

The Trump Administration's Drug Policies: Subnational Trends and Challenges¹

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Abstract

The United States faces many challenges regarding its current drug policies. This work analyzes several critical junctures to determine shifts in drug policy from the eight years of the Obama administration to the first 10 months of the Trump government. The speech acts of the Trump administration indicate that the federal government is not in favor of the legalization of marijuana. The article begins by examining the U.S. drug war. It then assesses the issue of states' rights and drug policy. The third section evaluates the Trump administration's drug policies, focusing on the national and subnational challenges.

Keywords: *Drug policy, Trump, Obama, Federalism, States' rights.*

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Resumen

Estados Unidos enfrenta múltiples desafíos con respecto a sus políticas de drogas. Este artículo analiza diversas coyunturas críticas para determinar los cambios en la política de drogas de la administración Obama y los primeros 10 meses del gobierno de Trump. El análisis del discurso de la administración Trump indica que el gobierno federal no está a favor de la legalización de la marihuana. El artículo inicia con un análisis de la guerra contra las drogas de Estados Unidos. Posteriormente, evalúa el problema de los derechos de los estados subnacionales y la política de drogas. La tercera sección evalúa estas políticas en la administración de Trump, enfocándose en los retos nacionales y subnacionales.

Palabras clave: *Política de drogas, Trump, Obama, Federalismo, Derechos de los Estados.*

Introduction

The U.S. has seen more states legalize both recreational and medical marijuana. However, consumption of this drug remains illegal at the federal level. What challenges does the legalization of drugs at the state level present for law enforcement and policymakers? Jeff Sessions, the current Attorney General, for example, has indicated that the federal government will prosecute marijuana usage (Johnson, 2017). The goal of this work is to understand recent trends in U.S. drug policies, focusing on the difference between the national and subnational levels. This article examines various critical junctures to determine the significant shifts in drug policies from the eight years of the Barack Obama administration to the first 10 months of the Donald J. Trump government. The discourse of the Trump administration indicates that the federal government is not in favor of the legalization of marijuana and will prosecute users and sellers at the state level. The speech acts of the Trump administration are quite different than the discourse of the Obama government, which declared an end to the war on drugs and vowed not to prosecute states that legalized marijuana (Sullivan, 2009).

While President Trump has only been in office for 10 months, there are some clear changes between the Obama and Trump governments regarding drug policy. This work is an effort to highlight some of the beginning shifts and indicate some potential issues that the current government is confronting. In summary, the goal of this article is to focus on the legal and political challenges as a result of differences between state and federal drug laws and policies. The article begins with an analysis of the U.S.-led war on drugs. It then evaluates the issue of drug policy and states' rights. The third section examines the Trump administration's drug policies, focusing on the subnational and national challenges.

The United States' War on Drugs

Scholars have studied how security priorities can change over time (Cutrona, 2017). Defining what is a security issue depends on one's perceptions on what constitutes a threat (Kassab, 2017). Politicians can elevate an issue on the security agenda through authoritative speech acts (Buzan, Wæver, and De Wilde, 1998). The Copenhagen School notes that it is important to follow the resources to determine whether a perceived threat has been successfully securitized (Buzan, Wæver, and De Wilde, 1998; Stritzel, 2007). In other words, discourse alone does not determine whether policymakers have been able to prioritize an issue on the national security agenda. While certain matters can be elevated on the security agenda, this article shows that certain topics also can become less of a security threat over time (i.e. de-securitized) (Bagley, Rosen, and Kassab, 2015; Kassab 2017). De-securitizing an issue requires "reverse engineering" of the securitization process. Not only must the discourse about the issue change, but the funding for the resources must be modified. Drugs, for instance, have fluctuated in terms of importance on the U.S. national security agenda (Kassab, and Rosen, 2016). In addition, public opinion has evolved about the issue of legalization (Galston, and Dionne Jr., 2013).

President Richard Nixon declared the war on drugs in 1971 (Bertram, 1996; Carpenter 2014; Inciardi, 1992). While Nixon securitized the war on drugs on the U.S. national security agenda, he recognized the need to combat demand as he contended that there will always be a drug problem if the demand for such substances exists (Bagley, and Rosen, 2015). What is known as the "modern phase" of the drug war occurred during the Ronald Reagan administration (1981-1989) (Hawdon, 2001; Smith, 1991). The Reagan administration sought to combat the crack cocaine boom plaguing inner cities in the United States (Reeves, and Campbell, 1994). Crack, which is a cheaper derivative of powder cocaine, devastated low income communities,

particularly underrepresented minorities (Reinarman, and Levine, 1997; Bourgois, 2003; Hawdon, 2001; Inciardi, 1986).

