been devastated by decades of broken enforcement-first policy. Unfortunately, this proposed rule will not take the necessary steps to undo the harm that the War on Drugs has inflicted on Black and Brown immigrant communities across the United States. The ILRC recommends that the Drug Enforcement Agency (DEA), revise this rule to appropriately address the racial justice implications and the complicated overlap between state and federal law governing marijuana policy and completely de-schedule marijuana.

The proposed rule would move cannabis from Schedule I of the CSA to Schedule III which would leave the criminal penalties intact and would leave the immigration penalties intact as well. The entanglement between the criminal legal system and immigration system in drug policy creates an unfair reality where immigrants face double punishment. The sad truth is that after serving a sentence for a cannabis-related crime, an immigrant still faces consequences in the immigration system which may include incarceration, losing their immigration status, and even deportation to their country of citizenship. The proposed rule fails to consider these key consequences that impact thousands of immigrants in the United States every year.

The civil immigration penalties that are triggered by even minor drug offenses have life-altering destructive consequences for immigrants across the country. The War on Drugs is one of the foundational reasons for the inextricable link between the criminalization of drugs and harsh penalties in the immigration system. President Nixon launched the War on Drugs to create extremely brutal punishments for drug related conduct in the hopes of deterring the use of all substances. Politicians of this era, and of the 1980s, succeeded in vilifying marijuana and

drawing a dangerous and racist connection between marijuana use and Black and Brown immigrants.¹ This harmful rhetoric tied a host of social ills to marijuana use and falsely blamed immigrants for the presence of marijuana in communities across the country.

In the wake of the legalization of cannabis across 24 states², keeping cannabis on any schedule of the Controlled Substance Act is woefully out of step with policy developments across the country and public opinion. Immigrants face criminal penalties for cannabis use, which also trigger a series of harsh consequences within the immigration system including detention without the possibility of bond and deportation. The administration should use its considerable power to remove marijuana from the Controlled Substances Act entirely.

There is an historic, damaging disconnect between federal marijuana policy and the vastly different legal, social, and economic realities in states. The enormous United States cannabis industry is projected to approach \$43 billion dollars in 2024³; Americans' use of cannabis has begun to exceed their use of alcohol⁴; and approximately 50% of our population lives in a state that has legalized recreational cannabis, yet the federal government continues to criminalize even possession of a small amount of cannabis, with the worst penalties falling on people of color. Among other problems, the federal policy causes immediate and severe harm to immigrants living in the United States and their families.

A misdemeanor conviction for marijuana can cause an immigrant to be arrested, detained in Immigration and Customs Enforcement (ICE) facilities, statutorily denied a bond hearing, and deported. Even without a conviction, and while entirely obeying state law (and with no idea that federal law is different), any noncitizen who works lawfully anywhere in the cannabis industry, or who innocently tries marijuana in accord with state law, can face terrible penalties. Without any conviction, spouses of U.S. citizens are permanently barred from legalizing through a family visa, and long-time permanent residents are not permitted to naturalize to U.S. citizenship. This problem can be ended if the administration entirely removes marijuana from the Controlled Substances Act, while permitting states to decide their own policy regarding marijuana.

2. The Immigrant Legal Resource Center's expertise on cannabis policy

The ILRC has developed expertise in the intersection between the criminal legal system and the immigration system. We focus on this area of law known as "crimmigration" and provide technical assistance and legal resources to practitioners and community members to help them understand how interactions with law enforcement may impact their current immigration status or future applications for immigration benefits. The immigration system imposes extremely harsh punishments for even minor conduct related to the use or possession of substances regulated under the CSA. These penalties include denial of immigration benefits like legal permanent residence (known informally as a "green card"), being subjected to prolonged immigration detention without the possibility of bond and deportation. The ILRC strongly believes that federal cannabis regulation must prioritize social equity through the decriminalization of cannabis and investment in the communities that have been harmed the most by the War on Drugs.

3. Disproportionate and harsh penalties facing immigrants based on marijuana remaining a part of the CSA

As long as cannabis remains on any schedule of the Controlled Substances Act it will trigger harsh immigration consequences even for conduct that occurred in a state where the conduct is considered lawful. This creates a fundamentally unfair set of consequences for all immigrants who may benefit from accepted medical uses of cannabis in states where it has been legalized or those who may seek employment in the lawful cannabis industry. Maintaining criminal penalties for all CSA substances will simply continue to compound the harsh consequences that

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

² [Where Is Marijuana Legal? A Guide to Marijuana Legalization \(usnews.com\)](#)

³ see, e.g., <https://www.statista.com/outlook/hmo/cannabis/united-states> accessed on July 16, 2024

⁴ <https://www.washingtonpost.com/wellness/2024/05/23/marijuana-cannabis-alcohol-drinking-daily/>

immigrant communities face. The ILRC regularly assists community members facing immigration consequences based on lawful conduct at the state level.

a. Marijuana related conduct that is lawful at the state level will continue to be a trigger for the denial of immigration benefits

As of July 2024, 24 states and the District of Columbia also have legalized recreational marijuana for adult use. Immigrants residing in these states may think that using “legal” marijuana in accordance with state law will not hurt their immigration status, or their prospects for getting lawful status. Unfortunately, logic notwithstanding, this is not the case. For immigration purposes, it is federal law that controls, and it remains a violation of federal law to possess or use recreational marijuana. The proposed rule would not change this and would not halt any of the immigration related consequences that come from possessing even a small amount of marijuana.

