



Department of Justice

STATEMENT OF
MATTHEW DONAHUE
REGIONAL DIRECTOR, NORTH AND CENTRAL AMERICAS DIVISION
DRUG ENFORCEMENT ADMINISTRATION

BEFORE THE
HOUSE ENERGY AND COMMERCE COMMITTEE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
UNITED STATES HOUSE OF REPRESENTATIVES

FOR A HEARING ENTITLED
“OVERSIGHT OF FEDERAL EFFORTS TO COMBAT THE SPREAD OF
ILLCIT FENTANYL”

PRESENTED

JULY 16, 2019

**Statement of Matthew Donahue
Regional Director, North and Central Americas Division
Drug Enforcement Administration
Before the House Energy and Commerce Committee
Subcommittee on Oversight and Investigations
For a Hearing Entitled
“Oversight of Federal Efforts to Combat the Spread of Illicit Fentanyl”**

Chairman DeGette, Ranking Member Guthrie, and Members of the Subcommittee: on behalf of the approximately 9,000 employees of the Drug Enforcement Administration (DEA), thank you for the opportunity to discuss the ongoing illicit fentanyl crisis.

It is well known that overdose deaths in the United States are on the rise and have already reached record levels. While the most recent provisional overdose death data published by the Centers for Disease Control and Prevention (CDC) indicate that deaths involving all drugs have begun to stabilize in the past year; however deaths from synthetic opioids continue to rise. Of note, in 2017, over half of the death certificates for cocaine- or heroin-involved overdose deaths also involved a synthetic opioid such as fentanyl. While a number of factors appear to be contributing to this public health crisis, one of the chief causes is the proliferation of illicitly produced fentanyl and potent substances structurally related to fentanyl, commonly called “fentanyl analogues” or “fentanyl-like substances.” Fentanyl’s analgesic potency is approximately 100 times higher than morphine, and the substances structurally related to fentanyl tend to be even more potent. Because of fentanyl’s low dosage range and potency, one kilogram of fentanyl purchased in China for \$3,000 - \$5,000 can generate upwards of \$1.5 million in revenue on the illicit market.

The lethality of fentanyl and fentanyl-like substances is virtually unmatched. Law enforcement is increasingly encountering fentanyl and fentanyl-like substances laced with other illicit drugs such as methamphetamine, cocaine, and heroin. These deadly combinations only enhance the urgency of this public health crisis and increase the risks for those who may be unknowingly using these fentanyl laced drugs.

However, licit fentanyl is an important treatment agent in the practice of medicine and is utilized for its potent analgesic effects. Because of its potency, careful dosing and titration are essential. Some forms of the drug are indicated for use in people who have high opioid tolerance. Due to their high potential for abuse, fentanyl and various fentanyl-like substances have been placed in Schedule I or Schedule II control under the Controlled Substances Act (CSA) on a substance-by-substance basis. Yet, with relative ease, clandestine chemists have been able to create new potent and potentially deadly synthetic compounds by merely altering the chemical composition of the substances, resulting in new, non-controlled synthetics. *These fentanyl-related substances are specifically engineered to skirt U.S. law.*

Whether via mail, express consignment, or through Mexico, China has been the principal source country of fentanyl-like substances and other synthetic opioids, producing most illicit

fentanyl and fentanyl like-substances that reach U.S. users. DEA works closely with China to bring attention to and help combat the rise of illicit fentanyl and fentanyl analogues. Because of robust engagement by multiple U.S. Government agencies, China has made progress in this space, and announced on April 1, 2019 the class-wide control of fentanyl-like substances effective May 1, 2019.

This is a promising development; however, if increased regulatory controls taking effect in China, Mexican Transnational Criminal Organizations (TCOs) may fill the void. DEA is continuing to see a shift from importation of precursor chemicals for the production of fentanyl and fentanyl like substances to the manufacturing of precursor chemicals within Mexico itself. This is an alarming development.

