

Biden's Marijuana Pardons: A Game-changer?

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In one of the major shifts in federal drug policy in decades, the Biden administration announced changes to end the U.S. “failed approach” to marijuana. The President’s recent liberalisation initiative allows thousands of citizens convicted of simple possession under federal law to be pardoned, calling governors to follow his lead with state offenses across the jurisdictions that have not decriminalised marijuana. Biden also directed federal agencies to review the classification of psychoactive substances in a clear attempt to remove marijuana from the Schedule 1 of the Controlled Substances Act, a category that also regulates illegal drugs such as heroin and LSD.

Critics fear, however, that the announcement is too narrow to reverse a highly punitive approach still prevailing at the federal level. The pardon does not contemplate the situation of individuals convicted in states despite local courts prosecute most of the country’s marijuana offenses, especially across the 23 states that have not decriminalized the psychoactive substance. Non-citizens who were not lawfully present in the U.S. at the time of the offense are also excluded from the executive action. Most importantly, the pardons will not protect individuals from facing federal marijuana possession offenses after the date of the presidential proclamation (i.e., October 6).

While there is still skepticism about the domestic impacts of the marijuana pardons, Biden’s recent announcement will likely become a game-changer for Latin America, a region that has historically succumbed to Washington’s pressure to adopt a highly

punitive approach against illegal drugs.

Latin America's long war on drugs

Since former President Richard Nixon defined illicit drug abuse as the country's "public enemy number one" in the early 1970s, Latin America has gradually become Washington's top priority in its international crusade against illegal drugs. Concerns about the explosion of domestic crack cocaine consumption, the growing power of international drug cartels, coupled with the fact that almost all illegal psychoactive substances trafficked into the US territory were cultivated and manufactured across Latin America, drove both the U.S. executive branch and the National Congress to shift their focus away from opium-source countries in the Eastern Hemisphere.

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It is estimated that the U.S. has spent over a trillion dollars in waging the "war on drugs" after Washington's redirected its international efforts to strike "at the supply side of the drug equation," as former President Nixon claimed. Since the unveiling of Operation Intercept along the Mexican border in 1969, the first modern attempt to stop illicit drugs at their source, various Latin American leaders have welcomed the U.S. foreign military assistance to spray coca plantations, manually eradicate the plants, or disband criminal organizations. The Andean Regional Initiative in Bolivia, Brazil, Colombia, Ecuador, Panama, Peru, and Venezuela; Plan Dignidad in Bolivia; and the Merida Initiative in Mexico rapidly became Washington's centerpiece strategies to suppress the production and trafficking of illegal drugs. Through Plan Colombia, for example, the Andean country received almost US \$8 billion over a decade, becoming the world's third largest recipient of US military aid, only surpassed by Israel and Egypt. By the late 1990s, these programs were central to Washington's foreign policy, accounting for more than 92 percent of US military and police aid to the Western Hemisphere. The war on drugs even survived the post-September 11 era, as the US repackaged its century-old punitive approach as part of the new "war on narco-terrorism."

Signs of change

Latin American countries, however, have found some "room for maneuver." Confronted with unprecedented levels of drug-related violence in a context where the overall supply of psychoactive substances has not decreased and consumption rates continue to grow, several governments started calling into question the merits of the war on drugs. Criticism gained political salience when the Latin American Commission on Drugs and Democracy, co-chaired by former presidents César Gaviria (Colombia), Ernesto Zedillo (Mexico), and Fernando Henrique Cardoso (Brazil), proposed a new paradigm to approach the problem of illegal drugs in Latin America. The document released in 2009 highlighted that the war on drugs sponsored by the U.S. was an utter failure, arguing that prohibitionist policies based on forced eradication, the disruption of drug flows, and the stringent criminalization of consumption did not yield the expected results.

Not surprisingly, things began to change. The vast majority of Latin American countries have gradually adopted different drug liberalization policies to tackle their problems at home. While Uruguay's cannabis legalization continues to call the attention of pundits and foreign government officials alike, most countries in the region have nonetheless pursued subtler and more volatile drug policy reforms like depenalization and decriminalization. Yet the absence of legislative reforms (e.g., Argentina) or the vague normative frameworks that objectively distinguish dealers from drug users (e.g., Brazil) have made depenalization and decriminalization inconsistent and effectively unrealized policies with limited power to divert people who use drugs away from the criminal justice system. In effect, the evidence in Latin America shows that approximately one in five inmates is incarcerated for drug-related crimes, although this percentage is larger if individuals arrested and held in pre-trial detention (around half of the region's inmate population) are considered. Despite the growing salience of drug trafficking activities in Latin America, a large proportion of these individuals are serving their prison sentences for cases of simple possession.

A game-changer?

Though Biden's pardons may not address the punitive roots of the U.S. criminal justice system, it represents a major symbolic boost for many Latin American countries still hesitant to adopt non-criminal policies to tackle various drug-related problems. Freed from the punitive straitjacket, Latin America can accelerate its transition towards approaches rooted in public health, emphasizing the relevance of prevention, treatment, and harm reduction efforts in dealing with drug users. In Mexico, for example, the bill intended to fully legalize the recreational use of marijuana, stalled in the Congressdespite the Supreme Court struck down criminalization in 2021, can gain momentum following Biden's pardons. A similar effect could be expected in Colombia, where not only marijuana legalization gained traction after the socialist Gustavo Petro won the last presidential elections in June 2022, but also more controversial proposals such as the bill aimed at regulating the coca leaf and its derivatives introduced in the National Congress in August 2020.

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Drastic reforms, of course, will not come without challenges. The three United Nation drug control conventions still bind signatory states to prohibit and criminalize the use of psychoactive substances; even though the multilateral regulatory framework will likely experience changes after its main benefactor started questioning its foundations. Yet there are reasons to celebrate in Latin America. Whether countries follow a non-criminal approach to psychoactive substances or stick to failed punitive recipesis now a matter of domestic politics and no longer subject to negotiation.

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