



May 19, 2023

Speaker Kevin McCarthy
2468 Rayburn H.O.B.
Washington, DC 20515

House Majority Leader Steve Scalise
2049 Rayburn H.O.B.
Washington, DC 20515

House Minority Leader Hakeem Jeffries
2433 Rayburn H.O.B.
Washington, DC 20515

Chair Cathy McMorris Rodgers
House Energy & Commerce Committee
2188 Rayburn H.O.B.
Washington, D.C. 20515

Ranking Member Frank Pallone
House Energy & Commerce Committee
2107 Rayburn H.O.B.
Washington, DC 20515

CC: Chairman Jim Jordan, House Judiciary Committee and Ranking Member Jerrold Nadler,
House Judiciary Committee

RE: Vote NO on the HALT Fentanyl Act (H.R. 467)

Dear Speaker McCarthy, Majority Leader Scalise, Minority Leader Jeffries, Chair Cathy McMorris Rodgers, Ranking Member Frank Pallone, and Honorable Members of the U.S. House of Representatives:

The 158 undersigned national, state, and local public health, criminal justice reform, and civil rights organizations write today to urge you to reject and vote NO on the Halt All Lethal Trafficking of Fentanyl (HALT) Act (H.R. 467). This bill permanently schedules fentanyl-related substances (FRS) on schedule I of the Controlled Substances Act (CSA) based on a

flawed class definition, imposes mandatory minimums, and fails to provide an offramp for removing inert or harmless substances from the drug schedule.

The classwide scheduling approach endorsed in the HALT Fentanyl Act classifies all FRS as schedule I drugs, reserved for substances with no currently accepted medical use and a high potential for abuse.¹ This class definition, however, is a radical departure from drug scheduling practices as it relies exclusively on chemical structure without accounting for pharmacological effect based on the unproven hypothesis of chemical structure-function relationships.² Contrary to this hypothesis, structurally related substances can often have complementary therapeutic values. In fact, the National Institute on Drug Abuse (NIDA) has already acknowledged that some FRS are inert and that at least one may be an opioid antagonist that behaves like naloxone, which is itself an opium derivative that counteracts the effects of opioid drugs.³ Classifying all FRS in schedule I places undue restrictions on research for therapeutic potential of FRS. This means that researchers and scientists are not able to study these substances at a time when the U.S. is experiencing record number overdose deaths.

The HALT Fentanyl Act also enshrines mandatory minimums for distribution of FRS under the Controlled Substances Act, an inappropriate mandate that criminalizes possibly inert or harmless substances. While some proponents of the HALT Fentanyl Act claim that the bill is not intended to interact with the criminal justice system and that mandatory minimums are primarily a deterrent against foreign import of FRS, this is simply inaccurate. The HALT Fentanyl Act expands mandatory minimums for both foreign importation crimes and domestic drug distribution offenses, including nonviolent drug distribution involving small quantities of drugs. What's more, by automatically scheduling a huge swathe of substances in one fell swoop, the HALT Fentanyl Act would lead to very real criminal justice consequences, posing an unacceptable risk of unnecessary incarceration for substances that carry no potential for abuse. Such miscarriages of justice have already occurred. For instance, Todd Coleman was sentenced to a mandatory minimum of 10 years for sale of cocaine that a crime laboratory said was laced with three fentanyl analogues, only to discover, years later, that the detected adulterants were not illegal fentanyl analogues and most were not even controlled substances.⁴

Our country is repeating past missteps when it comes to policy responses to fentanyl and its analogues. In the 1980s, policymakers enacted severe mandatory minimums for small amounts of crack cocaine in response to media headlines and law enforcement warnings that perpetuated mythology and fear. These laws imposed harsher penalties for crack—a substance associated with Black people—than for cocaine—a substance associated with white people—even though

¹ “H.R.467 - 118th Congress (2023-2024): HALT Fentanyl Act.” *Congress.gov*, Library of Congress, 24 Jan. 2023.

² Bamberger, Nathan D., et al. “Beyond Simple Structure–Function Relationships: The Interplay of Geometry, Electronic Structure, and Molecule/Electrode Coupling in Single-Molecule Junctions.” *The Journal of Physical Chemistry C* 126.15 (2022): 6653-6661.

³ NIDA. “The Overdose Crisis: Interagency Proposal to Combat Illicit Fentanyl-Related Substances.” *National Institute on Drug Abuse*, 2 Dec. 2021.

⁴ Schwartzapfel, Beth. “Biden Could Have Taken the War on Drugs Down a Notch. He Didn’t.” *The Marshall Project*, 16 June 2021.

the two substances are chemically similar. In the ensuing decades, people of color have been disproportionately incarcerated and sentenced to mandatory minimum sentences for small amounts of crack. The emergence of fentanyl-related substances in recent years has fueled similar waves of alarmist media and law enforcement headlines that are informed by mythology rather than science. Any further extension of the classwide scheduling policy threatens to repeat past missteps with crack cocaine that policymakers are still working to rectify.