CURRENT CHALLENGES WITH FENTANYL AND RELATED ANALOGUES

Traffickers Adapting to the Law

Even though fentanyl and fentanyl analogues, as well as other New Psychoactive Substances (NPS), have been controlled under Schedule I or Schedule II of the CSA, entrepreneurs procure/create new synthetic compounds with relative ease, by merely altering the chemical composition of the substances.¹ Over the past several years, DEA has identified numerous illicit fentanyl-class substances and hundreds of synthetic drugs from at least eight different drug classes, the vast majority of which are manufactured in China.

Using published data from the patent and scientific literature as their guide, clandestine chemists have continued to develop and synthesize new synthetic opioids, cannabinoids, and cathinones for the illicit market. Clandestine chemists can easily continue developing and synthesizing new synthetic opioids that do not appear on any schedule of controlled substances. Sadly, DEA often learns of these substances for the first time from reports from local hospitals and coroners in connection with a spate of overdoses. Temporary scheduling alone is not enough to address this epidemic. When DEA takes action to temporarily schedule a substance, traffickers begin selling new versions of their products made from new, non-controlled substances in as little as several weeks. Unfortunately, the existing process to temporarily schedule a substance is reactionary, and not agile enough to keep up with bad actors engineering illicit substances for the express purpose of skirting our laws. Similarly, while we have had considerable success in pursuing prosecutions under the Analogue Act, such cases are resource-intensive and complex, and the results are uncertain and non-transferable from one case to another.

Importation vs. Domestic Production and Use of the Internet

Illicit fentanyl, fentanyl analogues, and other NPS are relatively inexpensive, available via the Internet, and are often manufactured in China where they may be shipped (via the international postal system or express consignment couriers) to the United States; alternatively,

¹On February 6, 2018, DEA published a final order in the Federal Register scheduling all fentanyl-related substances (i.e., fentanyl analogues) in Schedule I on an emergency basis. The final order was made effective on the date of publication and is in effect for a period of two years.

they may be shipped directly to transnational criminal organizations in Mexico, Canada, and the Caribbean. Once in the Western Hemisphere, fentanyl and fentanyl analogues in particular are combined with heroin, cocaine, and other substances, and/or pressed into counterfeit pills made to look like controlled prescription drugs containing oxycodone or hydrocodone. They are then sold online on anonymous darknet markets, and even on overtly-operated websites or on the street. It is extremely difficult for the Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement's (ICE) Homeland Security Investigations (HSI), and the U.S. Postal Inspection Service (USPIS) to address the threat of illicit importation at ports of entry, due to the combination of: the questionable legal status of these substances; the enormous volume of international parcel traffic by mail and express consignment couriers; and the technological and logistical challenges of detection and inspection. These challenges have paved the way for both cartel and non-cartel-affiliated individuals to undertake fentanyl trafficking.

Use of Freight Forwarders

Traffickers often use freight forwarding companies that arrange importing and exporting of goods to ship fentanyl, fentanyl analogues, and other NPS from China to TCOs in the United States, Mexico, and Canada. Several DEA investigations have revealed that the original supplier will provide the package to a freight forwarding company or individual, who transfers it to another freight forwarder, who then takes custody and presents the package to customs for export. The combination of a chain of freight forwarders and multiple transfers of custody makes it challenging for law enforcement to track these packages. Often, the package will intentionally have missing, incomplete, and/or inaccurate information.

DEPARTMENT OF JUSTICE INTERACTIONS WITH CHINESE COUNTERPARTS

China: Government Action and Cooperation

As part of a whole of government approach of the Administration, the Department of Justice, and DEA, which has an active Beijing-based country office, have engaged Chinese counterparts on the control of emerging fentanyl-like substances and other NPS. When China takes action in controlling a specific drug or precursor chemical, we typically see a significant drop in that substance being used for illicit purposes in the United States, although it has always been accompanied by a rise in use of a similar unregulated substance. Nonetheless, it's through these bilateral communications and bridge building efforts that we can work to reduce the supply of illegal substances around the world.

