



# Department of Justice

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**STATEMENT OF**

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U.S. DEPARTMENT OF JUSTICE**

**BEFORE THE**

**SUBCOMMITTEE ON CRIME AND TERRORISM  
COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE**

**FOR A HEARING ENTITLED**

**DEFEATING FENTANYL: ADDRESSING THE DEADLIEST DRUGS  
FUELING THE OPIOID CRISIS**

**PRESENTED**

**APRIL 11, 2018**

**Statement of Christina E. Nolan**  
**U.S. Attorney for the District of Vermont**  
**U.S. Department of Justice**  
**Before the Subcommittee on Crime and Terrorism**  
**Committee on the Judiciary**  
**United States Senate**  
**April 11, 2018**

Chairman Graham, Ranking Member Whitehouse, and Members of the Committee: thank you for the opportunity to discuss the dangers posed by fentanyl and its analogues and the challenges the Department of Justice (the Department) faces when prosecuting distributors. The Department appreciates the Committee's interest in this important topic.

It would be impossible to overstate the impact of the opioid crisis currently gripping our nation. Drug overdoses, suffered by family, friends, neighbors, and colleagues, are now the leading cause of injury-related death in the United States, eclipsing deaths from motor vehicle crashes or firearms.<sup>1</sup> According to the Centers for Disease Control and Prevention (CDC), there were nearly 64,000 overdose deaths in 2016, or approximately 174 per day, over 42,249 (66 percent) of these deaths involved opioids,<sup>2</sup> and the sharp increase in drug overdose deaths between 2015 to 2016 was fueled by a surge in fentanyl and fentanyl analogue (synthetic opioids) involved overdoses.<sup>3</sup> Researchers at the CDC recently examined opioid overdose deaths in Maine, Massachusetts, Missouri, New Hampshire, New Mexico, Ohio, Oklahoma, Rhode Island, West Virginia, and Wisconsin, and found that over half of the victims tested positive for fentanyl.<sup>4</sup> We expect 2017 statistics will show that fentanyl and other illicit synthetic opioids were the primary catalyst for fatal overdoses in 2017.

Under U.S. federal law, fentanyl is a Schedule II controlled substance lawfully produced in the United States and used in medicine. It is an extremely potent analgesic, and widely used for anesthesia and pain control in people with serious pain problems. In such cases, it is indicated only for use in people who have high opioid tolerance. Illicit fentanyl, fentanyl analogues, and their immediate precursors are often produced in China. From China, these substances are shipped primarily through express consignment carriers or international mail directly to the United States. Alternatively, they are also shipped to transnational criminal organizations (TCO) in Mexico and Canada. Once in the Western Hemisphere, fentanyl and its analogues are either mixed into the heroin supply or pressed into a pill form, and then moved

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<sup>1</sup> Rose A. Rudd, Noah Aleshire, Jon E. Zibbell, & R. Matthew Gladden. Increases in Drug and Opioid Overdose Deaths – United States, 2000-2014 Morbidity and Mortality Weekly Report, 2016;64:1378-1382.

<sup>2</sup> Drug Overdose Deaths in the United States, 1999–2016, NCHS Data Brief No. 294, December 2017, *Centers for Disease Control and Prevention*, <https://www.cdc.gov/nchs/products/databriefs/db294.htm>.

<sup>3</sup> CDC WONDER data, retrieved from the National Institute of Health website; <http://www.drugabuse.gov> as reported on NIDA's website.

<sup>4</sup> Fentanyl involved in over half of opioid overdose deaths in 10 states, *Centers for Disease Control and Prevention*, <https://www.cdc.gov/media/releases/2017/s1027-fentanyl-deaths.html>. (“...of a total of 5,152 opioid overdose deaths, almost 3,000 tested positive for fentanyl, and over 700 tested positive for drugs that have similar chemical structures to fentanyl (fentanyl analogs).”)

into the illicit U.S. market, where demand for prescription opioids and heroin remain at epidemic proportions. In some instances, drug trafficking organizations have industrial pill presses shipped directly into the United States from China, and then operate fentanyl pill press mills domestically. Mexican TCOs have seized upon this business opportunity because of the profit potential of synthetic opioids, and have invested in growing their share of this market. Because of its 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 – and is enough to potentially kill 500,000 people by overdose.

