

October 4, 2011

To: Judiciary Committee

Re: The Drug Trafficking Safe Harbor Elimination Act of 2011 (H.R. 313)

We urge you to oppose the Drug Trafficking Safe Harbor Elimination Act of 2011 (H.R. 313). This bill would expand problematic conspiracy laws, apply mandatory minimum drug sentences to more people, increase racial disparities, and subject Americans to incarceration for drug offenses and public health interventions that are legal in the foreign country in which they are committed. At a time when the Bureau of Prisons is operating at 36 percent over capacity we should not further burden it with more nonviolent drug offenders. Implementation of this legislation will also increase law enforcement and criminal justice costs at a time when Congress is focused on lowering government spending.

This bill seeks to authorize federal criminal prosecution of anyone in the U.S. suspected of conspiring with one or more persons, or aiding or abetting one or more persons, to commit at any place outside the United States an act that would constitute a violation of U.S. Controlled Substances drug laws if committed within the United States. If convicted, the defendant would be subject to the penalties, including mandatory minimum penalties, provided for those domestic offenses. These penalties would apply even if the controlled substance is legal under some circumstances in the other country. An American treatment provider working with doctors in England, Denmark, Germany, or Switzerland to provide heroin assisted treatment and sterile syringes to heroin users in those countries could face arrest. So could an otherwise law-abiding American planning with some friends to use marijuana legally in the Netherlands while on vacation there.

Even when applied against drug traffickers, The Drug Trafficking Safe Harbor Elimination Act would likely perpetuate injustice. Under U.S. drug conspiracy laws, a person can be found guilty even where no drugs or other physical evidence is introduced. The uncorroborated word of someone pointing fingers to get a reduced sentence can be sufficient to establish guilt. Moreover those convicted of being part of a drug conspiracy can be subject to punishment based on the crimes of co-conspirators, whether or not they were personally involved in those offenses. This has led to very low-level, first-time offenders receiving mandatory minimum sentences that are decades long.

The United States has less than five percent of the world's population but nearly 25 percent of its incarcerated population. Trends in the U.S. are shifting toward alternative sentencing and away from policies that have proven costly and ineffectual in the forty years since the War on Drugs was declared. H.R. 313 would be a detrimental step in the wrong direction. We strongly urge you to oppose this bill.

AIDS Action Council  
American Civil Liberties Union  
Drug Policy Alliance  
Families Against Mandatory Minimums  
Justice Policy Institute  
National Association for the Advancement of Colored People  
National Association of Criminal Defense Lawyers  
National Association of Social Workers  
The Sentencing Project  
StoptheDrugWar.org  
Students for Sensible Drug Policy  
The United Methodist Church- General Board of Church and Society