On April 1, 2019, China announced that it would schedule fentanyl-like substances as a class, effective May 1, 2019, and DEA understands that the action is now in place. This will prevent chemical work-arounds to be exploited by clandestine synthetic opioid producers in China by allowing the United States and China to cooperate on a broader range of cases. Similar to DEA's emergency temporary scheduling order of fentanyl-like substances, this novel approach taken by the Government of China is responsive to our Nation's unprecedented opioid threat. Indeed, officials from the Ministry of Public Security Narcotics Control Board in China

had indicated that their scheduling process is long and complicated, that China has always scheduled one drug at a time, pursuant to its law, and that any change in that process would be groundbreaking for China.

As the opioid threat continues, DEA is committed to working with Chinese officials through well-established bilateral efforts: liaison presence; the Counter-Narcotics Working Group , Bilateral Drug Intelligence Working Group , regular meetings of scientists; and enhancing collaboration with DEA's interagency partners stationed abroad and in the United States. DEA is encouraged by China's recent class-wide controls of fentanyl-like substances.

UNITED STATES – MEXICO LAW ENFORCEMENT ENGAGEMENT

Mexico is the primary producer and supplier of heroin to the United States, additionally, Mexico is an increasing source of fentanyl and fentanyl-like substances. DEA investigative reporting indicates that the Sinaloa Cartel and the Cartel Jalisco Nueva Generacion (CJNG) are likely the primary groups trafficking fentanyl and fentanyl-like substances into the United States via the Southwest Border. The presence of fentanyl comingled with other poly-drug loads typical of Sinaloa and CJNG suggests strong links between these TCOs and fentanyl trafficking into the United States. This is not surprising considering Sinaloa maintains the most expansive footprint in the United States, while CJNG's domestic presence has significantly expanded in the past few years.

These developments drive DEA's continued efforts to expand the robust relationship between Mexico and the United States, particularly with regards to countering the threat from heroin and increasingly fentanyl and fentanyl-like substances. DEA has developed a U.S.-Mexico bilateral heroin strategy to increase intelligence sharing, coordination of investigations, training, sharing of forensic information, and the control of precursor chemicals. DEA's Mexico City Country Office has engaged the interagency within the U.S. Embassy through creation of a Heroin Fentanyl Working Group (HFWG). The HFWG, first convened in April 2015, meets on a monthly basis and synchronizes interagency efforts and capabilities. In early 2016, this forum became part of the Office of National Drug Control Policy's (ONDCP) Heroin Availability Reduction Plan (HARP) implementation, which continues as a monthly video teleconference, co-chaired by Mission Mexico and ONDCP and regularly attended by the National Security Council, DEA, the Department of Defense (DOD), and the Department of State Bureaus of Western Hemisphere Affairs and the Department of State's Bureaus of International Narcotics and Law Enforcement Affairs (INL). This one-hour monthly forum has become the most effective tool for synchronizing policy formulation and implementation between Mission Mexico and ONDCP. The HFWG has allowed the Federal government to speak with one voice and maintain critical security relationships with our Mexican partners. The HFWG has enabled close coordination on efforts to develop accurate Mexican heroin yield estimates, improve the Government of Mexico's poppy eradication efforts, support investigations of fentanyl seizures, track ongoing clandestine lab training, and reinforce interdiction efforts.

DEA also participates in the North American Drug Dialogue (NADD), a trilateral Assistant Secretary-level forum among the United States, Mexico, and Canada. Chaired by

ONDCP and INL, the NADD provides a framework for expanding cooperation on the heroin and fentanyl problem-set across the entire continent. For example, as a result of the NADD, and with funding from INL, the Royal Canadian Mounted Police (RCMP) has provided fentanyl detection training to Mexican Federal Police (PF) and canine units affiliated with Mexico's Tax Administration Service (SAT), which performs a customs function.

