

DRUG TRAFFICKING SAFE HARBOR ELIMINATION ACT
OF 2011

DECEMBER 12, 2011.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. SMITH of Texas, from the Committee on the Judiciary,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 313]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 313) to amend the Controlled Substances Act to clarify that persons who enter into a conspiracy within the United States to possess or traffic illegal controlled substances outside the United States, or engage in conduct within the United States to aid or abet drug trafficking outside the United States, may be criminally prosecuted in the United States, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The Amendment

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Drug Trafficking Safe Harbor Elimination Act of 2011”.

SEC. 2. AMENDMENTS TO THE CONTROLLED SUBSTANCES ACT TO CLARIFY CONSPIRACIES CONDUCTED WITHIN THE UNITED STATES MAY BE CRIMINALLY PROSECUTED IN THE UNITED STATES.

Section 406 of the Controlled Substances Act (21 U.S.C. 846) is amended by—

- (1) inserting “(a)” before “Any”; and
- (2) inserting at the end the following:

“(b) Whoever, within the United States, conspires with one or more persons, or aids or abets one or more persons, regardless of where such other persons are located, to engage in conduct at any place outside the United States that would constitute a violation of this title, other than a violation of section 404(a), if committed within the United States, shall be subject to the same penalties that would apply to such conduct if it were to occur within the United States.”.

Purpose and Summary

H.R. 313 gives extraterritorial application to the Federal drug conspiracy statute. The legislation clarifies that those persons who conspire within the United States to possess or traffic illegal controlled substances outside the United States, or engage in conduct within the United States to aid or abet drug trafficking outside the United States, may be criminally prosecuted in the United States. The crime of simple possession of a controlled substance is excluded from application of the legislation.

Background and Need for the Legislation

This bill closes a loophole in the Controlled Substances Act and clarifies Congress’ intent that the drug trafficking conspiracy statute be given extraterritorial application. Drug traffickers are currently allowed to conspire with impunity in the United States and evade criminal prosecution when their goal is to traffic drugs outside of the United States.

A Federal criminal case demonstrates how the loophole is being exploited. In 1998, two individuals conspired with members of a large Colombian drug trafficking organization which included a Saudi Arabian prince. The goal of the conspiracy was to traffic 2,000 kilograms of cocaine, worth over \$100 million, from South America to Europe. Several meetings among the co-conspirators occurred in Miami, Florida and elsewhere around the world. Specifically, while in Miami, they planned in detail to purchase the cocaine in Colombia and ship it to Europe for distribution. Ultimately, the prince used his royal jet under diplomatic cover to transport the cocaine from Venezuela to Paris, France. Although part of the cocaine was seized by law enforcement authorities in France and Spain, about 1,000 kilograms of cocaine were distributed and sold in the Netherlands, Italy and elsewhere in Europe.

In 2005, two of the conspirators were convicted of drug trafficking and conspiracy in Federal district court in Florida and each sentenced to about 24 years in prison. However, in 2007 the U.S.

Court of Appeals for the Eleventh Circuit vacated their convictions.¹ The court reasoned that there is no violation of Federal law when, absent Congressional intent to the contrary, the object of the conspiracy is to possess and distribute controlled substances outside of the United States even though meetings and negotiations in furtherance of the crime occurred on U.S. soil.

Crime is *usually* territorial. It is a matter of law enforcement specific to the place where the crime occurs. However, drug trafficking is inherently global in nature, now more than ever. Two other provisions of the Controlled Substances Act are explicitly extraterritorial: 21 U.S.C. § 959 (foreign manufacture of drugs for U.S. importation) and § 960a (narco-terrorism). In addition, 18 U.S.C. § 1956, the primary anti-money laundering statute used in drug trafficking cases, is extraterritorial. The Federal Maritime Drug Law Enforcement Act was enacted in response to the increasing use of vessels, submersibles and semi-submersibles to traffic drugs around the world. In passing that law, Congress stated “that trafficking in controlled substances aboard vessels is a serious international problem and is universally condemned. Moreover, such trafficking presents a specific threat to the security and societal well-being of the United States.”

