

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510–6275

April 19, 2021

The Honorable Chuck Schumer
Majority Leader
United States Senate
Washington, D.C. 20510

Dear Leader Schumer:

I trust you are well aware that our nation is in the midst of a drug overdose crisis. The Centers for Disease Control (CDC) has outlined the grave facts: in 2019, 70,630 Americans died from a drug overdose.¹ Synthetic opioids are the main driver of drug overdose deaths, accounting for over 50,000 of these deaths.² Furthermore, over 81,000 drug overdose deaths occurred in the United States in the last year, which is the highest number of overdose deaths ever recorded in a 12-month period.³ Much of this has been exacerbated by the ongoing COVID-19 pandemic.⁴ While drug abuse is prolific and varied, we are facing an unprecedented scourge from a particular class of illegal drugs: fentanyl-related substances.

Synthetic opioids – like fentanyl and its analogues – are produced in laboratories and have devastatingly lethal effects. Fentanyl is 100 times more potent than morphine, and 50 times more potent than heroin. An infinitesimal amount of fentanyl or its analogues can result in an overdose. The CDC has reported that from January 2019 to June 2019, almost 62% of overdose deaths involved a fentanyl-related substance.⁵

It's because of their deadly nature that both the Drug Enforcement Administration (DEA) and Congress have acted to control fentanyl-related substances. In February 2018, DEA issued a temporary emergency scheduling order placing fentanyl-related substances in Schedule I.⁶ In 2020, Congress passed the bipartisan measure, *The Temporary Reauthorization and Study of Emergency Scheduling of Fentanyl Analogues Act*, which extended DEA's coverage of fentanyl-related substances to May 6, 2021.⁷ This extension passed by unanimous consent.

¹ Centers for Disease Control and Prevention, Opioid Overdose, “Drug Overdose Deaths Remain High,” available at: <https://www.cdc.gov/drugoverdose/data/statedeaths.html>.

² *Id.*

³ Centers for Disease Control and Prevention, CDC Newsroom, “Overdose Deaths Accelerating During COVID-19,” Dec. 17, 2020, available at: <https://www.cdc.gov/media/releases/2020/p1218-overdose-deaths-covid-19.html>.

⁴ *Id.*

⁵ J. O'Donnel, R. M. Gladden, C. L. Mattson, C. T. Hunter, and N. L. Davis, “Vital Signs: Characteristics of Drug Overdose Deaths Involving Opioids and Stimulants – 24 States and the District of Columbia, January-June 2019.” *MMWR Morbidity and Mortality Weekly Report*, vol. 69, no. 35 (2020), 1188-1197.

⁶ 21 C.F.R. § 1308.11(h)(30).

⁷ Pub. L. No. 116-114, § 2, 134 Stat. 103 (2020).

May 6 is quickly approaching, as is the need for another extension of this life-saving authority. The Biden Administration has publicly supported a fentanyl scheduling order extension of seven months.⁸ During her testimony before the House Energy and Commerce Subcommittee on Health, Acting Director of the Office of National Drug Control Policy (ONDCP), Regina LaBelle, testified, “we want Congress to extend for a period of time,” but “we don’t have a period of time in mind.” She later qualified that “[w]e’ve been here [at ONDCP] about 85 days and there’s lots of folks at the Department of Justice who aren’t in yet.”

A sufficiently lengthy extension is necessary for the Administration interagency and Congressional partners to come together on how to schedule fentanyl-related substances in balance with criminal justice and research equities. Additionally, we must ensure ample time for the new Administration to build its staff, develop internal goals and strategies, and report to Congress – either through hearings or briefings – on its progress. We cannot afford to arbitrarily limit ourselves and our leaders from the necessary progress that must be made on this issue. We deserve to give ourselves a chance at finding a bipartisan solution on scheduling fentanyl related substances permanently. And given the precedent of Congressional extensions, it would behoove us to act similarly as the May 6 deadline approaches.

As you consider a fentanyl extension, I urge you to support legislation that provides a considerable timeframe. I introduced the bipartisan *Temporary Reauthorization of Fentanyl Scheduling Act of 2021*, which extends DEA’s authority by 14 months to July 6, 2022. This is an extension long enough for us to have bipartisan, complete, and thoughtful discussions on how to address fentanyl-related substances. Anything less is surely setting ourselves up for failure and another temporary extension later in the year.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is fluid and cursive, with the first name "Chuck" and last name "Grassley" clearly legible.

Charles E. Grassley
Ranking Member
U.S. Senate Committee on the Judiciary

Cc: The Honorable Richard Durbin
Chairman
U.S. Senate Committee on the Judiciary

⁸ Wegman, Philip, Real Clear Politics, “Biden Backs Extending Regulation of Fentanyl ‘Look-Alikes’,” April 12, 2021, available at: https://www.realclearpolitics.com/articles/2021/04/12/biden_backs_extending_regulation_of_fentanyl_look-alikes_145570.html.