While Nixon declared the war on drugs in 1971, the United States has been fighting the drug war since the enactment of the Harrison Narcotics Tax Act of 1914. This law regulated the distribution, importation, and production of coca and opiates (Bagley, 1988; MacCoun, and Reuter, 2001; Musto, 1999). Critics of the war on drugs contend that drugs remain cheaper and purer than when the drug war started (Nadelmann, 1988; Nadelmann, 1990). This, however, is even though the United States spends \$51 billion per year on the war on drugs (DPA, No Date). Moreover, the U.S. government has expended billions of dollars combating drug production and trafficking in Latin American countries through counter-narcotics initiatives such as Plan Colombia and the Mérida Initiative (Dion, and Russler, 2008; Crandall, 2002; Chabat, 2010; Friman, 1996; Watt, and Zepeda, 2012).

The Obama administration sought to change the security agenda of the U.S. by de-securitizing the drug war (Bagley, Rosen, and Kassab 2015). President Obama ended the war on drugs in 2009. Gil Kerlikowske, the drug czar during the Obama administration, contended: "We should stop using the metaphor about the war on drugs." He asserted that people in the United States view a war on drugs as a war on citizens: "People look at it as a war on them, and frankly we're not at war with the people of this country" (quoted in Sullivan, 2009). While the Obama government ended the war on drugs, at least in terms of rhetoric, the administration did not promote drug legalization. Kerlikowske stated, "The discussion about legalization is not a part of the president's vocabulary under any circumstances and it's not a part of mine" (quoted in Sullivan, 2009).

The Obama government also reversed some of the previous policies, particularly the mandatory minimum sentences for crack cocaine because the disparity for sentencing between crack and powder cocaine was 100 to 1.

Today, the disparity is 18 to 1 (Newman, 2017; Anderson, Kling, and Stith, 1999; Coyle, 2002). The Obama government also stressed prevention instead of incarceration and emphasized the need to increase access to treatment for individuals suffering from drug addiction. The White House's "A drug policy for the 21st century" highlights this approach:

Today, about 22 million Americans need treatment for a substance use disorder, and yet only 2 million—about 1-in-10—actually receive the treatment they need. This is unacceptable. Research shows that addiction is a disease from which people can recover. In fact, success rates for treating addictive disorders are roughly on par with recovery rates for other chronic diseases such as diabetes, asthma, and hypertension (White House, No Date).

In summary, the Obama administration stressed the need to invest resources in combating addiction through treatment and rehabilitation as opposed to only focusing on supply-side strategies designed to interdict drugs.

States' Rights, Drug Policies, and the Ensuing Consequences

The 50 states in the United States are quite different not only in terms of size but also in terms of political ideology. California, for instance, is much more liberal than states like Texas and Arkansas. Even within states, there are differences between counties and cities that are more liberal and others that are more conservative. States disagree with the federal government over many different policies and laws (e.g. healthcare, immigration, and climate change—among other issues) (Friedman, 2012; Joppke, 1998). These political differences have resulted in the legalization of marijuana for recreational usage in certain states. As of November 2017, eight states in the U.S. have legalized marijuana: Alaska, California, Colorado, Maine,

Massachusetts, Nevada, Oregon, and Washington. Such reforms occurred at the ballot box as voters approved initiatives to legalize the substance. Moreover, 29 states and Washington, D.C. have legalized medical marijuana (Gaffey, 2017; Cerdá, Wall, Keyes, Galea, and Hasin, 2012).

TABLE 1: STATES THAT HAVE LEGALIZED MARIJUANA FOR RECREATIONAL USAGE

Washington	Legalized in 2012
Oregon	Legalized in 2012
Colorado	Legalized in 2012
Alaska	Legalized in 2015
Massachusetts	Legalized in 2016
Maine	Legalized in 2016
Nevada	Legalized in 2016
California	Legalized in 2016

Source: Created by authors with data from Steinmetz, K. 2016. "These States Just Legalized Marijuana." Time; Smith, A. 2012. "Marijuana legalization passes in Colorado, Washington." CNN.

