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Hearing on “*Undoing the Damage of the War on Drugs:  
A Renewed Call for Sentencing Reform*”

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Chairwoman Jackson Lee and Members of the Subcommittee, thank you for the opportunity to submit this statement for the Subcommittee's hearing on "Undoing the Damage of the War on Drugs: A Renewed Call for Sentencing Reform." I am the executive director of the Drug Policy Alliance, the nation's leading organization advancing drug policies that are grounded in science, compassion, health and human rights.

### At Least Fifty Years of Failed Policy

For more than 50 years the United States has adopted and expanded punitive policies toward the possession, use and distribution of drugs -- enacting increasingly harsh sentencing laws that led to mass incarceration and mass criminalization while ignoring the destructive impacts of those laws. The sentencing laws at the heart of that deeply flawed strategy have led to mass incarceration, fractured families and communities, interrupted educational and vocational progress, blocked opportunities to contribute to society, and killed American dreams. The human and fiscal impacts of this destructive policy are staggering:

- Every month approximately **1,600 people<sup>1</sup> on average are sentenced** for drug offenses in federal courts and **over a thousand people<sup>2</sup>** are sent back to prison for violations of supervised release or parole related to drugs.
- Every day federal agents make more than **60 arrests<sup>3</sup> for drug offenses**, mostly of those who are themselves experiencing substance use disorder or desperate economic circumstances.
- Drug convictions still account for the incarceration of almost **half a million people<sup>4</sup>** -- one in five people currently incarcerated in the U.S. are locked up for a drug offense -- while over **750,000 people<sup>5</sup>** - or 25 percent of all people under community supervision - are on probation or parole for a drug law violation."
- Misguided drug laws and draconian sentencing have produced profoundly unequal outcomes for communities of color. Although rates of drug use and sales are similar

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<sup>1</sup>U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. *Federal Justice Statistics, 2017-2018*, <https://bjs.ojp.gov/content/pub/pdf/fjs1718.pdf>. (Accessed June 14, 2021)

<sup>2</sup>Sheil et. al., *Federal Supervised Release Revocation for Drug Use: The Rest of the Story*, December 2018, [https://www.uscourts.gov/sites/default/files/83\\_1\\_3\\_0.pdf](https://www.uscourts.gov/sites/default/files/83_1_3_0.pdf). (Accessed June 14, 2021)

<sup>3</sup> U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. *Federal Justice Statistics, 2017-2018*, <https://bjs.ojp.gov/content/pub/pdf/fjs1718.pdf>. (Accessed June 14, 2021)

<sup>4</sup> Prison Policy Initiative, *Mass Incarceration: The Whole Pie 2020*, March 24, 2020, <https://www.prisonpolicy.org/reports/pie2020.html> (Accessed June 14, 2021)

<sup>5</sup> Prison Policy Initiative, *Mass Incarceration: The Whole Pie 2020*, March 24, 2020, <https://www.prisonpolicy.org/reports/pie2020.html> (Accessed June 14, 2021)

across racial and ethnic lines, black and Latinx people are far more likely to be criminalized than white people.<sup>6</sup>

- A drug conviction can prevent a person from accessing housing, employment, public benefits, educational opportunities, and has cascading effects that impact families and communities for generations.
- Every year, the federal government spends over **\$35 billion**<sup>7</sup> on law enforcement, federal courts, forensic scientists, community supervision, and drug testing.

And yet the Drug War has achieved no meaningful reduction in the drug supply or prices. Instead it has exacerbated the dangers of illicit markets and created unnecessarily risky and harmful conditions for people who use drugs. Long prison sentences have done nothing to stem the rate of drug overdoses, but instead have prevented the implementation of robust harm reduction systems and driven people who need and want help further away from public health resources. In fact, overdoses have reached an all time high. Nearly 850,000 people have died from a drug overdose since 1999; more than 70,000 died in 2019 alone.<sup>8</sup>

This year must mark a significant turning point. As the United States marks the 50th anniversary of the Drug War, Congress must recognize the harms of this approach and move the country in a new direction.

Congress must take bold steps to refocus the federal strategy, pivoting away from the central premise that controlling unauthorized drug possession and use is something that should be punished. Instead, the federal approach should be health focused, evidence-based, and respectful of self-determination.

### A Policy Solution: Decriminalization

*Drug decriminalization* is an important step toward achieving a rational drug policy that prioritizes health over punishment. Decriminalization is a sensible step forward that would reap vast human and fiscal benefits, while protecting families and communities.<sup>9</sup> While drug

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<sup>6</sup> Drug Policy Alliance, *The Drug War, Mass Incarceration and Race*, January 25, 2018, <https://drugpolicy.org/resource/drug-war-mass-incarceration-and-race-englishspanish>

<sup>7</sup> Executive Office of the President of the United States, *National Drug Control Strategy FY 2021 Budget and Performance Summary*, June 2020, (Accessed June 14, 2021) <https://trumpwhitehouse.archives.gov/wp-content/uploads/2020/06/2020-NDCS-FY-2021-Budget-and-Performance-Summary.pdf> (Accessed June 14, 2021)

<sup>8</sup> Centers for Disease Control and Prevention, <https://www.cdc.gov/drugoverdose/data/statedeaths.html> (Accessed June 15, 2021)

<sup>9</sup> Drug Policy Alliance, *It's Time for the U.S. to Decriminalize Drug Use and Possession*, July 2017, <https://drugpolicy.org/resource/its-time-us-decriminalize-drug-use-and-possession> (Accessed June 14, 2021).

decriminalization cannot fully repair our broken and oppressive criminal legal system or the harms of an unregulated drug market, shifting from prohibition to drug decriminalization helps reduce dangerous and unnecessary police interactions, reduce the number of people caught up in the criminal justice system, better assist those in need, and save tax dollars.