The DEA's presence in Mexico represents our largest international footprint. The ability to have DEA Special Agents assigned to 11 different offices throughout Mexico is a reflection of the level of cooperation that we continue to enjoy with our Mexican counterparts. DEA supports bi-lateral investigations with the Government of Mexico by providing information and intelligence to develop investigations that target TCO networks, leadership command, and control elements throughout Mexico.

DEA RESPONSE TO THE FENTANYL THREAT

DEA is combating the threat both domestically and internationally. DEA prioritizes its resources by targeting Consolidated Priority Organization Targets (CPOTs) and Priority Target Organizations (PTOs), which are the most significant international and domestic drug trafficking and money laundering organizations. We partner with federal, state, local, tribal, and international entities to target these identified threats utilizing a range of programs.

Special Operations Division

Established in 1994, the Special Operations Division (SOD) is a DEA-led multi-agency operations coordination center with participation from Federal law enforcement agencies, the Department of Defense (DOD), the Intelligence Community, and international law enforcement partners. SOD's mission is to establish strategies and operations to dismantle national and international trafficking organizations by attacking their command and control communications. Special emphasis is placed on those major drug trafficking organizations that operate across jurisdictional boundaries on a regional, national, and international level.

Heroin Fentanyl Task Force

The DEA Special Operations Division's (SOD) Heroin/Fentanyl Task Force (HFTF) working group consists of several agencies using a "whole of government" approach to counter the fentanyl/opioid epidemic in the United States. The HFTF consists of personnel from DEA, ICE, and CBP, supplemented by the Federal Bureau of Investigation (FBI) and USPIS. The HFTF utilizes every resource available, including support from the Organized Crime Drug Enforcement Task Forces (OCDETF), OCDETF Fusion Center (OFC) and the Criminal Division, DOD, the Intelligence Community (IC), and other government entities, and provides field offices (of all agencies) with valuable support in their respective investigations.

The HFTF mission aims to:

- Identify, target, and dismantle command and control networks of national and international heroin, fentanyl, and NPS trafficking organizations.
- Provide case coordination and de-confliction on all domestic and foreign investigations to ensure that multi-jurisdictional, multi-national, and multi-agency investigations and prosecutions have the greatest impact on targeted organizations.
- Provide direct and dynamic operational and investigative support for domestic and foreign field offices for all agencies.
- Identify new foreign and domestic trafficking, manufacturing, importation, production, and financial trends utilized by criminal enterprises.
- Analyze raw intelligence and documented evidence from multiple sources to develop actionable leads on viable target(s) involved in possible illicit pill production and/or distribution networks.
- Educate overall awareness, handling, trafficking trends, investigative techniques, and safety to domestic and foreign field offices for all law enforcement, DOD, IC, and governmental agencies.
- Facilitate, coordinate, and educate judicial districts during prosecutions of heroin, fentanyl, and other NPS related cases.

Close interagency cooperation via the HFTF has led to several key enforcement actions, including the announcement on October 17, 2017, of the first-ever indictments, in two separate OCDETF cases, of two Chinese nationals responsible for the manufacturing and distribution of illicit fentanyl in the United States. The indictments represented the first of manufacturers and distributors of fentanyl and other opioid substances designated as Consolidated Priority Organization Targets (CPOTs). CPOT designations are of those who have “command and control” elements of the most prolific international drug trafficking and money laundering organizations operating in the world.

In addition, SOD’s HFTF played an integral role in the July 2017 seizure and closure of the largest criminal marketplace on the Internet, AlphaBay. As outlined by then Attorney General and the DEA Acting Principal Deputy Administrator, AlphaBay operated for over two years on the dark web, and was used to sell deadly illegal drugs, stolen and fraudulent identification documents and access devices, counterfeit goods, malware and other computer hacking tools, firearms, and toxic chemicals throughout the world. The international operation to seize AlphaBay’s infrastructure was led by the United States and involved cooperation and efforts by law enforcement authorities in Thailand, the Netherlands, Lithuania, Canada, the United Kingdom, and France, as well as the European law enforcement agency Europol. Multiple interagency OCDETF investigations into AlphaBay revealed that numerous vendors, including many in China, sold illicit fentanyl and heroin on the site, and that there have been a substantial number of overdose deaths across the country attributed to such purchases.

