

## Cannabis Business Blog

# Bongs and Busts – the Danger of State Cannabis Laws to Non-U.S. Citizens

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Seattle, Washington, where I practice, is one of the most popular tourist destinations in the U.S. Its natural beauty and cosmopolitan vibe are two of its biggest attractions. But increasingly, Cannabis Tourism has been a draw. That's because Washington State, like Colorado, Oregon and Alaska, has legalized cannabis – also known as marijuana, for sale and personal use in the state.

But people who are not U.S. citizens<sup>[1]</sup> need to understand that these state laws do not protect them from extreme danger. The federal government still considers cannabis to be a “controlled substance,” and the purchase, possession and/or use of cannabis is still a federal crime that could result in denied admission, deportation, and/or being barred from return – even if state law says it is perfectly legal.

“But wait,” you might say, “How can it be both legal and illegal to grow, sell, purchase or use marijuana?” It is only because of the existence of a [non-binding Department of Justice memorandum](#) that expressed the Department's choice to exercise “prosecutorial discretion” in those states that have such laws, that U.S. citizens might feel some level of comfort when complying with state cannabis laws within that state's borders. No other federal agency has indicated that it would exercise prosecutorial discretion, and no federal laws have changed as they relate to cannabis and non-citizens. So the risks associated with violation of federal law remain fully in place for those people. It should be especially of concern to know that the government can take action against a non-citizen based exclusively on the person's statements; a conviction is not required.

### **How does this play out in the real world?**

Foreign nationals crossing from Canada into Washington State, and those arriving at an international airport or seaport, are often asked if they have ever smoked marijuana and if they say that they have, can be excluded and deemed “inadmissible” to the U.S. - potentially forever.

Any person, whether U.S. citizen or not, who boards a cruise ship in Seattle needs to understand that the ship is under Coast Guard jurisdiction, and the Coast Guard will enforce federal law, which makes it illegal to take cannabis onboard the ship. Upon return to Seattle, officers from yet another federal agency, Customs and Border Protection, will “greet” all passengers with the same kind of questions that occur at the border and airport. And if the use of cannabis by a non-citizen becomes known to the officer, consequences can occur. (Remember, officers are legally authorized to review information, such as pictures and email messages on your mobile phone as a part of the inspection. People have been known to have been questioned about photographs showing cannabis use.)

So please, non-citizens, unless and until the federal government changes the law or its policies regarding state cannabis laws, consider whether it’s better to enjoy the “natural high” of the environments in the beautiful states of Washington, Colorado, Oregon and Alaska rather than taking the risk of a “bad trip,” otherwise known as deportation.

[1] For the purpose of this blog, people who should be especially cautious about the competing state and federal laws as they relate to cannabis include lawful permanent residents (that is, “green card” holders), asylees and refugees, immigrants and nonimmigrants.

**Warning Regarding Federal Law:** The possession, distribution, and manufacturing of marijuana is illegal under federal law, regardless of state law which may, in some jurisdictions, decriminalize such activity under certain circumstances. Penalties for violating federal drug laws are very serious. For example, a conviction on a charge of conspiracy to sell drugs carries a mandatory minimum prison term of five years for a first offense and, depending on the quantity of marijuana involved, the fine for such a conviction could be as high as \$10 million. In addition, the federal government may seize, and seek the civil forfeiture of, the real or personal property used to facilitate the sale of marijuana as well as the money or other proceeds from the sale. Although the U.S. Department of Justice (DOJ) recently rescinded its guidance regarding prioritization of criminal prosecutions of individuals and entities operating in compliance with effective state regulatory systems, DOJ left in place long standing guidance to federal prosecutors regarding how to exercise this discretion. Individuals and companies are cautioned to consult with experienced attorneys regarding their exposure to potential criminal prosecution before establishing business operations in reliance upon the passage of state laws which may decriminalize such activity. Federal authority to prosecute violations of federal law as crimes or through seizures and forfeiture actions is not diminished by state law. Indeed, due to the federal government’s jurisdiction over interstate commerce, when businesses provide services to marijuana producers, processors or distributors located in multiple states, they potentially face a higher level of scrutiny from federal authorities than do their customers with local operations.

**Tags:** cannabis tourism, Coast Guard jurisdiction, controlled substance, cruise ship, deportation, federal crime, federal government, foreign nationals, growing of marijuana, non-binding Department of Justice memorandum, non-citizens, prosecutorial discretion, purchase of marijuana, Seattle, selling of marijuana, state cannabis laws, violation of federal law, Washington state