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## Blunt the Violence: How Legal Marijuana Regulation in the United States Can Help End the Cartel Violence in Mexico

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Andrés E. Muñoz\*

### I. INTRODUCTION

Few people know of the fear and violence that currently plagues Mexico better than Cristina Roman. When asked how the drug war violence in Juarez, Mexico, invaded her own life, Ms. Roman responded, “How far should I go back?” She began her account in May 2010 when, at four in the morning, gunmen invaded her household, which included her husband and three children.<sup>1</sup> She hid with her children, but the gunmen ordered her to come out and when she did, she was thrown to the floor as the men pistol-whipped her husband.<sup>2</sup> They then asked for money, jewelry, and anything else they wanted.<sup>3</sup> After the gunmen told Ms. Roman to hide back with her kids, they beat her husband for another 30 minutes.<sup>4</sup> After the beating

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<sup>1</sup> Daniel Hernandez, *Mexican Drug War's Innocent Victims: 'They Tried to Kill Me With My Kids'*, THE GUARDIAN (Aug. 13, 2012, 10:34 EDT), <http://www.theguardian.com/world/2012/aug/13/mexican-drug-war-innocent-victims>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

ceased, Ms. Roman came out to find that her husband was missing.<sup>5</sup> Two hours later, her brother-in-law received a phone call with ransom instructions.<sup>6</sup>

Over the next two days, Ms. Roman and her brother-in-law sold her husband's used car dealership, liquidated his assets, and raised funds to pay off the ransom.<sup>7</sup> The kidnappers were supposed to return her husband on the third day; rather, on the fourth day, they threw his dead body in the street.<sup>8</sup>

Sadly, Ms. Roman's story does not end here. Overnight, she went from being a stay-at-home mom to the sole breadwinner for the family with a job at a nightclub.<sup>9</sup> While working one night, federal police entered the nightclub, ordered everyone to line up against the wall, and searched for weapons, violating women in the process.<sup>10</sup> A few minutes later, the police left and two men with automatic weapons entered and opened fire in the club—killing everyone they could.<sup>11</sup> Afterwards, the two men lit the place on fire.<sup>12</sup>

Incredibly, Ms. Roman was able to escape the massacre, but the assassins were still out to get her and the other survivors of the shooting.<sup>13</sup> At one point they even tried to run Ms. Roman off the freeway while she was driving with her kids.<sup>14</sup> Managing to escape that situation, she applied for asylum in the United States.<sup>15</sup>

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

Ms. Roman's grim story gives one account of the atrocious and fearsome violence that takes place on a daily basis in Mexico and that has been occurring for at least the past eight years.<sup>16</sup> The violence is part of a bloody drug war that has taken place since 2006 between the Mexican government and the powerful drug cartels that make enormous profits by trafficking illegal drugs to the United States. These cartels make between \$19–\$29 billion annually, making drug trafficking one of the most lucrative industries in Mexico.<sup>17</sup> It is estimated that over 70,000 people have died as a result of the nine-plus years of conflict.<sup>18</sup> This estimate does not include the 40,000 US residents that die each year due to the illegal drug use that is made possible by the cartels.<sup>19</sup> In addition, according to one estimate, more than 26,000 people have disappeared,<sup>20</sup> a staggering number attributed to both the cartels and to the Mexican government as part of its efforts to combat the cartels through the use of violent tactics.<sup>21</sup>

The amount of illegal drug use in the United States is the driving force of cartel power. In some respects, the United States is the perfect neighbor for drug cartels because the country has a “high demand for drugs, a sophisticated transportation network, a variety of places where drugs can be

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<sup>16</sup> Carrie F. Cordero, *Breaking the Mexican Cartels: A Key Homeland Security Challenge for the Next Four Years*, 81 UMKC L. REV. 289, 292–94 (2012).

<sup>17</sup> GRAYING G. WILLIAMS & JOHN MORTON, *Joint Message from Assistant Secretary John Morton, U.S. Immigration and Customs Enforcement, and Director Grayling G. Williams, DHS Office of Counternarcotics Enforcement*, DEPARTMENT OF HOMELAND SECURITY, UNITED STATES OF AMERICA–MEXICO: BI-NATIONAL CRIMINAL PROCEEDS STUDY (2010), available at <http://www.ice.gov/doclib/cornerstone/pdf/cps-study.pdf>.

<sup>18</sup> Tracy Wilkinson, *Mexico Cartel Leader's Capture Will Have Little Effect on Drug Flow*, L.A. TIMES, July 16, 2013, available at <http://articles.latimes.com/2013/jul/16/world/la-fg-mexico-trevino-20130717>.

<sup>19</sup> See Cordero, *supra* note 16, at 289.

<sup>20</sup> Catherine E. Shoichet, *Mexico Reports More Than 26,000 Missing*, CNN, <http://www.cnn.com/2013/02/26/world/americas/mexico-disappeared/index.html> (last updated Feb. 27, 2013, 8:00 AM).

<sup>21</sup> HUMAN RIGHTS WATCH, *WORLD REPORT 2013: MEXICO* 246 (2013), available at <http://www.hrw.org/world-report/2013/country-chapters/mexico>.

grown and manufactured, a vulnerable southwest border, and a population that is mostly unaware of the extent of the infestation.”<sup>22</sup> How, then, can the United States provide a means to an end of these dangerous cartels or a means to completely dismantle cartel power? The goal of this paper is to provide a possible answer to that question.

Understanding the drug war in Mexico is a complex study that requires a strong historical grasp of drug trafficking in Mexico and an in-depth analysis of how globalization, through neoliberal policies and ideologies, has facilitated this violent war in Mexico. A well-rounded understanding of the drug war is beyond the scope of this article. Rather, this article focuses primarily on the cartels’ reliance on the illegal trafficking of marijuana to the United States and draws on research to give a clearer understanding of how marijuana impacts cartel business. Additionally, this article ties the cartels’ marijuana business with the United States and the current movement to legalize marijuana’s recreational use. This article explains how marijuana legalization can potentially lead to a decrease in cartel power and hence, a decrease in the violence that plagues Mexico. However, the legalization of marijuana in the United States alone is not enough to put a halt to the illegal trafficking of marijuana to the United States. This paper argues that laws and policies legalizing marijuana need to be constructed in ways that will drive drug cartels out of business, at least out of the marijuana business.

Tight restrictions, high taxes, caps on marijuana (such as those in Washington and Colorado), and state and federal conflicts limit the ability for US businesses to grow and expand to an extent that could completely replace marijuana provided by cartels. Like any business, the emerging legal marijuana businesses must be able to compete with illegal marijuana

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<sup>22</sup> SYLVIA LONGMIRE, *CARTEL: THE COMING INVASION OF MEXICO’S DRUG WARS* 12 (2011).

businesses in order to replace them. Displacing the cartel marijuana businesses in the United States with legal domestic businesses would be a huge loss to the cartels and would likely shrink their influence and hopefully lead to an end of cartel violence. It is important that US policy makers, voters, and residents consider what is going on in Mexico, because this is a human rights issue that affects not only the United States' next door neighbor, but also US citizens and residents alike who have family, friends, and loved ones victimized by the violence.

The topic of marijuana in the United States is the center of much debate and controversy as there have been large movements in recent years to not only decriminalize its use generally, but also specifically legalize its recreational use. Currently in the United States, the movement to legalize both the medical and recreational use of marijuana is gaining momentum as can be seen by recent legislation legalizing the use of recreational marijuana in Washington and Colorado in 2012, and Oregon, Alaska, and the District of Columbia in 2014.<sup>23</sup> This recent legislation is profound in US history because a movement like this was likely unimaginable even 20 years ago. This movement, however, is still young, and many states and the federal government refuse to even consider this type of legislation for a variety of reasons. Due to its current criminalized status in much of the country, marijuana continues to be one of the most illegally smuggled drugs into the United States from Mexico, which provides a strong economic base for Mexican cartels.<sup>24</sup>

If more states, and possibly the federal government, followed in Washington's and Colorado's footsteps by legalizing marijuana's recreational use, a dwindling of cartel funding and business would likely

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<sup>23</sup> Initiative 502 in Washington; Amendment 64 in Colorado; Measure 91 in Oregon, Ballot Measure 2 in Alaska; Initiative 71 in the District of Columbia.

<sup>24</sup> See CNN Library, *Mexico Drug War Fast Facts*, CNN WORLD, <http://www.cnn.com/2013/09/02/world/americas/mexico-drug-war-fast-facts/> (last updated Mar. 15, 2014 9:29 AM).

result. This reduction of cartel power would severely damage cartels' efforts and possibly lead to an end of the widespread violence in Mexico. As stated above, however, this can only happen if the laws legalizing marijuana can effectively drive down cartel influence. This article examines how the current laws in Washington and Colorado could drive out cartel business and how a few modifications to state and federal policies can further reduce cartel influence and violence. Although Oregon, Alaska, and the District of Columbia have passed recreational marijuana laws, this article focuses primarily on the Washington and Colorado laws because more research has been done on these laws as they have been around longer.

