

Congress of the United States
Washington, DC 20515

March 25, 2021

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

Mr. D. Christopher Evans
Acting Administrator
U.S. Drug Enforcement Administration
8701 Morrisette Drive
Springfield, VA 22151

Dear Attorney General Garland and Acting Administrator Evans:

We write to request information from the U.S. Department of Justice (DOJ) and U.S. Drug Enforcement Administration (DEA) about how federal law enforcement agencies have used the temporary scheduling authority for fentanyl analogues to fight our country's opioid crisis. This scheduling authority is set to expire in less than two months.¹

The opioid crisis in the United States continues to worsen. Synthetic opioids, like fentanyl and fentanyl analogues, continue to be key drivers of overdose deaths. According to the U.S. Centers for Disease Control and Prevention (CDC), over 31,000 deaths involved synthetic opioids in 2018.² Deaths involving synthetic opioids increased by 10 percent from 2017 to 2018, accounting for approximately 70 percent of all opioid-involved deaths in 2018.³ Most recently, the CDC reported that over 83,000 people have died from drug overdoses in the United States in the twelve months ending in July 2020, representing the highest number of overdose deaths ever recorded in a twelve-month period.⁴

Over the last four years, DOJ has taken immediate actions to fight the deadly U.S. opioid crisis, particularly relating to illicitly produced fentanyl and its related substances. On November 9, 2017, DOJ announced a temporary emergency scheduling of substances chemically related to fentanyl as Schedule I drugs under the Controlled Substances Act (CSA), which would help to prosecute drug dealers and drug traffickers.⁵ On February 6, 2018, DEA issued an order pursuant

¹ Pub. L. 116-114 (2020).

² Centers for Disease Control and Prevention, *Opioid Overdose, Synthetic Opioid Overdose Data*, <https://www.cdc.gov/drugoverdose/data/fentanyl.html> (last visited Mar. 12, 2021).

³ *Id.*

⁴ Paul Sutton et al., *Provisional Drug Overdose Death Counts*, CENTERS FOR DISEASE CONTROL AND PREVENTION (Feb. 7, 2021), <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm#dashboard>.

⁵ Press Release, U.S. Dep't. of Justice, *Department of Justice Announces Significant Tool in Prosecuting Opioid Traffickers in Emergency Scheduling of All Fentanyls*, (Nov. 9, 2017).

to Section 201 of the CSA to place all nonscheduled fentanyl-related substances into Schedule I for two years.⁶ Congress later extended this temporary scheduling of fentanyl-related substances by 15 months in the Temporary Reauthorization and Study of the Emergency Scheduling of Fentanyl Analogues Act.⁷ This temporary scheduling authority now expires on May 6, 2021.⁸

The expiration of the scheduling authority would have devastating effects. For instance, it would mean that all drugs seized by U.S. investigators that have tested positive as illicit fentanyl analogues will no longer be illegal under federal law. Our nationwide efforts to prosecute traffickers and criminals pushing these dangerous drugs in American communities would be severely undercut.

The goal of decreasing overdose deaths – particularly by lethal fentanyl-related substance – should be collaborative and not impacted by political affiliation. Therefore, as Congress considers legislative proposals to extend scheduling of fentanyl-related substances, we respectfully request that you provide the following information:

1. Whether the Biden Administration supports an extension of the temporary scheduling order for fentanyl-related substances, which currently expires on May 6, 2021.
2. How a lapse in the temporary scheduling order for fentanyl-related substances would affect the U.S. opioid crisis and the manufacturing and trafficking of fentanyl-related substances, both internationally and domestically.
3. How the temporary scheduling order for fentanyl-related substances has allowed federal law enforcement agencies to address the illegal trafficking of opioids, including the seizure of fentanyl and fentanyl-related substances at the U.S. southern border and the DEA's work with international partners.
4. How the permanent scheduling of fentanyl-related substances on Schedule I of the Controlled Substances Act would affect responsible medical research and access to new fentanyl-related substances.

Please provide this information as soon as possible, but no later than 5:00 p.m. on April 8, 2021. After you have provided this information in writing, we ask that the Department provide a staff-level briefing on this topic. This briefing may be conducted remotely for convenience and safety issues.

The House Committee on the Judiciary has jurisdiction pursuant to Rule X of the Rules of the House of Representatives to conduct oversight of matters concerning “criminal law

⁶ 83 Fed. Reg. 5188 (Feb. 6, 2018).

⁷ Pub. L. 116-114 (2020).

⁸ *Id.*

The Honorable Merrick B. Garland
Mr. D. Christopher Evans
March 25, 2021
Page 3

enforcement and criminalization,”⁹ and the Senate Committee on the Judiciary has similar jurisdiction under Rule XXV of the Rules of the Senate.¹⁰

To schedule the briefing or if you have any questions about this request, please ask your staff to contact House Judiciary Committee staff at (202) 225-6906 and Senate Judiciary Committee staff at (202) 224-5225. Thank you for your prompt attention to this matter.

Sincerely,



Jim Jordan
Ranking Member
House Committee on the Judiciary



Charles Grassley
Ranking Member
Senate Committee on the Judiciary

cc: The Honorable Jerrold L. Nadler
Chairman
House Committee on the Judiciary

The Honorable Dick Durbin
Chairman
Senate Committee on the Judiciary

⁹ Rules of the House of Representatives, R. X, 117th Cong. (2021).

¹⁰ Rules of the Senate, R. XXV, 117th Cong. (2021).