The legalization of marijuana for recreational and medicinal use creates a quandary for the United States as marijuana remains illegal at the federal level (Schwartz, 2013; O'Hear, 2004; Kamin, 2013). Specifically, the Marijuana Tax Act of 1937 made it illegal to transfer or possess marijuana (Musto, 1972; Galliher, and Walker, 1977). Furthermore, the Controlled Substance Act (CSA) regulates controlled substances and places them into different categories (Drug Enforcement Administration, 2010). Violators of federal drug laws can be prosecuted by various agencies, such as the Federal Bureau of Investigation (FBI), the Drug Enforcement Administration (DEA), or the U.S. Treasury Department.

A federal system means that states have different laws regarding drug possession. In Florida, for instance, it is a

first-degree misdemeanor for an individual to possess up to 20 grams of marijuana. This, however, does not include medical marijuana. A person caught possessing more than 20 grams of marijuana can be charged with a third-degree felony possession (Florida Drug Possession Laws, No Date). On the other hand, possession of marijuana in Texas can be a "Class B" misdemeanor and violators can serve 180 days in jail, pay a fine of no more than \$10,000, or both pay a fine and serve a jail term. The penalties vary depending on the case, and individuals could be sentenced to life in prison (Texas Drug Possession Laws, No Date). In sum, there are dramatic differences between states regarding the punishment for drug possession. More conservative states, such as Texas, have much harsher laws than more liberal states.

In 2014, voters in California passed proposition 14, which made significant changes to the punishment of offenses for drug possession. Many drug crimes are punished as misdemeanors, which means that one can be sentenced up to 365 days in California county jails. Having more than 28.5 grams of marijuana can result in a \$500 fine, a person being incarcerated for six months, or both a fine and incarceration. It is legal for someone to have 28.5 grams of marijuana or less if this individual is 21 years of age or older. Individuals 18 and younger caught possessing such quantities of drugs must perform community service and complete a course on drug education (California Drug Possession Laws, No Date).

The tensions between the state and federal governments will need to be resolved in the court system. The United States legal system is quite complicated due to the nature of federalism. The federal court system has one Supreme Court, 13 circuit courts, and 94 district courts. Moreover, the state courts have trial and appeal courts as well as a state Supreme Court (Posner, 1999; Farnsworth, 2010; Warren, 2011). Litigation over marijuana could result in a decade of lawsuits that will be very costly. It is quite possible that more states will legalize either marijuana for recreational purposes or medical marijuana. This

suggests that by 2025 the United States could have 25 states that have legalized marijuana and another 25 that have made it illegal. The result could be a growing black market. It is also possible that states that have legalized marijuana could start exporting the product to other states that have not legalized the substance. In addition, the U.S. could begin to export marijuana to countries like Mexico, which could fuel organized crime and criminal activities.

Intricately linked with drug policy is the prison system. The U.S. faces major challenges with its prison population (Alexander, 2012; Caulkins, and Chandler, 2006; Moore, and Elkavich, 2008). This country has seen a drastic increase in its prison population since President Nixon declared the war on drugs in 1971 (Pettit, and Western, 2004). As of 2014, the U.S. has more than 2.2 million people in prison and incarcerates more people than any other country in the world. This country also has a higher incarceration rate per 100,000 inhabitants than any other nation (Alexander 2012). Today, 50 percent of the people in federal prisons are incarcerated for drug charges. In 2015, law enforcement arrested 1,488,707 people for violating drug laws. In the same year, 643,121 individuals were arrested for breaking marijuana laws. The majority—89 percent—were arrested for possession (DPA, No Date).

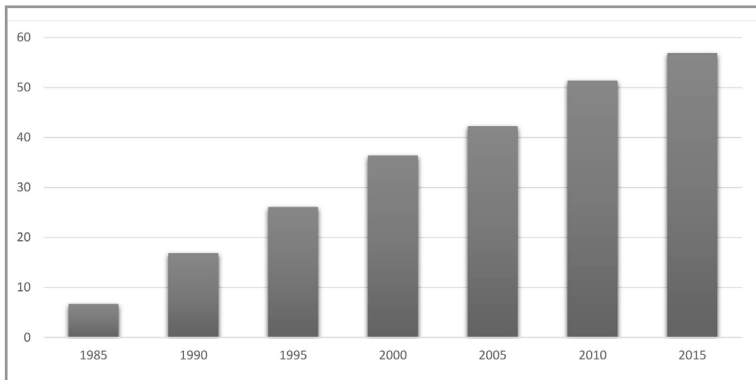
The cost of incarceration is very expensive (Pattillo, Western, and Weiman, 2004; Clear, and Frost, 2015). For example, it costs more than \$70,000 per year to incarcerate someone in the State of California. According to the Legislative Analyst's Office (2016), security per inmate costs \$32,019, while health care per inmate is \$21,582. In addition, there are other expenses: facility operations and records (\$7,025); administration (\$4,171); inmate food and activities (\$3,484); and rehabilitation programs (\$2,437). The costs of housing an inmate in California is expected to increase to \$75,560 per year in 2017 (Los Angeles Times, 2017).

