



The Honorable Jerrold Nadler
Judiciary Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Doug Collins
Judiciary Committee
U.S. House of Representatives
Washington, DC 20515

January 28, 2020

Re: Hearing - Fentanyl Analogues: Perspectives on Classwide Scheduling

Dear Chairman Nadler and Ranking Member Collins:

Thank you for holding this important hearing today regarding legislation to extend the Department of Justice's broad authority to classify fentanyl analogues as Schedule I substances and expose more people to harsh mandatory minimum sentences for drug offenses. The Sentencing Project opposes S. 3201, the Temporary Reauthorization and Study of the Emergency Scheduling of Fentanyl Analogues Act, and urge you to exclude the application of mandatory minimum sentences for cases prosecuted under this authority before it proceeds to a floor vote.

Just one-year after the president signed the First Step Act, the House of Representatives is preparing to approve S. 3201, a measure that would expose greater numbers of people to mandatory minimum penalties including in cases involving trace amounts of these substances. This effort contradicts the very premise of fairness and proportionality that led this Committee in a bipartisan way to support sentencing reforms just one year ago. I urge you to carefully consider the ramifications of this legislation which will exacerbate the already significant harm caused by the War on Drugs.

Indeed, the *Washington Post* on Sunday, January 26, published a column by retired U.S. District Court Judge Nancy Gertner that urged cautioned on this matter:

We must do everything we can to stop the opioid epidemic, but not with the failed policies of the past. The opioid epidemic persists despite decades of the punitive approach [Attorney General] Barr touts. Since 2014, federal prosecutions for fentanyl have increased more than 4,700 percent. In recent decades, such an approach has resulted only in mass incarceration — a nearly 790 percent increase in the federal prison population from 1980 to its peak in 2013, disproportionately impacting people of color.

According to the Sentencing Commission, most people sentenced for fentanyl trafficking in 2016 were deemed low-level, including mules or couriers (25.5 percent) and street-level sellers (23.5 percent). In 2018, 77 percent of those prosecuted for fentanyl were black or Hispanic. With passage of S. 3201 the trajectory of federal prosecutions in these cases, which overwhelmingly impact people who never knew a fentanyl analogue was present, will only get worse.

I am enclosing with this letter a copy of Judge Gertner's entire *Washington Post* [Op-Ed](#). I ask that it be included in the record of today's hearing.

Thank you for considering the concerns of The Sentencing Project. The organization looks forward to working with you to ensure our federal criminal justice policies are fair and effective.

Sincerely,

A handwritten signature in black ink, appearing to read "Marc Mauer". The signature is written in a cursive, slightly slanted style.

Marc Mauer
Executive Director