This article is broken up into four main parts with Part I serving as the introduction. Part II focuses on the drug war in Mexico, providing an overview of how the drug war came to be through a brief look at the economic and political climate that led to the current crisis. This is followed by an examination of the current situation, looking at the current demand for drugs in the United States that serves as the driving economic force for cartels. Additionally, this section looks at the cartel power structures in Mexico that compete directly against those of the Mexican government, which leads to the violence. This section also looks at how the United States, by providing military assistance to the Mexican government in combination with lax US gun laws, has exacerbated the violence. Lastly, this section looks at the bleak future of violence in Mexico.

Part III looks into the movement to legalize marijuana in the United States. This section begins with a brief overview of marijuana's historical criminalization through the War on Drugs. This is followed by an analysis of the reasons why Washington and Colorado legalized marijuana, by looking at marijuana's gradual decriminalization, the widespread popularity of its medical use throughout the country, and the ways that the official and popular opinions have drastically shifted over the years with regard to its use.

Part IV examines Washington's Initiative 502 (I-502) and Colorado's Amendment 64 to see which parts of these laws could keep the cartels in business through difficult licensing procedures, high taxes, and caps on marijuana sales. Additionally, this section explains how the uncertainty between conflicting state and federal laws serves as another obstacle for emerging legal marijuana businesses. This section suggests that states should loosen some of their licensing requirements, increase the number of licenses granted, and lower the overall tax rate on marijuana. These changes would allow legal marijuana business to be more competitive against the cartels. This section also suggests that marijuana should be rescheduled from its current status as a Schedule I drug under the Controlled Substance Act, that an exemption should be created allowing for states that have legalized marijuana to not be threatened by federal intervention, and that the president should consider implementing executive orders to realize the above suggestions.

## II. THE PROBLEM IN MEXICO

The problem of violence in Mexico has placed the people of Mexico in a state of fear and uncertainty. This section puts this bleak sentiment into context by examining the historical and economic forces along with militaristic policies of both the United States and Mexico that have created a climate of violence.

### *A. Brief Background of the Political and Economic Climate Leading to the Violence*

Recent cartel violence in Mexico can be traced to the election of Vicente Fox in 2000 under the National Action Party (PAN). This was a monumental change in power because it represented the end of a 71-year



reign of the Institutional Revolutionary Party (PRI),<sup>25</sup> which developed a reputation for corruption and authoritarianism.<sup>26</sup> However, the PRI also developed a masterful hand in dealing with the existing cartels, often by taking down a few token gangsters and taxing the rest, but allowing them to operate nonetheless.<sup>27</sup> The switch of power from the PRI to the PAN was popular among Mexican voters as it brought hope that corruption would be eradicated and that democracy would finally be practiced in Mexico.<sup>28</sup>

However, the newly elected political party did not have such a firm handle on the cartels—leading to the first serious violent outbreak of war on the Texas-Mexico border in 2004.<sup>29</sup> President Fox’s successor, Felipe Calderón, who became president in 2006 under the same party, launched the full-out drug war on the increasingly powerful criminal organizations through force,<sup>30</sup> rather than address the situation through reforming Mexico’s flawed enforcement agencies.<sup>31</sup> In the first four years of his presidency, an estimated 34 thousand lives were lost.<sup>32</sup> The number of public officials who died during this four-year period is significant, amounting to over 25 hundred public officials including police officers, soldiers, judges, mayors, and other federal officials.<sup>33</sup> This fact reflects that

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<sup>25</sup> Taylor Morris, *Mexico’s PRI: Repeating History or Looking Forward?*, HARV. POL. REV. (Sept. 1, 2012, 3:07 PM), <http://harvardpolitics.com/world/mexicos-pri-repeating-history-or-looking-forward/>.

<sup>26</sup> IOAN GRILLO, *EL NARCO: INSIDE MEXICO’S CRIMINAL INSURGENCY* 10 (2011).

<sup>27</sup> *Id.*

<sup>28</sup> *See id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> HUMAN RIGHTS WATCH, *NEITHER RIGHTS NOR SECURITY: KILLINGS, TORTURE, AND DISAPPEARANCES IN MEXICO’S “WAR ON DRUGS”* 4 (2011), *available at* [http://www.hrw.org/sites/default/files/reports/mexico1111webwcover\\_0.pdf](http://www.hrw.org/sites/default/files/reports/mexico1111webwcover_0.pdf).

<sup>32</sup> GRILLO, *supra* note 26, at 10.

<sup>33</sup> *Id.* at 11.

much of the violence was due, in part, to a struggle for societal power in cartel-ridden regions.<sup>34</sup>

Free trade policies also set the stage for cartel control to escalate in Mexico. The North American Free Trade Agreement (NAFTA) represented the formal breaking down of trade barriers between Canada, the United States, and Mexico, allowing goods to flow through the countries without any restrictions.<sup>35</sup> Although NAFTA may have furthered US business interests, it also furthered illegitimate business interests, such as those of drug cartels.<sup>36</sup> One of its devastating effects on Mexico is that it left many workers jobless because they could not compete with US producers and earn a livable wage.<sup>37</sup> The influx of US-grown agricultural products, which are mass-produced and exported to Mexico, has flooded the Mexican market, making US-grown goods cheaper than Mexican-grown goods<sup>38</sup> sold within Mexico.<sup>39</sup> As a result, farmers—consisting of young men—are left jobless, leading to more young men that are eager to make any sort of living. These young men then become easy targets for cartels that are

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<sup>34</sup> *Id.*

<sup>35</sup> Kimberly Amadeo, *Advantages of NAFTA*, ABOUTNEWS (Oct. 29, 2014), [http://useconomy.about.com/od/tradepolicy/p/NAFTA\\_Advantage.htm](http://useconomy.about.com/od/tradepolicy/p/NAFTA_Advantage.htm).

<sup>36</sup> Ryan Grim, *NAFTA and the Drug Cartels: "A Deal Made in Narco Heaven,"* HUFFINGTONPOST.COM (May 25, 2011), [http://www.huffingtonpost.com/ryan-grim/nafta-and-the-drug-cartel\\_b\\_223705.html](http://www.huffingtonpost.com/ryan-grim/nafta-and-the-drug-cartel_b_223705.html).

<sup>37</sup> See Gabrielle D. Schneck, *A War on Civilians: Disaster Capitalism and the Drug War in Mexico*, 10 SEATTLE J. FOR SOC. JUST. 927, 957–59 (2012).

<sup>38</sup> One of the best examples of a Mexican agricultural industry that was devastated by NAFTA is the corn industry. After the implementation of NAFTA, Mexican farmers that lived off the corn they grew and sold locally were driven out of business when cheap American corn from the United States flooded the Mexican market, selling at cheaper prices. Laura Carlsen, *Under NAFTA, Mexico Suffered, and the United States felt its Pain*, N.Y. TIMES (Nov. 24, 2013, 5:11 PM), <http://www.nytimes.com/roomfordebate/2013/11/24/what-weve-learned-from-nafta/under-nafta-mexico-suffered-and-the-united-states-felt-its-pain>

<sup>39</sup> See Susana G. Baumann, *Mexican Farmers Affected By Agricultural Subsidies From NAFTA, Other International Agreement*, HUFFINGTON POST, Jan. 11, 2013, [http://www.huffingtonpost.com/2013/01/11/mexican-farmers-agricultural-subsidies\\_n\\_2457845.html#slide=1627659](http://www.huffingtonpost.com/2013/01/11/mexican-farmers-agricultural-subsidies_n_2457845.html#slide=1627659).

hungry for foot soldiers. Policies such as NAFTA help explain the major role that the United States has played in setting the stage for the bloody drug war.

*B. The United States' Role in the Violence in Mexico*

In order to better understand why the legalization of marijuana in the United States stands out as a viable solution to the violence in Mexico, one ought to examine how current policies in the United States add to the violence in Mexico. Without the demand in the United States for illegal drugs, the military aid the United States currently provides to Mexico, and the free flow of guns into Mexico from the United States, the widespread violence would likely not exist.

**1. Demand for Illegal Drugs in the United States Fuels Cartels**

The driving force of cartel power is the demand for drugs in the United States. People in the United States spend approximately \$65 billion a year on illegal drugs, and drug-related damages amount to about \$110 billion per year.<sup>40</sup> A report by the US Senate Caucus on International Narcotics Control published in 2012 stated that about 22.6 million people in the United States over the age of 12 were illegal drug users, accounting for almost nine percent of the population and representing the largest proportion in the past decade.<sup>41</sup> Of all illegal drugs used in the United States, marijuana places first, representing over 60 percent of all illegal drug use with 17.4 million users in 2010, followed by 7 million psychotherapeutic users, 1.5 million cocaine users, 1.2 million hallucinogen users, 0.7 million inhalant users, and

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<sup>40</sup> *Drug Demand Sparks Drug War Debate*, ABC NEWS (March 16, 2013), <http://abcnews.go.com/WNT/story?id=131177>.

<sup>41</sup> U.S. SENATE CAUCUS ON INT'L NARCOTICS CONTROL, 112TH CONG., REDUCING THE U.S. DEMAND FOR ILLEGAL DRUGS 12 (Comm. Print 2012), *available at* [http://www.feinstein.senate.gov/public/index.cfm/files/serve?File\\_id=81b53476-64a3-4088-9bae-254a84b95ddb](http://www.feinstein.senate.gov/public/index.cfm/files/serve?File_id=81b53476-64a3-4088-9bae-254a84b95ddb).

