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May 18, 2023

The Honorable Kevin McCarthy  
Speaker of the House  
H-232, The Capitol  
Washington, DC 20515

The Honorable Hakeem Jeffries  
House Minority Leader  
2433 Rayburn House Office Building  
Washington, DC 20515

Dear Speaker McCarthy and Minority Leader Jeffries,

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 230 national organizations to promote and protect civil and human rights in the United States, we write to express our strong opposition to H.R. 467, the Halt All Lethal Trafficking (HALT) of Fentanyl Act, and to urge the House to reject this bill. **The Leadership Conference will score the House's vote in our Voting Record for the 118th Congress.**

This bill permanently schedules fentanyl-related substances (FRS) on schedule I of the Controlled Substances Act (CSA) based on a flawed class definition. Additionally, it imposes mandatory minimums and fails to provide an offramp for removing inert or harmless substances from the drug schedule. The classwide scheduling that this bill would impose would exacerbate pretrial detention, mass incarceration, and racial disparities in the prison system, doubling down on a fear-based, enforcement-first response to a public health challenge. Under the classwide control, any offense involving a "fentanyl-related substance" is subject to federal criminal prosecution, even if the substance in question is helpful or has no potential for abuse.

Take, for example, the case of Todd Coleman. Mr. Coleman was sentenced to a mandatory minimum of 10 years for selling 30 grams of cocaine — about 2 tablespoons — because a local lab said that they were laced with three illegal fentanyl analogues.<sup>1</sup> But none of the substances were illegal fentanyl analogues, and one was a substance called "Benzyl Fentanyl" that the Drug Enforcement Administration has long known is not dangerous or illegal.<sup>2</sup>

Moreover, the HALT Fentanyl Act enshrines mandatory minimums for distribution of FRS under the Controlled Substances Act, which could criminalize inert or harmless substances. This bill expands mandatory minimums for both foreign importation crimes and domestic

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<sup>1</sup> Schwartzapfel, Beth. "Biden could have taken the war on drugs down a notch. He didn't." *The Marshall Project*. June 16, 2021. <https://www.themarshallproject.org/2021/06/16/biden-could-have-taken-the-war-on-drugs-down-a-notch-he-didn-t>.

<sup>2</sup> Ibid.

**President and CEO**

Maya Wiley

drug distribution offenses, including nonviolent drug distribution involving small quantities of drugs. As mandatory minimums eliminate judicial discretion, judges are prevented from tailoring punishment to a particular defendant by taking into account an individual's background and the circumstances of their offenses when determining the sentence. Mandatory minimums instead place more power in the hands of prosecutors and their charging decisions, which is particularly concerning given that prosecutors are more likely to charge Black people with a crime that carries a mandatory minimum than a White person.<sup>3</sup> The HALT Fentanyl Act threatens to replicate this pattern.

This Congress should not repeat its past mistakes when it comes to policy responses to fentanyl and its analogues. Beginning in the 1980s, draconian drug laws with harsh mandatory minimums and their resulting enforcement under the banner of the "war on drugs" fueled skyrocketing prison populations.<sup>4</sup> In the ensuing decades, Black people have been disproportionately incarcerated and sentenced to mandatory minimum sentences for small amounts of crack cocaine, despite the fact that White people are more likely than Black people to use crack cocaine in their lifetimes.<sup>5</sup> Similar trends for FRS are emerging: Between 2015 and 2019, prosecutions for fentanyl-analogue offenses increased by more than 5,000 percent, with no corresponding decrease in the use of FRS or in overdose deaths.<sup>6</sup> In 2019, 58.9 percent of those sentenced in fentanyl-analogue cases were Black.<sup>7</sup> Any further extension of the classwide scheduling policy threatens to repeat past missteps with crack cocaine that policymakers are still working to rectify.<sup>8</sup>

Harsh federal drug laws and mandatory minimums have caused the federal prison population to explode. The Urban Institute has found that increases in expected time served for drug offenses was the largest contributor to growth in the federal prison population between 1998 and 2010.<sup>9</sup> Currently, people convicted of drug offenses make up 44.8 percent of the Bureau of Prisons (BOP) population.<sup>10</sup> There is no indication that overly punitive sentences or that this mass incarceration deter crime, protect public safety, or decrease drug use or trafficking.<sup>11</sup>

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<sup>3</sup> Starr, Sonja B., and M. Marit Rehani. "Racial Disparity in Federal Criminal Sentences." University of Michigan Law School Scholarship Repository. 2014. Pg. 1323.

<sup>4</sup> See, e.g., Hatsukami, D.K. & Fischman, M.W. "Crack Cocaine and Cocaine Hydrochloride: Are the Differences Myth Or Reality?" 279 *Journal of American Medicine*. Nov. 1996. Pg. 1580.

<sup>5</sup> 6.3 percent of people sentenced under these laws are White, while 77.1 percent are Black. "Quick Facts: Crack Cocaine Trafficking Offenses, FY2020." *U.S. Sentencing Commission*. 2020.

[https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Crack\\_Cocaine\\_FY20.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Crack_Cocaine_FY20.pdf).

<sup>6</sup> U.S. Sentencing Comm'n. "Fentanyl and Fentanyl Analogues: Federal Trends and Trafficking Patterns." Jan. 2021. P. 4. [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2021/20210125\\_Fentanyl-Report.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2021/20210125_Fentanyl-Report.pdf).

<sup>7</sup> Ibid at 24.

<sup>8</sup> See, e.g., H.R. 1062, the Eliminating a Quantifiably Unjust Application of the Law (EQUAL) Act.

<sup>9</sup> Mallik-Kane, Kamala & Parthasarathy, Barbara & Adams, William. "Examining Growth in the Federal Prison Population, 1998 to 2010." *Urban Institute*. 2012. Pg. 3.

<https://www.urban.org/sites/default/files/publication/26311/412720-Examining-Growth-in-the-Federal-Prison-Population-to-.PDF>.

<sup>10</sup> "Statistics: Inmate Offenses." *Federal Bureau of Prisons*. Updated March 18 2023.

[https://www.bop.gov/about/statistics/statistics\\_inmate\\_offenses.jsp](https://www.bop.gov/about/statistics/statistics_inmate_offenses.jsp).

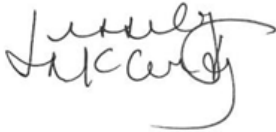
<sup>11</sup> See, e.g., Luna, Erik. "Mandatory Minimums." *The Academy for Justice*. 2017. Pgs. 127-130.

[https://law.asu.edu/sites/default/files/pdf/academy\\_for\\_justice/7\\_Criminal\\_Justice\\_Reform\\_Vol\\_4\\_Mandatory-](https://law.asu.edu/sites/default/files/pdf/academy_for_justice/7_Criminal_Justice_Reform_Vol_4_Mandatory-)

We share your concerns about fentanyl-related deaths and support effective health-based approaches to mitigating this public health crisis, but classwide scheduling and mandatory minimums merely repeat the mistakes of the past by exacerbating our incarceration problem. We welcome continued dialogue with you about how to move forward on this important topic. However, we must reiterate our firm opposition to classwide emergency scheduling and to mandatory minimum sentencing.

We strongly urge Congress to take bold steps on these issues and transform our criminal-legal system into one that delivers true justice and equality. For this reason, we ask you to vote NO on the HALT Fentanyl Act. Thank you for your time and attention to this matter. If you have any questions, please feel free to contact Chloé White, senior policy counsel, justice, at [white@civilrights.org](mailto:white@civilrights.org).

Sincerely,



Jesselyn McCurdy  
Executive Vice President of Government Affairs