Operation Synthetic Opioid Surge (SOS)

In July of 2018, then-Attorney General Sessions announced the creation of Operation Synthetic Opioid Surge (SOS), a new initiative that aims to reduce the supply of deadly synthetic opioids in high impact areas and to identify wholesale distribution networks as well as international and domestic suppliers. Operation SOS focuses its activities in ten specific districts throughout the United States. Specifically, the Attorney General directed each of the identified districts to prosecute every readily provable investigation involving the distribution of synthetic opioids, primarily fentanyl and its analogues, occurring in their identified counties, regardless of drug quantity. SOS seeks to reduce the supply of synthetic opioids in “hot spot” counties, thereby reducing drug overdoses and drug overdose deaths, and identify wholesale distribution networks and sources of supply operating nationally and internationally. SOS also involves a coordinated OFC and SOD effort to ensure that leads from these street-level cases are used to identify and prosecute larger-scale distributors.

As part of SOS, SOD harnesses participating interagency databases, tools, and programs to exploit traditional and cyber communications, travel, trade, finance, open source, and social media, to illuminate and target unknown TCO networks by pursuing a top down analytical focus. SOD assists in coordinating overlapping investigations, ensuring tactical and strategic intelligence occurs between law enforcement agencies and providing financial support to those investigations that meet investigative priorities across the interagency. SOS districts have reported significant increases in the number of pending fentanyl investigations and prosecutions and at least 10 pending OCDETF investigations.

Heroin-Fentanyl Enforcement Teams

Utilizing the appropriations under the Consolidated Appropriations Act of 2017 (P.L. 115-31), DEA has created six new heroin-fentanyl enforcement teams to combat trafficking in heroin, fentanyl, and fentanyl analogues. The establishment of the teams began in January 2018, and they are located in some of the regions hardest hit by the opioid epidemic: New Bedford, Massachusetts; Charleston, West Virginia; Cincinnati, Ohio; Cleveland, Ohio; Raleigh, North Carolina; and Long Island, New York. Thanks to the robust Consolidated Appropriations Act of 2018 (P.L. 115-141) appropriation, DEA will be creating three additional heroin-fentanyl teams. In determining the locations for these teams, DEA will consider multiple factors, including rates of opioid mortality, level of heroin and fentanyl seizures, and where additional resources would make the greatest impact in addressing the ongoing threat. While the teams are based in specific cities, their investigations are not geographically limited. DEA has always, and will continue, to pursue investigations wherever the evidence leads.

International Enforcement: Sensitive Investigative Units

A significant component of DEA’s International Drug Enforcement Priorities is to support and expand a key element of DEA’s international efforts: the Sensitive Investigative Unit (SIU) program. DEA’s SIU program, nine of which are in the Western Hemisphere,

including Mexico, helps build effective and vetted host nation units capable of conducting complex investigations targeting major TCOs.

International Enforcement: Bilateral Investigations Units

Bilateral Investigations Units (BIUs) are one of DEA's most important tools for targeting, disrupting, and dismantling significant TCOs. The BIUs have used extra-territorial authorities to infiltrate, indict, arrest, and convict previously "untouchable" TCO leaders involved in drug trafficking.

Fentanyl Signature Profiling Program

The overarching goal of the Fentanyl Signature Profiling Program (FSPP) is to provide new insights in support of ongoing DEA investigations. The FSPP does this by providing both real-time data from the in-depth analyses of seized samples and unique science-based forensic investigative leads on seizures where linkages were unknown or only suspected. These linkages are imparitive to discover relationships between these investigative leads. For instance, examples from qualified seizures throughout DEA (e.g., exhibits containing a sufficient amount of fentanyl necessary for in-depth testing) are automatically submitted to DEA laboratories for FSPP testing; each profiled sample is then compared to all other such fentanyl submissions. If linkages between samples are identified, this information is communicated to the appropriate DEA Field Division to advance the investigation. Since the program's implementation, over 500 illicit fentanyl samples have been examined, resulting in the establishment of several sets of seizure linkages tying separate cases and seizures together.