0.2 million heroin users.<sup>42</sup> Thus this article focuses on how current and up-and-coming laws that legalize recreational marijuana can be tailored to drive the cartels out of business.

The Senate Caucus also found that “[m]ost Americans are unaware of the impact that illegal drug consumption has in fomenting violence in drug trafficking countries in Latin America[,]” citing Mexico as an example.<sup>43</sup> During her term as Secretary of State, Hillary Clinton stated that in the United States, “[o]ur insatiable demand for illegal drugs fuels the drug trade.”<sup>44</sup> She also stated, “We know very well that the drug traffickers are motivated by the demand for illegal drugs in the United States and that they are armed by the transport of weapons from the United States.”<sup>45</sup> Clinton’s comments appear to be the first comments made by a public official of her capacity that admitted that the United States is largely responsible for the violence in Mexico. It is clear from the abovementioned statistics and the statements made by Hillary Clinton that the enormous demand for illegal drugs in the United States fuels Mexican drug cartels. Although most legal, academic, and media sources differ as to how the drug problem in the United States should be solved, it appears that most sources agree that it is a problem that needs to be resolved, not just by tackling the drug abuse problem in the United States, but also by ending the demand for drugs that provide the cartels with a means to exist.

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<sup>42</sup> *Id.* at 13.

<sup>43</sup> *Id.* at 7.

<sup>44</sup> Mary Beth Sheridan, *Clinton: U.S. Policies Failed, Fueled Mexico’s Drug War*, WASH. POST (March 26, 2009), <http://www.washingtonpost.com/wp-dyn/content/article/2009/03/25/AR2009032501034.html>.

<sup>45</sup> Jo Tuckman, *Hilary Clinton Admits US Role in Mexico Drug Wars*, THE GUARDIAN (March 26, 2009, 5:39 EDT), <http://www.theguardian.com/world/2009/mar/26/mexico-hillary-clinton-drugs-weapons>.

## 2. US Military Assistance Escalates Violence

Thus far, the United States' strategy for helping Mexico tackle the cartel problem has been a militaristic approach. The United States has recognized a need to assist Mexico, but rather than spending resources to tackle the problem of demand, the United States has allocated resources to battle the cartels with violence by supplying military equipment to the Mexican government.

The Mérida Initiative, also known as "Plan Mexico," launched shortly after President Calderón took office in Mexico to serve as a partnership between the United States and Mexico to "fight organized crime and associated violence while furthering respect for human rights and the rule of law."<sup>46</sup> As part of the initiative, the US Congress appropriated \$1.6 billion to fund aircraft to be used by the Mexican military and to fund other programs, including training for police and federal and state correctional staff to combat drug cartels.<sup>47</sup> The United States' decision to send funds to Mexico demonstrates that the US government has an interest in the militarization of Mexico's drug war and that the war is at least partly funded by US taxpayers.<sup>48</sup> The Mérida Initiative also helped add to the violence, as Mexican security forces—which the Mérida Initiative greatly funds—are known to commit human rights violations, including killings, disappearances, and torture, in efforts to fight against cartels.<sup>49</sup>

Another example of how the United States' efforts to provide military assistance to combat cartels in Mexico has only resulted in more violence can be seen by the rise of a cartel known as Los Zetas. This group originated in the 1990s when the United States actually provided military

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<sup>46</sup> U.S. DEP'T OF STATE, BUREAU OF W. HEMISPHERE AFFAIRS, THE MERIDA INITIATIVE: EXPANDING THE U.S./MEXICO PARTNERSHIP (2012), available at <http://www.state.gov/p/wha/rls/fs/2012/187119.htm>.

<sup>47</sup> *Id.*

<sup>48</sup> GRILLO, *Supra*, note 26, at 10.

<sup>49</sup> HUMAN RIGHTS WATCH, *supra* note 31, at 246, 252.

training to members of a Mexican Special Forces unit assigned to combat the Gulf Cartel.<sup>50</sup> Some members defected to the Gulf Cartel, becoming enforcers of the criminal organization, likely because the cartel offered more money than the Mexican Special Forces provided.<sup>51</sup> In 2010, Los Zetas split from the Gulf Cartel, sparking one of the most violent periods in Mexico as Los Zetas fought for turf against the Gulf Cartel and their rival Sinaloa Cartel<sup>52</sup> using military tactics learned through US training. Los Zetas now control much of the region surrounding the Gulf of Mexico up through Northern Mexico and are one of the most feared criminal organizations in the world, known for committing some of the most heinous crimes in the drug war.<sup>53</sup>

President Calderón publically recognized that the demand for drugs in the United States has made the drug industry profitable and that the flow of weapons from the United States into cartel hands has made the cartels powerful.<sup>54</sup> In response to the cartels' constantly growing power, President Calderón believed that a militaristic approach was the right one to take, stating, "the government must act with the full force of the state against [the cartels]."<sup>55</sup> He also stated that although the rising death toll is "painful," there is "no alternative" to the military strategy he undertook as president.<sup>56</sup> Unfortunately, that approach has proven to lead only to more violence.

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<sup>50</sup> Gordon Earle et al., *The 6 Most Infamous Crimes Committed By Mexico's Zetas Cartel*, GLOBAL POST (July 16, 2013), <http://www.globalpost.com/dispatch/news/regions/americas/mexico/130716/the-6-most-infamous-zetas-crimes-mexico-drug-war>.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> See Tracy Wilkinson, *Leader of Zetas Drug Cartel Seized, Mexico Says*, L.A. TIMES, July 15, 2013, available at <http://articles.latimes.com/2013/jul/15/world/la-fg-mexico-zetas-cartel-20130716>.

<sup>54</sup> GRILLO, *supra* note 26, at 933.

<sup>55</sup> Stephen Sackur, *'No Alternative' to Mexico's Drug War—Says Calderon*, BBC NEWS (Oct. 27, 2010, 10:01 AM), <http://news.bbc.co.uk/2/hi/programmes/hardtalk/9130155.stm#map>.

<sup>56</sup> *Id.*

### 3. United States' Lax Gun Laws Arm Cartels

Due to the United States' lax gun laws, as guaranteed by the Second Amendment to the US Constitution, cartels are easily able to buy guns in the United States and smuggle them across the border back into Mexico.<sup>57</sup> Anyone who crosses the border knows that going into Mexico is extremely easy, involving minimal inspection, if any. It does not help that, in 2004, President George W. Bush overturned a ban on 19 different assault weapons<sup>58</sup> to which cartels now have easy access and that represent 60 to 65 percent of the guns confiscated by Mexican authorities.<sup>59</sup>

A top Mexican national security and criminal justice official stated, "the significant rise in violence and the increase in the number of public officials killed in Mexico coincides with lifting of the assault weapons ban."<sup>60</sup> Many opposed to the violence in Mexico believe another effective strategy in curbing the violence would be to change gun laws in the United States to restrict access to guns. This presents another set of arguments that go beyond the scope of this paper but add another element to this complicated issue.

#### *C. Mexico's Current Situation*

The United States' demand for illegal drugs, military assistance, and lax gun laws have thus empowered cartels and fueled the violent drug war in Mexico. The result is a pattern of escalating violence between the Mexican government and Mexican cartels, and a general climate of fear among people living in Mexico.

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<sup>57</sup> *The Causes of Mexico's Drug Violence*, THE CAUSAL TRUTH (Nov. 10, 2010), <http://www.thecasualtruth.com/story/causes-mexico's-drug-violence>.

<sup>58</sup> *Id.*

<sup>59</sup> Editorial Board, *Lax U.S. Gun Laws Enable Killing in Mexico*, WASH. POST, Feb. 4, 2012, [http://articles.washingtonpost.com/2012-02-04/opinions/35445090\\_1\\_assault-weapons-gun-show-loophole-illegal-guns](http://articles.washingtonpost.com/2012-02-04/opinions/35445090_1_assault-weapons-gun-show-loophole-illegal-guns).

<sup>60</sup> *Id.*

### 1. Military Successes Do Not Alleviate the Problem

Mexican military forces have had some success in taking down top cartel leaders. For example, in July 2013 Mexican Naval Special Forces captured the head of the Zetas cartel, Miguel Angel Treviño Morales, also known by his alias, Z-40.<sup>61</sup> Treviño's capture represents the first major strike against the cartels for Mexico's newly elected President, Enrique Peña Nieto, who probably hoped that this capture would raise his popularity among the public and among skeptics who doubted his policy towards the drug war.<sup>62</sup> Early in 2014, Mexican Naval Special Forces also captured Joaquin "El Chapo" Guzman, leader of the Sinaloa cartel.<sup>63</sup>

US Attorney General Eric Holder called the arrest of "El Chapo" "a landmark achievement, and a victory for the citizens of both Mexico and the United States."<sup>64</sup> Similarly, a government security affairs spokesman commented that the capture of Treviño "will seriously complicate . . . the ability of these groups . . . to exercise their criminal activities."<sup>65</sup> However, others believe that eliminating individuals like Treviño and "El Chapo" will make little progress toward ending the violence. As one expert said, "No capture of an individual will have a great impact on drug trafficking nor perhaps, sadly the violence."<sup>66</sup> Cartels have a long line of heirs ready to take the place of fallen leaders.<sup>67</sup> Experts also refer to cartels as a worm, "where authorities can cut off pieces, but the worm lives."<sup>68</sup> These descriptions accurately describe the problem with confronting cartels through the use of

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<sup>61</sup> Wilkinson, *supra* note 18.

