

Marijuana Decriminalization and Legalization in the 21st Century

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“Nothing has contributed more to the systematic incarceration of people of color in the United States than the War on Drugs.” ~ Michelle Alexander ~

State governments have led the way in effecting policy change regarding the decriminalization and legalization of marijuana. So far, 44 states and the District of Columbia have either decriminalized or legalized marijuana in some capacity (DISA, 2021). Despite state level efforts to decriminalize and legalize marijuana, the federal government has retained its national prohibition on marijuana and maintained its status as a schedule 1 drug¹. In order for marijuana to be successfully decriminalized or legalized, there must be bipartisan support for a marijuana bill in Congress. While the turn of the 21st century ushered in greater social acceptance of marijuana, the outdated logic associated with the “War on Drugs” has prevented federal decriminalization, legalization, or rescheduling of marijuana from taking place (Cohn et. al, 2017). The legalization of marijuana is more than just an effort to create new lines of federal tax revenue or satisfy the needs of marijuana users; the decriminalization or legalization of marijuana is an important step forward in ending mass incarceration in the United States. While mass incarceration remains an unfortunate reality for many Americans, state level policies established over the past decade decriminalizing and legalizing marijuana have positively impacted arrest and incarceration rates. The purpose of this policy brief is to examine the disparate impact that marijuana prohibition has on minority communities, provide evidence-based solutions focused on being restorative rather than punitive in regard to marijuana use and distribution, as well as propose new markets for the federal government to consider.

Marijuana Decriminalization and Legalization

In 1971, President Richard Nixon identified drug addiction and drug abuse as “public enemy number one,” launching the most extensive and expensive attack on drugs in US history, known as the “War on Drugs” (Vulliamy, 2011). Three years after President Nixon’s declaration, the “Martinson Report” attempted to assess the effectiveness of offender rehabilitation, generally concluding that “nothing works” (Martinson, 1974). In the years that followed, the criminal justice system shifted its focus away from efforts of rehabilitation and placed a greater emphasis on imprisonment, thus beginning mass incarceration.

The policing of illicit substances has undoubtedly played a major role in mass incarceration and will continue to do so until there are rollbacks on preexisting policies that facilitate disproportionality and unreasonable punishment in our criminal justice system. The Bureau of Justice Statistics reports that 46.3 percent of federal prisoners and 14.1 percent of state prisoners are serving sentences for drug related offenses (Carson, 2020). Furthermore, the Bureau of Justice Statistics reports that Black and Hispanic individuals are disproportionately incarcerated in U.S. prisons (Carson, 2020). These statistics warrant concern and careful consideration, as the

¹ The DEA identifies heroin, LSD, marijuana, ecstasy, methaqualone, and peyote as schedule 1 drugs. Schedule 1 drugs are identified as not having currently accepted medicinal use and a high potential for user abuse.

disproportionate impact that incarceration has on minorities cannot be distilled into a single explanation.

Mass incarceration has been particularly damaging for minority Americans, who are disproportionately policed, arrested, and incarcerated (Carson, 2020). Location-based policing strategies have been developed to more efficiently police crime, but their use has had unintended consequences, specifically the over-policing of minority communities that have historically exhibited criminogenic risk factors (Kochel & Nouri, 2019). Furthermore, Sherman et.al (1989) posit that 60 percent of crime happens in 6 percent of places. While hot spots policing has been effective, certain neighborhoods and demographics consequently become over-policed. To illustrate, the American Civil Liberties Union reports that African-Americans are three and a half times more likely to be arrested for the possession of marijuana as compared to whites (Edwards et. al, 2020). Despite modest declines in the US prison population over the past decade, mass incarceration continues to disproportionately impact minority communities.

It has been half a century since President Nixon's declaration of a war on drugs, and the United States criminal justice system is still actively policing drugs (Edwards et al., 2020). The failures associated with this approach have led advocates and policy makers to consider alternative strategies to addressing drug addiction and abuse in the United States. A public health approach has emerged in response to drug addiction and abuse in the United States, which is evident through state level policy that has either decriminalized or legalized marijuana (DISA, 2021). Nonetheless, the policing of marijuana has had a disparate impact on minority communities. Moore and Elkavich (2008) report that the rates of illicit drug use between Blacks, Whites, or Hispanics is not significantly different. Yet, over the past decade, African Americans have been approximately three and a half times more likely than whites to get arrested for the possession of marijuana (Edwards, et. al, 2020). So, despite similar rates of use, African Americans are more likely to be brought into the criminal justice system.

