

February 7<sup>th</sup>, 2022

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

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

Dear Chairman Durbin and Ranking Member Grassley,

We, the undersigned organizations, write to urge you to pass legislation that permanently schedules fentanyl-related substances.

The United States has reached a grim milestone. According to the Centers for Disease Control and Prevention (CDC), an estimated 100,000 Americans died of an overdose death over a recent 12-month period.<sup>1</sup> The primary driver of these deaths were synthetic opioids, like illicitly manufactured fentanyl and fentanyl-related substances. The spread of fentanyl drugs in our communities is devastating. It is being mixed with already deadly illicit drugs, hidden in counterfeit drugs, and being peddled at alarmingly high rates.<sup>2</sup> 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. As we see the scourge of fentanyl drugs impacting our communities, it therefore comes as no surprise that fentanyl overdoses are the number one cause of death among 18-45 year olds.<sup>3</sup>

Being on the front lines, we see the destruction fentanyl substances wreak every single day. We must work to find and pass a permanent solution to schedule these deadly drugs.

The Drug Enforcement Administration (DEA) took action to temporarily control fentanyl-related substances by issuing an emergency scheduling order 3 years ago. This order has since been extended three times by Congress, most recently until February 18, 2022.<sup>4</sup> Extension legislation is helpful in preventing a lapse in this critical and lifesaving tool, and we applaud Congress's dedication to ensuring that all fentanyl-related substances remain controlled.

Controlling fentanyl analogues permanently is the most effective way to stop their spread and prevent future overdoses. We are grateful that the Administration's proposal reflects this and

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<sup>1</sup> Centers for Disease Control and Prevention, National Center For Health Statistics: Vital Statistics Rapid Response: Provisional Drug Overdose Death Counts, <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm>.

<sup>2</sup> "It is commonly mixed with drugs like heroin, cocaine, and methamphetamine and made into pills that are made to resemble other prescription opioids." *Fentanyl Facts*, CDC <https://www.cdc.gov/stopoverdose/fentanyl/index.html> (last visited Jan. 26, 2022).

<sup>3</sup> Audrey Conklin, *Fentanyl overdoses become No. 1 cause of death among US adults, ages 18-45: 'A national emergency'*, Fox News (Dec. 16, 2021), <https://www.foxnews.com/us/fentanyl-overdoses-leading-cause-death-adults>.

<sup>4</sup> Further Extending Government Funding Act, Pub. L. No. 117-70, 135 Stat. 1499 (2021).

has placed all fentanyl-related substances in Schedule I. As evidenced by the DEA’s initial class-wide scheduling order and China’s reciprocal scheduling of fentanyl analogues, such proactive measures directly impact the supply of the drug entering the United States from source countries.<sup>5</sup> Also, in the absence of the class-wide order, law enforcement would almost certainly face a surge of new, never before seen fentanyl-related substances.<sup>6</sup> Without a class-wide scheduling law in place, these fentanyl analogues will be scheduled on an individual basis, which can take years. Simply put, American lives are on the line and we don’t have the time to waste repeatedly resorting to a lengthy, bureaucratic process. Deliberative, decisive, and strong action is needed.

Scheduling fentanyl analogues will cut off supply by making it more difficult to illicitly produce. This, in turn, will reduce traffickers’ abilities to sell the drugs in our communities. If fewer drugs are sold, fewer people will use them and fewer people will die. Scheduling fentanyl analogues is likely the most effective tool to prevent overdoses from ever occurring.

An effective sentencing structure for fentanyl drugs doesn’t seek to unduly punish drug abusers or addicts. Rather, serious consequences like mandatory minimums exist to deter and punish the kingpins, their traffickers, and the manufacturers who flood our communities with deadly drugs. Any permanent legislative solution on fentanyl-related substances must address the need to deter and punish criminal organizations and their leaders who threaten the safety of the communities we serve.

The current class-wide scheduling order for fentanyl-related substances expires on February 18, 2022. As we near the expiration of the scheduling authority, we call on Congress to work collaboratively, transparently, and quickly in finding a solution that extends the current scheduling order on fentanyl-related substances and protects against future overdose deaths. In the event that a permanent legislative proposal cannot pass Congress before the scheduling authority expires, we alternatively would support a straight extension of DEA’s scheduling order so that this critical authority does not lapse. If another temporary extension is the most prudent path forward, we strongly believe that a lengthy extension period is necessary, and that it must be significantly longer than recent stopgap measures of 5 or 2 months.

We must find a way to prevent any more loss of American lives due to drug overdoses. We know the culprit; we know the cost of inaction. Scheduling fentanyl analogues is time sensitive, necessary, and critical. It cannot be bargained, traded, or compromised. As such, Congress can and must rise to the occasion and schedule fentanyl-related substances. We stand at the ready to help with this critical task.

Sincerely,

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<sup>5</sup> Fentanyl Analogues: Perspectives on Class-wide 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>.

<sup>6</sup> This was the case prior to the DEA class-wide scheduling order. According to Customs and Border Protection (CBP), from 2016 to 2018, CBP “...encountered either a new fentanyl analogue, a non-fentanyl opioid, or a fentanyl substance utilizing a molecular deletion nearly every single month (33 total).” See also *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>.

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