<sup>62</sup> *Id.*

<sup>63</sup> Ray Sanchez et al., *After Years on the Run, Sinaloa Cartel Chief 'El Chapo' Guzman Arrested*, CNN, (Feb. 22, 2014, 11:03 PM), <http://www.cnn.com/2014/02/22/world/americas/mexico-cartel-chief-arrest/>.

<sup>64</sup> *Id.*

<sup>65</sup> Wilkinson, *supra*, note 18.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*



militaristic approaches. Although there may be battles in which certain military gains are made against the cartels, the cartels come back to confront their enemies with more violent force, further creating a violent atmosphere from which innocent bystanders in Mexico cannot escape.

## 2. Climate of Fear Persists

The cartels are also known to make theatrical displays of victims to create fear and intimidation, often as a message to security forces and to rival cartels. In March 2013 the bodies of seven men were arranged on lawn chairs in the state of Michoacán, some with threat messages nailed to their chests with ice picks.<sup>69</sup> In May 2012 just across the US-Mexico border in the city of Nuevo Laredo, the bodies of four men and five women were found hanging off the side of the Colosio Bridge,<sup>70</sup> which was quite an atrocious sight for any passerby. In the same incident, 14 headless bodies were found in coolers in a van.<sup>71</sup> Hangings, beheadings, and lacerating of limbs are common actions cartel members take upon their victims. Live beheadings conducted by cartels are common on the internet, which contributes to the mass fear people have surrounding cartels.<sup>72</sup> Unfortunately, this grim atmosphere is all too common in Mexico, presenting what many people view to be a fearsome and hopeless problem

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<sup>69</sup> *Mexico's Drug War: 7 Men Shot in Head Are Left in Plastic Chairs as 14 Killed Across 2 States*, N.Y. DAILY NEWS (Mar. 25, 2013, 4:16 AM), <http://www.nydailynews.com/news/crime/14-killed-2-drug-plagued-mexican-states-article-1.1297760>.

<sup>70</sup> Tracy Connor, *Mexico Drug Violence: 9 Hanged, 14 Decapitated in the Border City of Nuevo Laredo*, N.Y. DAILY NEWS (May 4, 2012, 10:22 PM), <http://www.nydailynews.com/news/world/mexico-drug-violence-9-hanged-14-decapitated-border-city-nuevo-laredo-article-1.1072899>.

<sup>71</sup> *Id.*

<sup>72</sup> Will Grant, *Facebook Beheading Video: Who Was Mexico's Jane Doe?* BBC.COM (Nov. 3, 2013, 7:42 PM), <http://www.bbc.com/news/magazine-24772724>.

that cannot be solved.<sup>73</sup> However, there may be a solution that lies on the side of the border that fuels this problem in the first place.

### III. WASHINGTON'S AND COLORADO'S LAWS LEGALIZING MARIJUANA

This section gives a brief overview of how, within a century, marijuana has been converted from one of the most criminalized substances in the United States to one that is now being legalized for recreational use.

#### *A. Background on Marijuana Regulation*

Marijuana is one of the most traditionally regulated drugs in the United States. Its regulation arose largely as a backlash against African Americans and Mexican laborers in the Southwest, who were largely viewed as lazy, prone to crime, and of lesser intelligence.<sup>74</sup> All these characteristics were, and often still are, associated with marijuana use. In the South, marijuana was scapegoated as causing African Americans to commit murder, rape, and mayhem.<sup>75</sup> After the Mexican Revolution of 1910, a large number of Mexican immigrants entered the United States; Caucasians feared these Mexican immigrants and so tied them to marijuana use, which resulted in anti-drug campaigns warning against the “Marijuana Menace.”<sup>76</sup>

Not surprisingly, state and local governments whose jurisdictions contained areas with large Mexican populations were the first to spearhead the criminalization of marijuana—starting with California, which prohibited the sale and possession of marijuana in 1913, followed by the city of El

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<sup>73</sup> See Ashley Fantz, *The Mexico Drug War: Bodies for Billions*, CNN (Jan. 20, 2012 9:03 AM), <http://www.cnn.com/2012/01/15/world/mexico-drug-war-essay/>.

<sup>74</sup> Steven W. Bender, *Joint Reform?: The Interplay of State, Federal, and Hemispheric Regulation of Recreational Marijuana and the Failed War on Drugs*, 6 ALB. GOV'T L. REV. 359, 361–62 (2013).

<sup>75</sup> *Id.*

<sup>76</sup> *Marijuana Timeline*, PBS, <http://www.pbs.org/wgbh/pages/frontline/shows/dope/etc/cron.html>, (last visited Dec. 1, 2013).

Paso, Texas, which did the same in 1914.<sup>77</sup> The Great Depression of the 1930s caused massive unemployment, which resulted in resentment towards Mexican immigrants among US citizens.<sup>78</sup> The Great Depression also led to more public and governmental concern over marijuana.<sup>79</sup> By 1931, marijuana was outlawed in 29 states,<sup>80</sup> with all states banning its use by 1937.<sup>81</sup>

In 1932, the federal government followed the states' lead by introducing the Uniform State Narcotic Act, which, rather than promoting federal legislation, encouraged state governments to adopt the Act to boost the uniformity and strength of policing narcotics, including marijuana.<sup>82</sup> In 1937, Congress officially criminalized marijuana with the Marijuana Tax Act, which created an excise tax on its use.<sup>83</sup> Stricter federal sentencing laws in the 1950s<sup>84</sup> set mandatory sentencing for drug-related offenses and included a minimum sentence of two to 10 years, with a fine of up to \$20,000 for a first-time offense for marijuana possession.<sup>85</sup> The 1960s proved that these sentencing laws did nothing to eliminate the drug culture, including widespread use of marijuana during this period, as it was known for youthful rebellion and social change.<sup>86</sup> This popularity led to backlash from the Nixon administration when President Richard Nixon declared a "War on Drugs,"<sup>87</sup> calling drug use "public enemy number one."<sup>88</sup>

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<sup>77</sup> Bender, *supra*, note 74, at 362.

<sup>78</sup> *Marijuana Timeline*, *supra*, note 76.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> Boggs Act of 1951, ch. 666, 65 Stat. 767 (repealed 1970); Narcotics Control Act of 1956, 18 U.S.C. §§ 1401–1407 (repealed 1970).

<sup>85</sup> *Marijuana Timeline*, *supra*, note 76.

<sup>86</sup> *A Brief History of the Drug War*, DRUG POLICY ALLIANCE, <http://www.drugpolicy.org/new-solutions-drug-policy/brief-history-drug-war> (last visited Oct. 15, 2014).

<sup>87</sup> *Id.*

The Federal Controlled Substances Act of 1970 classified marijuana as a first-tier Schedule I controlled substance, placing it in the same level as heroin and ecstasy, and above drugs such as opium, oxycodone, and methamphetamine.<sup>89</sup> President Nixon ignored and rejected recommendations by a committee he appointed to decriminalize its possession and distribution for personal use, and the drug remains in the Schedule I category to this day.<sup>90</sup> 11 states, however, decriminalized marijuana possession during the period between 1973 and 1977.<sup>91</sup> This was followed by the 1977 presidential election of Jimmy Carter, who won on a platform that included the decriminalization of marijuana.<sup>92</sup>

After President Reagan took office in 1981, gains made to decriminalize marijuana ended when President Reagan continued the movement of criminalizing marijuana, as evidenced by high rates of incarceration during his presidency. Thanks to the help of the “War on Drugs,” the United States now holds 25 percent of the world’s prison population, even though it only contains five percent of the world’s total population, making it the world’s biggest jailer.<sup>93</sup> In 1986, President Reagan signed the Anti-Drug Abuse Act, which raised federal penalties for marijuana possession and dealing, eventually requiring life sentences for repeat drug offenders and the death penalty for kingpins.<sup>94</sup>

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<sup>88</sup> Bender, *supra*, note 74, at 366.

<sup>89</sup> Office of Diversion Control, *List of Controlled Substances*, DRUG ENFORCEMENT ADMIN., <http://www.deadiversion.usdoj.gov/schedules/> (last visited Dec. 1, 2013).

<sup>90</sup> See *A Brief History of the Drug War*, *supra* note 86.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *The Prison Crisis*, ACLU, <https://www.aclu.org/safe-communities-fair-sentences/prison-crisis> (last visited Dec. 1, 2013 at 10:50 PM); Kathleen Miles, *Just How Much The War On Drugs Impacts Our Overcrowded Prisons, In One Chart*, HUFFINGTONPOST.COM (Apr. 3, 2014, 11:59 PM), [http://www.huffingtonpost.com/2014/03/10/war-on-drugs-prisons-infographic\\_n\\_4914884.html](http://www.huffingtonpost.com/2014/03/10/war-on-drugs-prisons-infographic_n_4914884.html).

