Congress of the United States
Washington, DC 20515

May 2, 2019

The Honorable William Barr	The Honorable Kevin K. McAleenan
U.S. Attorney General	Acting Secretary of Homeland Security
U.S. Department of Justice	Department of Homeland Security
950 Pennsylvania Ave N.W.	245 Murray Lane SW
Washington, DC 20201	Washington, DC 20528-0075

Dear Attorney General Barr and Acting Secretary McAleenan:

We write to express our support for two Coloradans who, like many others, seek to exercise their legal right to become naturalized U.S. citizens. We respectfully disagree with the recent guidance issued by the 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 Colorado 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, including the State of Colorado. Hence, implementing a policy that targets naturalization applicants based solely on their lawful employment in the cannabis industry directly contravenes the law of over two-thirds of American states. 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" and would not "upset settled expectations and reliant interests" related to the same. Given those statement and the proliferation of state laws legalizing cannabis on both a recreational and/or medicinal basis, 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.

By way of background, and as referenced above, Colorado legalized recreational marijuana in 2014. Since that time, a robust industry has developed, generating over $927 million in state taxes and fees on over $6 billion in total sales, and the industry itself employs a significant number of Coloradans. Recently, as detailed by *The Denver Post*[1], two such Coloradans who are law-abiding, lawful permanent residents—one from Lithuania and another from El Salvador—were questioned about their work in the legal cannabis industry during their citizenship interviews. These individuals have lived in this country for over two decades, graduated from Colorado schools, and paid their taxes. They have worked as a "grower" and as a cashier at a dispensary, respectively, in the state's legal cannabis industry. This employment history led the U.S. Citizenship and Immigration Services ("USCIS") officers who conducted their interviews to

[1] *The Denver Post*, Denver mayor says legal immigrants are being denied citizenship due to work in marijuana industry, https://www.denverpost.com/2019/04/03/michael-hancock-marijuana-immigration/. April 04, 2019.

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deny their citizenship applications, citing their alleged failure to exhibit "good moral character," which related only to their work in the industry (which the USCIS asserts is a federal crime). Neither individual has a criminal background or legal citations that otherwise would serve as disqualifying actions for purpose of showing "good moral character." In addition to denying their citizenship, USCIS compelled both these Coloradans to sign affidavits in which they confirmed their employment in the cannabis industry, subjecting them to potential Federal prosecution and possible deportation on that basis.

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 refenced by the DHS 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;
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, the individuals referenced in this letter were not provided the elements of potential crimes which USCIS apparently believes they could be indicted for, including, for example, possession of marijuana. Given that fact, neither individual was ostensibly provided the opportunity to defend themselves on 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—was not implemented correctly by USCIS in the instances described in this letter. 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 the DHS and DOJ act on the following:

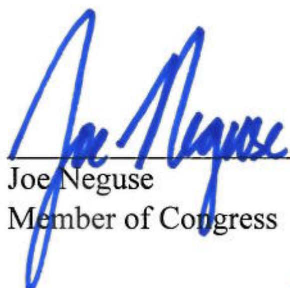
(1) retract the current policy and replace it with a policy consistent with the Cole Memorandum in which the "good moral character" standard respects settled state expectations on cannabis;

(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 such as the two cases identified in this letter; and

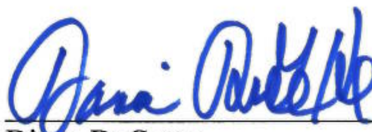
(3) Provide additional guidance and the departments' legal basis for construing employment in the lawful cannabis industry as a negative factor for establishing good moral character in the naturalization process, especially given that employees have no reason to know that they are in technical violation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



Diana DeGette
Member of Congress

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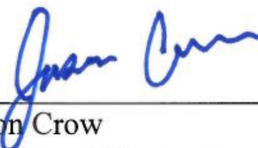
Member of Congress



Jason Crow
Member of Congress