

Congress of the United States
Washington, DC 20515

May 29, 2019

The Honorable William Barr
U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Ave N.W.
Washington, DC 20201

The Honorable Kevin K. McAleenan
Acting Secretary of Homeland Security
Department of Homeland Security
245 Murray Lane SW
Washington, DC 20528-0075

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Dear Attorney General Barr and Acting Secretary McAleenan:

We write to express our support for the many legal permanent residents who seek to exercise their legal right to become naturalized U.S. citizens. We respectfully disagree with the recent guidance issued by the U.S. Department of Homeland Security (“DHS”) formalizing a bar to naturalization for legal permanent residents who have been employed in the legal cannabis industry, in accordance with state law, and wish to see rescission of this policy and – at the very minimum – clarification on the process as it stands.

As you know, over 30 states and the District of Columbia have legalized cannabis for medical or recreational purposes. Hence, implementing a policy that targets naturalization applicants based solely on their lawful employment in this industry creates conflicts of law with over two-thirds of American states and territories. Moreover, it is our understanding that during his confirmation hearings before the U.S. Senate Judiciary Committee, Attorney General Barr made clear that the U.S. Department of Justice (“DOJ”), under his potential leadership, would “not go after companies that have relied on the Cole Memorandum” nor would he “upset settled expectations and reliant interests” related to the same. Given this statement and pertinent state laws, we ask that both DOJ and DHS act to rectify this policy as it relates to naturalization and disruption to a reliant state interest as referenced by Attorney General Barr.

The DHS guidance referenced above creates significant ambiguity for both individuals and their attorneys. First, the guidance states that “depending on the specific facts of the case, possession or employment in the marijuana industry, whether established by a conviction or an admission by the applicant, may preclude a finding of good moral character for the applicant....” The guidance states further that “an admission must meet the long-held requirements for a valid ‘admission’ of an offense.” These long-held requirements were enumerated in *Matter of K*, (explicitly referenced by your guidance) in which the following three requirements must be met for a valid “admission” of an offense:

- (1) The officer must provide the applicant the text of the specific law from the jurisdiction where the offense was committed;

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- (2) The officer must provide an explanation of the offense and its essential elements in “ordinary” language; and
- (3) The applicant must voluntarily admit to having committed the elements of the offense under oath.

As we understand it, individuals, such as the ones whose stories of naturalization rejection have recently been publicized along with so many others, arguably were not provided the elements of potential crimes for which they may be indicted, including, for example, possession. In addition to denying their application for citizenship, U.S. Citizenship and Immigration Services (“USCIS”) compelled many of these individuals to sign affidavits confirming their employment in the cannabis industry, subjecting them to potential federal prosecution and possible deportation. Given these facts, these individuals ostensibly are not given the opportunity to defend themselves as to why their conduct did not qualify as a crime or meet the elements of the alleged crime at issue.

Further, under the DHS guidance, “even if an applicant does not have a conviction or make a valid admission to a marijuana-related offense, he or she may be unable to meet the burden of proof to show that he or she has not committed such an offense.” Yet, it is well established that the U.S. naturalization process is a non-discretionary process: if a determination of good moral character is not denied and the person meets other requirements, there is no other discretionary tool an agency may use to deny one’s application, unlike in other immigration applications for relief. While an officer may decide that the person has not affirmatively established that they are of good moral character, they must first apply a balancing test that considers both negative and positive factors.

Given the foregoing, it bears mentioning that the DHS guidance – which requires long held admission standards be upheld – arguably is not being implemented correctly by USCIS. Moreover, the guidance itself is fatally flawed, as it provides no cogent basis for the agency’s apparent conclusion that lawful employment in a state-licensed industry could be treated as a negative factor in establishing good moral character and places a negative burden upon the individuals against a non-existent discretionary element.

Therefore, we urgently request that DHS and DOJ act on the following:

- (1) retract the current policy and replace it with a policy consistent with the Cole Memorandum in which the “good moral character” standard respects settled state expectations on cannabis;
- (2) If not, at the minimum describe how the standards for taking an “admission” will be implemented, and what will be done in cases where they were not implemented; and

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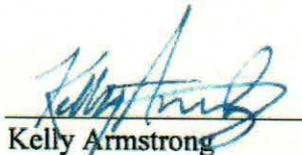
- (3) Provide additional guidance and the departments' legal basis for construing employment in the lawful cannabis industry as a negative factor for establishing good moral character in the naturalization process, especially given that employees have no reason to know that they are in technical violation of an unenforced Federal law.