The concept is neither new nor radical. Other nations, including Portugal, have successfully decriminalized possession of drugs for personal use and achieved meaningful improvements in treating problematic drug use and reducing the harms of policing drugs. Support for eliminating criminal penalties for drug possession is growing across the U.S. and around the world.

At the state level, Oregon decriminalized the possession of drugs for personal use last November, and in 2021 bills have been introduced in several other states, including New York, Maine, Massachusetts, Maryland, Vermont, Rhode Island, and elsewhere to enact similar reforms.

At the federal level, we are excited that Representatives Bonnie Watson Coleman and Cori Bush announced their intention to introduce groundbreaking legislation, the *Drug Policy Reform Act*, in this body very soon. The Drug Policy Reform Act will decriminalize low-level possession of controlled substances, shift the regulatory responsibility for classifying drugs away from law enforcement to the Department of Health and Human Services, begin repairing past harms, and make other changes to shift toward a system that prioritizes health and harm reduction.

#### Support Pending Reform Proposals

We commend members of the House who have introduced the following legislation to reduce sentences for drug offenses:

- *The **EQUAL Act**, introduced by Rep. Jeffries, to once and for all end the federal disparity between crack cocaine offenses and make this policy retroactive. Passing this law is even more important now in light of the recent Supreme Court case that upholds the First Step Act's limitations when it comes to crack cocaine offenses.<sup>10</sup>*
- *The **Prohibiting Punishment of Acquitted Conduct Act**, introduced by Rep. Steven Cohen, to end the unjust practice of judges increasing sentences based on conduct for which a defendant has been acquitted by a jury.*
- *The **COVID-19 Safer Detention Act**, by Chair Jerrold Nadler (D-NY) and Representatives Sheila Jackson Lee (D-TX) and Ted Deutch (D-FL), to expand compassionate release from federal prisons and allow some of the most vulnerable individuals in custody an opportunity to reunite with loved ones.*

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<sup>10</sup> See *Terry v. United States*, slip opinion issued June 14, 2021.

- Of course the **MORE Act**, led by Chairman Jerrold Nadler, Subcommittee Chairwoman Sheila Jackson Lee, and Reps. Earl Blumenauer, Barbara Lee, Hakeem Jeffries and Nydia Velázquez, to declassify marijuana as a controlled substance under federal law, expunge marijuana convictions, and reduce marijuana sentences.

In addition to the legislative proposals above, Congress should do more to immediately reform federal drug sentencing. Congress should reduce sentences of incarceration for all drug offenses, particularly those related to possession and distribution of personal use quantities of controlled substances. Additionally, it should:

- Fully repeal mandatory minimum sentences and vastly broaden the safety valve provisions. Mandatory minimum sentences take discretion away from judges and require the imposition of often absurdly harsh sentences, regardless of the circumstances of the individual -- regardless of whether they were suffering from substance use disorder and sometimes even when they did not fully know the contents of a substance. In 2020 nearly two thirds<sup>11</sup> of those sentenced in drug cases were convicted of an offense carrying a mandatory minimum penalty.
- Enact substantial reforms to supervised release to limit unnecessary drug-related conditions of release and prevent further incarceration for drug related technical violations.
- Revisit harsh drug enhancements like the “distribution resulting in death” statute<sup>12</sup> that allows for excessive and arbitrary sentences, while undermining the safety of people who use drugs by discouraging others close to a person experiencing overdose from seeking medical help.
- Ensure that that drug possession is no longer the cause of mandatory detention and deportation of non-citizens, or otherwise leads to immigration consequences, tearing apart families.
- Reject efforts to further criminalize fentanyl and its analogues and instead embrace a public health response to drug use.<sup>13</sup>

Madame Chair, this must be the turning point. For 50 years the Drug War has filled our prisons and derailed individual lives and disrupted families and communities. We must start enacting evidence-based policies rather than those based on arbitrary punishments that have no demonstrated benefit in keeping people safer.

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<sup>11</sup> United States Sentencing Commission, *Annual Report 2020*, <https://www.ussc.gov/about/annual-report-2020> (Accessed June 14, 2021)

<sup>12</sup> See 21 U.S.C. § 841(b)(1)(C).

<sup>13</sup> See for example, <https://drugpolicy.org/sites/default/files/classwide-scheduling-fentanyl-analogues-oppositionletter-congress.pdf> (Accessed June 14, 2021)

Although we appreciate the Committee holding this hearing to discuss sentencing reform, it is important to recognize the vast array of reforms that are necessary to dismantle the excesses of the Drug War.

- We need to pass comprehensive police reform that should contain meaningful changes in how search warrants are executed and limits on the militarization of our police forces. We must also end the practice of civil asset forfeiture based on suspected drug activity.
- We must dramatically reduce the funding for drug enforcement agencies, particularly the DEA, which are incentivized only to make increasing numbers of arrests, which leads to more arrests of the least culpable and most vulnerable, such as low level sellers who themselves suffer from substance use disorder.
- We need Congress to pass legislation that stops revocation of parole and supervised release for drug technical violations.
- We must pass legislation to clarify the "drug-involved premises" law to prevent the criminalization of harm reduction providers seeking to prevent overdoses.
- We must pass the MEAL Act to lift restrictions on the receipt of Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy Families (TANF) benefits for people with prior felony drug convictions in order to ensure people are able to feed and support their families.
- And fundamentally, we need Congress to start crafting a true replacement for the Controlled Substances Act - and to develop in a manner that is led by the people most impacted by the Drug War.

Thank you for the opportunity to submit testimony. We look forward to working with you to develop and enact meaningful reforms centered on removing criminal penalties for drug possession and facilitating access to voluntary harm reduction, treatment, recovery, and other social services.