There are hundreds of Federal laws which are expressly extraterritorial. Extradition treaties among countries around the world are often used to effectuate the extraterritorial laws of nations. The United States has taken the lead in worldwide narcotics control over the past several decades. Now is not the time for the U.S. to provide a safe haven for drug traffickers to plot their illicit, international operations.

The United States is a signatory to two leading international drug treaties: the 1961 Single Convention on Narcotic Drugs and the 1971 Convention on Psychotropic Substances. The first treaty has been extremely influential in standardizing national drug control laws. The Controlled Substances Act was intended to fulfill our treaty obligations. As of January 2005, this treaty had 180 parties. The second treaty was designed to control psychotropic drugs which were not within the scope of the first treaty. This treaty, supplemented by subsequent treaty signed in 1988, includes provisions to end international drug trafficking, associated money laundering and other drug-related crimes.

The Committee adopted an amendment to expressly exclude the crime of simple possession of a controlled substance from the extraterritorial application of the drug conspiracy statute. Consideration has been given to situations where one or more persons in the United States may discuss the simple possession or personal use of drugs outside of the United States with individuals in or outside of the United States. The intent to criminalize conspiracies to traffic drugs both in and outside of the United States should not extend to conspiracies limited to the simple possession of personal use quantities when there is no concurrent intent to distribute or re-sell those drugs.

Opponents argue that the new conspiracy provision should only apply to cases in which the conduct at issue violates not just U.S. law but the laws of the countries in which the drug trafficking oc-

¹ *United States v. Lopez-Vanegas*, 493 F.3d 1305 (11th Cir. 2007).

curs. The *Lopez-Vanegas* case illustrates the difficulty this requirement would present to the government. The 2,000 kilograms of cocaine originated in Colombia. It was transported to Venezuela and Saudi Arabia before arriving in Paris. Then, part of the cocaine was transported to Spain. The rest of it was sold in Italy, the Netherlands and elsewhere in Europe. The members of this drug trafficking conspiracy met in Miami, Florida, Aruba, Spain and Saudi Arabia. The proceeds of the sale of the cocaine were laundered through Switzerland.

Under this requirement, the government would have been required to prove that the conduct alleged in the conspiracy was criminal in more than ten countries around the world. Despite some creative legal interpretation by our colleagues on the other side of the aisle, the government would not meet this burden simply by proving illegality in one country. A simple plain meaning interpretation of the amendment offered by Mr. Scott of Virginia leaves no doubt that the government would be required to prove illegality in every country in which any drug trafficking conduct occurred.

As noted above, Congress has enacted numerous extraterritorial statutes and in most of those instances, has done so without regard for the legality of the conduct in the foreign country or countries in which it occurs.² Interpretation and application of foreign law or mutual criminality is currently and more appropriately addressed in the extradition process.

Opponents also assert that H.R. 313 should not apply to distribution offenses. There are essentially two types of Federal offenses relating to the possession of illegal drugs: simple possession and possession with intent to distribute. Simple possession includes the control or ownership of amounts to be used by one individual. Possession with intent to distribute encompasses the re-sale of drugs to others as well as the cultivation, manufacture, and importation of drugs. Although distribution offenses carry lower penalties than Federal drug trafficking offenses,³ they still involve the sale of large quantities of illegal drugs—quantities that well exceed those that would constitute simple possession under Federal law.

A carve-out of possession with intent to distribute offenses would exempt significant drug distributors from the reach of the drug conspiracy statute and afford them continuing safe harbor protections that this bill intends to eliminate.

Hearings

The Committee on the Judiciary held no hearings on H.R. 313.

Committee Consideration

On October 6, 2011, the Committee met in open session and ordered the bill H.R. 313 favorably reported with an amendment, by a recorded vote of 20–7, a quorum being present.

²See, e.g., 18 U.S.C. § 1091 (genocide), ch. 113B (terrorism), ch. 113C (torture), ch. 118 (war crimes), § 2442 (recruitment or use of child soldiers).

