

November 28th, 2022

The Honorable Dick Durbin
Chairman
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley:

We, the undersigned organizations, write to urge you to permanently extend the Drug Enforcement Administration's (DEA) class wide scheduling authority for fentanyl-related substances before the agency's temporary scheduling authority expires on December 31, 2022.

Preliminary data from the Centers for Disease Control and Prevention (CDC) indicates there were an estimated 50,000 deaths from synthetic opioids, including fentanyl-related overdoses, between July 2019 and July 2020.¹ The agency has also warned about an alarming trend of polysubstance use, in which fentanyl is mixed with other illicit drugs such as heroin or cocaine, leading to more potent drug combinations.² In one 10-state study, CDC researchers found that "almost 57% of people who died from an overdose tested positive for fentanyl and fentanyl analogues also tested positive for cocaine, methamphetamine, or heroin."³ Much of the illicit fentanyl responsible for this tragic death toll in the United States is manufactured abroad, particularly in China or using Chinese-made precursor chemicals.

From October 2020 through September 2021, CBP seized 11,201 pounds of fentanyl. One kilogram of fentanyl is equivalent to 500,000 lethal doses, making this record amount equal to 2.5 billion fatal doses. The Fentanyl produced is up to 100 times stronger than morphine and 50 times stronger than heroin. The Centers for Disease Control and Prevention found most fentanyl overdoses were from illicitly manufactured fentanyl or that made illegally and smuggled into the country by criminal organizations.

DEA's temporary class wide order has played a significant role in curbing the flow of Chinese-origin fentanyl-related substances into the United States as noted by the Department of Justice (DOJ):

"The Chinese scheduling action, coupled with DEA's regulatory authority, enacted on February 6, 2018, which placed all non-scheduled fentanyl-related substances in Schedule I temporarily, on an emergency basis, for two years, has resulted in a significant

¹ CENTERS FOR DISEASE CONTROL AND PREVENTION, NATIONAL CENTER FOR HEALTH STATISTICS: VITAL STATISTICS RAPID RESPONSE: PROVISIONAL DRUG OVERDOSE DEATH COUNTS (Feb. 7, 2021), <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm>.

² CENTERS FOR DISEASE CONTROL AND PREVENTION: FENTANYL CONTAMINATION OF OTHER DRUGS IS INCREASING OVERDOSE RISK (Jan. 26, 2021), <https://www.cdc.gov/drugoverdose/data/otherdrugs.html#fentanyl>.

³ CENTERS FOR DISEASE CONTROL AND PREVENTION: FENTANYL CONTAMINATION OF OTHER DRUGS IS INCREASING OVERDOSE RISK (Jan. 26, 2021), <https://www.cdc.gov/drugoverdose/data/otherdrugs.html#fentanyl>.

decrease in *direct* Chinese-origin fentanyl-related substances being encountered in the United States since Fiscal Year 2019.”⁴

DOJ has also noted a 50-percent reduction in law-enforcement encounters with fentanyl-related substances when comparing the two years (2016 and 2017) before DEA’s order with the two years (2018 and 2019) after its implementation.⁵

In the absence of the class wide order, law enforcement would likely face a surge of new, rapidly-emerging fentanyl-related substances as they did prior to the class wide scheduling order; “...from 2016 to 2018, [Customs and Border Protection] encountered either a new fentanyl analogue, a non-fentanyl opioid, or a fentanyl substance utilizing a molecular deletion nearly every single month (33 total).”⁶ These fentanyl-related substances would have to be scheduled on a substance-by-substance basis, which can take up to three years when previously scheduled under emergency authority. This reactive posture would amount to a game of whack-a-mole between law enforcement and transnational criminal organizations (TCOs). Meanwhile, fentanyl-related deaths, including from polysubstance use, would increase.

While some legislators have offered half measures, such as temporary orders that allow for the wide-scale removal of analogues from the schedule or eliminate mandatory minimums, only a permanent solution with clear penalties is sufficient to address the crisis we’re currently experiencing across the country. We encourage the Senate Judiciary Committee, alongside leadership in both chambers, to work together in a bipartisan fashion to find a permanent scheduling solution that provides Federal, State, local and tribal law enforcement with the tools it needs to keep communities safe.

To help save American lives, we urge you to permanently extend DEA’s class wide scheduling order for fentanyl-related substances before the agency’s temporary authority expires at the end of this year.



District Attorney John Flynn
President
National District Attorneys Association

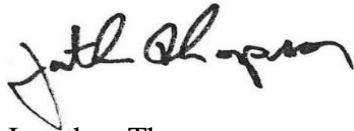


Chief Eddie Garcia
President
Major Cities Chiefs Association

⁴ *Fentanyl Analogues: Perspectives on Classwide Scheduling: Hearing Before Subcomm. on Crime, Terrorism, and Homeland Security*, 116th Cong. (Jan. 28, 2020) (Statement of Amanda Liskamm, Director, Opioid Enforcement and Prevention Efforts, Office of the Deputy Attorney General, U.S. Department of Justice), <https://docs.house.gov/meetings/JU/JU08/20200128/110392/HHRG-116-JU08-Wstate-LiskammA-20200128.pdf>.

⁵ *Fentanyl Analogues: Perspectives on Classwide Scheduling: Hearing Before Subcomm. on Crime, Terrorism, and Homeland Security*, 116th Cong. (Jan. 28, 2020) (Statement of Amanda Liskamm, Director, Opioid Enforcement and Prevention Efforts, Office of the Deputy Attorney General, U.S. Department of Justice), <https://docs.house.gov/meetings/JU/JU08/20200128/110392/HHRG-116-JU08-Wstate-LiskammA-20200128.pdf>.

⁶ *The Countdown: Fentanyl Analogues and the Expiring Emergency Scheduling Order: Hearing Before Committee on the Judiciary, United States Senate*, 116th Cong. (June 4, 2019) (Statement of Kemp L. Chester, Assistant Director, National Opioids and Synthetics Coordination Group, Office of National Drug Control Policy), <https://www.judiciary.senate.gov/imo/media/doc/Chester%20Testimony.pdf>



Jonathan Thompson
Executive Director and CEO
National Sheriffs' Association



William J. Johnson
Executive Director
National Association of Police
Organizations



Sheriff Dennis M. Lemma
Seminole County Sheriff's Office, FL
President
Major County Sheriffs Association



Chief Mark Keel
President
Association of State Criminal
Investigative Agencies



Vincent J. Vallelong
President
Sergeants Benevolent Association, NYPD



Steven Wasserman
National President
National Association of Assistant
United States Attorneys



John W. Letteney
President
International Association of Chiefs of Police