

Benefit of U.S. border crackdown on marijuana questionable

By Peter Small, AdvocateDaily.com Contributor



“Absurd” U.S. federal cannabis policies are in the spotlight again as Canadians are reportedly being barred from the United States for admitting to long-past marijuana use, says Toronto criminal lawyer [Jacob Stilman](#).

“It’s really appalling,” says Stilman, a partner with the litigation and criminal law firm [Lo Greco Stilman LLP](#).

“It’s hard to conceive of what larger purpose this serves,” he says. “To keep some 60-year-old who admits to smoking weed in high school out of the country, I’m not sure what benefit the U.S. is deriving from that kind of practice.”

Canadians trying to cross into the United States are being asked different questions than they were before cannabis was legalized in Canada, according to an American immigration lawyer, quoted by [The Canadian Press](#).

A lawyer based in Blaine, Wash., told the news service that U.S. border agents are not asking about people’s marijuana use since it became legal in Canada a year ago, but are now asking whether they have ever smoked the drug.

Recently, a Langley, B.C. man received a lifetime ban after telling border officials he last smoked marijuana 18 years ago, according to the article. He told [The Canadian Press](#) he now has to apply for a waiver, which he estimates will cost about US\$2,000.

“This is not a new problem,” Stilman tells AdvocateDaily.com. “This same nonsense has been going on for the last two decades.”

Long before recreational pot was legalized in Canada, there were stories of U.S. border officials blacklisting people after asking them in a disarming way if they had ever smoked the drug, he says.

Stilman recalls the case of Canadian snowboarder [Ross Rebagliati](#).

“He wasn’t shying away from cannabis advocacy. So, he got red-flagged.”

Rebagliati had been stripped of his gold medal at the 1998 Olympics in Nagano, Japan, after he tested positive for THC, but he later successfully contested the ruling, according to [The Guardian](#) newspaper.

The next time he tried to enter the U.S., however, he was barred for life after admitting to past marijuana use on American TV, [The Guardian](#) reports.

Nowadays, it might be a bit of a ruse that U.S. border officials — knowing Canadians will be on guard if questioned about current consumption — are asking in a disarming way about past use, Stilman says.

But it doesn’t matter if you used the drug before or after it was legalized in Canada because you could still be barred from the U.S., he says.

American border agents have wide discretion to enforce immigration and customs laws and to bar people deemed undesirable from entering the U.S., Stilman says.

Although recreational cannabis use is legal in several U.S. states, including Colorado and Washington, it is still prohibited federally and strictly policed at the border, he says.

“It makes precious little sense.”

This policy was emphasized last year by [U.S. Customs and Border](#), which reminded Canadians that marijuana is a controlled substance according to federal law, and that its sale, possession, production, distribution or “the facilitation of the aforementioned of both medical and recreational marijuana remains illegal under U.S. federal law.”

If asked by a border official if you ever used pot, you could politely decline to answer and withdraw your application to enter the U.S., but it is unclear whether that would leave you with a black mark, Stilman says.

You can be barred just for being charged with a drug or, indeed, any offence, even if you were acquitted, he says. Canadian authorities share police data with U.S. officials, so such charges could be revealed to border agents, he says.

If you are denied entry to the United States, just once, you are deemed to be no longer admissible and have to obtain a waiver to be admitted.

As a lawyer, Stilman says, he cannot advise anyone to lie to a law enforcement official such as a U.S. border agent, although if you have a clean record it is unlikely your denial would be disbelieved.

“Still, one wants to be careful with what one says and how you say it,” he says.