Advantages and Disadvantages Associated with Legalizing Marijuana

Public support for the legalization of marijuana has gained considerable traction in the 21st century. Younger generations are showing increased support for marijuana legalization, and substantial numbers of older individuals have begun to show support as well (Brenan, 2020). Since 1969, Gallup has measured the public's support for the legalization of marijuana; the most recent Gallup poll indicates that 68 percent of Americans support the legalization of marijuana. Furthermore, Gallup polls show that support for the legalization of marijuana has been steadily trending upward for the past 52 years. In addition to increasing public support for the legalization of marijuana, a 2017 Gallup poll indicated bipartisan support from those who identified as Democrats and Republicans regarding the legalization of marijuana (McCarthy, 2017). While the most recent Gallup poll shows that marijuana legalization has diminished somewhat amongst Republicans, it has only fallen by two percent (Brenan, 2020).

National legalization of marijuana is poised to have a positive impact on the economy. Not only will the legalization of marijuana create new economic markets, but it will also reduce the burden placed on police to enforce the prohibition of marijuana. Ultimately, marijuana legalization will lead to a reduction in incarceration costs associated with marijuana related

offenses. In Colorado, a state which fully legalized marijuana in 2012, it is reported that marijuana brings in three times as much tax revenue as compared to alcohol (Light, et. al, 2016). In its first year of being legal, marijuana sales produced 78 million dollars in tax revenue, followed by 128 million dollars in tax revenue in its second year. In the fiscal year 2019 alone, Colorado benefitted from approximately 302 million dollars in marijuana excise taxes, yielding a per-capita revenue of 52 dollars and 53 cents. Colorado is one example of many in which consumer interest in marijuana has had a positive impact on producing tax revenue. More importantly, this increase in tax revenue can be directed towards funding school budgets and other pertinent public initiatives.

Not only are there financial benefits associated with the legalization of marijuana, but marijuana legalization will also impact research and treatments for individuals with psychiatric disorders who would not otherwise qualify for medical marijuana. The rules for medical marijuana treatment vary by state. For example, the only psychiatric disorder that can legally be treated with medical marijuana in Connecticut is post-traumatic stress disorder (CT Department of Consumer Protection, 2021). These arbitrary qualifications for medical marijuana use disqualify people with general anxiety and other psychiatric disorders and are unable to receive any legal and safe treatment. Federal Legalization of Marijuana will allow people with general anxiety disorders or other psychiatric conditions to benefit from marijuana use in their everyday lives.

Furthermore, from a public health approach research shows that legalized marijuana has been good for communities. In 2017 a study that looked at the legalization of marijuana and opioid deaths in Colorado between 2000 and 2015 showing a relationship between the legalization of recreational marijuana with a short-term decrease in opioid deaths (Livingston et. al, 2017). It is important to note that further research will need to be conducted over time as more states begin to legalize marijuana. For now, this relationship has been observed and recorded.

Lastly, legalized marijuana leads to quality control. According to the American Addiction Centers, marijuana has been known to be laced with other “hard drugs” such as heroin, cocaine, and methamphetamine (American Addiction Centers, 2021). The combination of drugs can potentially lead to severe reactions and, in extreme cases, death. With a well-regulated system in place, adults who choose to use marijuana will be able to do so in a safe way without the risk of consuming an unintended and dangerous substance. When someone buys an illegal substance, they take a significant risk because they do not know the composition of the substance. By controlling the quality of marijuana, lives have the potential of being saved.

The economic impact of marijuana legalization is important, but the legalization of marijuana will also reduce the burden that the criminal justice system bears regarding the criminal association with this illicit drug. However, this report would be remiss if it were not to identify the disadvantages associated with the legalization or decriminalization of marijuana. A new burden will be placed on the criminal justice system, which is the policing of marijuana use while individuals are operating motor vehicles. Colorado has experienced a 62 percent increase in fatal traffic accidents following the legalization of marijuana. Similar to alcohol, acceptable consumption limits will have to be established, and traffic field sobriety tests for marijuana will have to be developed and administered. So, despite the many positives associated with the legalization of marijuana, there are also a few drawbacks.