³See 21 U.S.C. § 841 et seq.

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following rollcall votes occurred during the Committee's consideration of H.R. 313.

1. An amendment by Mr. Scott to limit coverage of the bill to conduct which is a criminal offense in the place where it occurs. Failed 11 to 13.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Smith, Chairman		X	
Mr. Sensenbrenner, Jr.		X	
Mr. Coble			
Mr. Gallegly		X	
Mr. Goodlatte			
Mr. Lungren			
Mr. Chabot		X	
Mr. Issa		X	
Mr. Pence			
Mr. Forbes			
Mr. King		X	
Mr. Franks		X	
Mr. Gohmert			
Mr. Jordan			
Mr. Poe			
Mr. Chaffetz		X	
Mr. Griffin		X	
Mr. Marino			
Mr. Gowdy		X	
Mr. Ross		X	
Ms. Adams		X	
Mr. Quayle			
Mr. Amodei		X	
Mr. Conyers, Jr., Ranking Member	X		
Mr. Berman	X		
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Cohen	X		
Mr. Johnson	X		
Mr. Pierluisi	X		
Mr. Quigley			
Ms. Chu			
Mr. Deutch	X		
Ms. Sánchez			
[Vacant]			
Total	11	13	

2. An amendment by Mr. Scott to limit coverage of the bill to the most serious of drug crimes. Failed 11 to 12.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Smith, Chairman		X	
Mr. Sensenbrenner, Jr.		X	
Mr. Coble			
Mr. Gallegly		X	
Mr. Goodlatte			
Mr. Lungren			
Mr. Chabot		X	
Mr. Issa			
Mr. Pence			
Mr. Forbes			
Mr. King		X	
Mr. Franks		X	
Mr. Gohmert			
Mr. Jordan			
Mr. Poe			
Mr. Chaffetz		X	
Mr. Griffin		X	
Mr. Marino			
Mr. Gowdy		X	
Mr. Ross		X	
Ms. Adams		X	
Mr. Quayle			
Mr. Amodei		X	
Mr. Conyers, Jr., Ranking Member	X		
Mr. Berman			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Cohen	X		
Mr. Johnson	X		
Mr. Pierluisi	X		
Mr. Quigley			
Ms. Chu	X		
Mr. Deutch	X		
Ms. Sánchez			
[Vacant]			
Total	11	12	

3. An amendment by Ms. Jackson Lee to require corroborating evidence in order to convict someone of a drug offense. Failed 9 to 17.

ROLLCALL NO. 3

	Ayes	Nays	Present
Mr. Smith, Chairman		X	
Mr. Sensenbrenner, Jr.		X	
Mr. Coble			
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Lungren			
Mr. Chabot		X	

ROLLCALL NO. 3—Continued

	Ayes	Nays	Present
Mr. Issa		X	
Mr. Pence			
Mr. Forbes		X	
Mr. King		X	
Mr. Franks		X	
Mr. Gohmert			
Mr. Jordan			
Mr. Poe			
Mr. Chaffetz			
Mr. Griffin		X	
Mr. Marino		X	
Mr. Gowdy		X	
Mr. Ross		X	
Ms. Adams		X	
Mr. Quayle		X	
Mr. Amodei		X	
Mr. Conyers, Jr., Ranking Member	X		
Mr. Berman			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Cohen			
Mr. Johnson	X		
Mr. Pierluisi		X	
Mr. Quigley			
Ms. Chu	X		
Mr. Deutch	X		
Ms. Sánchez			
[Vacant]			
Total	9	17	

4. Motion to report H.R. 313 favorably, as amended. Passed 20 to 7.

ROLLCALL NO. 4

	Ayes	Nays	Present
Mr. Smith, Chairman	X		
Mr. Sensenbrenner, Jr.	X		
Mr. Coble			
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Lungren			
Mr. Chabot	X		
Mr. Issa	X		
Mr. Pence			
Mr. Forbes	X		
Mr. King	X		
Mr. Franks	X		
Mr. Gohmert			
Mr. Jordan			
Mr. Poe			

