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## United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

July 1, 2022

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

Dear Attorney General Garland:

I write to inquire whether the Department of Justice (DOJ) is pursuing all available avenues to address the rapidly expanding threat of counterfeit pills laced with deadly illicit drugs. Mexican drug trafficking organizations (DTOs) have amplified their illicit markets in the U.S. by lacing pills with deadly substances such as fentanyl, fentanyl-related substances (FRS), and methamphetamine.<sup>1</sup> In 2021, the Drug Enforcement Administration (DEA) seized more than 20 million counterfeit pills.<sup>2</sup> This amount of seizures was more than the previous two years combined.<sup>3</sup> DEA seizures of fake pills containing fentanyl have increased by more than 430 percent since 2019.<sup>4</sup> The alarming increase in the availability and lethality of fentanyl-laced counterfeit pills prompted the DEA to initiate the “One Pill Can Kill” campaign to heighten awareness and call the attention of the public to the threat posed by these pills.<sup>5</sup>

Beyond these statistics, there is a call for help from families across America to act. I have met with heartbroken mothers, fathers, sisters, and brothers and heard their messages about spreading awareness on the dangers posed by fake pills laced with deadly drugs. I have also heard calls from organizations such as Song for Charlie and Victims of Illicit Drugs who are dedicated to preventing more lives from being lost because of deadly counterfeit pills.<sup>6</sup> We need to step up and act on behalf of these grieving families.

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<sup>1</sup> Drug Enforcement Administration, “One Pill Can Kill,” <https://www.dea.gov/onepill>.

<sup>2</sup> Drug Enforcement Administration, “DEA Reveals Criminal Drug Networks Are Flooding the U.S. with Deadly Fentanyl,” Dec. 16, 2021, <https://www.dea.gov/press-releases/2021/12/16/dea-reveals-criminal-drug-networks-are-flooding-us-deadly-fentanyl#:~:text=In%202021%2C%20DEA%20has%20seized%20a%20staggering%2020.4,at%20least%2046%20overdoses%20and%2039%20overdose%20deaths.>

<sup>3</sup> *Id.*

<sup>4</sup> Drug Enforcement Agency, “Sharp Increase in Fake Prescription Pills Containing Fentanyl and Meth,” Sept. 27, 2021, <https://www.dea.gov/alert/sharp-increase-fake-prescription-pills-containing-fentanyl-and-meth>.

<sup>5</sup> Drug Enforcement Agency, “DEA Issues Public Safety Alert on Sharp Increase in Fake Prescription Pills Containing Fentanyl and Meth,” Sept. 28, 2021, <https://www.dea.gov/press-releases/2021/09/28/dea-issues-public-safety-alert-sharp-increase-fake-prescription-pills>.

<sup>6</sup> Milgram, Anne, *As Illegal Drug Trade Goes From the Corner to the Web, Rising Deadly Threat of Fake Pills*, USA TODAY (Oct. 31, 2021), <https://www.usatoday.com/story/opinion/policing/2021/10/31/illegal-drug-trade-deadly-pills-online/8540733002/?gnt-cfr=1>.

Currently, the *Controlled Substances Act (CSA)* allows for prosecutions for drug offenses under 21 U.S.C. § 841.<sup>7</sup> But, in order to combat the counterfeit pill crisis, we need to beef up this legislation. I introduced the bipartisan, bicameral *Stop Pills that Kill Act* earlier this year to improve the *CSA* by closing a sentencing loophole for federal drug paraphernalia charges and enhancing criminal penalties for illicit pill pushers.<sup>8</sup> Additionally, my legislation requires the DEA to construct and implement a strategic response plan in order to tackle the rise of counterfeit pills head on, and mandates that DOJ, along with DEA and the Office of National Drug Control Policy (ONDCP) submit a report to Congress on prosecutions of these fake pills.<sup>9</sup>

To date, DOJ has been successful in bringing some illicit counterfeit pill charges against DTOs and traffickers under the *CSA*.<sup>10</sup> However, considering how dire and dangerous this threat is, we need to use all available resources at our disposal and think outside of the box and provide solutions for the American people.

One such avenue for combating this threat could be the Consumer Protection Branch (CPB) of the DOJ. The CPB works to ensure consumers' health and safety by enforcing laws that protect consumers from dangerous or misleading products. CPB is responsible for criminal and civil actions under statutes administered by several agencies, including the Food and Drug Administration (FDA).<sup>11</sup> Such statutory authority allows the CPB to investigate and prosecute the manufacturers and distributors of the components of illegal drugs. For example, under 21 U.S.C. § 331, it is illegal to "introduc[e] into interstate commerce ... any ... drug ... that is adulterated or misbranded." For this and similar offenses, criminal penalties up to ten years in prison and \$250,000 in civil fines attach.<sup>12</sup>

Given the additional tools that may be available through the CPB to counter these deadly pills, I would like you to submit answers to the following questions:

1. Is DOJ using the CPB and its authorities to deal with counterfeit pills laced with fentanyl and methamphetamine? If not, explain why DOJ is not using the authorities traditionally used by the CPB.
2. Are there any improvements regarding penalties, fines, etc. that can or should be made by Congress with regard to the CPB's statutory authorities to address the onslaught of counterfeit pills?

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<sup>7</sup> 21 U.S.C. § 841

<sup>8</sup> *Stop Pills That Kill Act*, S. 4151, 117th Cong. (2022).

<sup>9</sup> *Id.*

<sup>10</sup> *E.g.*, U.S. Dept. of Justice, U.S. Attorney's Office, District of Oregon, "12 Members of Drug Trafficking Organization Indicted for Distributing Oxycodone Pills Containing Fentanyl, Laundering Proceeds," Mar. 18, 2022, <https://www.justice.gov/usao-or/pr/12-members-drug-trafficking-organization-indicted-distributing-counterfeit-oxycodone>; U.S. Dept. of Justice, U.S. Attorney's Office, So. Dist. of Ca., "Multi-Year Investigation Leads to Indictment of 26 Defendants and Seizure of Nearly 500,000 Counterfeit Pills Laced with Fentanyl," June 14, 2022, <https://www.justice.gov/usao-sdca/pr/multi-year-investigation-leads-indictment-26-defendants-and-seizure-nearly-500000>; and U.S. Dept. of Justice, U.S. Attorney's Office, Central Dist. of Ca., "7 Federal Criminal Cases Charge Drug Dealers Who Allegedly Sold Fentanyl that Caused Deadly Overdoses in Orange County," April 22, 2022, <https://www.justice.gov/usao-cdca/pr/7-federal-criminal-cases-charge-drug-dealers-who-allegedly-sold-fentanyl-caused-deadly>.

<sup>11</sup> *See Controlled Substances Act*, 21 U.S.C. § 841, *Food, Drug and Cosmetic Act*, 21 U.S.C. § 301.

<sup>12</sup> *See* 21 U.S.C. § 333(a) – (b).

Thank you for your prompt review and responses. If you have any questions, please contact my staff at (202) 224-5225.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is written in a cursive style with a horizontal line underneath the name.

Charles E. Grassley  
Ranking Member  
United States Senate Judiciary Committee

CC:  
The Honorable Dick Durbin  
Chairman, Senate Judiciary Committee

Director Christopher Wray  
Federal Bureau of Investigation