



May 23, 2023

President Joseph R. Biden
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear President Biden:

The undersigned organizations, including the Drug Policy Alliance, FAMM, Law Enforcement Action Partnership, The Leadership Conference on Civil and Human Rights, The Sentencing Project, and Vera Institute of Justice, write this letter to express disappointment at the White House's May 22, 2023 Statement of Administration Policy ("SAP") on H.R. 467, the Halt All Lethal Trafficking of (HALT) Fentanyl Act. Perhaps inadvertently, your Administration's statement fails to condemn the HALT Fentanyl Act's expansion of mandatory minimums and encourages Congress to throw its support behind legislation that will only exacerbate the harms of illicit drug activity and will do nothing to further the public health solutions urgently needed. **We ask your Administration to issue a clear statement against the HALT Fentanyl Act and we ask Congress to vote no on this legislation.**

The HALT Fentanyl Act fails to implement critical aspects of your Administration's 2021 permanent fentanyl-related substances (FRS) scheduling proposal: 1) HALT fails to provide for "a streamlined process for the Department of Health and Human Services to identify and remove or reschedule any individual FRS" that does not pose a "high potential for abuse;" and 2) it contains no provision for studying the impact of permanent FRS scheduling on "research, civil rights, and the illicit manufacturing and trafficking of FRS." These fatal flaws in the HALT Fentanyl Act --- the absence of what the SAP calls "critical components" of any permanent FRS scheduling initiative --- make it absolutely imperative that Congress votes no on the bill. A vote for the HALT Fentanyl Act is a vote against not just smart public health and public safety, but against your Administration's stated position on permanent scheduling as well.

Disappointingly, the SAP does not mention yet another unacceptable aspect of the HALT Fentanyl Act: its entrenchment and expansion of mandatory minimums. As drafted, the HALT Fentanyl Act expressly entrenches quantity-based mandatory minimums for trafficking FRS. Under the HALT Fentanyl Act, a person who distributes just 10 grams of an FRS will be subject to a 5-year mandatory minimum prison term, which increases to a 10-year mandatory minimum prison term for trafficking 100 grams of FRS. What's more, the HALT Fentanyl Act also expands mandatory minimums to non-FRS fentanyl-analogue trafficking. Section 6 of the HALT Fentanyl Act, as amended, would express Congress's view that non-FRS analogues of fentanyl should be subject to the same harsh quantity-based mandatory minimums that the HALT Fentanyl Act applies to FRS trafficking under the classwide scheduling approach.

You campaigned on a policy of ending mandatory minimums, but the HALT Fentanyl Act does the opposite. Punishing FRS through mandatory minimums is particularly egregious. This is because FRS are defined solely based on their molecular structure and without regard to their pharmacological effect. What this means is that, under the HALT Fentanyl Act, a person could be subject to harsh mandatory minimums for distributing *harmless substances* or even substances that *reverse the effects of fentanyl overdose* --- just so long as those substances exhibit a particular molecular structure. Enacting a scheme that imposes mandatory 5- or 10-year sentences on people without regard to whether the substance they traffic is harmless or even helpful is, to say the least, inconsistent with the promise to end mandatory minimum sentencing.

Entrenching and expanding mandatory minimums in the context of FRS trafficking is also inconsistent with your Administration's stated commitment to racial justice. The data are stark: in FY2021, Black people made up 61.5% of all people sentenced for fentanyl-analogue trafficking in federal court. Latinos made up 24.8%. The racial disparities in fentanyl-analogue trafficking are shocking, and a vote for HALT is a vote for policies that will worsen racial disparities in American sentencing.

The public-safety and public health case against any form of permanent FRS scheduling is overpowering. Permanent FRS scheduling will do nothing to redress the fentanyl overdose crisis. All it will do is hinder scientific research into lifesaving overdose-prevention treatments, make individuals less likely to seek help, and inflict harsh punishments on people who use drugs.

But at least your Administration's 2021 proposal --- introduced in the House as the Save Americans from the Fentanyl Emergency or SAFE Act --- recognizes that if the federal government is going to schedule thousands of substances in one fell swoop and without regard to their pharmacological effect, it must, at minimum, ensure that no mandatory minimum sentences be applied to those substances and that those substances have an opportunity to be delisted or rescheduled. The HALT Fentanyl Act contains no

equivalent protection --- it entrenches and expands mandatory-minimum sentencing for FRS and fentanyl analogue trafficking. Because your Administration's SAP has failed to flag this important point, it falls to us to make it clear: to support the HALT Fentanyl Act is to support an unprecedented expansion of mandatory minimums.

Sincerely,

Center for Disability Rights
Center for Popular Democracy
CURE (Citizens United for Rehabilitation of Errants)
Drug Policy Alliance
Due Process Institute
FAMM
Federal Public and Community Defenders
FWD.us
LatinoJustice PRLDEF
Law Enforcement Action Partnership
The Leadership Conference on Civil and Human Rights
National Association of Criminal Defense Lawyers
National Council of Churches
National Immigration Project (NIPNLG)
People's Action
R Street Institute
Sunita Jain Anti-Trafficking Policy Initiative, Loyola Law School
The Sentencing Project
Vera Institute of Justice
VOCAL-NY