The District of Vermont where I serve as the United States Attorney has been one of the hardest hit by the crisis. On a daily basis, I see the death and destruction caused by fentanyl and fentanyl analogues. In 2017 in Vermont – a state of only about 625,000 citizens - we lost 107 people to opioid overdose deaths, about two-thirds of those attributable to fentanyl. In only one year, deaths involving fentanyl increased by more than a third, from 49 in 2016 to 67 in 2017. We desperately want all 107 of those people back. But in our grief, we must be forward-looking and pursue enforcement strategies that incapacitate those who would profit from the horror of opioid addiction. In Vermont, we recently prosecuted a death-resulting case involving large-scale Vermont dealers who sold pure fentanyl. In another case, we recently sentenced another set of out-of-state dealers who dealt pure fentanyl that caused non-fatal overdoses of two Vermonters, one a pregnant woman.

The lethality of fentanyl is virtually unmatched – it is 30-50 times more potent than heroin, which is quite lethal in its own right. That unmatched lethality is not currently reflected in the Controlled Substances Act (CSA), which punishes dealers of fentanyl less severely than sellers of less lethal drugs, such as crack cocaine. Although opioid tolerance may develop in users, as little as two milligrams of pure fentanyl is a lethal dose in most people.<sup>5</sup> The amount required for a lethal dose of fentanyl analogues like carfentanil is even less. In contrast, the average lethal dose for heroin is approximately 200 milligrams, 100 times that of fentanyl.<sup>6</sup> Yet currently, mandatory minimum penalties based on drug weight in simple distribution cases are only triggered at 40 grams of fentanyl. That is a five-year mandatory minimum sentence for an amount of fentanyl containing up to 20,000 potentially lethal doses. And unfortunately, most of our cases do not reach the 40-gram threshold.

When the five-year statutory mandatory minimum does not apply, courts must rely on the sentencing guidelines, and for small amounts of fentanyl, the guidelines are inadequate. For example, a defendant with up to one previous conviction, the guideline range for trafficking in any amount of fentanyl less than 4 grams is 10-16 months (and if the defendant pleads guilty,

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<sup>5</sup> DRUG ENFORCEMENT ADMINISTRATION, FENTANYL FAQ'S, last visited Feb. 18, 2018, <https://www.dea.gov/druginfo/fentanyl-faq.shtml>; EUROPEAN MONITORING CENTRE FOR DRUGS AND DRUG ADDICTION, FENTANYL DRUG PROFILE, PHARMACOLOGY, last visited Jan. 28, 2018, <http://www.emcdda.europa.eu/publications/drug-profiles/fentanyl>; see also Ellenhorn, M.J. & D.G. Barceloux, *Medical Toxicology - Diagnosis and Treatment of Human Poisoning*, New York, NY: ELSEVIER SCIENCE PUBLISHING CO. INC., 745 (1988) (.25 milligrams, reported in micrograms).

<sup>6</sup> EUROPEAN MONITORING CENTRE FOR DRUGS AND DRUG ADDICTION, HEROIN DRUG PROFILE, PHARMACOLOGY, last visited Jan. 28, 2018, <http://www.emcdda.europa.eu/publications/drug-profiles/heroin>.

this range would drop further to 6-12 months, with eligibility for probation). Such an outcome is wholly inadequate for a defendant who could sell enough fentanyl to kill almost 2,000 people.

When we can prove fentanyl causes death or serious bodily injury, defendants will face 20-year mandatory sentences. But prosecutors often encounter evidentiary problems such as insufficient toxicology reports; or inadequate or conflicting medical examiner and coroner findings; an inability to prove a particular dealer provided the particular drug responsible for a death; and an inability to prove but-for causation required by the Supreme Court, especially in the common situation where multiple drugs contribute to a death. In these common cases where a resulting-in-death charge cannot be proven, prosecutors are left with charging simple distribution charges, with no mandatory minimum sentence and low advisory sentencing guidelines. Reducing the amount of fentanyl and its analogues required to trigger mandatory minimum sentencing in distribution cases would give prosecutors the ability to charge more cases under the guidelines, enhance public safety, and provide additional encouragement to law enforcement agencies to continue to devote substantial resources to the investigation and apprehension of fentanyl traffickers.