One drawback being that just like other types of drugs, marijuana is addictive. When users heavily use this illicit drug and develop marijuana use disorder (commonly known as problematic use), studies indicate that nine percent will become dependent on the drug. Approximately 30 percent of marijuana users could have some level of marijuana use disorder; those who started taking the drug before 18 years old are about four to seven times more likely to develop marijuana use disorder when they become adults. Those suffering from marijuana use disorder can face withdrawal after quitting the drug, which could result in the following symptoms: irritability, mood, and sleep difficulties decreased appetite, cravings, restlessness, and various forms of physical discomfort. Of the four million Americans considered to fit the criteria for marijuana use disorder, only 138,000 decided to seek treatment (National Institute on Drug Abuse, 2021). Further research has shown that in states that legalized recreational use of marijuana, adolescents between the ages of 12 and 17 were 25 percent more likely to have problematic use than states who have not yet legalized recreational use. Similarly, in a year, adults who were 26 or older were at a 37 percent increased chance of problematic use (NYU Langone Health / NYU School of Medicine, 2019).

Although the legalization of marijuana will significantly impact tax revenue, the societal cost might be far more significant. Legalizing marijuana would resemble the economic impact of alcohol and tobacco; annual costs taxpayers face from alcohol is 233.5 billion dollars and 193 billion dollars from tobacco. At the same time, the tax revenues from these substances are 24 billion dollars (Pros & Cons, 2020). In legalizing marijuana, society could face the costs associated with a rise in hospital visits and addiction treatment; increased fatal driving accidents, among other negative societal impacts.

Pre-Existing Marijuana Policies Nationally and Abroad

The establishment of state level marijuana policies creates a variety of different legal structures from state to state and causes concern and confusion for the users, producers, and distributors of marijuana. As previously noted, 44 states and the District of Columbia have legalized or decriminalized marijuana in some capacity.

In 2013, Uruguay legalized the production and sale of marijuana. Use of marijuana – both medicinal and recreationally – had been legal for nearly 45 years in Uruguay, but in 2013 new regulations were established that closed the gap in the legal framework. The execution of these new policies was initially met with a lot of apprehension from the public. Citizens would have to register through the government's office group before they could acquire cannabis from the newly legal distributors, i.e., pharmacies. According to public opinion surveys, Uruguayans found this to be a less than fitting solution with 60 percent of the population in opposition of the new law (Cruz, Boidi & Queirolo, 2018).

Nevada took an approach to legalizing marijuana that created an effective revenue structure for the state. Nevada's legalization of marijuana for recreational use in 2018 established 234 million dollars in cumulative marijuana tax revenue (Dept. of Taxation Nevada, 2019). An article by Nevada Public Radio discusses the impacts of marijuana just a year later. The 10 percent retail tax on recreational marijuana "...has gone into the state's rainy-day fund" and the 15 percent wholesale tax "...pays for enforcement and administration of the marijuana laws," anything left is

earmarked for education (Totten & Christiansen, 2018). Nevada has been able to take advantage of significant added tax revenue while properly controlling and monitoring marijuana distribution.

The inconsistencies that exist in marijuana legislation throughout the United States make enforcement difficult to manage. Specifically, when citizens can travel from one neighboring state to another and face different penalties – if any at all – for their possession of cannabis. In addition, because marijuana is not legalized on a federal level, National banks are weary of handling this business which forces many cannabis organizations to operate cash-only. A uniform front to legalize or decriminalize marijuana at the federal level will benefit all states individually.

The federal government still has not lifted its prohibition on marijuana and has used its power to selectively prosecute marijuana related offenses on a federal level, per the supremacy clause (USDEA, n.d.; DISA, 2021, Barrett, 2021). For the future, four policy options exist for providing a more consistent approach to regulating marijuana (Drug Intervention Services of America, 2021):

1. Legalize the use, production, and distribution of marijuana. (Fully Legalize Marijuana).
2. Legalize the medicinal use of marijuana (Medicinally Legalize Marijuana).
3. Decriminalize the use of marijuana. (Decriminalize Marijuana).
4. Retain the prohibition of marijuana (Prohibit Marijuana).

