



Department of Justice

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BEFORE THE

**SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH, GLOBAL HUMAN
RIGHTS AND INTERNATIONAL ORGANIZATIONS
COMMITTEE ON FOREIGN AFFAIRS
U.S. HOUSE OF REPRESENTATIVES**

FOR A HEARING REGARDING

TACKLING THE FENTANYL CRISIS: WORKING WITH CHINA

PRESENTED

SEPTEMBER 6, 2018

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Before the Subcommittee on Africa, Global Health, Global Human Rights and
International Organizations
Committee on Foreign Affairs
U.S. House of Representatives
September 6, 2018

Chairman Smith, Ranking Member Bass, and Members of the Subcommittee: on behalf of the Department of Justice (the Department), and in particular the approximately 9,000 employees of the Drug Enforcement Administration (DEA), thank you for the opportunity to discuss current cooperation between United States law enforcement agencies and China in the areas of drug enforcement.

Drug overdoses, suffered by family, friends, neighbors, and colleagues, are now the leading cause of injury-related deaths in the United States, eclipsing those from motor vehicle crashes or firearms.¹ An in-depth analysis of 2016 U.S. drug overdose data shows that America's overdose epidemic is spreading geographically, and is increasing across demographic groups. 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.^{2,3} Unfortunately, provisional drug overdose data from the Centers of Disease Control and Prevention (CDC) shows that fentanyl use drove drug overdose deaths to a record high in 2017. Annual deaths from all drug overdoses in 2017 rose to 72,287, with 49,060 of those deaths involving opioids. Overdose deaths in 2017 are expected to exceed 2016 figures with synthetic opioids being the prime driver of the increase.⁴

Under U.S. federal law, fentanyl is a Schedule II controlled substance, which is lawfully produced in the United States and widely used in medicine. It is an extremely potent analgesic used for anesthesia and pain control in people with serious pain problems, and, in such cases, it is generally indicated only for use in people who have a 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, or, alternatively, shipped directly to transnational criminal organizations (TCO) in Mexico, Canada, and the Caribbean. Once in the Western Hemisphere, fentanyl or its analogues are prepared for mixing into the heroin supply, other non-opioid drugs, or pressed into a tablet form, and then moved into the illicit U.S. market where demand for prescription opioids and heroin remains at epidemic proportions. In some instances, drug trafficking organizations have industrial pill presses shipped directly into the United States from China, which allows them to press fentanyl pills domestically. Mexican TCOs have seized upon

¹ 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.

² <https://www.cdc.gov/media/releases/2018/p0329-drug-overdose-deaths.html>

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

⁴ <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm>

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 with the potential of being lethal for 500,000 people.⁵

According to the DEA National Forensic Laboratory Information System (NFLIS), from January 2013 through December 2016, over 58,000 fentanyl exhibits were identified by federal, state, and local forensic laboratories.⁶ During 2016, there were 36,061 fentanyl reports compared to 1,042 reports in 2013,⁷ an exponential increase over the past four years. The consequences of fentanyl misuse are often fatal and occur amongst a diverse user base. According to a December 2017 CDC Data Brief, from 2015 to 2016, the death rate from synthetic opioids other than methadone, a category that includes fentanyl, doubled from 9,580 (age adjusted rate 3.1) to 19,413. The age-adjusted rate of drug overdose deaths involving synthetic opioids other than methadone (drugs such as fentanyl, fentanyl analogues, and tramadol) doubled between 2015 and 2016, from 3.1 to 6.2 per 100,000.⁸

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 in Schedule I or Schedule II of the Controlled Substances Act (CSA), entrepreneurs procure new synthetic compounds with relative ease.⁹ 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, these substances are often first discovered when DEA receives 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

⁵ U.S. Department of Justice, Drug Enforcement Administration, 2017 National Drug Threat Assessment Summary, October, 2017.

⁶ U.S. Department of Justice, DEA, NFLIS, actual data queried on October 13, 2017.

⁷ U.S. Department of Justice, DEA, NFLIS, actual data queried on October 13, 2017.

⁸ Rose A. Rudd, Noah Aleshire, Jon E. Zibbell, & R. Matthew GladdenHedegaard, H., Margaret Warner, and Arialdi M. Miniño. Drug Overdose Deaths in the United States, 1999–2016Increases in Drug and Opioid Overdose Deaths – United States, 2000-2014 Morbidity and Mortality Weekly ReportNCHS Data Brief, 2016;64:1378-1382No. 294, Dec 2017. <https://www.cdc.gov/nchs/data/databriefs/db294.pdf>.

⁹ On 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.

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.