ROLLCALL NO. 4—Continued

	Ayes	Nays	Present
Mr. Chaffetz			
Mr. Griffin	X		
Mr. Marino	X		
Mr. Gowdy	X		
Mr. Ross	X		
Ms. Adams	X		
Mr. Quayle	X		
Mr. Amodei	X		
Mr. Conyers, Jr., Ranking Member		X	
Mr. Berman	X		
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren			
Ms. Jackson Lee		X	
Ms. Waters		X	
Mr. Cohen			
Mr. Johnson		X	
Mr. Pierluisi	X		
Mr. Quigley			
Ms. Chu	X		
Mr. Deutch	X		
Ms. Sánchez			
[Vacant]			
Total	20	7	

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

Congressional Budget Office Cost Estimate

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 313, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 8, 2011.

Hon. LAMAR SMITH, CHAIRMAN,
*Committee on the Judiciary,
House of Representatives, Washington, DC.*

DEAR MR. SMITH: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 313, the “Drug Trafficking Safe Harbor Elimination Act of 2011.”

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226–2860.

Sincerely,

DOUGLAS W. ELMENDORF,
DIRECTOR.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 313—Drug Trafficking Safe Harbor Elimination Act of 2011.

As ordered reported by the House Committee on the Judiciary on
October 6, 2011

CBO estimates that implementing H.R. 313 would have no significant costs to the Federal Government. Enacting the bill could affect direct spending and revenues; therefore, pay-as-you-go procedures apply. However, CBO estimates that any effects would be insignificant for each year.

H.R. 313 would prohibit U.S. entities from assisting, supporting, or engaging in conspiracy with entities engaged in activities outside the United States that would violate the Controlled Substances Act if carried out within the United States. Under current law, it is legal to assist or invest in a manufacturing company with operations outside the United States that produces chemicals that are on the U.S. Controlled Substance list. Thus, the government might be able to pursue new cases under the bill that it otherwise would not be able to prosecute. CBO expects that H.R. 313 would apply to a relatively small number of new cases, however, so any increase in costs for law enforcement, court proceedings, or prison operations would not be significant. Any such costs would be subject to the availability of appropriated funds.

Because those prosecuted and convicted under H.R. 313 could be subject to criminal fines, the Federal Government might collect additional fines if the legislation is enacted. Criminal fines are recorded as revenues, deposited in the Crime Victims Fund, and later spent. CBO expects that any additional revenues and direct spending would not be significant because of the small number of cases likely to be affected.

To the extent that public and private entities, including public and private pension funds, would be prohibited from investing in or aiding those companies, the legislation would constitute an intergovernmental and private-sector mandate as defined in the

Unfunded Mandates Reform Act (UMRA). The cost of the mandate is uncertain because it would depend on what activities are determined to constitute assistance, support, or conspiracy under the legislation, and those terms may be interpreted narrowly or broadly. Moreover, if investments are prohibited, the cost of complying with the mandate would depend on the difference in returns on the investments that would be prohibited and on alternative investments. CBO does not have data to make those determinations. Therefore, CBO cannot determine whether the aggregate costs of the intergovernmental or private-sector mandates would exceed the annual thresholds established in UMRA (\$71 million for intergovernmental mandates and \$142 million for private-sector mandates in 2011, adjusted annually for inflation).

The CBO staff contacts for this estimate are Mark Grabowicz (for Federal costs), Melissa Merrell (for the State and local impact), and Marin Randall (for the impact on the private sector). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 313, gives extraterritorial application to the Federal drug conspiracy statute for drug trafficking crimes under Title 21, United States Code, but not the crime of simple possession of a controlled substance.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 313 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI.

Section-by-Section Analysis

The following discussion describes the bill as reported by the Committee.

Sec. 1: Short Title.

Section 1 provides that the short title of H.R. 313 is the “Drug Trafficking Safe Harbor Elimination Act of 2011.”