It is critically important, for purposes of just punishment and deterrence, that we have the ability to bring charges against those who peddle this deadly poison for profit, even those who are careful to bring relatively small amounts to rural, end-user states like Vermont. Indeed, the fentanyl that lands in the United States directly – which as mentioned earlier, is usually sent through the express consignment carriers or international mail and originates from China – tends to come in smaller, difficult-to-detect quantities. In my district, dealers some time sell fentanyl “on the side,” pushing stimulants and heroin as their main commodities. It takes only one small dose of fentanyl to end a precious life, and the sentencing scheme should reflect this tragic reality.

Drug traffickers are now mixing fentanyl and fentanyl analogues with other drugs. Drug traffickers are now using commercially available pill presses to produce pills that contain fentanyl and fentanyl analogues but appear to be less lethal prescription drugs like oxycodone and hydrocodone. Last year in Vermont, law enforcement seized 3,200 pills from an individual – now charged in federal court – that appeared to be marked as pharmaceutical grade Percocet 30 mg pills, but were actually determined to be fentanyl. That number of fentanyl pills could have killed thousands of Vermonters. Both of these practices are incredibly dangerous, and are directly related to the increase in overdose deaths. As a medical examiner in Ohio explained after 19 people died from using what they believed was cocaine, “[i]f someone is using cocaine, they might not be expecting it to be mixed with fentanyl. . . .It’s very dangerous.”<sup>7</sup> The same is happening in Vermont. According to the Vermont Department of Health, in our state, opioid-related fatalities involving cocaine doubled in the past year, from 17 in 2016 to 32 in 2017. Cocaine is now present in about one-third of accidental and undetermined opioid-related deaths. As National Public Radio has reported, deaths involving fentanyl-laced cocaine are occurring with greater frequency in other districts, as individuals believe they are using cocaine, while

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<sup>7</sup> Cocaine Laced with Heroin, Fentanyl Linked to String of Northeast Ohio Overdose Deaths, Feb 10, 2017, Cleveland.com, [http://www.cleveland.com/metro/index.ssf/2017/02/cocaine\\_mixed\\_with\\_heroin\\_fent.html](http://www.cleveland.com/metro/index.ssf/2017/02/cocaine_mixed_with_heroin_fent.html).

alone and without having naloxone on hand to reverse an overdose.<sup>8</sup> The Drug Enforcement Administration (DEA) reports that seven percent of cocaine seized in New England included fentanyl, up from four percent in 2016.

## **THE DEPARTMENT OF JUSTICE AND DEA ARE COMMITTEED TO COMBATTING THIS CRISIS**

In recognition of the unprecedented and continuing escalation in opioid-related overdoses, and of the White House directive to declare the opioid crisis as a national public health emergency,<sup>9</sup> on February 6, DEA used its authority under Section 201 of the Controlled Substances Act<sup>10</sup> to place all non-scheduled fentanyl-related substances into Schedule I *temporarily*, on an emergency basis, for two years.<sup>11</sup> But even when DEA is able to identify and temporarily schedule these deadly substances on an emergency basis, we struggle to keep pace with the creativity of drug traffickers and clandestine laboratories under the current statutory scheme. We recently seized a fentanyl-related substance bound for Vermont that had only been identified once before in the United States. The problem of fentanyl analogues is not going away.