<sup>94</sup> This act particularly targeted users of crack-cocaine, a smokable version of powder cocaine, by creating a 100-to-1 sentencing disparity:

On the Mexican side of the border, the criminalization of marijuana in the United States creates a demand for the drug through illegal means. Hence, marijuana provides business for criminal insurgent groups like the cartels. On the US side, the criminalization of marijuana contributes to mass incarceration, hinders opportunities of individuals, and disproportionately affects communities of color.<sup>95</sup> In recent years, however, opinions surrounding marijuana use have changed, as can be seen by the large number of states that have decriminalized it and legalized its medical and even recreational use, particularly in the states of Washington and Colorado.

*B. Shifting Marijuana Policy: Why Washington and Colorado Legalized Marijuana*

In the 1960s and 1970s, marijuana use in the United States became less associated solely with African Americans and Mexican laborers, and became more widespread among the white population.<sup>96</sup> By 2009, almost half of high school seniors in the United States and 100 million US residents had smoked marijuana, with widespread use among middle-class whites.<sup>97</sup> Marijuana's increased popularity among middle-class white individuals in the past half-century has led to its increased decriminalization. While the federal government's marijuana policy has

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In what's known as the 100-to-1 rule, federal law mandates a 10-year sentence for anyone caught with 50 grams of crack, about the weight of a candy bar. To get a comparable sentence, a dealer selling powdered cocaine would have to be caught with 5,000 grams, enough to fill a briefcase.

*100-to-1 Rule*, N.Y. TIMES (Nov. 15, 2007), [http://www.nytimes.com/2007/11/15/opinion/15thu3.html?\\_r=0](http://www.nytimes.com/2007/11/15/opinion/15thu3.html?_r=0).

<sup>95</sup> See Michelle Alexander, *The War on Drugs and the New Jim Crow*, 17 RACE, POVERTY, AND THE ENVIRON., A J. FOR SOC. AND ENVIRONM'L JUST., no.1 (2010), available at <http://reimaginerpe.org/20years/alexander>.

<sup>96</sup> Bender, *supra* note 74, at 368–69.

<sup>97</sup> *Id.* at 369.

remained the same, states have taken the lead to decriminalize marijuana. In the late 1960s and early 1970s, states began decriminalizing marijuana by reducing penalties for small possessions from felonies to misdemeanors.<sup>98</sup>

### 1. Widespread State Medical Marijuana Laws

One of the clearest signs of the decriminalization of marijuana and increase in marijuana tolerance, is its widespread legalized medical use among states. Marijuana is known to be an effective treatment for symptoms of cancer, AIDS, multiple sclerosis, glaucoma, and epilepsy.<sup>99</sup> It is also known to effectively treat anorexia, spasticity, and migraines.<sup>100</sup> Marijuana is also used for pain relief, control of nausea and vomiting, and appetite stimulation.<sup>101</sup> A strong and early example of marijuana's medical potential can be seen by the federal government's Marijuana Tax Act of 1937, which actually allowed doctors to prescribe marijuana for certain medical conditions.<sup>102</sup> This recognition of marijuana's medical potential was, of course, done away with when the federal government designated marijuana as a Schedule I controlled substance in 1970.<sup>103</sup> Since then, however, marijuana's medical potential has been alluded to in various reports and experiments.<sup>104</sup>

California became the first state to legalize the medical use of marijuana in 1996, when voters enacted Proposition 215, the Compassionate Use Act, with a majority vote of 56 percent.<sup>105</sup> Since then, 18 states and the District of Columbia have followed California's lead in legalizing the medical use

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<sup>98</sup> *Id.*

<sup>99</sup> *Should Marijuana Be a Medical Option?*, PROCON, <http://medicalmarijuana.procon.org> (last updated Sept. 19, 2014, 1:31 PM).

<sup>100</sup> Bender, *supra*, note 74, at 372.

<sup>101</sup> *Id.* at 371.

<sup>102</sup> *Marijuana Timeline*, *supra* note 76.

<sup>103</sup> *Id.*

<sup>104</sup> Bender, *supra* note 74, at 371.

<sup>105</sup> *Id.*

of marijuana, mostly through voter initiatives rather than legislation, and requiring patients to obtain a physician's recommendation to use marijuana that can be home grown or purchased at dispensaries.<sup>106</sup> The movement towards legalizing medical marijuana since the 1990s represents a large shift in mainstream public opinion regarding its use because a movement to legalize marijuana would have been unimaginable just a generation earlier.

## **2. Shift in Opinions Regarding Marijuana Use and Law Enforcement at the Public Official Level**

Another example of the rapid shift of marijuana policy is how public officials have responded to questions regarding their own marijuana use. In 1992, when asked whether he had smoked marijuana, President Bill Clinton admitted that he had experimented with marijuana a time or two and said that he "didn't like it, didn't inhale, and never tried it again."<sup>107</sup> It is not surprising that Clinton phrased his answer in this way because, at the time, marijuana use still carried a strong stigma and because the Clinton Administration took a hard stance against marijuana use.<sup>108</sup> President Barack Obama, in contrast, mentioned in 2006, "When I was a kid, I inhaled frequently. That was the point."<sup>109</sup> These two contrasting statements reflect how opinions regarding marijuana use have changed in the span of less than 15 years.

Recently, officials have made efforts to reduce penalties for marijuana use, possession, and distribution. Although distribution of medical marijuana is still a federal offense, in October 2009 the Department of

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<sup>106</sup> *Id.* at 372.

<sup>107</sup> 2013 Top 50 Most Influential Marijuana Users, MARIJUANA POLICY PROJECT, <http://www.mpp.org/outreach/top-50-marijuana-users-list.html?page=1> (last visited Oct. 11, 2014).

<sup>108</sup> *Medical Marijuana Policy in the United States*, HUNTINGTON'S OUTREACH PROJECT OF EDUCATION, STANFORD (May 15, 2012), <https://www.stanford.edu/group/hopes/cgi-bin/wordpress/2012/05/medical-marijuana-policy-in-the-united-states/>.

<sup>109</sup> 2013 Top 50 Most Influential Marijuana Users, *supra* note 107.

Justice (DOJ), headed by Attorney General Holder, sent a memo to federal prosecutors to encourage them to refrain from prosecuting people who distribute medical marijuana in accordance with state law,<sup>110</sup> further evidencing that, even at the highest level of law enforcement, the nation is taking a step back with regard to enforcing federal law regarding marijuana usage.

In 2007, prior to the legalization of recreational marijuana use in Colorado, voters in Denver approved an initiative that deemed marijuana the city police's lowest priority.<sup>111</sup> Similarly, in 2012, the Seattle City Attorney announced that enforcement of laws pertaining to marijuana possession was the lowest priority of the Seattle City Attorney's Office Criminal Division and Seattle Police Department, stating, "I don't prosecute simple marijuana possession cases."<sup>112</sup>

### 3. Shift in Popular Opinion on Marijuana

For the first time in more than 40 years since this issue was first polled, US residents favor legalizing marijuana usage.<sup>113</sup> A national survey found that 52 percent support the legalization of marijuana while 45 percent do not, an increase of 11 percentage points since 2010.<sup>114</sup> This shift in popular opinion regarding marijuana marks a substantial change from 1969, when just 12 percent were in favor of its legalization and 84 percent were opposed.<sup>115</sup> Young voters—those born since 1980, now between the ages of 18 and 34—are the strongest group in favor of its legalization with 65

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<sup>110</sup> *State Medical Marijuana Laws*, NCSL (Aug. 25, 2014), <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>.

<sup>111</sup> Bender, *supra* note 74, at 370.

<sup>112</sup> *Id.*

<sup>113</sup> *Majority Now Supports Legalizing Marijuana*, PEW RESEARCH CENTER FOR THE PEOPLE & THE PRESS (Apr. 4, 2013), <http://www.people-press.org/2013/04/04/majority-now-supports-legalizing-marijuana/>.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*



percent in favor,<sup>116</sup> reflecting that in the coming years, as younger voters increase in voting turnout, the issue of marijuana legalization will likely shift more rapidly in favor of its legalization. All age groups polled are now more in favor of marijuana's legalization than ever before, including Generation X with 54 percent, the Baby Boomers with 50 percent, and the Silent Generation with 32 percent.<sup>117</sup>

The shift in public opinion on marijuana has been so significant that recreational marijuana is now legal in four states and the District of Columbia. Washington and Colorado captured national attention in the 2012 election by legalizing recreational marijuana use.<sup>118</sup> Voters in Washington approved I-502 by 55.7 percent,<sup>119</sup> legalizing possession of up to one ounce of loose leaf marijuana, 16 ounces of a solid product, and 72 ounces of marijuana infused liquid for adults aged 21 and over.<sup>120</sup> Likewise, 55 percent of Colorado voters approved Amendment 64, the Regulate Marijuana Like Alcohol Act of 2012, legalizing possession of up to one ounce of marijuana and the cultivation of up to six cannabis plants.<sup>121</sup>

Because the legislation of legalized marijuana is new, states like Washington and Colorado face the problem of having no clear model for legislation, leaving states with the ongoing task of testing which methods will work and which will not. The next section will discuss what holes legislation in Washington and Colorado may have left for cartels to fill in and possible solutions to these problems in more detail.

