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Biden Says He's Pardoning 'All' Federal Weed Possession Offenders. He Isn't.

Fiona Harrigan

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President Joe Biden announced Thursday that he is "pardoning all prior federal offenses of simple marijuana possession." This is a welcome move but a modest one, since it provides relief to only a small share of U.S. citizens with federal marijuana records. And despite that declaration that he's pardoning "all" offenders, the pardon's language specifies that only "current United States citizens and lawful permanent residents" are eligible for relief.

According to David Bier, associate director of immigration studies at the Cato Institute, someone wouldn't be eligible for a pardon if they committed an offense while unlawfully present in the country, "even if you subsequently received a green card or U.S. citizenship." The pardon's language even excludes people, such as tourists, who are here lawfully but are not permanent residents.

Noncitizens comprise a significant share of people with federal marijuana possession records. From 2015–2021, the U.S. Sentencing Commission (USSC) recorded 6,276 federal offenders with marijuana possession charges. Of those, it listed 4,341—roughly 70 percent—as noncitizen offenders. Nearly all of them were reported in districts along the U.S.-Mexico border. The number of noncitizen marijuana possession offenders has dropped from 1,670 in FY 2015 to just six in FY 2021.

A USSC report covering FY 2013 found that 94.3 percent of border offenders were noncitizens, while 16.5 percent of non–border offenders were. "Nearly all" marijuana simple possession offenders apprehended at the border that year "had little or no prior criminal history." They were carrying a median weight of 48.5 pounds of marijuana, which the USSC says "does not appear to correspond to simple possession."

Rather, those may have been the result of "marijuana drug trafficking cases in which the offender was sentenced only for a possession offense," the USSC reports. Nearly 98 percent of simple possession offenders at the border in fiscal year 2013 received prison time, with a median sentence of six months, while 26.4 percent of non–border offenders got jail time. That same year, per a 2016 report from the Drug Policy Alliance (DPA), less than 1 percent of those deported were drug traffickers.

By contrast, the DPA notes, simple marijuana possession was "the most common cause of deportation for drug law violations" in 2013. Failing to pardon people who aren't citizens or lawful permanent residents keeps them at risk of removal. "A pardon wipes out the grounds of deportability for a noncitizen," says Bier, so noncitizens without "legal permanent resident status (e.g., refugees, asylees, etc.) would still be deportable based solely on a marijuana conviction."

That's true of noncitizens with state and federal marijuana records. According to the Transactional Records Access Clearinghouse, a Syracuse University organization that analyzes immigration data, over 45,000 people were deported for marijuana possession from FY 2003 to August 2018. Noncitizens who have consumed, sold, or possessed marijuana may be barred from entering the U.S. or receive denials on their citizenship applications.

Even as states—and now the Biden administration—have relaxed their stances toward marijuana use, someone's immigration status can lead to drastic punishments for drug convictions. Though Biden's marijuana announcement called for a review of how marijuana is classified under federal law, he issued no such request that government bodies review the Immigration and Nationality Act to remove marijuana use, possession, and distribution as grounds for a migrant's inadmissibility. Even if Biden had extended his pardon to noncitizens, Bier explains that immigrants would "still be subject to the controlled substance grounds of inadmissibility."

Biden rightly notes that marijuana relief will help people "who may be denied employment, housing, or educational opportunities" by virtue of their drug convictions. That line of reasoning applies just as much to noncitizens as it does to citizens.

"There is no good reason to exclude any noncitizen from this order," says Bier. "The president lays out all the reasons why Americans have come to believe that marijuana [possession] convictions lack legitimacy and impose unnecessary harms, yet he still wants to apply those penalties and others to noncitizens as well as to U.S. citizens and green card holders who were once here illegally."