



Statement

of

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before the

**Subcommittee on Crime and Federal Government Surveillance
Committee on the Judiciary
United States House of Representatives**

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RE: “The Fentanyl Crisis in America: Inaction is No Longer an Option”

Chairman Biggs, Ranking Member Jackson Lee, and distinguished members of the subcommittee:

I want to thank the Subcommittee on Crime and Federal Government Surveillance for the opportunity to provide my thoughts on the fentanyl crisis in America.

My name is Jeffrey A. Singer. I am a Senior Fellow in Health Policy Studies at the Cato Institute. I am also a medical doctor specializing in general surgery and have been practicing that specialty in Phoenix, Arizona, for over 40 years. The Cato Institute is a 501(c)(3) non-partisan, non-profit, tax-exempt educational foundation dedicated to the principles of individual liberty, limited government, free markets, and peace. Cato scholars conduct independent research on a wide range of policy issues. To maintain its independence, the Cato Institute accepts no government funding. Cato receives approximately 80 percent of its funding through tax-deductible contributions from individuals. The remainder of its support comes from foundations, corporations, and the sale of books and other publications. The Cato Institute does not take positions on legislation.

Leaders and commentators often refer to the fentanyl overdose crisis as an “epidemic” or an “invasion.” But these are inappropriate metaphors. Fentanyl is not a viral pathogen that jumps from host to host or a hunter seeking defenseless prey. The influx of fentanyl is a response to market demand.

But more crucially, fentanyl is just the latest manifestation of what drug policy analysts call “the iron law of prohibition.”¹ A variant of what economists call the Alchian-Allen Effect, the shorthand version of the iron law states, “the harder the law enforcement, the harder the drug.” Enforcing prohibition incentivizes those who market prohibited substances to develop more potent forms that are easier to smuggle in smaller sizes and can be subdivided into more units to sell.

During alcohol prohibition, bootleggers and dealers were not smuggling beer and wine but whiskey and other hard liquors. At football games, tailgaters drink beer and wine but smuggle flasks of hard liquor into stadiums that prohibit fans from bringing alcoholic beverages.

The iron law of prohibition is why cannabis THC concentration has grown over the years. It is what brought crack cocaine into the cocaine market. And it made fentanyl replace heroin as the primary cause of overdose deaths in the United States.

The Centers for Disease Control and Prevention began seeing fentanyl-related overdose deaths rise in 2012. By 2016 fentanyl-related deaths eclipsed deaths from heroin and diverted prescription pain pills. By 2017 fentanyl was found in more than 50 percent of opioid-related overdose deaths. By 2022 it was involved in roughly 90 percent of deaths.²

The iron law of prohibition cannot be repealed. Already we have been getting troubling reports of the veterinary tranquilizer xylazine—drug users call it “tranq”—becoming an additive to fentanyl and other illicit narcotics. This tranquilizer greatly potentiates opioids’ effects, producing more powerful “highs.” Adding this potentiator again enables illicit opioids to be smuggled in smaller

¹ <https://filtermag.org/infographic-the-iron-law-of-prohibition/>

² <https://usafacts.org/articles/are-fentanyl-overdose-deaths-rising-in-the-us/>

sizes and subdivided into more units to sell. Xylazine causes blood vessels to constrict, and if it gets into the tissues surrounding blood vessels, it can lead to tissue necrosis and deadly soft tissue ulcers. Some users' ulcers have become so severely infected that surgeons must amputate limbs to save their lives.³ What makes xylazine more deadly is that it is not an opioid, and overdoses from it that cause people to stop breathing cannot be reversed with naloxone.

And the iron law hasn't stopped at "tranq." In 2019, health departments in Belgium, Canada, Estonia, Germany, Latvia, Sweden, the United Kingdom, and the United States began seeing the synthetic opioid nitazene in overdose forensic toxicology studies. Last fall, the Tennessee Department of Health reported that nitazene-related overdose deaths increased four-fold between 2019 and 2021.⁴ Nitazenes were developed by Ciba-Geigy in the 1950s but never brought to market. Nitazenes are estimated to be roughly 20 times more potent than fentanyl. Fortunately, naloxone reverses nitazene overdoses, though greater doses of naloxone are required. Because most health departments have not been testing for nitazenes, we are unaware if nitazenes are becoming more prevalent among black market drugs. Yet, I wouldn't be surprised if two or three years from now, we are talking about the "nitazene crisis" instead of the fentanyl crisis.⁵