Sec. 2: Amendments to the Controlled Substances Act To Clarify Conspiracies Conducted Within the United States may be Criminally Prosecuted in the United States.

Section 2 gives extraterritorial application to the Federal drug conspiracy statute. The Section clarifies that those persons who conspire within the United States to possess with intent to distribute or traffic illegal controlled substances outside the United States, or engage in conduct within the United States to aid or abet drug trafficking outside the United States, may be criminally prosecuted in the United States. Section 2 also excludes the crime of simple possession of a controlled substance from the extraterritorial application of the drug conspiracy statute.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

CONTROLLED SUBSTANCES ACT

TITLE II—CONTROL AND ENFORCEMENT

* * * * *

PART D—OFFENSES AND PENALTIES

* * * * *

ATTEMPT AND CONSPIRACY

SEC. 406. (a) Any person who attempts or conspires to commit any offense defined in this title shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

(b) *Whoever, within the United States, conspires with one or more persons, or aids or abets one or more persons, regardless of where such other persons are located, to engage in conduct at any place outside the United States that would constitute a violation of this title, other than a violation of section 404(a), if committed within the United States, shall be subject to the same penalties that would apply to such conduct if it were to occur within the United States.*

* * * * *

Dissenting Views

INTRODUCTION

H.R. 313 has the potential to greatly expand our Nation's drug laws and the harsh penalties associated with them. It would criminalize conspiracies that take place in the United States relating to drug activity that occurs entirely in another country, regardless of that country's law or the scope of the activity. This bill would also subject more people to mandatory minimum sentences and it would further extend our Nation's failed policy on drugs.

For these reasons, and those stated below, we urge our colleagues to oppose this legislation and respectfully dissent.

DESCRIPTION AND BACKGROUND

H.R. 313 would amend the Controlled Substances Act (CSA)¹ to provide that persons located in the United States who enter into a conspiracy within the United States to engage in drug trafficking abroad, or who aid and abet drug trafficking abroad, may be criminally prosecuted in the United States.

H.R. 313 was introduced at least partly in response to the 2007 decision of the 11th Circuit Court of Appeals in *United States v. Lopez-Vanegas*.² In that case, the defendants were charged with and convicted of a conspiracy to transport large amounts of cocaine from Venezuela to France. The prosecution's charges were based on 21 U.S.C. §§ 841 (unlawful distribution of controlled substances) and 846 (conspiracy to violate the CSA). The defendants appealed their conviction on the basis that the object of the conspiracy—the possession and distribution on foreign soil—is not a violation of section 841 because the statute does not expressly provide for liability for possession or distribution that occurs completely outside the United States. The Court of Appeals agreed and overturned the convictions, reasoning that Congress had not stated its intent to reach discussions held in the United States in furtherance of a conspiracy to possess controlled substances outside the territorial jurisdiction of the United States with the intent to distribute those controlled substances outside of the territorial jurisdiction of the United States.

For the reasons discussed below, however, H.R. 313 is an overbroad response to the *Lopez-Vanegas* case and an unwarranted extension of Federal criminal law.

CONCERNS WITH H.R. 313

I. THE BILL'S FOCUS SHOULD BE LIMITED TO THE HIGHEST LEVELS OF INTERNATIONAL DRUG TRAFFICKING

If Congress is to extend Federal criminal law to conspiracies occurring solely in the United States to engage in drug transactions taking place abroad, it should focus only on the highest level of drug trafficking, such as the large quantities of cocaine trafficked in the *Lopez-Vanegas* case. Local law enforcement is more than capable of investigating and prosecuting low-level drug sellers, while Federal law enforcement has the unique ability to dismantle so-

¹ Codified at Chapter 13 of 21 U.S. Code.

² 493 F.3d 1305 (11th Cir. 2007).

phisticated drug trafficking networks which cross international boundaries and which should be the focus of Federal law. While the Committee adopted an amendment offered by the bill's sponsor, Chairman Lamar Smith, to exclude conspiracies solely involving simple possession of controlled substances from the bill, this amendment did not adequately limit the broad coverage of the bill.

