



MEMORANDUM

July 12, 2019

**To: Subcommittee on Oversight and Investigations Members and Staff**

**Fr: Committee on Energy and Commerce Staff**

**Re: Hearing on “Oversight of Federal Efforts to Combat the Spread of Illicit Fentanyl”**

On Tuesday, July 16, 2019 at 10 a.m. in the John D. Dingell Room, 2123 of the Rayburn House Office Building, the Subcommittee on Oversight and Investigations will hold a hearing entitled, “Oversight of Federal Efforts to Combat the Spread of Illicit Fentanyl.” The hearing will examine the increasing threat posed by fentanyl and the federal government’s coordination and response.

**I. FENTANYL IN THE UNITED STATES**

Fentanyl is a powerful synthetic opioid up to 100 times more potent than morphine.<sup>1</sup> Under the Controlled Substances Act, fentanyl is a Schedule II drug. Fentanyl is legally available through a nonrefillable prescription in the form of transdermal patches or lozenges for patients with cancer or chronic pain.<sup>2</sup> However, in recent years, illicitly manufactured powdered fentanyl has become a growing threat and a primary driver of drug overdoses and the opioid epidemic.<sup>3</sup>

The Centers for Disease Control and Prevention (CDC) released data showing that, in 2017, there were over 70,000 drug overdose deaths in the United States,<sup>4</sup> with over 47,000 involving opioids.<sup>5</sup> Over 28,000 of those deaths involved synthetic opioids such as fentanyl – an

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<sup>1</sup> U.S. – China Economic and Security Review Commission, *Fentanyl: China’s Deadly Export to the United States* (Feb. 2017).

<sup>2</sup> Drug Enforcement Administration, *2018 National Drug Threat Assessment* (DEA-DCT-DIR-032-18). *See also* note 1.

<sup>3</sup> *See* note 1.

<sup>4</sup> Centers for Disease Control and Prevention, *Drug Overdose Deaths in the United States, 1999–2017* (Nov. 2018) (NCHS Data Brief No. 329).

<sup>5</sup> Centers for Disease Control and Prevention, *Opioid Overdose: Drug Overdose Deaths* ([www.cdc.gov/drugoverdose/data/statedeaths.html](http://www.cdc.gov/drugoverdose/data/statedeaths.html)) (accessed May 13, 2019).

increase of nearly 47 percent from the previous year.<sup>6</sup> CDC reports that, on average, 130 people die from opioid overdose every day and that the United States is in the “third wave” of the opioid epidemic, with “significant increases in overdose deaths involving synthetic opioids – particularly those involving illicitly-manufactured fentanyl.”<sup>7</sup> Law enforcement has found fentanyl in every state, often mixed into other illicit drugs.<sup>8</sup> In response to the growing fentanyl overdose problem, in March 2015 and June 2016, the U.S. Drug Enforcement Administration (DEA) issued nationwide public health and public safety alerts regarding the lethality of the drug.<sup>9</sup>

In hearing testimony in 2017, DEA told the Committee that China is the primary source of illicit fentanyl, with pure fentanyl shipped through the mail from China to the United States.<sup>10</sup> A range of fentanyl products are supplied to the United States from China, including raw fentanyl, precursors, fentanyl analogues, and counterfeit fentanyl-laced prescription drugs.<sup>11</sup> In recent years, the dark web has also become a key source for purchasing Chinese-manufactured fentanyl and other drugs.<sup>12</sup> Online drug markets have connected Chinese drug suppliers to U.S. fentanyl purchasers.<sup>13</sup> After an online purchase, illicit fentanyl is often packaged and then trafficked through the United States Postal Service or consignment carriers.<sup>14</sup> Reports also indicate that, in addition to finished fentanyl, China sends precursor chemicals to Mexico, where transnational criminal organizations use clandestine labs to produce fentanyl.<sup>15</sup> The finished fentanyl is then trafficked into the United States or mixed with other illicit drugs like heroin, cocaine, or methamphetamine.<sup>16</sup>

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<sup>6</sup> Centers for Disease Control and Prevention, *Opioid Overdose: Fentanyl* ([www.cdc.gov/drugoverdose/opioids/fentanyl.html](http://www.cdc.gov/drugoverdose/opioids/fentanyl.html)) (accessed May 13, 2019).

<sup>7</sup> Centers for Disease Control and Prevention, *Opioid Overdose: Understanding the Epidemic* ([www.cdc.gov/drugoverdose/epidemic/](http://www.cdc.gov/drugoverdose/epidemic/)) (accessed May 13, 2019).

<sup>8</sup> See note 1.

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

<sup>10</sup> House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, testimony of Louis J. Milione, DEA Assistant Administrator, *Fentanyl: The Next Wave of the Opioid Crisis*, 115<sup>th</sup> Cong. (Mar. 21, 2017).

<sup>11</sup> See note 1.

<sup>12</sup> *Dark Web Drug Sellers Dodge Police Crackdowns*, New York Times (Jun. 11, 2019) ([www.nytimes.com/2019/06/11/technology/online-dark-web-drug-markets.html](http://www.nytimes.com/2019/06/11/technology/online-dark-web-drug-markets.html)).