Policy Option 1

The first policy option removes the federal prohibition on marijuana. This policy requires all states to follow suit and lift their prohibitions on marijuana as well.

<i>Advantages</i>	<i>Disadvantages</i>
<ul style="list-style-type: none"> • Reductions in crime and incarceration 	<ul style="list-style-type: none"> • Increased traffic accidents and fatalities
<ul style="list-style-type: none"> • Elimination of disproportionality associated with the enforcement of marijuana 	<ul style="list-style-type: none"> • Proliferation of black markets
<ul style="list-style-type: none"> • Economic opportunity (Employment/Jobs, Taxes, reduced incarceration) 	<ul style="list-style-type: none"> • Addiction
<ul style="list-style-type: none"> • Quality Control 	<ul style="list-style-type: none"> • Development of formal field test for marijuana intoxication
<ul style="list-style-type: none"> • Research Opportunities 	

Policy Option 2

The second policy option calls for the medicinal legalization of marijuana.

<i>Advantages</i>	<i>Disadvantages</i>
<ul style="list-style-type: none"> • Pain Management 	<ul style="list-style-type: none"> • Allows for disproportionality in enforcement
<ul style="list-style-type: none"> • Research 	<ul style="list-style-type: none"> • Development of formal field test for marijuana intoxication
<ul style="list-style-type: none"> • Quality Control 	

Policy Option 3

The third policy option decriminalizes the use of marijuana.

<i>Advantages</i>	<i>Disadvantages</i>
<ul style="list-style-type: none"> • Partial reduction in crime and incarceration 	<ul style="list-style-type: none"> • Development of formal field test for marijuana intoxication
<ul style="list-style-type: none"> • Lessens burden on police 	<ul style="list-style-type: none"> • Will create confusion for producers and distributors

Policy Option 4

The fourth policy option retains the prohibition of marijuana. This policy option appears to be the least desirable.

<i>Advantages</i>	<i>Disadvantages</i>
<ul style="list-style-type: none"> • Maintain “Status Quo” 	<ul style="list-style-type: none"> • Disproportionality in who gets policed, arrested, and incarcerated for marijuana
	<ul style="list-style-type: none"> • Perpetuation of confusion for producers and distributors who are operating businesses under state level legalization but are going against federal law

Recommendation

The United States has criminalized drug addiction and abuse for far too long. The opioid epidemic has aided in the reframing of drug addiction and abuse as a public health issues as opposed to a criminal justice issue. While the medicinal legalization or decriminalization of marijuana use are potential policy options, it is the recommendation of this brief that marijuana be federally legalized. This recommendation is presented in Option #1, to legalize the use, production, and distribution of marijuana. While Options #2 and #3 may also seem like viable options, they will not adequately address the disproportionality of minority members of our communities being policed, arrested, and incarcerated for marijuana. Additionally, if Options #2 or #3 were selected, the systematic policing of marijuana networks will preclude only some marijuana arrests, while still permitting others. Overall, the federal legalization of marijuana provides the criminal justice system a chance to be restorative, and atone for the disproportionate and unreasonable punishment of marijuana related offenses.

Acknowledgement

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Annotated Bibliography

Alexander, M. (2010). *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New York: [Jackson, Tenn.]: New Press, Distributed by Perseus Distribution.

In her 2010 book, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, Michelle Alexanders discusses mass incarceration and the disproportionate incarceration of African American Males through the United States Criminal Justice system. She also discusses the disproportionate representation of other minorities and the socio-economic disadvantaged in our criminal justice system.

American Addiction Centers (2021). *What can Marijuana be Laced With?* Retrieved from: <https://americanaddictioncenters.org/marijuana-rehab/what-can-marijuana-be-laced-with>

This web article offers a description of common substances that marijuana can be laced with, a brief explanation of each substance, an explanation of possible effects of laced marijuana and precautions to take to avoid laced marijuana.

Barrett, S. (2021). *Medical Marijuana and Federal Law: While your states' laws may allow you to use marijuana for medicinal purposes, federal law does not*. NOLO.