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<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> See Marc Fisher, *Marijuana's Rising Acceptance Comes After Many Failures. Is It Now Legalization's Time?*, WASH. POST (Feb. 22, 2014), [http://www.washingtonpost.com/politics/marijuanas-rising-acceptance-comes-after-many-failures-is-it-now-legalization-time/2014/02/22/9adc8502-98dd-11e3-80ac-63a8ba7f7942\\_story.html](http://www.washingtonpost.com/politics/marijuanas-rising-acceptance-comes-after-many-failures-is-it-now-legalization-time/2014/02/22/9adc8502-98dd-11e3-80ac-63a8ba7f7942_story.html).

<sup>119</sup> Bender, *supra*, note 74, at 374.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

#### IV. CLEARING THE SMOKE: CRAFTING MARIJUANA LEGISLATION TO TAKE OUT THE CARTELS

States around the nation are watching how Washington and Colorado regulate the use of marijuana. In particular, California, a state that has been central to marijuana policy in the nation, is watching closely how the aforementioned states go about legislating marijuana. The American Civil Liberties Union (ACLU) announced a panel, headed by Lieutenant Governor Gavin Newsom of California, established to draft a possible ballot item for 2016 to legalize marijuana in California.<sup>122</sup> As more states and countries consider legalizing marijuana, the more they must consider the implications of their legislation on the drug war in Mexico. The following section examines how the current legislation in Washington and Colorado, as it currently exists, might have little influence to hamper cartels, followed by possible solutions to this problem.

##### *A. Licensing Obstacles*

One of the largest obstacles in running a legal recreational marijuana business is obtaining a license. Merging licensing requirements between medical and recreational dispensaries, loosening the initial requirements for licensee hopefuls, and increasing the number of licenses issued will likely contribute to a decrease in black market marijuana business. Although this section focuses primarily on Washington law, Colorado has similar licensing regulations. Under Washington's I-502, there are three separate tiers for individuals involved in the recreational sale of marijuana: producer, processor, and retailer.<sup>123</sup> Each must be licensed under the rules

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<sup>122</sup> Eliza Gray, *New Laws Chart Course for Marijuana Legalization: How Colorado and Washington State Govern Their Legal Pot Markets Will Be A Test Case for the Rest of the U.S.*, TIME (Oct. 19, 2013), <http://nation.time.com/2013/10/19/new-laws-chart-course-for-marijuana-legalization/>.

<sup>123</sup> *FAQs on I-502*, WASHINGTON STATE LIQUOR CONTROL BOARD, [http://lcb.wa.gov/marijuana/faqs\\_i-502](http://lcb.wa.gov/marijuana/faqs_i-502) (last visited Oct. 11, 2014).

set out by the Washington State Liquor Control Board.<sup>124</sup> Each license application fee is \$250 and each renewal fee is \$1,000.<sup>125</sup> Though a licensed producer may additionally hold a processor license, neither a producer nor a processor may hold a retailer license.<sup>126</sup> Each applicant must go through a thorough criminal background check and must pay for fingerprinting fees (along with other background check fees), which are submitted to the Washington State Patrol and FBI for comparison to the applicant's criminal records.<sup>127</sup> Financers are also subject to criminal investigation and the Liquor Control Board conducts financial investigations to verify that the source of funds are used for the "acquisition and startup of the business, the applicants' right to the real and personal property, and to verify the true party(ies) of interest."<sup>128</sup>

Additionally, applicants must also submit operating plans, must notify the board of any substantial change to the plans, and must be current on tax obligations in Washington.<sup>129</sup> Applicants must also have resided in Washington State for at least three months prior to submitting an application.<sup>130</sup> Although there are many good reasons for having this requirement, applicants for black market marijuana businesses connected to Mexican cartels certainly do not have to go through these tedious background checks to enter into the business.

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<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> WASH. ADMIN. CODE § 314.55.020 (2013).

<sup>129</sup> Operating plans are meant to demonstrate that the applicant is qualified to hold the marijuana license to the satisfaction of the board, and must include the floor plan or site plan drawn to scale illustrating the operation being proposed, and must also include information addressing security, traceability, employee qualifications and training, and transportation of product, etc. *Id.*

<sup>130</sup> *Id.*

In addition, limits on the numbers of licenses issued and restrictions on retail location and advertisement hinder the growth of recreational marijuana businesses. The number of retail licenses is limited and is determined by using a formula that distributes the number of locations according to the local population.<sup>131</sup> Retailers cannot be setup within 1,000 feet of an elementary or secondary school playground, recreation center, child care center, public park, public transit center, or arcade where minors are allowed to enter; and are only allowed to sell marijuana, marijuana-infused products, and marijuana paraphernalia.<sup>132</sup> Retailer licenses will not be approved for locations within another business.<sup>133</sup> In terms of advertising, retailers cannot have more than one 1,600 square inch sign bearing the business's name, cannot display products on window fronts, and cannot advertise within 1,000 feet of the locations listed above where retailers cannot set up stores.<sup>134</sup>

The process to convert a medical marijuana outlet into a recreational marijuana outlet seems overly complicated considering medical marijuana outlets are already heavily regulated. Medical marijuana outlets that want to become recreational outlets still have to go through the same application process as any other potential applicants.<sup>135</sup> Should they obtain a license, these stores would only be allowed to sell marijuana purchased from the legal recreation system and cannot mingle medical and recreational marijuana.<sup>136</sup>

Finally, applicants cannot actually get their license until after a final inspection, after they have invested hundreds of thousands of dollars on

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<sup>131</sup> *FAQs on I-502*, *supra* note 123.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> WASH. ADMIN. CODE § 314.55.020 (2013).

equipment,<sup>137</sup> transformers, and leases, posing a “cart-before-the-horse” kind of situation considering someone who does all this may not know whether or not they will get a license.<sup>138</sup>

Since black market marijuana businesses do not face these regulatory obstacles, states considering marijuana legalization may want to loosen regulations to help neutralize this advantage. Particularly, it seems counterproductive to require already existing medical marijuana dispensaries in Washington State to go through the process of obtaining a license through the same set of requirements as someone who is not already licensed to sell medical marijuana. One of the reasons this requirement exists is because, in Washington, the Washington State Liquor Control Board governs recreational marijuana whereas medical marijuana is governed by the Department of Health.<sup>139</sup> If the two were to merge certain requirements so as to not recreate the wheel, it would allow for easier access into both markets for those looking to be involved in selling both medical and recreational marijuana.

Easier access to licenses is essential for individuals looking to be involved in the legal marijuana business and hence to compete more effectively against cartel businesses. Another possible solution for this may be to increase the number of licenses. There are 334 spots available for 2,000 applicants, and in the City of Seattle, there are 411 retail hopefuls for

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<sup>137</sup> Equipment includes but is not limited to surveillance equipment, bulletproof glass, ventilation materials, dehumidifiers, air movers, and air conditioners. See Martine Kaste, *All Things Considered: Even Where It's Legal, Pot Producers Weigh the Business Risks*, NATIONAL PUBLIC RADIO (May 7, 2013), <http://www.npr.org/2013/03/06/173460550/even-where-its-legal-pot-producers-weigh-the-business-risks>.

<sup>138</sup> Martin Kaste, *All Things Considered: Washington State Growers Roll The Dice On New Pot Licenses*, NATIONAL PUBLIC RADIO (Dec. 3, 2013), <http://www.npr.org/2013/12/03/248470522/washington-state-growers-roll-the-dice-on-new-pot-licenses>.

<sup>139</sup> Gray, *supra* note 122.

just 21 spots.<sup>140</sup> This 10–17 percent chance of approval causes a lot of uncertainty for those seeking licenses. Certainty for licensing applicants is important considering the commitments and investments that must be made by potential applicants. For example, those seeking a retail license must have a space leased as part of their application requirement.<sup>141</sup> To make initial investments in space and materials less risky, perhaps the application requirements can have some preliminary requirements that allow for people to, after passing the initial stage of their application process, move along and invest more with the guarantee that their investments will not go to waste. For example, uncertainty could be decreased if applicants are required to have a business space leased and ready to go, but are not required to invest in expensive equipment until after they are guaranteed a license.

Also, the number of licenses should be increased to almost double, at around 600 licenses, to allow for more people seeking to enter the marijuana business do so. This number will allow for almost double the amount of licenses while keeping it at a limit, as skeptics will likely not be on board with issuing an unlimited number of licenses.

It is important to relax the process of granting marijuana licenses. If current regulations prevent legal marijuana businesses from increasing and eventually replacing black market businesses, then a black market will still exist in Washington and Colorado and will keep cartels alive. The next issue that may prevent legal marijuana businesses from replacing black market businesses is the issue of whether legal marijuana can be sold at competitive prices with black market marijuana. That depends on tax.

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<sup>140</sup> Reid Wilson, *Legal Pot Faces Myriad Obstacles: Delays Raise Tensions over Medical Use, Sales, Availability, More*, COLUMBIAN (Apr. 8, 2014 8:17 PM), <http://www.columbian.com/news/2014/apr/08/legal-pot-faces-myriad-obstacles/>.

<sup>141</sup> Maria L. La Ganga, *Would-be Pot Producers Run into Obstacles in Washington State*, L.A. TIMES, Oct. 31, 2013, available at <http://articles.latimes.com/2013/oct/31/nation/la-na-washington-pot-20131101>.