The classwide scheduling policy expands the application of existing severe mandatory minimum sentencing laws enacted by Congress in the 1980s to a newly scheduled class of fentanyl-related compounds. For example, just a trace amount of a fentanyl analogue in a mixture with a combined weight of 10 grams—10 paper clips—can translate into a five-year mandatory minimum with no evidence needed that the seller even knew it contained fentanyl. In addition, current laws impose a statutory maximum sentence of 20 years for just a trace amount of a fentanyl analogue in a mixture with a combined weight of less than 10 grams.⁵ The truth of the matter is that lawmakers do not need to impose new mandatory minimums in order to prosecute fentanyl analogue cases because law enforcement officials already have the ability to prosecute these cases pursuant to the Controlled Substance Analogue Enforcement Act of 1986, which requires that prosecutors show the substances in question are harmful.⁶

Despite the threat of grave injustices in the criminal legal system, the current lack of research on FRS, and indications that some FRS are harmless or hold therapeutic potential, the HALT Fentanyl Act does not include an offramp to reschedule or remove FRS that research has proven to be pharmacologically inactive or do not meet schedule I criteria. Though it includes research reforms for schedule I substances, the bill excludes the possibility of such research impacting the criminalization of FRS. Other proposed FRS legislation, including the Biden proposal for FRS, the Save Americans from the Fentanyl Emergency (SAFE) Act (H.R. 6946) introduced by Rep. Chris Pappas (D-NH), and the Temporary Emergency Scheduling and Testing of Fentanyl Analogues Act (TEST) Act of 2022 (S. 5167) introduced by Sen. Cory Booker (D-NJ), provide this offramp, ensuring that substances can be removed from schedule I to prevent miscarriages of justice. Without a rescheduling process, the HALT Fentanyl Act may unjustly promote criminalization of harmless or inert substances.

The HALT Fentanyl Act and other bills proposing the permanent classwide scheduling of FRS are yet another iteration of the drug war's ineffective and punitive strategies. To prevent overdose, Congress must invest in a public health solutions to mitigate the harms of illicit fentanyl. We urge Congress to support bills like the Support, Treatment, and Overdose Prevention of Fentanyl (STOP Fentanyl) Act of 2021 (H.R. 2366) introduced by Rep. Ann Kuster (D-NH) and Rep. Lisa Blunt Rochester (D-DE), which proposes increased access to harm reduction services and substance use disorder treatment, improved data collection, and other evidence-based methods to reduce overdose, and the TEST Act, which provides funding for FRS research and offers

⁵ See *generally* Brian T. Yeh, Cong. Research Serv., RL30722, Drug Offenses: Maximum Fines and Terms of Imprisonment for Violation of the Federal Controlled Substances Act and Related Laws (Jan. 20, 2015), <https://fas.org/sgp/crs/misc/RL30722.pdf>.

⁶ U.S.C. section 813(a); see also *United States v. Requena*, 980 F.3d 30, 35 (2d Cir. 2020).

alternative strategies to simultaneously address the opioid epidemic while preventing backsliding on criminal justice reform.

Thank you for your time and attention to this matter. Please contact Maritza Perez Medina, Director of the Office of Federal Affairs of the Drug Policy Alliance, at mperez@drugpolicy.org for questions about this letter or to further discuss this matter.

Sincerely,

ACLU of Nevada (NV)
AIDS Alabama (AL)
AIDS Foundation Chicago (IL)
AIDS United
American Civil Liberties Union
American Friends Service Committee
Appalachian Learning Initiative (WV)
Association of Black Social Workers (Virginia Union University) (VA)
Autistic Self Advocacy Network
Battle Born Progress (NV)
Beacon House Aftercare, Louisville (KY)
Beauty After the Bars (NC)
Bend the Arc: Jewish Action
Better Organizing to Win Legalization
BLM Louisville (KY)
Brave Technology Co-Op
Bronx Móvil (NY)
C-UR Recovery Services, LLC (MI)
Celebrate Recovery (KY)
Center for Disability Rights
Center for Housing & Health (IL)
Center for Popular Democracy
Citizen Action of Wisconsin (WI)
Clergy for a New Drug Policy
Coalition on Human Needs
Color of Change
Communities United for Status & Protection (CUSP)
Community Catalyst
Cosmovisiones Ancestrales (CA)
CURE (Citizens United for Rehabilitation of Errants)
Dream.org
Drug Policy Alliance
Drug Policy Forum of Hawai'i (HI)

