

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510–6275

August 25, 2021

The Honorable Richard Durbin
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Durbin:

The countdown is on. As of today, there are 58 days until the critical and life-saving authority placing all fentanyl related substances in Schedule I expires. Controlling fentanyl analogues is urgent and necessary. As you know, the Centers for Disease Control and Prevention reported that a staggering 93,000 Americans died from drug overdoses last year, the majority of which were due to synthetic opioids like fentanyl.¹ No corner of the country is immune to fentanyl's impact. In fact, your home state of Illinois has suffered a 27.3% increase in overdose deaths over the past year, with fentanyl-involved overdoses on the rise.²

Scheduling fentanyl analogues has historically been a bipartisan issue, enjoying support and engagement from both chambers of Congress and multiple agencies in the federal government. The Biden Administration supports a solution to deal with fentanyl and its analogues. For instance, Attorney General Garland, during his confirmation hearing before the Senate Judiciary Committee, stated, “illicitly sold fentanyl analogues have caused senseless fatalities,” and that “stopping fentanyl and synthetic opioids from flooding our communities should be a high priority for the Department of Justice.”³ Additionally, the Office of National Drug Control Policy (ONDCP) Acting Director LaBelle has stated in multiple congressional hearings that fentanyl analogues are dangerous, that they are working towards a solution to schedule fentanyl substances, and that a legislative proposal on the issue is anticipated to be shared with Congress as soon as August.⁴

¹ Centers for Disease Control and Prevention, National Center for Health Statistics, Provisional Drug Overdose Counts, available at: <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm>.

² *Id.* See also “12 month-ending provisional number of drug overdose deaths by drug or drug class” for Illinois jurisdiction, with selection specific drugs or drug classes being “synthetic opioids, excl. methadone.”

³ *The Nomination of the Honorable Merrick Brian Garland to be Attorney General of the United States: Day 1* before the S. Comm. On the Judiciary, 117th Cong., Questions for the Record responses, p. 131 (2021).

⁴ See *An Epidemic within a Pandemic: Understanding Substance Use and Misuse in America*, Before the H. Comm. on Energy and Commerce, 117th Cong. (2021). (“Age-adjusted drug overdose deaths involving synthetic opioids other than methadone, including fentanyl analogues, continue to increase.”); *Examining Federal Sentencing for Crack and Powder Cocaine*, Before the S. Comm. On the Judiciary, 117th Congress (2021). (“... of the 90,000 overdose deaths from last year, from 2020, that 75% of them involved . . . a fentanyl or fentanyl analogue. So, what we’re doing is working with the interagency to make sure that we can present to Congress a solution on the

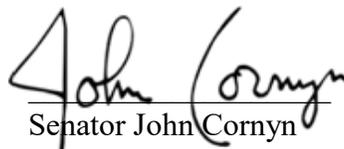
As you know, Congress passed H.R. 2630 earlier this year, which extends DEA's emergency scheduling order placing fentanyl substances in schedule I to October 22, 2021.⁵ This extension is a necessary stopgap measure to maintain control over fentanyl analogues while contemplating options on how to permanently schedule them. The ONDCP is spearheading a federal interagency working group to draft a comprehensive solution. We are interested in engaging in this process with ONDCP and the larger interagency working group sooner rather than later to ensure that the proposal adequately protects public safety and addresses this dire problem.

It is in the spirit of transparency and bipartisanship that we respectfully request a full-committee consensus hearing after the August recess comprised of members of the interagency working group to review, evaluate, and discuss the legislative proposal from the Administration on scheduling fentanyl related substances. Based on sworn testimony by multiple Biden Administration officials, we have no reason to believe that the interagency working group will not provide Congress with a proposed solution. Granted, the details of this proposal are largely unknown, including essential details, such as if it will recommend permanently placing fentanyl related substances in Schedule I or reducing the appropriately serious criminal penalties that deter criminals from distributing fentanyl. But even if the interagency working group fails to share draft proposals with congressional leaders, or if the proposal falls short, we still urge the committee to convene a hearing on how Congress should work to schedule these deadly substances. Any legislation moving through committee or on the floor of the Senate on such an important issue deserves the review and scrutiny of relevant committee members.

As the committee of jurisdiction over drug control, we owe it to the American people and the thousands of victims of drug abuse and overdose to hold a candid and deliberative hearing on the best path forward to stopping the spread of deadly fentanyl related substances. We look forward to hearing back from you about our request and hope to work with your office on a permanent solution on fentanyl related substances.

Sincerely,


Ranking Member Charles Grassley


Senator John Cornyn

permanently scheduling or scheduling of fentanyl analogues. So, we're working with DOJ, DEA, and our partners at HHS to send something to the Hill by the fall."); *Federal Response to the Drug Overdose Epidemic*, Before the S. Caucus on Int. Narcotics Control, 117th Cong. (2021). ("We will have legislation to the Hill prior to the expiration of the fentanyl scheduling act. The update is that ... I think we're making good progress and we're going to have something on time to the Hill.")

⁵ *Extending Temporary Emergency Scheduling of Fentanyl Analogues Act*, P.L. 117-12, 135 STAT. 264, May 4, 2021.

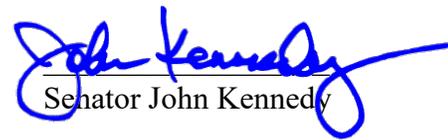

Senator Michael S. Lee

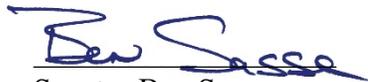

Senator Joshua D. Hawley

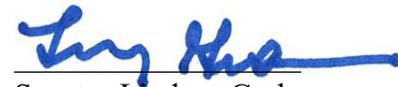

Senator Thom Tillis


Senator Marsha Blackburn


Senator Ted Cruz


Senator John Kennedy


Senator Ben Sasse


Senator Lindsey Graham