This web-based article helps differentiate between federal and state policy in regards to the legalization and decriminalization of marijuana. In this article covers the Supremacy Clause and Tenth Amendment, are addressed, explaining that the federal government has the right to prosecute anyone for the use of marijuana, even if it is for medicinal purposes. Apart from explaining the

Supremacy Clause, this article also briefly covers the political aspects of legalization, banking, interstate trade, taxes, and research associated with marijuana.

Brenan, M. (2020). *Support for Legal Marijuana Inches Up to New High of 68%*. Gallup.

This article identifies the results of the latest Gallup poll reflecting the public's support or lack of support for the legalization of marijuana. This article reveals that public support for the legalization of marijuana has reached a new height of 68%. Despite reaching a new high supporting the legalization of marijuana, bipartisan support for legalizing marijuana fell out of favor, as only 48% of republicans support the legalization of marijuana.

Carson, A. (2020). *Prisoners in 2019*. United States Department of Justice. Washington, D.C.: Bureau of Justice Statistics.

This is the 94th annual report on state and federal prison statistics in the United States. This report provides information on imprisonment rates, admissions, and release of state and federal prisoners in 2019. Additionally, this report provides a breakdown of demographic information for those who are imprisoned and identifies numbers and percentages of offense characteristics. This report highlights the high number of prisoners serving federal sentences for drug related offenses.

Cohn, A., Johnson, A., Rose, S., Rath, J., Villanti, A. (2017). *Support for Marijuana Legalization and Predictors of Intentions to Use Marijuana More Often in Response to Legalization Among U.S. Young Adults*. *Substance use & Misuse* 52(2), 203-213.

This article measures support for marijuana use, separating participants who support marijuana use and are users, and those who support marijuana use and are not users. The findings indicate that users are more likely to support marijuana legalization than those who are not users. This article also illustrates an increasing social acceptance of marijuana use.

Connecticut State: Department of Consumer Protection (2021). *Qualification Requirements*. Retrieved from <https://portal.ct.gov/DCP/Medical-Marijuana-Program/Qualification-Requirements>

This webpage offers a list of the qualifying medical requirements for medical marijuana in the state of Connecticut.

Cruz, J. M., Boidi, M. F., & Queirolo, R. (2018). *The status of support for cannabis regulation in Uruguay 4 years after reform: Evidence from public opinion surveys*. *Drug & Alcohol Review*, 37, S429–S434

This study assessed three nationally administered surveys of adults across the United States about their opinion on legalizing marijuana. The surveys took place approximately 1.5 years apart from one another and findings illustrate a growth in support of marijuana legalization overtime.

Dept. of Taxation Nevada. "Cannabis Statistics and Reports." *Marijuana Statistics and Reports*, 2019, tax.nv.gov/Publications/Marijuana_Statistics_and_Reports/.

This webpage illustrates the tax revenue accumulated by fiscal year for cannabis sales in Nevada ranging from 2018 to 2021.

Drug Intervention Services of America (2021). *Map of Marijuana Legality by State*. Retrieved from <https://disa.com/map-of-marijuana-legality-by-state>

This webpage offers an interactive map of the United States identifying which states have legalized cannabis, legalized the medicinal use cannabis and decriminalized it, legalized cannabis for medicinal use, decriminalized cannabis, or retained the prohibition of cannabis. This interactive map is constantly updating to adjust for changes in individual states cannabis policies.

Edwards, E., Greytak, E., Madubonwu, B., Sanchez, T., Beiers, S., Resing, C., Fernandez, P., & Galai, S., (2020). *A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform*. American Civil Liberties Union.

This Report curated by the ACLU recognizes that the War on Drugs is still active and that the policing of marijuana has remained very active. This report identifies five key findings important to the policing of marijuana and the racial disparity that exists who is policed for marijuana use. This report concludes that despite many states rollbacks on marijuana prohibition in the forms of medical legalization, decriminalization, and legalization, a great deal of confusion and contradiction still exists regarding marijuana policies.

Kochel, T. & Nouri, S. (2019). *Hot spots policing*. In B.M. Huebner (Ed.) *Oxford bibliographies in criminology*. New York: Oxford University Press. (an update) DOI: 10.1093/OBO/9780195396607-0178

This piece is on location-based policing strategies, such as hot spot policing. This add to the policy brief in that it helps inform who is policed, based on targeted. Strategies to specific places with high levels of crime.

