

Congress of the United States

Washington, DC 20515

March 11, 2022

The Honorable Joseph R. Biden
President of the United States
1600 Pennsylvania Avenue
Washington, DC 20500-000

Dear President Biden,

Today we write to you with serious concerns about the growing public health threat of deadly illicit fentanyl and its analogues being trafficked into our communities. Last year, our country experienced the greatest loss of life due to drug overdoses in the history of our nation with almost 92,000 Americans dying of an overdose in 2020¹. Most of these overdoses involved synthetic opioids according to the Centers for Disease Control and Prevention, making up almost 56 percent of all drug overdoses during this same 12-month period in 2020².

The U.S. Customs and Border Patrol agents made a record number of illicit fentanyl seizures year-over-year between fiscal year 2020 and fiscal year 2021, including seizing more than 10,000 pounds of illicit fentanyl at our Southwest Border³. A December 2021 news release sent by the Drug Enforcement Administration (DEA) even notes, “DEA Seizes Enough Fentanyl in 2021 to Provide A Lethal Dose to Every American.”⁴ Although this deadly substance is now the leading cause of death for Americans 18-45 years old, you even neglected to mention it or allude to the growing overdose epidemic entirely during your one-year anniversary press conference. We find this failure of leadership deeply disturbing. Families who have lost loved ones from a drug overdose across this country deserve decisive action on this issue. Your Administration’s inaction is cause for deep concern.

The human stories behind the overdose statistics are heartbreaking. Recent reporting told the tragic story of a 13-year-old from Connecticut who died from an illicit fentanyl overdose in early January. Local authorities found about 100 bags of this poison in this child’s bedroom. It is our belief that your Administration’s unwillingness to secure the border and misguided approach to

¹ <https://nida.nih.gov/drug-topics/trends-statistics/overdose-death-rates>

² <https://www.cdc.gov/nchs/products/databriefs/db428.htm>

³ <https://www.cbp.gov/newsroom/stats/drug-seizure-statistics#>

⁴ <https://www.dea.gov/press-releases/2021/12/16/dea-reveals-criminal-drug-networks-are-flooding-us-deadly-fentanyl>

addressing this growing crisis is leading to more drugs illegally crossing our borders and taking more American lives.

We are furthermore concerned that recent statements and proposals coming from your Administration, specifically the top behavioral health and law enforcement agencies within the federal government, will unintentionally encourage illicit drug use in our country and exacerbate the overdose epidemic. Examples of this include the Substance Abuse and Mental Health Services Administration's (SAMHSA) FY 2022 Harm Reduction Program Grant announcement that states it would specifically provide safe smoking kits and syringes that would eventually be provided to those with substance use disorder⁵, the Department of Justice signaling support for safe-injection sites, and finally your Administration's proposal to permanently schedule but exempt fentanyl-related substances (FRS) from quantity-based mandatory minimum sentences.

SAMHSA recently announced grant programs that would require recipients to "Purchase equipment and supplies to enhance harm reduction efforts, such as... safe smoking kits/supplies"⁶. The Secretary of Health and Human Services finally publicly opposed funding crack pipes or other paraphernalia after receiving significant bipartisan pushback. Now your own Department of Justice is considering working with operators of safe injection sites to implement appropriate guardrails at these sites despite a U.S. District Court ruling that such sites are in clear violation of federal law⁷.

Additionally, your Administration has put forth a proposal that would weaken law enforcement's ability to seize illicit fentanyl-related substances, also known as fentanyl analogues. In December 2021, the Energy & Commerce Health Subcommittee held a hearing to discuss the September 2021 proposal drafted by your Administration to address fentanyl analogues. Illicit fentanyl, which can be lethal with just two milligrams, is 100 times more potent than morphine and 50 times stronger than heroin. Fentanyl analogues can be even more deadly; some have been found to be even four to five times more potent than fentanyl. Your Administration's proposal would exempt these substances from quantity-based mandatory minimum sentences. We are deeply concerned that scheduling these analogues without the necessary criminal penalties will incentivize traffickers to make new variations of these positions in order to evade law enforcement.