We trust that you will expeditiously address the requests above, as any failure to do so will only further exacerbate these conflicts between federal and state law and continue to disrupt settled expectations in over 30 states and territories as it relates to immigration policy. We look forward to hearing from you on additional guidance to better protect individuals such as the ones discussed in this letter.

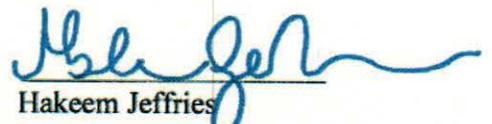
Sincerely,



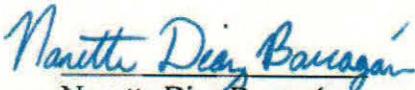
Joe Neguse
Member of Congress



Kelly Armstrong
Member of Congress



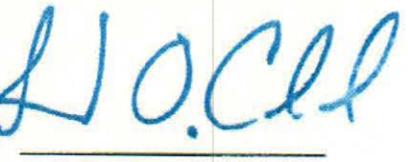
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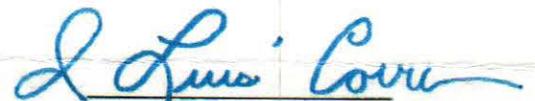
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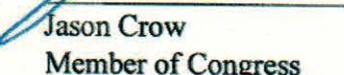
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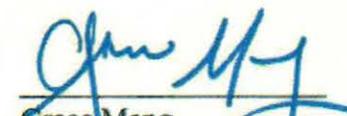
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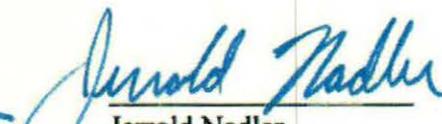
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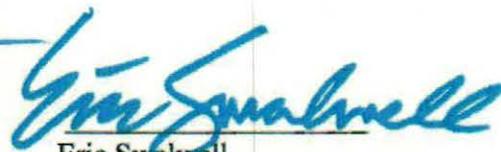

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Chellie Pingree
Member of Congress

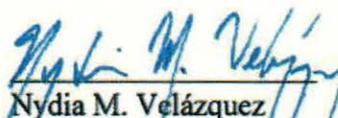

Mark Pocan
Member of Congress


Jan Schakowsky
Member of Congress

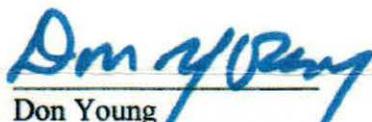

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Don Young
Member of Congress



U.S. Citizenship
and Immigration
Services

July 17, 2019

The Honorable Joe Neguse
U.S. House of Representatives
Washington, DC 20515

Dear Representative Neguse:

Thank you for your May 29, 2019, letter. Acting Secretary McAleenan asked that I respond on his behalf. We have taken your concerns under advisement and we hope that you find the below information responsive.

Naturalization is the most significant benefit that U.S. Citizenship and Immigration Services (USCIS) bestows. Congress established the requirements for naturalization in the Immigration and Nationality Act (INA). The INA sets forth that, to be eligible for naturalization, the individual must be, among other things, a person of "good moral character" during the statutorily-prescribed period. Furthermore, the INA provides that *any* violation of federal controlled substance law, evidenced by conviction or admission, with the single exception of simple possession of 30 grams or less of marijuana, precludes a finding of good moral character. *See* INA sections 101(f)(3), 212(a)(2)(A)(i)(II) (8 U.S.C. §§ 1101(f)(3), 1182(a)(2)(A)(i)(II)); 8 C.F.R. § 316.10(b)(2)(iii)-(iv).

The USCIS Policy Manual makes clear to officers that an admission of a criminal offense must meet the long-standing requirements to constitute a valid admission for immigration purposes, while also noting that, even if an applicant does not have a conviction or makes a valid admission to a marijuana-related (or other controlled substance) offense, he or she may still be unable to meet the burden of proof to show that he or she has not committed such an offense.

As you know, under the federal Controlled Substances Act, the possession, manufacture, distribution or dispensing of marijuana is prohibited. The statute does not provide an exception to the requirements for good moral character where the controlled substance is decriminalized under state law. Under federal law, marijuana, among other drugs, remains a Schedule I controlled substance, regardless of its treatment under parallel state laws. It is the applicant's burden to prove that he or she has met the requirements for naturalization, which include establishing that he or she is a person of good moral character as defined in the INA.

The Honorable Joe Neguse
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Thank you again for your letter. The co-signers of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative and Intergovernmental Affairs at (202) 272-1940.

Respectfully,

A handwritten signature in black ink, consisting of a stylized 'K' followed by a 'C' and the Roman numeral 'II'.

Ken Cuccinelli II
Acting Director