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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

May 12, 2021

The Honorable Merrick B. Garland
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Ms. Regina M. LaBelle
Acting Director
Office of National Drug Control Policy
1800 G. St NW
Washington, DC 20006

Dear Attorney General Garland and Acting Director LaBelle:

In 2020, the Centers for Disease Control and Prevention (CDC) provisional data shows that approximately 88,000 Americans died of a drug overdose in the 12-month period ending in September 2020.¹ Synthetic opioids, primarily illicitly manufactured fentanyl, are the primary driver of the increase in overdose deaths.² Rates of overdose deaths involving synthetic opioids have climbed steadily over the past few years, and will continue to do so if the federal government does not act now.

Controlling fentanyl is urgent and necessary. It has historically been a bipartisan issue, enjoying support and engagement from both chambers of Congress and multiple agencies in the federal government. The Biden Administration has stated support in finding solutions to control fentanyl and their deadly analogues. For instance, during the House Committee on Energy and Commerce hearing, “An Epidemic within a Pandemic: Understanding Substance Use and Misuse in America,” the Office of National Drug Control Policy (ONDCP) Acting Director LaBelle stated, “age-adjusted drug overdose deaths involving synthetic opioids other than methadone, including fentanyl analogues, continue to increase.”³ Her oral testimony also emphasized that extending temporary scheduling authorities on fentanyl was necessary so that ONDCP could have time to address concerns on how to facilitate research and sentencing issues. Furthermore, Attorney General Garland, during his confirmation hearing before the Senate Judiciary Committee, stated, “illicitly sold fentanyl analogues have caused senseless fatalities and that stopping synthetic opioids from flooding American communities is a high priority for the Department of Justice.”⁴

In 2019, an interagency working group was convened consisting of representatives from ONDCP, the Department of Health and Human Services (HHS), and the Department of Justice (DOJ) where they were tasked with developing sensible legislation and recommendations to permanently schedule fentanyl and its analogues, while also addressing research and sentencing concerns. I understand this framework has been abandoned and the Biden Administration is

¹ Ahmad, F. B., Rossen, L. M., & Sutton P. (2021). Provisional drug overdose death counts. Centers for Disease Control and Prevention. <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm>

² “Overdose Deaths Accelerating During COVID-19.” Centers for Disease Control and Prevention. Centers for Disease Control and Prevention, December 18, 2020. <https://www.cdc.gov/media/releases/2020/p1218-overdose-deaths-covid-19.html>.

³ https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Witness%20Testimony_LaBelle_HE_2021.04.14.pdf

⁴ <https://www.judiciary.senate.gov/imo/media/doc/QFR%20Responses%202-28.pdf>

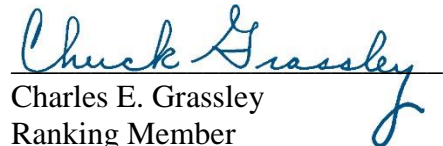
starting over from scratch.

As you know, Congress passed H.R. 2630 on April 29, which extends DEA's emergency scheduling order placing fentanyl substances in schedule I to October 22, 2021. President Biden signed this into law on May 4. This extension is a necessary stopgap measure to maintain control over fentanyl analogues while contemplating options on how to permanently schedule them. We are now working against an extremely short timeline of 5 months. I suspect another extension will be needed. But with transparency, bipartisanship, and open communication, we should be able to solve this problem together.

To that end, I am requesting that the Biden Administration keep me and my colleagues informed of your progress in proposing a permanent solution to scheduling fentanyl analogues. Specifically, I believe that members of the Senate Judiciary Committee would benefit greatly from regular briefings and updates from the Administration on its efforts to find a legislative solution. We need to find a path forward on scheduling fentanyl related substances permanently. Understanding the Administration's goals and progress is critical for Congress to draft, negotiate and pass legislation.

We must take long-term, sustainable action, which can only be achieved if we work together. I look forward to our continued dialogue and relationship on finding permanent solutions to controlling fentanyl related substances, and truly hope the next 5 months are spent wisely.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is written in a cursive style and is positioned above a horizontal line.

Charles E. Grassley
Ranking Member
United States Senate Judiciary Committee

CC:
The Honorable Dick Durbin
Chairman, Senate Judiciary Committee