In their April 2021 report that studied the effectiveness of the Drug Enforcement Administration's actions in 2018 to temporarily classify fentanyl-related substances as Schedule 1 drugs, the nonpartisan Government Accountability Office (GAO) noted the impact that class-wide scheduling had on the creation of new analogues⁸. DEA officials interviewed by GAO stated feeling like they were playing a game of "whack-a-mole" prior to the 2018 class-wide scheduling going into effect, having to individually schedule these analogues one at a time, which made it more difficult to keep up with emergent substances. Law enforcement officials

⁵ <https://www.samhsa.gov/sites/default/files/grants/pdf/fy22-harm-reduction-nofo.pdf>

⁶ <https://www.samhsa.gov/sites/default/files/grants/pdf/fy22-harm-reduction-nofo.pdf>

⁷ <https://apnews.com/article/business-health-new-york-c4e6d999583d7b7abce2189fba095011>

⁸ <https://www.gao.gov/assets/gao-21-499.pdf>

interviewed by GAO stated that class-wide scheduling reduced incentives to create and traffic new analogues designed to evade law enforcement.

Law enforcement officials and others across the federal government have been sending warning signals about the severity of the situation for months, starting in September 2021 when DEA issued a Public Safety Alert for the first time in six years. The alert warned Americans about the increases in the lethality and availability of fake prescription medications containing illicit fentanyl and methamphetamine⁹. DEA Administrator Anne Milgram stated in late December 2021 that the “criminal drug networks are ruthless, and they will stop at nothing to get these drugs into the United States.”¹⁰ Administrator Milgram further stated during the same interview that cartels have an unlimited amount of illicit fentanyl that they can make and that the Administrator’s job will be to ensure DEA agents have the tools and technologies needed to address this issue. The U.S. Commission on Combating Synthetic Opioid Trafficking’s report released earlier this year characterized the current situation by saying, “In terms of loss of life and damage to the economy, illicit synthetic opioids have the effect of a slow-motion weapon of mass destruction in pill form.”¹¹

Despite there being a clear call-to-action coming from within your own Administration, the Department of Justice could not even send a witness to testify at an Energy and Commerce Committee hearing on this very subject about how the plan will adequately equip federal law enforcement agencies with the tools they need to address this growing fentanyl crisis.

Given your inconsistent approach to this issue, please answer the following questions by March 25, 2022:

- Is addressing fentanyl a top priority for your Administration?
- If so, what is your plan of action?

Please also direct the Secretary of Health and Human Services to provide written responses to the final inquiries by March 25, 2022:

- The 2021 GAO report notes that there were 7,058 law enforcement encounters with fentanyl analogues that were not individually scheduled between 2016 and 2017. During 2018 and 2019 there were 787 reports of encounters with these analogues after the temporary classification took effect.
 - As you developed your September 2021 proposal, how did you use this specific data to reach your final conclusions?

⁹ <https://www.dea.gov/press-releases/2021/09/27/dea-issues-public-safety-alert>

¹⁰ <https://www.cbsnews.com/news/transcript-dea-administrator-anne-milgram-face-the-nation-12-19-2021/>

¹¹ <https://www.rand.org/hsrd/hsoac/commission-combating-synthetic-opioid-trafficking.html>

- Please explain why you did not use this specific data if you did not use these specific metrics.
- The GAO report also notes that law enforcement associations GAO interviewed, including DEA, the Federal Bureau of Investigation (FBI), Executive Office for United States Attorneys, and Organized Crime Drug Enforcement Task Forces, stated that class-wide scheduling “reduces incentives for criminal entities to create, manufacture, and traffic fentanyl-related substances to circumvent law enforcement.”
 - Do you agree with this assessment?
- Please provide all data or any available evidence used to make your decision to exempt fentanyl-related substances from quantity-based mandatory minimum sentences.
- Data shows a lethal dose of fentanyl is about 2 milligrams compared to 200 milligrams for a lethal dose of cocaine and methamphetamine. Is there a reason why this proposal keeps criminal penalties in place for cocaine and methamphetamine, but exempts fentanyl-related substances from quantity-based mandatory minimums sentences?
 - Which Departments, agencies and stakeholder groups were consulted when drafting the recommendations for Congress on reducing illicit fentanyl-related substances?
- Will you commit to working with Congress to pass H.R. 6184, the Halt All Lethal Trafficking of Fentanyl Act?

Thank you for your attention to this critically important issue. You can direct all responses to Brian Fahey in my office at brian.fahey@mail.house.gov.

Sincerely,



Brett Guthrie
Member of Congress



Cathy McMorris-Rodgers
Member of Congress



Robert E. Latta
Member of Congress



H. Morgan Griffith
Member of Congress



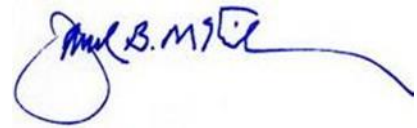
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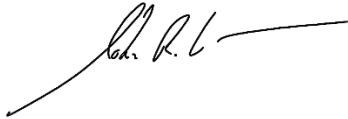
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