<sup>13</sup> *US Welcomes China’s Expanded Clampdown on Deadly Drug Fentanyl*, CNBC (Apr. 1, 2019) ([www.cnbc.com/2019/04/02/us-welcomes-chinas-expanded-clampdown-on-narcotic-drug-fentanyl.html](http://www.cnbc.com/2019/04/02/us-welcomes-chinas-expanded-clampdown-on-narcotic-drug-fentanyl.html)).

<sup>14</sup> U.S. Postal Service, Office of Inspector General, *Opioid Safety Preparedness* (Jun. 18, 2018) (HR-AR-18-006).

<sup>15</sup> See note 10.

<sup>16</sup> See note 1.

The United States and China have taken steps to increase counternarcotic cooperation, including strengthening regulations to control the movement of some precursor chemicals.<sup>17</sup> To combat the inflow of illicit fentanyl into the United States, in February 2018, DEA issued a temporary scheduling order to classify all fentanyl-related substances as Schedule I drugs.<sup>18</sup> This temporary scheduling order is set to expire on February 6, 2020, unless extended or made permanent.<sup>19</sup> On April 1, 2019, China agreed to regulate all fentanyl-related drugs as controlled substances, effective May 1, 2019.<sup>20</sup> The ban, however, does not cover all precursor chemicals and concerns remain about China's enforcement of the provisions.<sup>21</sup>

## II. FEDERAL AGENCIES' ROLES IN COUNTERING THE THREAT OF FENTANYL

Several federal agencies are responsible for combating illicit opioids, including fentanyl. These agencies include:

**The Office of National Drug Control Policy (ONDCP):** The Anti-Abuse Act of 1988 created ONDCP. ONDCP is a component of the Executive Office of the President and its Director serves as the President's principal drug policy advisor. The office's responsibilities include outlining our nation's illicit drug control strategy and coordinating drug control efforts and funding for relevant departments and agencies.<sup>22</sup>

**U.S. Customs and Border Protection (CBP):** CBP is a law enforcement component of the Department of Homeland Security (DHS). The agency secures our nation's more

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<sup>17</sup> See note 10.

<sup>18</sup> Drug Enforcement Administration, *Rules 2018* ([www.deadiversion.usdoj.gov/fed\\_regs/rules/2018/fr0206\\_4.htm](http://www.deadiversion.usdoj.gov/fed_regs/rules/2018/fr0206_4.htm)). See also Drug Enforcement Administration, *U.S. Drug Enforcement Administration Emergency Schedules All Illicit Fentanyl in an Effort to Reduce Overdose Deaths*, ([www.dea.gov/press-releases/2018/02/07/us-drug-enforcement-administration-emergency-schedules-all-illicit](http://www.dea.gov/press-releases/2018/02/07/us-drug-enforcement-administration-emergency-schedules-all-illicit)).

<sup>19</sup> Drug Enforcement Administration, *Rules 2018* ([www.deadiversion.usdoj.gov/fed\\_regs/rules/2018/fr0206\\_4.htm](http://www.deadiversion.usdoj.gov/fed_regs/rules/2018/fr0206_4.htm)).

<sup>20</sup> *China Bans All Types of Fentanyl, Cutting Supply of Deadly Drug to U.S. and Fulfilling Pledge to Trump*, New York Times (Apr. 1, 2019) ([www.nytimes.com/2019/04/01/world/asia/china-bans-fentanyl-trump.html](http://www.nytimes.com/2019/04/01/world/asia/china-bans-fentanyl-trump.html)).

<sup>21</sup> *Id.*

<sup>22</sup> Office of National Drug Control Policy, Home Page ([www.whitehouse.gov/ondcp/](http://www.whitehouse.gov/ondcp/)) (accessed May 13, 2019).

than 300 ports of entry.<sup>23</sup> CBP inspects international packages and the agency interdicts fentanyl and its analogues before these drugs reach U.S. soil.<sup>24</sup>

**Drug Enforcement Administration (DEA):** DEA enforces U.S. drug laws and is responsible for regulating both licit pharmaceuticals and illicit drugs.<sup>25</sup> DEA uses its authority to regulate synthetic drugs, including classifying drugs as Schedule I as appropriate.<sup>26</sup> The agency also works with and shares drug-related intelligence with its Chinese and Mexican counterparts.<sup>27</sup>

**Food and Drug Administration (FDA):** An agency within the Department of Health and Human Services, FDA helps keep illegal, unapproved, and counterfeit drugs from entering the country. Reports have indicated that fentanyl is often mixed into counterfeit prescription drugs, such as counterfeit oxycodone tablets.<sup>28</sup> FDA monitors international mail shipments to oversee the importation of drugs and conducts related criminal investigations.<sup>29</sup>

**U.S. Immigration and Customs Enforcement (ICE):** An agency within DHS, ICE's responsibilities include investigating, disrupting, and dismantling criminal organizations involved in trafficking fentanyl and other drugs.<sup>30</sup>

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<sup>23</sup> U.S. Customs and Border Protection, *CBP Enforcement Statistics FY 2019* ([www.cbp.gov/newsroom/stats/cbp-enforcement-statistics](http://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics)) (accessed May 13, 2019).

