November 2, 2017

The Honorable Charles E. Grassley
Chair
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Sentencing Reform and Corrections Act of 2017 (S.1917)

Dear Chairman Grassley and Ranking Member Feinstein:

We write to express the opposition of the undersigned organizations to the recently-introduced Sentencing Reform and Corrections Act of 2017 (S. 1917). We represent federal, state and local law enforcement officers, agents and prosecutors responsible for the investigation and prosecution of drug traffickers and other violent offenders involved in the distribution and sale of dangerous drugs.

The public safety of our communities across the nation would be negatively impacted by this legislation. The legislation undermines mandatory minimum penalties for drug trafficking and weakens the tools that law enforcement authorities need to enforce the law, prosecute criminals and dismantle domestic and international drug trafficking organizations. The legislation authorizes the early release of thousands of previously convicted armed career criminals, serial violent criminals, and repeat drug traffickers. And it will make it more difficult for law enforcement to pursue the most culpable drug dealers and secure their cooperation to pursue others in drug distribution rings and networks, domestic and international.

The bill would undermine law enforcement investigatory efforts by giving serious criminals the best of both worlds: less sentencing exposure and the choice to not cooperate with law enforcement in further investigatory efforts.
This is not the time for the Congress to consider changes like these that will impair the ability of law enforcement to take serious drug traffickers off the street. Violent crime across America continues to grow, and a raging heroin and opioid abuse epidemic shows no sign of ebbing. For the second year in a row, violent crime increased across the United States, according to FBI annual crime data. Homicides increased by 8.6%, with cities like Baltimore, Chicago, and Kansas City, Missouri witnessing massive increases in their homicide rates. Meanwhile, a national epidemic of overdose deaths, caused largely by heroin and opioid drug abuse, ravages the country. No state is immune from the deadly consequences. Over 47,000 Americans died from drug overdoses in 2014, an all-time high. In 2015 that number rose to 50,000; last year it continued to skyrocket to 64,000 people. Daily drug overdose deaths, including those from heroin use, exceed those caused by auto accidents.

Moreover, the federal prison population is not increasing. It is in decline, partially as the result of untested and far-reaching United States Sentencing Commission changes over the past several years in federal sentencing policy. Misguided legislation like the Sentencing Reform and Corrections Act comes about when myth and misunderstanding overwhelm fact and reality. The assertion that the federal prison population is exploding is myth; the federal prison population is, in fact, decreasing and the rate of decrease – and the likely relationship to the rise in violent crime – will only accelerate as early releases continue as a result of unworthy changes.

Our reservations and concerns with the legislation are numerous. The bill does not require offenders to cooperate and in fact will lead to less cooperation, not more. The “second safety valve” established by the bill will eviscerate the 10-year mandatory minimums for drug trafficking and destroy the incentive under current law for offenders to reduce their sentences through cooperation with law enforcement in the pursuit of gangs and criminal organizations. This is because the second safety valve will expand the authority of judges to reduce the current 10-year mandatory minimum sentence for drug trafficking to anyone considered a “minor or minimal participant” in drug distribution conspiracies. The bill will over-expand judicial discretion to apply the leniency of the “safety valve” in current law to major drug traffickers, including those with multiple prior criminal convictions. Under S. 1917, the scope of the safety valve will expand to create a flood gate of legal jailbreaks, with the expansion of its coverage to cover nearly anyone in a drug distribution network, except for the highest level leaders and managers.

Furthermore, as a result of the definition of “serious drug offense” in the bill, which significantly narrows the class of prior felony drug trafficking convictions which can be counted for purposes of recidivist enhancements, serial drug traffickers with multiple convictions could become eligible for relief from the second safety valve. This combination of expanded judicial discretion, along with further sentence reductions under the corrections title of the bill, could effectively reduce ten-year sentences for trafficking to as little as 2.5 years, a pale reflection of the ten-year minimum sentence intended by Congress. Moreover, felons who enjoy the
benefits of the second safety valve will not be required to cooperate with law enforcement, nor disclose anything more than their role and knowledge of the underlying offense. These felons will not be required to testify against their criminal associates or cooperate in any way in other criminal investigations. As if this were not enough, proposed revisions of the bill purport to exclude retroactive sentencing reductions to those who have previously committed “serious violent felonies,” an approach likely to create endless litigation throughout the federal courts over the vagueness of that term in light of the U.S. Supreme Court’s decision in Johnson v. United States, 135 S.Ct. 2551 (2015).

Once again, we urge Congress to refrain from considering changes like those found in this legislation. The institutional capacity of law enforcement authorities at the federal, state and local levels to fulfill their mission, assure public safety at a time when it is desperately needed, and deliver justice will be undermined by the Sentencing Reform and Corrections Act. For these reasons, we are opposed to the legislation.

Sincerely yours,

Robert Bushman
President
National Narcotics Officers’ Associations’ Coalition

Nathan R. Catura
Nate Catura
President
Federal Law Enforcement Officers Association

Sheriff Harold Eavenson
President
National Sheriffs Association

Ron Hosko
President
Law Enforcement Action Network
William J. Johnson  
Executive Director  
National Association of Police Organizations

Lawrence Leiser  
President  
National Association of Assistant United States Attorneys

Robert Peryam  
President  
National HIDTA Directors Association

cc: Majority Leader Mitch McConnell  
    Minority Leader Charles E. Schumer  
    Senate Judiciary Committee Members