A noncitizen who admits to an immigration official that they possessed marijuana can be found ineligible for a visa or permanent residence, denied entry into the United States, or have their application for lawful status or naturalization denied. This is true even if the conduct was permitted under state law, the person never was convicted of a crime, and the conduct took place in their own home. State laws legalizing marijuana provide many benefits, but unfortunately, they also are a trap for unwary immigrants. Believing that they have done nothing wrong, immigrants may readily admit to officials that they possessed marijuana. In some states, such as Washington, immigration officials from different Department of Homeland Security component agencies including ICE, Citizenship and Immigration Services (CIS) and Customs and Border Protection (CBP) have aggressively asked noncitizens if they ever have possessed marijuana, in an attempt to deny and application or justify an enforcement action like arrest or deportation. In other states, such as California, CIS does not appear to be doing this, although CBP officials at border and internal checkpoints are.

One such example was an exemplary recipient of Special Immigrant Juvenile Status (SIJS), a form of humanitarian immigration relief for young people who have survived abuse, abandonment, or neglect. She had emerged from foster care and gotten a job working in a cannabis candy factory. She herself did not use marijuana, but she found that this was the only job she could get during the pandemic. Her long-awaited visa number for SIJS finally came up which meant it was her turn to apply for her legal permanent residence, or green card. Her attorney told her that she could not file the final application for permanent residence because she had lawfully worked in the cannabis industry, for a corporation that would sell a cannabis product. Even though she never used a cannabis product because she was engaged in lawful employment in a state cannabis industry she would be barred from lawful status as a “drug trafficker.” Applying for her green card would result in the denial of her application and could potentially result in an enforcement action against her.

Moving marijuana to Schedule III will do nothing for this young woman or the overwhelming majority of people like her. She was not involved in “medical” marijuana, but in the regular cannabis industry.

b. Marijuana related conduct will still be the cause of prolonged detention and deportation even if marijuana is moved to Schedule III

Marijuana related conduct can make a person subject to immigration enforcement actions such as arrest, detention without bond, and even deportation. Conduct that is minor can trigger severe consequences for noncitizens. Many people who seek immigration status may unknowingly put themselves at risk for arrest and incarceration in an immigration detention center because of a marijuana related arrest or conviction.

One such example is a lawful permanent resident from El Salvador who was arrested after a traffic stop for the presence of drug paraphernalia in his vehicle. He did not possess any actual marijuana but had a grinder and a small pipe with marijuana residue in his car. He was arrested and when the local police determined he was not a citizen he was transferred to ICE custody. Because the paraphernalia offense was related to marijuana, a controlled substance, he was forced to remain detained for a year while he fought to maintain his status. He was separated from his United States citizen spouse and even missed the birth of his child due to the prolonged detention he

faced. These unjust and inhuman consequences will continue to tear families and communities apart if the federal government continues to take such a harsh prohibitive approach to marijuana policy.

- c. Keeping marijuana on Schedule III does little to undo the harm that has been done to Black and Brown immigrant communities

One of the key steps the administration must take is to reinvest in the immigrant communities that have been harmed the most but the racist policies of the War on Drugs. Black and Brown immigrants who have been arrested and deported based on marijuana related conduct should be returned to the United States and supported so they can benefit from the possibilities made available by the legalization of marijuana including economic opportunity pursuing employment in the industry. Federal legislative proposals include restorative justice elements such as returning community members who have been reported and social reinvestment funds to center equity and restoration in marijuana policy, and the administration should also center these principles in any proposed regulations.

4. Marijuana should be fully decriminalized, and the federal government should invest Black and Brown immigrant communities that have faced harsh consequences due to the War on Drugs

The ILRC supports the full decriminalization of marijuana through the administrative rule-making process. The current proposed rule moving marijuana to Schedule III does not go far enough to ameliorate the current consequences that immigration law imposes on all noncitizens who use, possess or work with marijuana. We urge the DEA to reconsider this rule and take into accounts the life-changing impacts it has on thousands of immigrants every year. If there are any questions, please contact us at nnathan-pineau@ilrc.org.

Sincerely yours,

Nithya Nathan-Pineau

ILRC Policy Attorney and Strategist