An amendment offered by Congressman Robert C. "Bobby" Scott (D-VA) to limit the bill's coverage to conspiracies to engage in conduct which under the Federal drug laws would be punishable by imprisonment of greater than 20 years failed by a vote of 11 to 12. Without this change, the scope of the bill is too broad.

II. FEDERAL CRIMINAL LAW SHOULD NOT BE EXTENDED TO CONSPIRACIES IN THE UNITED STATES TO ENGAGE IN DRUG TRANSACTIONS THAT ARE LEGAL ABROAD

Another significant concern with H.R. 313 is that it would allow Federal prosecution of conspiracies that take place in the United States to engage in drug distribution that, in some cases, may not even be illegal in the country in which the distribution takes place.

Drug laws around the world are not all the same. There are some drug transactions which are illegal under the laws of the United States but are not criminally prohibited in some other countries. For instance, activities such as the use, production, and distribution of marijuana for medical use are legal in various countries, including Israel³ and Canada.⁴ Israelis, Canadians and other citizens involved in medical marijuana programs in their country could face Federal prosecution if they visited the United States but stayed in contact with their coworkers abroad.

To correct this problem, Congressman Scott offered an amendment that would have limited the bill's application to conspiracies to engage in drug activity abroad that would actually be a criminal offense in the place in which that conduct occurs. This narrow amendment to the bill is necessary to prevent the unwarranted use of Federal investigative, prosecutorial, and prison resources in situations in which it would be permissible under foreign law for someone to engage in certain drug activity in other countries but illegal for them, because of this bill, to make arrangements for that legal activity in the United States. The amendment failed by a vote of 11 to 13.

III. H.R. 313 WOULD CONTINUE THE UNJUST PROLIFERATION OF MANDATORY MINIMUM SENTENCES

The broad scope of this bill means that even more individuals will be subjected to mandatory minimum sentences under the CSA.⁵ Mandatory minimum penalties are already a major concern

³ <http://www.pmo.gov.il/PMOEng/Communication/Spokesman/2011/08/spokecannabis070811.htm>; Bankier, Ariela. *Israeli Government Approves Guidelines for Medical Marijuana*, Haaretz.com. Haaretz Newspaper, Aug. 8 2011., available at <http://www.haaretz.com/news/national/israeli-government-approves-guidelines-for-medical-marijuana-1.377416>.

⁴ <http://www.hc-sc.gc.ca/dhp-mps/marihuana/index-eng.php>.

⁵ The conspiracy provision under the CSA subjects conspirators to the same penalties as those prescribed for the offense. 21 U.S.C § 846. The CSA provides a number of mandatory minimum penalties, such as sentences of 5 years imprisonment for distribution or possession with intent to distribute one gram of LSD, 100 marijuana plants, 28 grams of crack cocaine, 500 grams of powder cocaine, 100 grams of heroin, five grams of pure methamphetamine, 50 grams of a methamphetamine mixture, ten grams of PCP, and 100 grams of a PCP mixture. Ten-year sentences

Continued

with respect to sentencing fairness and the wise use of financial resources, but they would be particularly troublesome with respect to actions which have almost no nexus to the United States.

Mandatory minimums for low-level offenders waste considerable tax dollars in terms of prison spending and law enforcement prioritization. In 2008, 21,023 people were sentenced to 31,239 counts of conviction carrying mandatory minimum sentences at an average cost of \$28,000 per person per year. Mandatory minimums cause other unintended, but very real, consequences beyond the daily and personal injustice of subjecting many defendants to sentences that are too long.

