



**Committee for Public Counsel Services  
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**Marijuana Pardons and the Impact on Non-Citizens  
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On April 3, 2024, the Governor’s Council [unanimously approved](#) Governor Healey’s [pardon](#) of all misdemeanor marijuana possession convictions. While the courts work to identify potentially hundreds of thousands of impacted cases, it is important to understand the impact, and particularly the limitations, of this pardon for non-citizens.

**What are the immigration consequences of a conviction for possession of marijuana?**

*Deportability* – for non-citizens who were lawfully admitted into the U.S., a conviction for possession of marijuana makes them deportable. A CWOFF (continuance without a finding) is a conviction for immigration purposes, so even a CWOFF has this result. The only exception to deportability is when a person has a single conviction for possession of 30 grams or less of marijuana.

*Inadmissibility* – a conviction, including a CWOFF, for possession of marijuana makes a person inadmissible. Inadmissibility bars many pathways to lawful status, bars some defenses to removal (deportation) and bars a person’s ability to transition from one form of status to another (e.g. from a student visa to a green card). In addition, a non-citizen who travels abroad with a marijuana conviction can be prevented from returning to the U.S. based on that conviction. There is a waiver available for one conviction for possession of 30 grams or less of marijuana, but it has strict eligibility requirements making it available only in a limited number of cases.

**Does Governor’s Healey’s pardon protect non-citizens from these consequences?**

**No!** Under existing federal law, non-citizens remain vulnerable to deportation and remain at risk of having their applications for immigration status denied despite the state pardons.

First, under federal immigration law, gubernatorial pardons only waive deportability for a small subsection of deportable offenses. Specifically, courts have held that state pardons do not eliminate the “controlled substance” ground of deportability. This means that although the state does not recognize the pardoned offense as a conviction, the federal government will still consider it a valid conviction for deportability.

Second, pardons do not waive any grounds of inadmissibility. This means that a pardon does not prevent the federal government from denying admission to the U.S. or lawful status to someone based on a possession of marijuana conviction, even if it has been pardoned.

Example hypothetical scenarios:

Ms. X is a legal permanent resident (“green card holder”). She has an old conviction for possession of marijuana. She knows about Gov. Healey’s blanket pardon, so she assumes the conviction does not exist anymore. She travels to Mexico for vacation. However, when she tries to return home, federal immigration officials see the old conviction and question her. For federal immigration purposes, she is inadmissible and can be placed in removal proceedings.

Mr. Y is a legal permanent resident who has lived in the U.S. for many years. He never applied for citizenship because he knew that his two old convictions for possession of marijuana made him deportable. Now that he is pardoned, he thinks he is free to apply for citizenship. However, when he applies, his record is flagged and ICE arrests him because of the old marijuana convictions.

Mr. Z entered the U.S. 10 years ago without documents. A couple of years after he arrived, he was convicted of possession of marijuana. He is now married to a U.S. citizen and wants to apply for a green card based on his marriage. Although his old conviction was pardoned, it still makes him inadmissible and bars him from being able to obtain his green card, unless he is eligible for and granted a waiver of inadmissibility.

### **Unintended complications of the pardons for non-citizens:**

Often, the only way to avoid immigration consequences of a conviction is to try to vacate that conviction. However, a gubernatorial pardon eliminates a conviction under state law, which means there is no conviction to challenge in a post-conviction motion. Unfortunately, this leaves immigrants in a catch-22 – the pardoned conviction remains valid for federal immigration purposes but is unreachable under state law as there is no remaining conviction.

*NOTE: Because CWOFS are not included under Governor Healey’s pardon, a non-citizen with a CWOFS for possession of marijuana would still be able to file a motion to vacate that conviction.*

### **Conclusion**

A pardon for a marijuana conviction can be helpful even for non-citizens by reducing barriers to employment, housing, and other benefits. However, it carries risks if non-citizen clients are not fully advised that a pardoned marijuana conviction remains a conviction for immigration purposes. The recent gubernatorial pardons will happen automatically so while there is no affirmative action to be taken, non-citizens should be aware that the conviction will continue to carry risks of deportation, inadmissibility, and denial of applications for lawful status or citizenship.