State expenditures on corrections have spiked over time (Stephan, 1999; Kyckelhahn, 2012). In 1985, for in-

stance, state governments spent \$6.7 billion on corrections. By 2000, the amount spent on corrections proliferated to \$36.4 billion. Yet in 2015, state corrections cost \$56.9 billion (see figure 1). Not only are the incarceration costs expensive, but the recidivism rates are high (Travis, 2005; Petersilia, 2003; Spohn, and Holleran, 2002). Figure 2 shows the variance that exists among states in terms of the cost per prisoner. In Virginia, for instance, it cost \$21,299 per inmate in 2015. In the same year, Vermont spent \$57,615 per inmate while Massachusetts expended \$55,170 per prisoner. Some states want to experiment with alternatives to jail and prison because of the high costs of incarceration. Non-violent offenders arrested for drug charges could be sent to educational programs, including vocational training (Nadelmann, 1989; Young & Belenko, 2002; Lang, 2000).

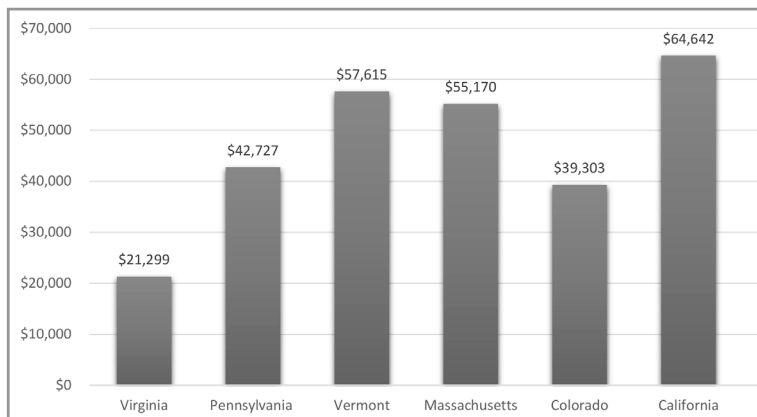
The revolving door that former felons face because of the obstacles of finding employment, housing, and educational opportunities after serving time in prison cre-

FIGURE 1: STATE EXPENDITURES ON CORRECTIONS
(BILLIONS OF DOLLARS)



Source: Created by authors with data from The Sentencing Project, "Fact sheet: Trends in U.S. Corrections;" National Association of State Budget Officers (1985-2015). State Expenditure Report Series. Washington, DC: National Association of State Budget Officers.

FIGURE 2: COST PER INMATE (2015)



Source: Created by authors with data from the Vera Institute of Justice.

ate various challenges (Alexander, 2012; Roberts, 2003; Clear, 2009). Policymakers, both Republicans and Democrats, have discussed the need for alternatives to prison for people facing drug charges. States have also created drug courts. The goal of such courts is to focus on rehabilitating individuals who have violated drug laws as opposed to trying the case (Belenko, 1998).

The Trump Administration's Drug Policies: National and Subnational Challenges

Trump ran for president on a "law and order" platform. While the U.S. has a federal system of government and federal laws trump state laws, it is important to note that the states have a great deal of power in this country. The founding fathers feared the concentration of power at the federal level as they wanted to avoid a dictator. Thus, the system is designed so that states have significant power and autonomy. This is different than other countries (e.g.

Mexico) where power is concentrated at the federal level (Elazar, 1972; McGinnis, and Somin, 2004). The current administration has discussed how the Republican Party is a states' rights party. Sean Spicer, the former White House Press Secretary, stated: "We are a states' rights party. The president in a lot of issues believes that these issues are states' rights issues." However, the White House later contradicted such statements contending that the government will prosecute states who legalize marijuana (Tanner, 2017).

