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October 20, 2021

TO: United States Commission on Combating Synthetic Opioid Trafficking

CC:

The Honorable Nancy Pelosi
The Honorable Chuck Schumer

The Honorable Kevin McCarthy
The Honorable Mitch McConnell

Dear Distinguished Members of the Commission,

We, the undersigned police officers, prosecutors, judges, corrections officials, and other law enforcement officials and criminal justice leaders, are writing to echo the calls by advocacy groups across the country urging you to oppose the FIGHT Fentanyl Act (H.R. 3269), which would extend the Class I Scheduling of fentanyl-related analogues permanently. Across the board, bipartisan groups—ranging from law enforcement to healthcare—are uniting against this legislation which would do little to save lives or otherwise resolve the opioid crisis and would, instead, exacerbate existing problems within our criminal justice and healthcare systems.

[The overwhelming majority](#) of Americans, over 70% across the country, support an end to the failed War on Drugs and a return to sensible drug policy: treat humans like humans and treat substance use disorder like a disorder. Far too often, low-level drug offenders wind up caught in our criminal justice system rather than receiving the treatment they need. This overburdens our courts, jails, and prisons, costing taxpayers billions of

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dollars and increasing rates of recidivism, with economic and social consequences across the board

[Studies](#) have shown that incarceration is neither a deterrent nor an effective strategy for addressing the root causes of substance use disorder. Notably, the outcomes of tough on drugs policing tend to bring about outcomes opposite to those intended, leading to: [increased rates of re-incarceration](#); [increased rates of homelessness](#); and [decreased rates of employment](#). Furthermore, incarceration contributes to intergenerational trauma, worsening our problems with childhood delinquency and truancy.

Our correctional system is simply not equipped to treat, rehabilitate, or otherwise mitigate substance use disorder, as a whole, or opioid use disorder (OUD), specifically. [Roughly 5%](#) of adults referred by our system for treatment receive medicinal intervention despite medication for opioid use disorder being considered the optimal intervention. Comparatively, 41% of non-incarcerated individuals receive medication-assisted treatment. The result of this failure is death; upon release, opioid addicted persons are up to [129 times](#) more likely to overdose and die within two weeks of reentry.

Law enforcement officials and prosecutors across the world are aligning around evidence-based strategies to treat opioid use disorder. Rather than relying on arrests—a method which is outdated and ineffective at best—we need to look for reasonable alternatives which will link public health and law enforcement solutions to address the high rates of mortality associated with OUD and associated comorbidities, as well as the crimes associated with drug use. At its core, OUD is a public health epidemic and it should be treated as such; any sort of law enforcement or criminal legal system intervention should be limited, at best, and incorporate a new or innovative approach to this public health crisis.

The FIGHT Fentanyl Act is neither new nor innovative. It builds upon the failed historical legacy of the War on Drugs, specifically the Anti-Drug Abuse Act of 1986, threatening to devastate more families across the nation and further erode community trust in policing, making it more difficult for officers and prosecutors to do our jobs. Furthermore, current laws already provide ample penalties to address the concerns about serious criminal behaviors surrounding fentanyl and its analogues. At a time when public scrutiny of policing is making daily news and overall trust in policing is slowly rebounding from record lows, we need to be taking proactive measures to ensure that we are a value-add to the conversation and the wider community. We need to take measures that will increase trust and cooperation between law enforcement and the communities we serve.

More importantly, we need to recognize that preventing overdose and disrupting substance use disorder takes community engagement. Accordingly, we need to advance measures that will encourage individuals to seek help rather than drive them further underground. Between the acute toxicity of the illicit drug supply and a treatment and support scarcity fueled by the COVID-19 pandemic, the overdose death toll surged to almost 92,000 Americans in 2020. All of us need to work together to keep those struggling with substance use disorder out of the justice system because they do not belong there.

We need to prioritize the evidence-based strategies to treat OUD and reduce harm, including:

- Increasing access to treatment options for behavioral and mental health care;
- Ensuring robust funding to increase community-level capacity to deliver low-barrier harm reduction services, especially including the distribution of naloxone, fentanyl test strips and sterile syringes;
- Recognize that reducing the supply of illicit substances should be focused on combating organized crime; and
- Lead the discussion on the introduction of safe supply to include treatment with pharmaceutical grade medications, low barrier access to quality-controlled alternatives to adulterated illicit drugs, and widespread access to the means for people who use drugs to be able to test them for their content and potency.

At present time, avenues to research are blocked by legislation like the SUPPORT Act which mandates ONDCP to take such actions as necessary to oppose any attempt to legalize the use of a substance (in any form) that is listed in Schedule I of the Controlled Substances Act. This statute has mired research, preventing the use of federal dollars in support of evidence-based harm reduction strategies including the adequate funding of syringe exchange programs and drug checking services. While we laud the steps the Biden-Harris Administration has taken to increase funding for harm reduction, treatment, and evidence-based solutions, these efforts will be hampered by the permanent scheduling of Fentanyl and its analogues.

The FIGHT Fentanyl Act will make our streets less safe while contributing to the over-criminalization of a public health crisis. It will exacerbate the racial disparities we already face within the criminal justice system, and it will perpetuate systemic inequalities that contribute to racial, economic, and health disparities throughout our nation, and particularly within marginalized communities. The Drug Enforcement Administration's emergency rescheduling failed its dual purpose of reducing fentanyl-related overdose deaths as well as trafficking; the permanent scheduling proposed by the FIGHT Fentanyl Act will fall to a similar fate. Again, we urge you to oppose the FIGHT Fentanyl Act.

Respectfully,

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