*B. High Taxes and Caps on the Amounts to Be Sold*

Beyond licensing obstacles, high taxes and caps on amounts sold also limit the legal marijuana market. One of the selling points on legalizing marijuana is the potential gain to be made on its taxation. Consumers spend an estimated \$30 billion dollars per year on marijuana nationally.<sup>142</sup> In Washington, state budget officials estimate that Washington could potentially gain \$134 million in tax revenue between 2015 and 2017.<sup>143</sup> Washington imposes a “25 percent tax on each of the three parts of marijuana production: producer to processor, processor to retailer, and retailer to customer,”<sup>144</sup> consisting of a 10 percent sales tax and a 15 percent excise tax.<sup>145</sup> In Colorado, marijuana is subject to a 2.9 percent sales tax, a 10 percent state tax on marijuana sales, and a 15 percent excise tax, with a total 29 percent tax rate.<sup>146</sup>

Experts say that finding the “sweet spot” for taxation is key because legalized marijuana needs to be competitive with illegal marijuana so as not to push business back into the black market.<sup>147</sup> These taxes have made it so that the cost per ounce of high-grade marijuana from retailers is more than double the cost from illegal drug dealers.<sup>148</sup> The price for an ounce of high-grade marijuana sold legally in Colorado goes for about \$400,<sup>149</sup> whereas in

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<sup>142</sup> Jonathan P. Caulkins et al., *High Tax States: Options for Gleaning Revenue from Legal Cannabis*, 91 OR. L. REV. 1041, 1047 (2013).

<sup>143</sup> Wilson, *supra* note 140.

<sup>144</sup> Gray, *supra* note 122.

<sup>145</sup> Joe Harpaz, *How Tax Could Blunt the Growth of the Legal Marijuana Market*, FORBES (Feb. 20, 2014), <http://www.forbes.com/sites/joeharpaz/2014/02/20/how-tax-could-blunt-the-growth-of-the-legal-marijuana-market/>.

<sup>146</sup> *Id.*

<sup>147</sup> See Gray, *supra* note 122.

<sup>148</sup> Harpaz, *supra* note 145.

<sup>149</sup> *Data for the Price of Weed in: Colorado, United States*, PRICE OF WEED, <http://www.priceofweed.com/prices/United-States/Colorado.html> (last visited Dec. 9, 2014).

the black market, high-grade marijuana goes for about \$237 in Colorado.<sup>150</sup> Additionally, visitors to Colorado can only buy a quarter of an ounce and private citizens are limited to growing six plants.<sup>151</sup> In Washington, changing the high tax rate would have to come through the legislature and, during the first two years of the initiative, would require a two-thirds majority.<sup>152</sup>

Washington has also placed a cap on the Washington market as to the amount of marijuana to be produced at 80 metric tons: 40 for useable marijuana and 40 for other marijuana products.<sup>153</sup> This cap is in place for several reasons. The main reasoning is to avoid having a surplus of marijuana that can be illegally smuggled into other states—a major concern of the federal government.<sup>154</sup> Another reason for placing a cap is because, when too much marijuana floods the market, retailers tend to keep prices low, incentivizing them to disregard certain quality and safety measures.<sup>155</sup>

On the other hand, there are also arguments against imposing caps on the retail marijuana market. Critics on cap placement argue that “by limiting the legal market, they are enriching the illegal market.”<sup>156</sup> Any marijuana provided to other states will likely come from cartels, keeping them in business and keeping the violence in Mexico alive. Experts also say that marijuana consumption in 2013 was greater than 85 metric tons, though

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<sup>150</sup> *Id.*

<sup>151</sup> *Colorado Lawmakers Set Taxes and Rules for Marijuana Sales*, NPR.ORG (May 9, 2013, 1:09 PM), <http://www.npr.org/blogs/thetwo-way/2013/05/09/182604241/colorado-lawmakers-set-taxes-and-rules-for-marijuana-sales>.

<sup>152</sup> *FAQs on I-502*, *supra* note 123.

<sup>153</sup> Gray, *supra* note 122.

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*



because of the difficulty in measuring consumption, that estimate is likely an understatement of actual consumption.<sup>157</sup>

States implementing marijuana legislation may want to consider lowering taxes and eliminating caps on amounts sold because of the challenge they pose for legal marijuana businesses and the advantage they give to their illegal counterparts. One way to provide lower prices for marijuana would be to lower the taxes on marijuana. A tax lower than 25–30 percent is a possible solution that would significantly reduce the price of marijuana and would incentivize potential marijuana buyers to purchase legal marijuana rather than illegal marijuana. Potential losses in state revenue from reduced taxes could be alleviated with an elimination of caps on amounts sold, or at least an increase on existing caps. The increase in sales as a result of the increase or removal of caps will result in more tax revenue overall.

Opponents argue that the removal or liberalization of caps may allow for illegal interstate smuggling of marijuana. Though this may be true, some might agree that it is better for marijuana to be illegally smuggled into states where it is illegal from legal growers in Washington or Colorado than from black market sources stemming from Mexican cartels, as these types of transactions will not likely lead to the amount of violence seen in Mexico's Drug War. It is also possible that as time passes, and if more states legalize marijuana use, competition from other legalized states may reduce the amount of tax Washington and Colorado put on their marijuana.<sup>158</sup> Only time will tell.

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<sup>157</sup> BEAU KILMER, ET AL., BEFORE THE GRAND OPENING: MEASURING WASHINGTON STATE'S MARIJUANA MARKET IN THE LAST YEAR BEFORE LEGALIZED COMMERCIAL SALES (2013), *available at* [http://www.rand.org/content/dam/rand/pubs/research\\_reports/RR400/RR466/RAND\\_RR466.pdf](http://www.rand.org/content/dam/rand/pubs/research_reports/RR400/RR466/RAND_RR466.pdf).

<sup>158</sup> Pat Oglesby, *Marijuana Taxes: Time Will Tell*, HUFFINGTON POST (Feb. 26, 2014 12:41 PM), [http://www.huffingtonpost.com/pat-oglesby/marijuana-taxes-time-will\\_b\\_4858405.html](http://www.huffingtonpost.com/pat-oglesby/marijuana-taxes-time-will_b_4858405.html).

With an industry this young, it is difficult to tell what will happen with regard to how regulations such as licensing and taxes will pan out. Another interesting area to look out for is how state law regarding marijuana will interact with federal law.

### C. Federal Involvement

In addition to the obstacles marijuana businesses face at the state level are the uncertain risks of federal intervention in the marijuana business as marijuana is still illegal under federal law.<sup>159</sup> Individuals may still be prosecuted if the federal government chooses to do so,<sup>160</sup> as federal law preempts the laws in Washington and Colorado. The US Supreme Court decision in *Gonzales v. Raich* held that the federal government could still criminalize the manufacture, distribution, or possession of medical marijuana even when individual states have legalized its medical use.<sup>161</sup> This holding applies to Washington and Colorado for legal recreational use, creating uncertainty as to how federal enforcement will approach these measures.<sup>162</sup> After the passage of the laws in Washington and Colorado, the DOJ released a statement saying that the laws would have no effect on the federal ban on marijuana and that marijuana would still remain a Schedule I controlled substance.<sup>163</sup>

At the same time, the Obama administration has stated that it will not challenge Washington's and Colorado's laws so long as those states abide

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<sup>159</sup> Kaste, *supra*, note 138.

<sup>160</sup> Gray, *supra*, note 122.

<sup>161</sup> *Gonzales v. Raich*, 125 U.S. 1, 32–33 (2005).

<sup>162</sup> Todd Grabarsky, *Conflicting Federal and State Medical Policies: A Threat to Cooperative Federalism*, 116 W. VA. L. REV. 1, 3 (2013).

<sup>163</sup> See Byron Tau, *DOJ: Federal Marijuana Enforcement Remains "Unchanged,"* POLITICO (Nov. 7, 2012, 2:57 PM), <http://www.politico.com/politico44/2012/11/doj-federal-marijuana-enforcement-remains-unchanged-148901.html>.

by the federal rule involving the sale and distribution of marijuana.<sup>164</sup> When asked by Barbara Walters whether the laws were a major concern of his administration, President Obama responded, “We’ve got bigger fish to fry,” and added, “It would not make sense for us to see a top priority as going after recreational users in states that have determined that it’s legal.”<sup>165</sup> In August 2013 Deputy Attorney General James Cole released a memo encouraging US attorneys to use prosecutorial discretion in enforcing priorities, noting that marijuana-related activity in compliance with Washington and Colorado laws is less likely to threaten the DOJ’s objectives.<sup>166</sup> However, the memo also asserted the power of federal prosecutors to enforce the federal law in Washington and Colorado, including those acting in compliance with the states’ recreational use laws.<sup>167</sup>

The mixed signals from the Obama Administration and the DOJ as to their policy on marijuana regulation make potential marijuana businesses uncertain about the future.<sup>168</sup> This poses yet another obstacle for marijuana businesses in compliance with state law looking for a future in marijuana. Black market businesses run by the cartels are used to operating under illegal conditions and have established networks giving them an advantage over businesses coming into an uncertain atmosphere. Marijuana prosecution is also determined by the administration running the executive

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<sup>164</sup> Brady Dennis, *Obama Administration Will Not Block State Marijuana Laws, if Distribution Is Regulated*, WASHINGTON POST (Aug. 29, 2013), [http://articles.washingtonpost.com/2013-08-29/national/41566270\\_1\\_marijuana-legalization-attorney-general-bob-ferguson-obama-administration](http://articles.washingtonpost.com/2013-08-29/national/41566270_1_marijuana-legalization-attorney-general-bob-ferguson-obama-administration).