The Trump administration has indicated that it will take a hardline position against marijuana. Attorney General Sessions is asking for harsher sentences for low level drug offenders. It, however, is important to note that the previous Attorney General, Eric Holder, released a memo in 2013 advising that prosecutors should not seek mandatory minimum sentencing for non-violent drug offenders in order to reduce the prison population. In the directive issued by Sessions, he argues: "This policy affirms our responsibility to enforce the law, is moral and just, and produces consistency." Sessions advocates for the need to use the mechanisms provided by Congress to address these crimes. He maintains that...

[t]his policy fully utilizes the tools Congress has given us. By definition, the most serious offenses are those that carry the most substantial... sentence, including mandatory minimum sentences (quoted in Johnson, 2017).

Furthermore, Trump faces a major challenge with the opioid epidemic in the U.S. In May 2017, President Trump stated,

So solving the drug crisis will require cooperation across government and across society, including early intervention to keep America's youth off this destructive path. We must work together, trust each other, and forge a true partnership based on the common ground of cherishing human life (White House, 2017).

The Trump administration contended that it would decrease the budget of the Office of National Drug Control Policy (ONDCP) by 95 percent. Both Republicans and Democrats responded to such actions. The Democratic National Committee released a statement, contending:

This is a cruel betrayal by Trump. Throughout the campaign, Trump promised communities ravaged by opioid addiction that he would come to their aid. That was a lie. Not only does Trump's health bill jeopardize services for people in need of opioid treatment and once again allow companies to deny care by labeling addiction as a pre-existing condition, today he announced that he wants to cut nearly 95% of the funds for the main office in charge of fighting the opioid epidemic (quoted in Rubin, 2017).

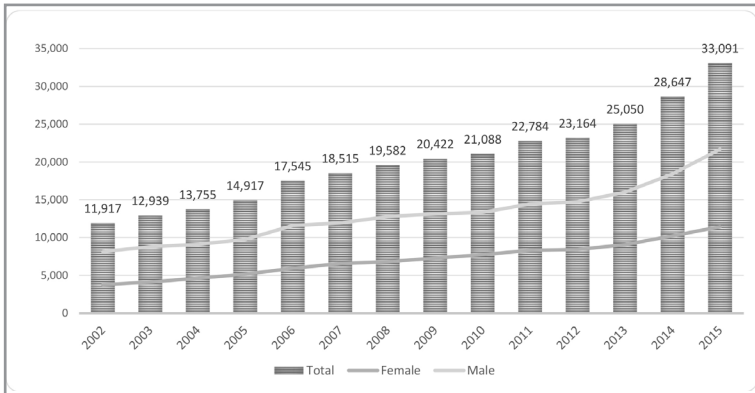
Rob Portman, a Republican Senator from Ohio, also expressed his concerns over such practices, stating:

I've known and worked with our drug czars for more than 20 years and this agency is critical to our efforts to combat drug abuse in general, and this opioid epidemic, in particular. This office supports the Drug Free Communities Act, legislation I authored in 1997 which has provided more than \$1 billion to community drug coalitions around the country over the last 20 years as well as the High Intensity Drug Trafficking Areas program, which has helped states like Ohio that are ground zero for this problem. We have a heroin and prescription drug crisis in this country and we should be supporting efforts to reverse this tide, not proposing drastic cuts to those who serve on the front lines of this epidemic (quoted in Rubin, 2017).

The number of opioid emergency room visits or hospital admissions per day in the United States has proliferated from 1,800 in 2005 to 3,500 in 2014 (Achenbach and Keating, 2017). There has been a rise in the number of drug poisoning deaths involving heroin by 248 percent from 2010 to 2014 (DEA, 2016). By 2015, 12,989 people

died from heroin (Achenbach, and Keating, 2017). Some states have experienced spikes in heroin-related deaths in recent years. Mississippi, for example, had a 65.2 percent increase in heroin-related deaths when compared to the previous year. Florida also witnessed a 64.8 percent increase in heroin-related deaths when comparing 2015 to the previous year (Horowitz, 2016). Figure 3 shows the rise in deaths from opioid overdoses. Figure 3 also indicates that there has been a steady increase in the number of deaths for both males and females. The total number of opioid overdoses in 2002 was 11,917. By 2015, the number of total deaths from opioid overdoses increased to 33,091 (see figure 3).

FIGURE 3: DEATHS FROM OPIOID OVERDOSES



Source: Created by authors with data from National Center for Health Statistics.