One major consequence is that mandatory minimums contribute to over-incarceration. As Federal Public Defender Michael Nachmanoff testified before the U.S. Sentencing Commission in 2009:

[t]he Federal prison population is currently at 206,786 inmates, a nearly five-fold increase since mandatory minimums and mandatory guidelines became law. The major cause of the prison population explosion is the increase in sentence length for drug trafficking, from 23 months before the guidelines to 73 months in 2001. About 75% of this increase was due to mandatory minimums, and 25% was due to guideline increases above mandatory minimum levels. Today, the average sentence length for drug trafficking is even higher than in 2001, at 83.2 months.⁶

Federal prison beds should be prioritized for offenders who have higher level roles in drug trafficking organizations. This is another reason that limiting the scope of this bill to quantities that carry sentences of more than 20 years would help ensure that low-level individuals will not be swept into the over-burdened criminal justice system, ensuring that Federal law enforcement and prosecutors can focus on major traffickers.

IV. CONGRESS SHOULD REFRAIN FROM UNWARRANTED EXTENSIONS OF CONSPIRACY LAWS

Conspiracy laws are particularly susceptible to abuse, and convicting someone based on discussions about activity that may be criminal has very serious ramifications. As discussed above, H.R. 313 is even more problematic because it is not limited to high-level drug trafficking and the object of the conspiracies covered by the bill may, in some cases, not even be illegal in the countries in which the transactions take place. Federal drug laws provide extreme punishment, and under the drug conspiracy law, someone may be subject to the same penalty for a conspiracy as the underlying offense, which could include lengthy mandatory minimum sentences.⁷

In response to these concerns, Congresswoman Sheila Jackson Lee (D-TX) offered an amendment that would have prevented the

are mandatory for ten grams of LSD, 1000 marijuana plants, 280 grams of crack cocaine, five kilos of powder cocaine, one kilo of heroin, 50 grams of pure methamphetamine, 500 grams of a methamphetamine mixture, 100 grams of PCP, and one kilo of a PCP mixture.

⁶Statement of Michael Nachmanoff, Federal Public Defender for the Eastern District of Virginia, Public Hearing Before the United States Sentencing Commission, "The Sentencing Reform Act of 1984: 25 Years Later," New York, New York, July 9, 2009, available at http://www.fd.org/pdf_lib/Statement%20of%20Michael%20Nachmanoff%20USSC%20Regional%20Hearing%207.9.09.pdf.

⁷21 U.S.C. § 846.

use of the bill's conspiracy provision to convict someone for drug offenses unless the conviction is supported by evidence other than the eyewitness testimony of a law enforcement officer or individual acting on behalf of a law enforcement officer (i.e., confidential informant). Her amendment also responds in part to the case in Tulia, Texas, in which more than 40 mostly African American citizens were falsely arrested, and some convicted, of drug crimes, based on the fabrications of a part-time, undercover officer, who worked on temporary assignments for small police departments.⁸ The amendment, however, failed by a vote of 9 to 17.

Americans are best protected from abuse when a greater degree of evidence in conspiracy cases is required. Unfortunately, H.R. 313 fails to achieve this goal. As a result, the bill is an unwarranted extension of Federal laws which are already overbroad.

CONCLUSION

While Congress has an interest in combating major, international drug trafficking, H.R. 313 is not the solution. The scope of this bill is an excessive response to the *Lopez-Vanegas* case, which involved large-scale cocaine shipments. Federal drug conspiracy laws are already subject to abuse and impose extreme penalties. H.R. 313, however, exacerbates current law by criminalizing arrangements made in the United States for drug transactions that take place completely outside this country, some of which may not even be illegal in the countries where they occur.

For the forgoing reasons, we respectfully dissent.

JOHN CONYERS, JR.
 JERROLD NADLER.
 ROBERT C. "BOBBY" SCOTT.
 MELVIN L. WATT.
 SHEILA JACKSON LEE.
 MAXINE WATERS.
 STEVE COHEN.
 HENRY C. "HANK" JOHNSON, JR.



⁸Nate Blakeslee, *Color of Justice: An Undercover Drug Bust Opens Old Wounds in Tulia, Texas*, THE AUSTIN CHRONICLE, July 28, 2000, available at <http://www.austinchronicle.com/news/2000-07-28/78058/print/>.