The Department is committed to use all of its available tools to combat the opioid epidemic. Last year, the Attorney General directed every U.S. Attorney to designate an Opioid Coordinator in their office. The Opioid Coordinator is responsible for facilitating intake of cases involving prescription opioids, heroin, and fentanyl; convening a task force of federal, state, local and tribal law enforcement to identify opioid cases for federal prosecution, facilitate interdiction efforts, and tailor their district's response to the needs of the community. The Attorney General also designated Mary Daly as the Director of Opioid Enforcement and Prevention Efforts in the Office of the Deputy Attorney General. In this role, Ms. Daly will be responsible for assisting the Attorney General and components within the Department in formulating and implementing initiatives, grants, and programs relating to opioids, and coordinating these efforts with law enforcement.

In January, the Attorney General ordered the creation of the Joint Criminal Opioid Darknet Enforcement (J-CODE) team. J-CODE is an FBI initiative, aimed at targeting drug trafficking, especially fentanyl and other opioids, on the internet and Darknet. The J-CODE team is comprised of agents, analysts, and professional staff with expertise in drugs, gangs, health care fraud, and more, as well as the Department's federal, state, and local law enforcement

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<sup>8</sup> Fentanyl-laced Cocaine Becoming a Deadly Problem Among Drug Users, National Public Radio, March 29, 2018, <https://www.npr.org/sections/health-shots/2018/03/29/597717402/fentanyl-laced-cocaine-becoming-a-deadly-problem-among-drug-users>,

<sup>9</sup> *President Donald J. Trump is Taking Action on Drug Addiction and the Opioid Crisis*, The White House Office of the Press Secretary, Oct. 26, 2017, <https://www.whitehouse.gov/the-press-office/2017/10/26/president-donald-j-trump-taking-action-drug-addiction-and-opioid-crisis>.

<sup>10</sup> 21 U.S.C. § 811(h)(1).

<sup>11</sup> Schedules of Controlled Substances: Temporary Placement of Fentanyl-Related Substances in Schedule I, 83 Fed. Reg. 5188 (Feb. 6, 2018), <https://www.federalregister.gov/documents/2018/02/06/2018-02319/schedules-of-controlled-substances-temporary-placement-of-fentanyl-related-substances-in-schedule-i>. There is a possibility of extending temporary scheduling for one additional year if proceedings are underway for permanent scheduling. 21 U.S.C. § 811(h)(2).

partners. The J-CODE team is focused on disrupting the sale of drugs via the Darknet and internet and dismantling criminal enterprises that facilitate this trafficking. Just last week, the Department announced the results of the J-CODE team's first coordinated action, Operation Disarray, which targeted vendors and buyers of opioids and cocaine on the Darknet, and led to eight arrests. President Trump has highlighted scaling up internet enforcement efforts under J-CODE as part of the President's Opioid Initiative.

In February, the Attorney General announced the Department's Prescription Interdiction & Litigation (PIL) Task Force, to fight the prescription opioid crisis. The PIL Task Force coordinates the Department's many efforts and tools to combat the opioid epidemic at every level of the distribution system and examines existing state and local government lawsuits against opioid manufacturers to determine what assistance, if any, federal law can provide in those lawsuits. The Task Force will consider use of the False Claims Act and other tools to crack down on pain-management clinics, drug testing facilities, and physicians that make illegal opioid prescriptions. In addition to using the criminal and civil tools available under the CSA to bring claims/charges against doctors, pharmacies, and others that break the law, the PIL Task Force builds upon and expands the efforts of the existing Opioid Fraud and Abuse Detection Unit. Created in August 2017, the Unit uses sophisticated data analysis to identify and prosecute individuals who are contributing to the opioid epidemic, including pill-mill schemes and pharmacies that unlawfully divert or dispense prescription opioids for illegitimate purposes.

## **DEPARTMENT OF JUSTICE INTERACTIONS WITH CHINESE COUNTERPARTS**

### *China: Government Action and Cooperation*

Combating illicit fentanyl is a top priority of this Administration. Recognizing that a significant amount of illicit fentanyl, fentanyl analogues, and their immediate precursor chemicals are manufactured in China, Attorney General Sessions and Deputy Attorney General Rosenstein both requested that China take action during meetings with then-State Councilor Guo Shengkun of the Chinese Ministry of Public Security. Guo met with Deputy Attorney General Rosenstein in Beijing, China on September 25, 2017, followed by a meeting with the Attorney General in Washington, D.C. on October 3 and October 4, 2017. The Attorney General and the Deputy Attorney General's efforts are built on long-standing working-level engagements with the Chinese on a number of levels. Our engagement has resulted in positive actions by the Government of China over the last year. These actions are a step in the right direction, but much more must be done by the Chinese government.