<sup>24</sup> U.S. Department of Homeland Security, *McAllenan: Through Innovation, Partnership, and Prevention, DHS is Confronting the Opioid Epidemic and Halting Illicit Substances at the Source* (press release) (Apr. 24, 2019).

<sup>25</sup> Drug Enforcement Administration, *Mission* ([www.dea.gov/mission](http://www.dea.gov/mission)) (accessed May 13, 2019).

<sup>26</sup> Senate Judiciary Committee, Testimony of Amanda Liskamm and Greg Cherundolo, Department of Justice, *Hearing on The Countdown: Fentanyl Analogues and Expiring Emergency Scheduling Order*, 116th Cong. (Jun. 4, 2019).

<sup>27</sup> House Committee on Foreign Affairs, Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations, Testimony of Paul Knierim, Deputy Chief of Operations, Drug Enforcement Administration, *Hearing on Tackling Fentanyl: The China Connection*, 115<sup>th</sup> Cong. (Sep. 6, 2018).

<sup>28</sup> Drug Enforcement Administration, *Dangerous fentanyl masked as counterfeit oxycodone, 20,000 pills seized in the Bronx and Manhattan* (press release) (Feb. 11, 2019).

<sup>29</sup> U.S. Food and Drug Administration, *U.S. Food and Drug Administration and the International Mail Facilities* ([www.fda.gov/media/111980/download](http://www.fda.gov/media/111980/download)).

<sup>30</sup> U.S. Immigration and Customs Enforcement, *Combating the Opioid Crisis* ([www.ice.gov/features/opioid-crisis](http://www.ice.gov/features/opioid-crisis)) (accessed May 13, 2019).

**U.S. Postal Service (USPS):** USPS is an independent federal agency responsible for shipment of domestic and international mail. USPS's enforcement arm, the Postal Inspection Service, combats the inflow of illegal narcotics in the mail stream.<sup>31</sup> USPS has entered into bilateral agreements with counterparts in several countries to require Advance Electronic Data (AED) on international mail sent to the United States, which provides information on the sender, consignee, and contents of a package, among other things.<sup>32</sup>

### **III. PRIOR CONGRESSIONAL AND COMMITTEE ACTION**

The Comprehensive Addiction and Recovery Act of 2016 (CARA) was signed into law on July 22, 2016.<sup>33</sup> CARA created an awareness campaign that required the inclusion of information on the dangers of fentanyl, as well as a grant program through ONDCP to support drug-free coalitions in responding to local drug crises and emerging drug abuse issues in their communities.<sup>34</sup>

In March 2017, the Committee held a hearing with relevant agencies about the increasing threats posed by fentanyl. Witnesses agreed on the complexity of the opioid epidemic and the need for cooperation between relevant agencies to address the problem.<sup>35</sup>

H.R. 6, the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act (the SUPPORT Act) was signed into law on October 24, 2018. Among other things, the SUPPORT Act gave FDA more tools to intercept illicit drugs coming through U.S. international mail facilities, including fentanyl shipped to the United States by mail from China. The SUPPORT Act also places new responsibilities on USPS and CBP related to tracking shipments of controlled substances.<sup>36</sup>

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<sup>31</sup> U.S. Postal Inspection Service, *About* ([www.uspis.gov/about/what-we-do/](http://www.uspis.gov/about/what-we-do/)) (accessed May 13, 2019).

<sup>32</sup> Senate Homeland Security and Governmental Affairs Committee, Senate Permanent Subcommittee on Investigations, testimony of Robert Cintron, United States Postal Service, *Hearing on Combating the Opioid Crisis: Exploiting Vulnerabilities in International Mail*, 115<sup>th</sup> Cong. (Jan. 25, 2018).

<sup>33</sup> Comprehensive Addiction and Recovery Act of 2016, Pub. L. No. 114-198 (2016).

<sup>34</sup> *Id.*, Sec. 102, 103.

<sup>35</sup> House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, *Hearing on Fentanyl: The Next Wave of the Opioid Crisis*, 115<sup>th</sup> Cong. (Mar. 21, 2017).

<sup>36</sup> SUPPORT for Patients and Communities Act, Pub. L. No. 115-271 (2018).

#### **IV. WITNESSES**

The following witnesses have been invited to testify:

**Kemp Chester**

Assistant Director of the National Opioids and Synthetics Coordination Group  
White House Office of National Drug Control Policy

**Matthew Donahue**

Regional Director North and Central Americas  
Operation Division  
Drug Enforcement Administration  
U.S. Department of Justice

**Thomas Overacker**

Executive Director, Office of Field Operations  
Customs and Border Protection  
U.S. Department of Homeland Security

**Gary Barksdale**

Chief Postal Inspector  
U.S. Postal Service

**David A. Prince**

Deputy Assistant Director, Transnational Organized Crime  
Homeland Security Investigations  
Immigration and Customs Enforcement  
U.S. Department of Homeland Security

**Carol Cave**

Director, Office of Enforcement and Import Operations  
Office of Regulatory Affairs  
Food and Drug Administration  
U.S. Department of Health and Human Services