Light, M., Orens, A., Rowberry, J., & Saloga, C. (2016). *The Economic Impact of Marijuana Legalization in Colorado*. Marijuana Policy Group.

This article provides the pertinent information on the economic impact that the legalization of marijuana has had in the state of Colorado. This piece is important to this policy brief because it illustrates how the legalization of marijuana has affected the economy on the state level, which can help to inform the economic impact of the legalization of marijuana federally.

Livingston, M., Barnett, T., Delcher, C., & Wagenaar, A. (2017). *Recreational Cannabis Legalization and Opioid-Related Deaths in Colorado, 2000–2015*. American Journal of Public Health, 107, (1827-1829).

This paper investigates the relationship between recreational cannabis legalization and opioid – related deaths in Colorado between 2000 and 2015. It establishes a relationship between marijuana legalization and a decrease in opioid - related deaths.

Martinson, R. (1974). *What Works? Questions and Answers About Prison Reform*. The Public Interest, (35) 22-54.

This dated report evaluates the rehabilitation of offenders, generally concluding that “Nothing Works.” This report contributed to the shift from rehabilitation to mass incarceration in the United States.

McCarthy, J. (2017). *Record High Support for Legalizing Marijuana Use in U.S.* Gallup.

This Gallup report on support for the legalization of marijuana identified bipartisan support for marijuana legalization in 2017. This was the first year in which both the majority of Republicans and Democrats showed support for the legalization of marijuana.

Moore, L. & Elkavich, A. (2008). *Who’s Using and Who’s Doing Time: Incarceration, the War on Drugs, and Public Health*. American Journal of Public Health, 98 (176-180).

In this journal article, Moore and Elkavich (2008) give an overview of the war on drugs and identify the disparate impact that the war on drugs has had on minority communities. They take this article a step further and posit that the war on drugs and mass incarceration has facilitated a public health issue within the confines of prison. It is noted that prison inmates suffer from high rates of mental illness, HIV, tuberculosis, other infectious diseases, and violence. This article concludes by inferring that formerly incarcerated persons may be worse off when they are released from prison than when they entered, making the argument that prisons are not places of rehabilitation and that other sources of rehabilitation should be considered.

National Institute on Drug Abuse (2021). *Is marijuana addictive?* Retrieved from <https://www.drugabuse.gov/publications/research-reports/marijuana/marijuana-addictive>

This report evaluates the impact of marijuana use disorder. It also establishes how many individuals face this disorder.

NYU Langone Health / NYU School of Medicine. (2019, November 13). In states where recreational marijuana is legal, problematic use increased among adults and teens. *ScienceDaily*. Retrieved June 17, 2021 from www.sciencedaily.com/releases/2019/11/191113153049.htm

This journal gives an overview of a study done from 2012 to 2015 on states who legalized the use of marijuana for recreational purposes and the implications on marijuana use. It establishes the likelihood of problematic marijuana use due to legalization and discusses the positive impact legalization of marijuana can have on the equality of criminal justice. Based on the study, it is suggested as more states fold to allow recreational use, substance use prevention might need to be implemented.

Pros & Cons - ProCon.org. Recreational Marijuana. (2020, June 3). Retrieved June 17, 2021 <https://marijuana.procon.org/>

This article identifies 13 pros and 13 cons arguments correlated to the legalization of recreational marijuana.

Totten, K., & Christiansen, R. (2018) "One Year Later: Marijuana's Impact On Nevada." *Nevada Public Radio*, 2018, knpr.org/knpr/2018-06/one-year-later-marijuanas-impact-nevada.

This article provides an overview of the tax revenue structure for the state of Nevada's cannabis distribution as well as a deep analysis on the first year of legalizing marijuana. The article uses personal testimonials and statistics to tell the story.

United States Drug Enforcement Administration (n.d.). *Drug Scheduling*. Retrieved from <https://www.dea.gov/drug-scheduling>

This is the accepted Drug Scheduling list produced by the United States Drug Enforcement Administration that identifies illicit substances and categorizes them into one of five categories.

Vulliamy, E. (2011). *Nixon's "war on drugs" began 40 years ago, and the battle is still raging*. The Guardian.

This article gives a detailed history of the war on drugs, and emphasizes the continuation of the war on drugs in the 21st century. This article provides context to the history associated with the war on drugs.