Since 2014, the Department, our interagency partners, and Chinese officials have met regularly to discuss bilateral efforts to counter the threat to the United States from fentanyl class substances. In October 2015, when China implemented domestic control on 116 New Psychoactive Substances (NPS), including a number of fentanyl analogues, and streamlined its procedures to control additional substances. In total, China has scheduled 138 different NPS. On March 1, 2017, China's National Narcotics Control Commission announced scheduling controls against four fentanyl-class substances: carfentanil; furanyl fentanyl; valeryl fentanyl; and acryl fentanyl. This announcement reaffirms an expanding collaborative commitment to countering illicit fentanyl. On July 1, 2017, China controlled U-47700. While not a fentanyl

class substance, U-47700 is a powerful synthetic opioid that has been trafficked and abused in the United States.

After requests by Administration officials, including the Attorney General and Deputy Attorney General, and in accordance with its obligations under the 1988 UN Convention, on December 28, 2017, China's Ministry of Public Security announced scheduling controls on two fentanyl precursor chemicals, NPP and 4ANPP. The scheduling controls took effect on February 1, 2018. The Department and our interagency colleagues will continue to engage the Chinese on the control of emerging fentanyl analogues and other NPS and enforcing those controls.

## **SIGNIFICANT ENFORCEMENT EFFORTS**

### *Heroin Fentanyl Task Force*

The DEA Special Operations Division (SOD) Heroin/Fentanyl Task Force (HFTF) working group consists of a group of federal agencies employing a joint, cooperative approach to counter the fentanyl/opioid epidemic in the United States. The HFTF consists of personnel from DEA, U.S. Immigration and Customs Enforcement, Homeland Security Investigations (HSI) and Customs and Border Protection (CBP); supplemented by the Federal Bureau of Investigation (FBI) and the U.S. Postal Inspection Service. HFTF utilizes every resource available, including support from the Department of Justice's Organized Crime Drug Enforcement Task Forces (OCDETF), OCDETF Fusion Center (OFC), and the Criminal Division, the Department of Defense (DOD), the Intelligence Community (IC) and other government entities, and provides field offices (all agencies) with valuable support in their respective investigations.

Close interagency cooperation via the HFTF has led to several large enforcement actions, including the first-ever indictment, in two separate OCDETF cases, of two Chinese nationals responsible for the manufacturing and distribution of illicit fentanyl in the United States, announced on October 17, 2017 by the Deputy Attorney General and the DEA Acting Administrator. The two Chinese nationals were the first manufacturers and distributors of fentanyl and other opiate substances to be 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 shutting down of the largest criminal marketplace on the Internet, AlphaBay. As outlined by the Attorney General and the DEA Acting Principal Deputy Administrator in July, 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 a substantial number of overdose deaths across the country were attributable to such purchases.

## **CONCLUSION**

In sum, to fight the opioid epidemic and the alarming increase in fentanyl trafficking and fatal overdoses, prosecutors must be armed with charging and sentencing tools sufficient to confront the urgent realities on the ground. Although the Department is working to combat the dangerous fentanyl problem from many fronts, the current quantity thresholds necessary to trigger mandatory minimum penalties for fentanyl and fentanyl analogues are out of date and inadequate, given what we now know about the tremendous potency, toxicity, and harm associated with these substances. Lowering these quantities would provide prosecutors with the tools they need to address the problem as they are currently encountering it. Fentanyl comes to the country in relatively small amounts, and arrives in rural states in even smaller quantities. We rarely seize quantities that meet the current statutory thresholds for mandatory minimum sentences, meaning that we lack the necessary tools to deter dealers and remove them from communities.

Thank you for the opportunity to share the Department's views on these important issues. I look forward to answering your questions.