Scheduling by Administrative Rulemaking: Temporary Control

DEA continues to utilize its regulatory authority to place many synthetic substances into the CSA, pursuant to the aforementioned temporary scheduling authority. Once a substance is temporarily placed in Schedule I, DEA moves towards permanent control by requesting a scientific and medical evaluation, and a scheduling recommendation, from the Department of Health and Human Services (HHS). DEA also gathers and analyzes additional scientific data and other information collected from all sources, including poison control centers, hospitals, medical examiners, treatment professionals, and law enforcement agencies, in order to consider the additional factors warranting its permanent control. Since March 2011, DEA has utilized this authority on 19 occasions to place 56 synthetic drugs temporarily (emergency control) into Schedule I, including 17 fentanyl analogues. In comparison, over the first 25 years (1985-2010) after Congress created this authority, DEA utilized it a total of 13 times to control 25 substances. The process is workable but often lags behind the dynamic pace of illicit drug producers and distributors. In a significant step, on February 6, 2018, DEA temporarily placed Schedule I controls on "fentanyl related substances," which includes the class of substances structurally related to fentanyl based on specific chemical changes but not otherwise controlled in any other schedule.

DEA's temporary actions are the catalyst for communication with a number of international counterparts, not just China, who are interested in following our example and implementing a similar class-based control for fentanyl related substances. The Department of Justice, DEA, and ultimately the United States is leading from the front with our efforts to emergency control fentanyl-like substances as a class, but that regulatory authority soon expires. If no action is taken to permanently class-wide schedule these dangerous, lethal substances, **in just 206 days from today**, they will again fall out of our controls. Should the temporary order expire, it will result in significant negative outcomes for our communities and users. We are working with our interagency colleagues on a means to comprehensively address the scheduling of opioid analogues.

CONCLUSION

Mexican TCOs remain the greatest criminal drug threat to the United States. These Mexican poly-drug organizations traffic heroin, methamphetamine, cocaine, marijuana, and now more than ever illicit fentanyl and synthetic opioid analogues, which are responsible for so many deaths over the last several years throughout the United States using established transportation routes and distribution networks. They control drug trafficking across the Southwest Border and are moving to expand their share of U.S. illicit drug markets. Their influence up and down the supply chain, their ability to enter into new markets, and their associations with domestic gangs are of particular concern for the DEA. DEA will continue to address this threat domestically and abroad by attacking the crime and violence perpetrated by the Mexican-based TCOs, which have brought tremendous harm to our communities. Targeting the world's most prolific and dangerous drug traffickers is a dynamic and evolving mission, and with it comes myriad challenges. But throughout our history, DEA has met those challenges and produced impressive results.

The fight against drug abuse is a generations-long struggle; it will not be completed overnight. DEA plays a critically important role in our country's holistic strategy of prevention, treatment and recovery support, and in reducing the availability of illicit drugs in the United States. DEA remains committed to bringing the "Most Wanted" drug traffickers and their entire networks to justice in cooperation with our law enforcement partners. With that, DEA continues to engage the Governments of China, Mexico, and others in our efforts to stem the flow of fentanyl and fentanyl precursors, which are fueling the national opioid epidemic. DEA is further committed to working with our interagency and international partners in targeting, indicting, and arresting leadership of criminal networks, both foreign and domestic. By taking harmful drugs off of the street, dismantling major drug organizations, and seizing the profits associated with this trade, we are making our nation a safer place to live and do business.

Thank you for the opportunity to testify today and we look forward to continuing to work with Congress to find solutions necessary to address the threats posed by TCOs and the harmful substances and illegal activity they are involved in, no matter where they may operate.