<sup>165</sup> Rachel Weiner, *Obama: I’ve Got ‘Bigger Fish to Fry’ than Pot Smokers*, WASH. POST (December 14, 2012), <http://www.washingtonpost.com/blogs/post-politics/wp/2012/12/14/obama-ive-got-bigger-fish-to-fry-than-pot-smokers/>.

<sup>166</sup> Memorandum from James Cole, Deputy Attorney General to United States Attorneys (June 29, 2011), *available at* <http://www.justice.gov/oip/docs/dag-guidance-2011-for-medical-marijuana-use.pdf>.

<sup>167</sup> *Id.*

<sup>168</sup> Kaste, *supra* note 138.

branch. The Obama administration and Attorney General Holder have clearly been lenient with regard to enforcing marijuana policies. This does not mean that the next administration will take the same approach. In order to curb that potential, some concrete policies ought to be implemented to prevent future prosecution by the federal government over states where marijuana is legal.

A good place to start in terms of untangling the conflict between state and federal law is to remove marijuana from Schedule I of the CSA. As a Schedule I drug, marijuana remains a drug that is a high priority for the Drug Enforcement Agency (DEA), which rejected a proposal in 2002 to remove marijuana as a Schedule I drug.<sup>169</sup> Despite evidence to the contrary, the DEA asserts that marijuana maintains the characteristics necessary to be classified as a Schedule I drug.<sup>170</sup> While some argue that it should be removed off the CSA altogether, a more feasible solution in today's split political environment would be to lower it to a Schedule II or III drug so as to lower its potential for being sought after by the DEA.<sup>171</sup> In April 2014 Attorney General Holder stated that he would be willing to work with Congress to "reschedule" marijuana and take it off the list of what the government considers the most dangerous drugs.<sup>172</sup> By declassifying marijuana as one of the most dangerous drugs, the federal government will open up the way for legal marijuana businesses to operate without as much fear of being intercepted by the DEA, which can also focus its resources on targeting the more dangerous drug cartels.

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<sup>169</sup> Michael D. Moberly & Charitie L. Hartsig, *The Arizona Medical Marijuana Act: A Pot Hole for Employers?*, 5 PHX L. REV. 415, 425 n.65 (2012).

<sup>170</sup> Annaliese Smith, *Marijuana as a Schedule I Substance: Political Ploy or Accepted Science*, 40 SANTA CLARA L. REV. 1137, 1167 (2000).

<sup>171</sup> *Id.* at 1139.

<sup>172</sup> Ryan J. Reilly, *Eric Holder 'Cautiously Optimistic' About Marijuana Legalization in Washington and Colorado*, HUFFINGTON POST (Apr. 14, 2014 7:30 AM), [http://www.huffingtonpost.com/2014/04/15/eric-holder-marijuana-legalization\\_n\\_5148663.html](http://www.huffingtonpost.com/2014/04/15/eric-holder-marijuana-legalization_n_5148663.html).

A possible solution to resolve the conflict between federal rules outlawing marijuana use and states that have legalized its use would be to create an exemption from federal enforcement in states that have legalized it.<sup>173</sup> As discussed above, the CSA places marijuana as a top priority for federal drug enforcement, and an exemption such as this is another possible solution for this uncertain dilemma.<sup>174</sup> This collaborative effort would ease tensions that may prevent individuals from starting a business out of fear that the federal government may intervene in their operation. This too would pave a way for legal marijuana businesses to more freely conduct business, and, as a result, further trump cartel influence in the United States.

While the rescheduling of marijuana or the implementation of an exception would have to come through Congress, it is also possible for the president to implement an executive order to reschedule or create an exception. Although executive orders face the risk of being overturned by Congress, the US Supreme Court, or the next executive administration, they tend to remain after they have been issued.<sup>175</sup> Should President Obama issue an executive order on this issue, it would serve as a movement forward in protecting legal marijuana businesses, giving them more mobility to eventually replace black market marijuana businesses.

#### *D. The Other Side: Counterarguments*

It is hard to determine exactly how US marijuana legalization would hurt the cartels, in part because we do not have perfect numbers on how drug traffickers profit from marijuana use in each of the 50 states.<sup>176</sup> It is widely

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<sup>173</sup> Tau, *supra*, note 163.

<sup>174</sup> *Id.*

<sup>175</sup> Mark Koba, *Executive Orders Coming? Here's How They Work.*, CNBC (Jan. 28, 2014 1:42 PM), <http://www.cnbc.com/id/101369574>.

<sup>176</sup> Olga Khazan, *How Marijuana Legalization Will Affect Mexico's Cartels*, in *Charts*, WASH. POST (Nov. 9, 2012), <http://www.washingtonpost.com/blogs/worldviews/wp/2012/11/09/how-marijuana-legalization-will-affect-mexicos-cartels-in-charts/>.

accepted that marijuana accounts for at least 50 percent of cartel profits, at least for some cartels such as the Sinaloa Cartel.<sup>177</sup> Assuming it were legalized in the United States, that still leaves cartels with the 40 percent profit they make from selling other drugs such as methamphetamine, cocaine, brown powder, and heroine.<sup>178</sup> That is why states that do legalize marijuana need to carefully craft their legislation so as to maximize the effects it has on cartels.

Supporters of strict licensing regulation argue that licensing is necessary for purposes such as preventing criminals from being involved in the marijuana business. While thorough background checks should be implemented for this purpose, this purpose should not be used to justify a limit on the number of licenses issued. Increases in the number of applications granted will eventually allow for a replacement of black market businesses. While background checks will certainly weed out certain individuals, chances are that in the abundance of applicants, there are plenty of applicants that will pass the background checks and can lawfully operate a marijuana operation.

Some argue that extracting as much revenue as possible from taxes is necessary to help fund public education, public works, or other public institutions. While an increase in tax revenue is certainly helpful for state economies, policy makers must consider that legal businesses still need to compete with illegal businesses. In some cases, legal marijuana costs almost twice as much as illegal marijuana. By increasing or eliminating caps on the total amounts of marijuana that can be sold, states can lower the tax rate and still receive a similar amount of tax revenue.

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<sup>177</sup> Robin Young, *Marijuana Legalization Raises Fear of Drug Cartel*, HERE AND NOW (Feb. 21, 2014), <http://hereandnow.wbur.org/2014/02/21/marijuana-drug-cartels>.

<sup>178</sup> Sylvia Longmire, *Legalization Won't Kill Cartels*, N.Y. TIMES (Jun. 18, 2011), [http://www.nytimes.com/2011/06/19/opinion/19longmire.html?\\_r=0](http://www.nytimes.com/2011/06/19/opinion/19longmire.html?_r=0).

Another argument against loosening marijuana regulation is to prevent higher numbers of drug use. Although most should be able to agree that decreased drug or marijuana use is always better than not, demand for it will likely exist whether or not it is legal. This is exemplified by the fact that it has increased in enormous popularity over the past 50 years while it was illegal for most of that time and in most places. Also, the proposals presented in this article are not meant to increase the overall usage of marijuana, but rather to regulate its legal manufacture and distribution in such a way that strategically ousts black market marijuana businesses.

It is clear that a movement to legalize and normalize marijuana use is gaining traction in the United States, and by keeping marijuana as a Schedule I drug, the federal government is only holding back the growth of this movement. While many people take different stances as to why they do or do not support the legalization of marijuana, the placement of marijuana as a Schedule I drug seems counterintuitive and diverts federal attention away from what many people agree are more dangerous drugs and drug businesses. Policy makers must keep in mind that legal marijuana businesses face the challenge of competing with the black market supplied mostly by the Mexican cartels. The existence of the cartels has caused a bloody war in Mexico that has cost tens of thousands of lives. Surely this fact must strongly influence the minds of policy makers when thinking of the best way to regulate marijuana.

## V. CONCLUSION

Mexico is currently facing a grave challenge that threatens the livelihoods of its citizens. In some locations, individuals cannot even walk outside without fear of the violence that is currently strangling Mexico. The drug cartels have risen as enormous forces that compete directly with each other and with federal military forces. This has resulted in a bloody war that has plagued Mexico for almost a decade.

Fortunately, there is hope. The main supply of money for cartels is the sales they make in the illegal marijuana market in the United States. States, just like Washington, Colorado, and most recently, Oregon, Alaska, and the District of Columbia are now beginning to legalize marijuana for recreational use. Other states are hoping to follow in those footsteps by doing the same in upcoming elections. However, legalizing its use and placing tight regulations that prevent legal marijuana businesses from being competitive with illegal businesses may keep the cartels in business and continue to drag out the drug war. Because of this, any state that has legalized or is planning to legalize recreational marijuana in the future must consider policies that allow legal marijuana businesses to drive their illegal counterparts out of business. This article advocates that such policies ought to consider loosening their licensing requirements, reducing taxes on recreational marijuana, increasing the amount of marijuana that can be sold, and teasing out any potential state and federal tangles. Steps such as these will hopefully lead to an end to the violence that has plagued Mexico for almost a decade.