Due Process Institute
E5 Enterprise (NY/PA)
Elephant Circle (CO)
Equal Justice USA
Fair and Just Prosecution
Faith in Harm Reduction
FAMM
Federal Public & Community Defenders
Feed Louisville (KY)
Filling The Gaps Outreach, Inc. (GA)
Florida Harm Reduction Collective (FL)
Freedom BLOC (OH)
Fruit of Labor Action Research & Technical Assistance, LLC (NC)
Full Circle Youth Empowerment, Inc. (CT)
FWD.us
G. Williams & Associates, Inc. (IL)
Giving Others Dreams G.O.D Inc (IL)
GLIDE (CA)
Hawai'i Health & Harm Reduction Center (HI)
HEAL Ohio (OH)
Hepatitis C Mentor and Support Group (HCMSG) (NY)
Hep Free Hawai'i (HI)
Hey Joe Media (AZ)
Hip Hop Caucus
HIPS (DC)
HomeRise (CA)
Hoosier Action (IN)
Human Rights Watch
Illinois Alliance for Reentry and Justice (IL)
Illinois Harm Reduction & Recovery Coalition (IL)
Indiana Recovery Alliance (IN)
Isaiah House Inc (KY)
Justice Strategies
JustLeadershipUSA
Juvenile Law Center
Lacey's Legacy (KY)
LatinoJustice PRLDEF
Law Enforcement Action Partnership
Law Office of the Cook County Public Defender (IL)
The Leadership Conference on Civil and Human Rights
Legal Action Center
Life Coach Each One Teach One Reentry Fellowship (KY)
Lighthouse Consultants Colorado, LLC (CO)
Los Angeles Community Action Network (CA)
Michigan People's Campaign (MI)

Minorities for Medical Marijuana
Mississippi Prison Reform Coalition (MS)
Monetwork (MO)
My Brothers Keeper NEO (OH)
My Meta ReEntry Services, Inc. (NC)
NASTAD
National Association of Criminal Defense Lawyers
National Council of Churches
National Council on Alcoholism and Drug Dependence-Maryland Chapter (MD)
National Employment Law Project
National Harm Reduction Coalition
National Immigrant Justice Center
National Immigration Project (NIPNLG)
National Organization for Women
National Pain Advocacy Center (CO)
NC Harm Reduction Coalition (NC)
Nelsonville Voices/Showing Up for Racial Justice (OH)
NETWORK Lobby for Catholic Social Justice
New Jersey Organizing Project (NJ)
NEXT Distro
OhioCAN/Newark Homeless Outreach (OH)
On The Bright Side LLC (NC)
ONE Northside (IL)
Overdose Crisis Response Fund
PA Stands Up (PA)
Parabola Center for Law and Policy
Parole Preparation Project
Pennsylvania Harm Reduction Network (PA)
People Advocating Recovery (KY)
People's Action
Progressive Leadership Alliance of Nevada (NV)
Progressive Maryland (MD)
Psychotherapy Services DBA (KY)
R Street Institute
REACH-NEO (OH)
Reentry Advocacy Project (TX)
Renew A New, Inc (CA)
Revolve Impact
Rights & Democracy (NH/VT)
River Valley Organizing (OH)
Sana Healing Collective (IL)
Smoky Mountain Harm Reduction (NC)
Sojourners
Source Corp LLC (OH)

South Carolina For Restorative Justice (SC)
South Louisville Community Ministries (KY)
Southern Tier AIDS Program (NY)
StoptheDrugWar.org
Students for Sensible Drug Policy
Sunita Jain Anti-Trafficking Policy Initiative, Loyola Law School
Tacoma Healing Awareness Community (WA)
TakeAction Minnesota (MN)
TCRC Community Healing Center (PA)
Texas Harm Reduction Alliance (TX)
The Action Lab, Center for Health Policy and Law, Northeastern University School of Law (MA)
The Advocates for Human Rights (MN)
The Daniel Initiative
The Festival Center
The Gubbio Project (CA)
The Matrix Consulting, LLC
The Porchlight Collective SAP (IL)
The Sentencing Project
Transform Network
Treatment Action Group (TAG) (NY)
Treatment on Demand Coalition-SF (CA)
Truth Pharm Inc. (NY)
United Vision for Idaho (ID)
Vera Institute of Justice
Vivent Health
VOCAL-KY (KY)
VOCAL-NY (NY)
VOCAL-WA (WA)
Voices of Community Activists and Leaders Kentucky (C3) (KY)
VT Citizens United for the Rehabilitation of Errant(s) (VT)
Washington Office on Latin America
Why Not Prosper (PA)
Wilkes Recovery Revolution, Inc. (NC)
Women on the Rise (GA)
Worth Rises
Young People in Recovery