The Covid pandemic accelerated fentanyl's prominence among black market drug users. Border closures, lockdowns, and other pandemic policies made it more challenging to transport opium and opium gum to drug dealers to be processed into heroin. Pandemic-related supply chain problems created shortages of the commercial chemical acetic anhydride—used to make cigarette filters, aspirin, and other products—which is necessary to convert the morphine in opium to diacetyl-morphine, which Bayer branded as heroin when it developed the drug in the 1890s.⁶

On the other hand, fentanyl and fentanyl analogs can be easily synthesized in clandestine labs by modifying its fundamental ingredient, piperidine. Piperidine is a chemical used to make numerous pharmaceuticals and is in abundant supply. And because fentanyl and its analogs are entirely synthetic, drug cartels don't need to rely on growing and transporting opium.

These factors, plus the tighter border controls in response to the pandemic, made it an easy business decision for the drug cartels to switch out heroin for fentanyl. With pandemic policies relaxed, it still makes sense for the cartels to stick with what works for them.

University of California, San Francisco medical school professor Daniel Ciccarone, MD told the audience at a 2019 Cato Institute harm reduction conference that most IV drug users prefer heroin to fentanyl. The fentanyl experience differs significantly from the heroin experience. In 2019, most heroin users considered fentanyl an unwanted contaminant.⁷ Today, however, heroin is much less available as the cartels have moved to supply fentanyl instead. Therefore, IV drug users have resigned themselves to using fentanyl, and many have come to prefer it.

³ <https://www.cato.org/blog/iron-law-prohibition-introducing-tranq>

⁴ https://www.cdc.gov/mmwr/volumes/71/wr/mm7137a5.htm?s_cid=mm7137a5_w

⁵ <https://www.cato.org/blog/nitazene-overdose-deaths-rise-iron-law-prohibition-cannot-been-repealed>

⁶ <https://www.unodc.org/documents/data-and-analysis/covid/Covid-19-and-drug-supply-chain-Mai2020.pdf>

⁷ <https://cdn.cato.org/archive-2019/cc-03-21-19-05.mp4> and also <https://www.cato.org/events/harm-reduction-shifting-war-drugs-war-drug-related-deaths>

Adding fentanyl analogs to the Drug Enforcement Administration's Schedule I is ill-advised. First, many fentanyl analogs are used medically to control pain and assist in anesthesia, including sufentanil, alfentanil, and remifentanil. An outright ban on developing fentanyl analogs will stifle advances in therapeutic research. Second, placing a drug on Schedule I will not deter drug cartels. Heroin has been listed on Schedule I for more than 50 years, and it has not deterred heroin trafficking or heroin use. There is no evidence that placing fentanyl analogs on Schedule I works any better.

Threatening drug dealers with life imprisonment or the death penalty is also unlikely to deter the drug trade. Most drug dealers already factor the risk of death into their decision to get into the business and, correctly, have a greater fear of being killed by rival cartels and dealers than by the United States Department of Justice.

If policymakers double down on the same prohibitionist policies they have employed for over 50 years, deaths from illicit drug overdoses will continue to rise. Doing the same thing repeatedly, with even more vigor this time, will not yield a different result.

Prohibition makes the black market dangerous because people who buy drugs on the black market can never be sure of the drug's purity, dosage, or even if it is the drug they think they are buying.

Policymakers learned how alcohol prohibition failed and came to their senses when they repealed it in 1933. Today, when I go to my legal drug dealer to purchase whiskey, it never enters my mind that it might be adulterated with fentanyl or have a greater concentration of alcohol than it says on the bottle label. That is because it is legal and regulated.

As a parent, my heart breaks whenever I hear stories of teenagers who thought they were buying a diverted prescription drug like oxycodone and then died from an overdose because the pill contained fentanyl. Those young people were not seeking and did not know they were buying fentanyl. The black market killed those youngsters.

Short of ending prohibition, federal and state lawmakers can help reduce overdose deaths by repealing drug paraphernalia laws that make it illegal to distribute fentanyl test strips, which mitigate the dangers of fentanyl consumption. The Canadian company that makes fentanyl test strips has also developed strips that can test for xylazine.⁸ Xylazine test strips are likely to grow in importance as "tranq" becomes more prevalent.

I urge the Subcommittee to avoid doubling down on policies that will not only fail to stem the flow of illicit fentanyl but will fuel the development of more deadly replacements.

Thank you and I look forward to answering your questions.

⁸ <https://www.cfsre.org/nps-discovery/drug-checking/characterization-of-xylazine-test-strips-for-use-in-drug-checking>