Attorney General Jeff Sessions has promoted a hard-line drug policy and insisted that federal prosecutors seek the maximum penalties even though public opinion in the U.S. has evolved about mandatory prison sentences for non-violent drug crimes (Johnson, 2017). In 2001, for example, 47 percent of the population responded that it was a “good thing” that some states have shifted away from

mandatory prison sentences for drug crimes that are non-violent in nature. In 2014, the percentage of people that considered this a “good thing” spiked to 63 percent, while 32 percent contended that it was a bad thing (Pew Research Center, 2014).

Moreover, President Trump initially proposed a budget that would cut resources for key drug policy program areas. The new budget, which is part of his policy to repeal and replace Obamacare, would eliminate treatment programs for addiction in both general populations and within prisons. In February 2014, 67 percent of the country believed that the government should concentrate on providing treatment to drug users. On the other hand, 26 percent contended that the government should focus on prosecuting drug users (Pew Research Center, 2014; Room, 2014). In addition, unemployment in underrepresented minority communities remains higher than the national average (Kochhar, 2008). The Trump administration has proposed decreasing the budget in areas that will impact inner city populations who receive assistance through these programs. Rather than addressing these kind of drug problems over the next few years, it is likely that the U.S. will experience increases in every category if a sound policy is not implemented.

As of November 2017, the current administration has not addressed how society can reincorporate former felons into civilian life. Many scholars have studied the challenges that ex-felons face upon attempting to reinsert themselves into society (Mauer, 2001; Yates, and Fording, 2005; Roberts, 2003). First, ex-felons are denied access to public housing. Convicted felons often have a difficult time finding housing as individuals are screened during background checks prior to renting an apartment or house (Carey, 2004; Alexander, 2011; Schneider, 2010). Second, former felons are denied access to student loans, which makes it difficult for someone to learn new skills through education programs. Third, felons face challenges finding employment because of their criminal records (Saxonhouse, 2003). Scholars have examined the high levels of

discrimination that occurs as people are required to disclose their criminal records when applying to jobs (Henry, and Jacobs, 2007; Blumstein, and Nakamura, 2009). Fourth, felons are denied the right to vote in certain states (Alexander, 2012; Mauer, and Chesney-Lind, 2002; Segall, 2011).

Since the Trump administration's approach to drug policy is hardline in nature it is also likely that the U.S. will witness increases in incarceration, particularly given the absence of drug treatment programs. The U.S. could also be vulnerable to the resurgence of harder drugs. While the U.S. is experiencing an opioid epidemic, it is possible that increases in the use of crack cocaine will occur. As of November 2017, there remains a lack of clarity about the Trump administration's policies designed to address such public health problems. While President Trump declared the opioid crisis as a public health emergency, he has not requested any funding to address this issue (Hirschfeld Davis, 2017). The speech acts of the administration suggest that the U.S. is moving back to the period of harsh punishment for drug law violators. This could create major tensions between the states and the federal government over the issue of punishment pertaining to drug possession.

Conclusion

The U.S. has a federal system of government where the states have tremendous power. Citizens in certain states started to promote changes in drug policies at the grass-roots level. Such movements led to ballot initiatives where people voted whether they wanted to legalize marijuana for recreational usage and or medical marijuana. The legalization of marijuana at the state level has created a conundrum for the federal government because this substance is illegal at the federal level. The Obama government ended the war on drugs, at least in terms of rhetoric, in 2009. While President Obama did not support the legalization of marijuana, his administration vowed not

to have federal authorities prosecute states that legalized this substance.

On the other hand, the Trump administration has sought to elevate drugs on the security agenda of the U.S. As of November 2017, it appears that the U.S. government will continue the hardline approach against drug consumption under the Trump administration. There are growing forces that suggest that instead of jail time for drug addicts, court monitored treatment and rehabilitation programs should be implemented. Some scholars and policy analysts believe that drugs should be treated more leniently with first offenders and people who have committed non-violent crimes (Lang & Belenko, 2000; Nadelman, 1989; Peters & Kearns, 1992). This, however, requires sound treatment options. Given the aforementioned challenges, it is possible that the U.S. will see a resurgence of drug abuse without a sound policy solution. The opioid epidemic requires sufficient resources aimed at funding programs designed to treat and rehabilitate addicts (Volkow, Frieden, Hyde, & Cha, S. S., 2014). This could lead to increases in criminal rates as people who have serious addiction problems may resort to criminal activities to find the necessary money to buy drugs.

Finally, it is highly likely that there will be lawsuits over the legalization of marijuana if consumers in states are arrested by federal law enforcement for violating the country's marijuana laws. Such litigation could last for years before a high-level court will make a ruling on these issues.

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