

May 15, 2013

The Honorable Patrick J. Leahy
Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

RE: Senator Hatch's Amendment 2 (MDM13383) To S.744 Would Result In Harsh Penalties For Cultivation Of Controlled Substances On Federal Lands

Dear Chairman Leahy and Ranking Member Grassley,

We, the undersigned faith-based, immigration, criminal justice and civil and human rights advocacy organizations, are writing to urge you to oppose Senator Hatch's amendment 2 (MDM13383) to S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act (i.e. the immigration legislation being marked up in the Senate Judiciary Committee). This amendment would result in the stacking of an additional up to 10-year sentence for cultivation of controlled substances on federal lands on top of the mandatory minimum sentences already associated with manufacturing and distribution of drugs. Also, the amendment would direct the United States Sentencing Commission (USSC) to establish a two-level sentence enhancement if the case involved the use and/or release of a poison, chemical, or other hazardous substance; diversion of or tampering with a water source; or the use or possession of weapons in furtherance of the grow operation.

Federal courts are overwhelmed with staggering immigration and criminal caseloads. The Federal Bureau of Prisons (BOP) is operating at almost 40% over capacity and currently is the second largest budget line in the Department of Justice. In its October 2011 report on mandatory minimum sentences, the USSC recognized that mandatory minimum sentences as well as the increase in immigration cases have contributed to BOP overcrowding. This proposed amendment will only add to these problems. Furthermore, the current laws already provide harsh mandatory minimum sentences for cultivating and manufacturing on Federal property.

In the 2011 report, the Commission recommends that Congress reconsider so-called "stacking" (i.e., sentencing a person to consecutive mandatory sentences) of mandatory minimum penalties for some federal firearms crimes, because these penalties can be excessively severe and unjust.

While the enhanced penalties required by this amendment do not result in stacking two mandatory minimum sentences, it does require stacking of a possible 10-year sentence on top of a mandatory minimum. The USSC concluded that stacking penalties can be excessively severe

and unjust, particularly cases in which there is no physical harm or threat of physical harm. In addition to the already long sentences for cultivation, the amendment also would require the USSC to create two-level sentencing enhancements for certain aggravating factors, which could result in even longer sentences.

The federal penalties for manufacturing and distribution of drugs are currently excessive and harsh. Long sentences for drug crimes and the increased number of immigration-related cases are creating dangerous conditions for staff and inmates in federal prisons across the country, and this amendment would only exacerbate this situation. For these reasons, we urge you to oppose Senator Hatch's Amendment 2.

Sincerely,

American Civil Liberties Union
Advo CARE
Blacks in Law Enforcement of America
Chicago Legal Advocacy for Incarcerated Mothers
Citiwide Harm Reduction
Drug Policy Alliance
[Drug Policy Forum of Texas](#)
Ella Baker Center for Justice
Families Against Mandatory Minimums
FedCURE
Human Rights Defense Center
Human Rights Defense Center
Law Enforcement Against Prohibition
NAACP
National Association of Criminal Defense Lawyers
National Council on Alcoholism and Drug Dependence - New Jersey
National Organization for the Reform of Marijuana Laws
Parents for Addiction Treatment & Healing
Partnership for Safety and Justice
StoptheDrugWar.org
The Sentencing Project
The Sentencing Project
United Church of Christ/Justice and Witness Ministries

cc: U.S. Senate Judiciary Committee