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Safeguarding Justice for All Americans

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Representative Morgan Griffith
House of Representatives
2202 Rayburn House Office Building
Washington DC 20515

Dear Representative Griffith,

On behalf of the National Association of Assistant United States Attorneys (NAAUSA), representing the interests of the over 6,000 Assistant U.S. Attorneys (AUSAs) working in the 94 U.S. Attorney Offices, we write to express our strong support for the HALT Fentanyl Act (H.R. 6184).

As you know, fentanyl and fentanyl-related substances (“FRS”), often referred to as fentanyl analogues, are having a devastating impact on communities across the country. These substances are extremely lethal and causing overdose deaths at an unprecedented rate.

In 2020 alone, the [CDC reports](#) nearly 100,000 people died of drug overdoses – up 30 percent from the previous year. Additionally, the [National Center for Drug Abuse Statistics](#) finds that fentanyl is a factor in 53 percent of drug overdose deaths. Last year, [cities across the country reported](#) sharp increases in drugs laced with fentanyl, causing overdose deaths in unsuspecting victims. And just last month, a superintendent [confirmed](#) a vaping device found at an Iowa high school contained both THC and fentanyl.

Ingesting less than 0.07 ounces of fentanyl causes certain death, making it one of the deadliest drugs in the world. Fentanyl analogues are even more dangerous, and we know even less about their additional risks. It is critical Congress act to combat this crisis, and this legislation is a critical step in that direction.

NAAUSA is extremely supportive of this legislation’s provision permanently placing fentanyl-related substances in schedule I of the Controlled Substances Act.

In the absence of class-wide scheduling, prosecutors lack adequate capacity to prosecute cases relating to fentanyl and fentanyl analogues. Prosecuting cases involving fentanyl analogue under the Controlled Substances Act requires prosecutors to prove not only that the substance is substantially chemically and pharmacologically similar to fentanyl, but also that the drug trafficker know of such similarity. Given the speed at which fentanyl analogues are created, this two-factor *mens rea* requirement is extremely difficult to meet. Permanently scheduling fentanyl-related substances ensures law enforcement has the tools to bring these cases to court and take serious drug traffickers off the street.

NAAUSA also supports the provisions establishing a simplified process that would align research registration for all schedule I substances, including FRS, more closely with the research registration process for schedule II substances. Although not related to federal prosecutions directly, NAAUSA understands the importance of ensuring productive research can occur to combat drug addiction and understand the effects of drugs on human health. Allowing this research to occur may prevent and combat addiction to ensure individuals get the help they need

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and never end up in the criminal justice system.

Finally, NAAUSA appreciates and applauds that this legislation does not exempt fentanyl and fentanyl analogue offenders from mandatory minimums. Excluding these offenders from mandatory minimums, as some have proposed, would deeply undermine law enforcement efforts to combat drug trafficking.

The U.S. Sentencing Commission [reports](#) that fentanyl trafficking offenses have increased by 1,890 percent since FY 2016. Similarly, fentanyl analogue trafficking offenses have [increased](#) 159.6 percent since FY 2018. Over 90 percent of offenders for both fentanyl and fentanyl analogues are convicted and sentenced to prison time. More than half of both fentanyl and fentanyl analogue offenses were subject to mandatory minimum sentences in FY 2020. Fentanyl analogues are more lethal than fentanyl. In fact, Fentanyl analogue offenses resulted in 29.2 percent of deaths as compared to 14.1 percent for fentanyl offenses.

Still, nearly 60 percent of fentanyl offenders and roughly 40 percent of fentanyl analogue offenders are relieved of this mandatory minimum sentence. For fentanyl and fentanyl analogue offenders, this is often because they qualify for either relief pursuant to the safety valve provision or for cooperating with law enforcement.

While not all individuals eligible for mandatory minimums receive such a sentence, the existence of mandatory minimums serves as a valuable tool for discouraging drug alterations and gaining critical cooperation that enables law enforcement to prosecute more culpable participants in drug trafficking networks. To be clear, federal prosecutors do not target drug users. Mandatory minimums allow prosecutors to focus our efforts on dismantling drug trafficking networks. Mandatory minimums allow cooperating defendants to escape the life of crime, reduce their sentence, and receive the assistance they may need to combat addiction.

The HALT Fentanyl Act effectively enhances law enforcement efforts to combat the proliferation of fentanyl and fentanyl analogues with permanent class-wide scheduling and allows for necessary research to improve our knowledge about these drugs. At the same time, this legislation does not undermine law enforcement efforts by exempting offenders from mandatory minimums. At a time when Americans are dying at alarming rates from fentanyl and fentanyl analogues, this legislation is critical. We thank you for introducing this bill and offer any support in ensuring its passage. For additional information on NAAUSA's position, please do not hesitate to reach out to our Washington representative Natalia Castro (ncastro@shawbransford.com).

Sincerely,



Steve Wasserman
NAAUSA National President