

The Drug War and Mass Deportation

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**We are
the Drug
Policy
Alliance.**

The drug war has increasingly become a war against migrant communities. It fuels racial profiling, border militarization, violence against immigrants, intrusive government surveillance and, especially, widespread detentions and deportations.

Mass Deportation for Minor Drug Offenses

For noncitizens, including legal permanent residents, any drug law violation (except first-time possession of less than 30 grams of marijuana) can trigger automatic detention and deportation – often without the possibility of return.¹

Roughly 40,000 people have been deported from the United States for drug law violations every year since 2008.²

More than 250,000 people have been deported from the U.S. for drug offenses since 2007.

A 2015 report by Human Rights Watch found that deportations for drug possession offenses increased by 43 percent from 2007 to 2012.³

During this time period, 266,000 people were deported for drug law violations, of whom 38 percent – more than 100,000 people – were deported for possession.⁴

A drug law violation was the cause of more than 11 percent of deportations for any reason in 2013 – and nearly one in five (19 percent of) deportations for a criminal conviction.⁵

Simple marijuana possession was the fourth most common cause of deportation for any offense in 2013, and the most common cause of deportation for drug law violations. More than 13,000 people were deported in 2012 and 2013 just for marijuana possession.⁶

By contrast, relatively few (less than 1 percent) of those deported in 2013 were drug traffickers.

Minor drug possession charges can also lead to inadmissibility from entering the U.S. for noncitizen residents – meaning that, even if a minor offense does not lead to incarceration or deportation, it can prevent a legal permanent resident from ever returning to the U.S. if they decide to leave the country for any reason.⁷

Under existing law, a noncitizen who pleads guilty to a criminal offense is deportable. Since most diversion programs like drug courts require a guilty plea, even if that person is eligible for diversion they would still be subject to deportation.⁸

Much as the drug war drives mass incarceration, it is also a major driver of mass deportation.

The Human Costs of Mass Deportation

What becomes of the people who are deported? They will first likely be disappeared within the (increasingly for-profit) U.S. prison and detention system; then sent back to their countries of origin, where they may no longer have any ties to family or community, may lack basic survival needs like food, housing and health services and may face serious threats to their security.

Those who are removed from the country are usually barred from reentry, often for life – no matter if they have family members who are U.S. citizens or decades-long ties to their communities of residence in the United States.

The result is thousands of families broken and communities torn apart every year.

Recommendations

Local, state and federal governments should adopt the following commonsense policies to ensure that no one is arrested, incarcerated or deported for merely using or possessing drugs:

- Legalize and regulate marijuana;
- Stop arresting and criminalizing people for using or possessing other illicit drugs; and
- Adopt pre-plea diversion programs that allow people with minor drug charges to successfully complete a treatment program *before* pleading guilty – since a guilty plea is often what triggers federal immigration consequences, including deportation.

Though modest, these proposals would have a huge impact: sparing tens of thousands of people from deportation every year, while saving tens of thousands more from the anguish of an arrest, conviction, jail or prison sentence, and criminal record; and saving millions of dollars in currently wasted public resources.

¹ Jason Cade, "The Plea Bargain Crisis for Noncitizens in Misdemeanor Court," *Cardozo Law Review* 34(2013): 1754; Jenny Roberts, "Why Misdemeanors Matter: Defining Effective Advocacy in the Lower Criminal Courts," *UC Davis Law Review* 45(2011): 277.

² Grace Meng, "A Price Too High: US Families Torn Apart by Deportations for Drug Offenses," (Human Rights Watch, 2015) <http://www.hrw.org/node/135529>.

³ *Ibid.*

⁴ *Ibid.*

⁵ Transactional Records Access Clearinghouse, "Secure Communities and ICE Deportation: A Failed Program?," (Syracuse: Transactional Records Access Clearinghouse, 2014) <http://trac.syr.edu/immigration/reports/349/>.

⁶ *Ibid.*

⁷ Immigrant Defense Project, presentation to Drug Policy Alliance, June 17, 2014 (on file with author).

⁸ Immigrant Defense Project, presentation to Drug Policy Alliance, June 17, 2014 (on file with author); Jordan Cummings, "Nonserious Marijuana Offenses and Noncitizens: Uncounseled Pleas and Disproportionate Consequences," *UCLA L. Rev.* 62(2015); Cade, "The Plea Bargain Crisis for Noncitizens in Misdemeanor Court"; Sara Elizabeth Dill, "Unbalanced Scales of Justice: How Ice is Preventing Noncitizens from Having Equal Access to Diversion Programs and Therapeutic Courts," *Family Court Review* 50, no. 4 (2012).