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, 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 often pressed into counterfeit pills made to look like controlled prescription drugs containing oxycodone or hydrocodone. They are then sold online from anonymous darknet markets and even overtly operated websites. It is extremely difficult for the Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), and Homeland Security Investigations (HSI), and the U.S. Postal Inspection Service (USPIS) to address the threat at ports of entry, due to the combination of: the questionable legal status of these substances, which are not specifically named in the CSA itself or by DEA through scheduling actions; 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 non-cartel-affiliated individuals to undertake fentanyl trafficking. DEA is working with CBP, HSI, and USPIS, to increase coordination on seized parcels.

Use of Freight Forwarders

Traffickers often use freight forwarders, 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

China is one of the world's top producers of the precursor chemicals used to manufacture methamphetamine and fentanyl, as well as the chemicals used to process heroin and cocaine. There are approximately 160,000 chemical companies in China.¹⁰ Although the majority of chemical production is intended for legitimate use, illicit drug manufacturers directly

¹⁰ U.S. Department of State, 2014 International Narcotics Control Strategy Report (INCSR), March 2014. <http://www.state.gov/j/inl/rls/nrcrpt/2014/vol1/223172.htm>; Roger Bate, Phake: The Deadly World of Falsified and Substandard Medicines, American Enterprise Institute for Public Policy Research, 2012, 186. 67

source or divert their chemicals from China for their drug production. The three major destinations for Chinese-sourced, illicit precursor chemicals are: Southwest Asia for opium and heroin production; Southeast Asia for opium, heroin, and methamphetamine production; and Latin America for cocaine, methamphetamine, and heroin production. Significant amounts of precursor chemicals are shipped from China to Central America for the production of methamphetamine, heroin, and fentanyl. Additionally, precursor chemicals transit through any number of Latin American countries on to Peru and Colombia for cocaine processing.

Combating illicit fentanyl is a top priority of this Administration. Recognizing that a significant amount of illicit fentanyl, fentanyl analogues, and their immediate precursors are manufactured in China, Attorney General Sessions and Deputy Attorney General Rosenstein both requested that China take action to stop the flow of these materials in meetings with then-State Councilor Guo Shengkun of the Chinese Ministry of Public Security. Deputy Attorney General Rosenstein met with Guo in Beijing, China on September 25, 2017, followed by a meeting with the Attorney General at the Law Enforcement and Cybersecurity Dialogue in Washington, D.C. on October 3-4, 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. For example, DEA has maintained a liaison presence in the People's Republic of China, with an office in Beijing for the last three decades. DEA is currently working to staff offices in both Guangzhou and Shanghai. DEA's office in Beijing has direct engagement with drug control officials from China's Ministry of Public Security, Narcotics Control Bureau (NCB). DEA's well-established relationship with Chinese drug control authorities is a primary significant bilateral mechanism for addressing the threat from the shipment of illicit fentanyls, their precursors, and other synthetic drugs to the United States and elsewhere.

DEA and the NCB share drug-related intelligence and trends through the Bilateral Drug Intelligence Working Group (BDIWG), led by DEA's Intelligence Division. This annual engagement was established through a memorandum of agreement between DEA and the NCB in 2002.

At a higher policy level, the United States Government has also engaged China through two bilateral fora on law enforcement and counternarcotics matters: first, the Law Enforcement and Cybersecurity Dialogue (LECD), which is co-chaired by the Attorney General and the Secretary of Homeland Security and the Chinese Ministry of Public Security; and second, the U.S.-China Joint Liaison Group (JLG) on Law Enforcement (now re-cast as the LECD Senior Officials Meeting or "LECD-SOM"), a sub-ministerial group co-chaired by the Department, the Department of State's Bureau of International Narcotics and Law Enforcement Affairs (INL), and DHS. At the working level, DEA and the NCB participate in the Counter-Narcotics Working Group (CNWG) which has operated within the LECD-SOM framework, and that is chaired, respectively, by the Department and the Ministry of Public Security on the Chinese side.

These efforts have resulted in positive actions being taken by the Chinese Government over the last year. China, which has not yet suffered a domestic fentanyl misuse problem, has

been increasingly cooperative with the United States in this area. Their actions are steps in the right direction, but more can be done.

Since 2014, the Department, DEA, and Chinese officials have met regularly to discuss bilateral efforts to counter the threat to the United States from fentanyl class substances. For the past four years, representatives from China's National Narcotics Laboratory have met with DEA experts to exchange information on emerging substances, trafficking trends, and drug sampling standards. This dialogue fosters an ongoing information exchange about new substances of misuse in the United States to be considered for control in China. In May 2017, and again in June 2018, China NCB and DEA hosted bilateral meetings of experts in Beijing to exchange information and perspectives at the technical level on the science and law pertaining to emerging NPS, including fentanyl class substances. These meetings answered China's request for more information about the misuse and pharmacology of the substances we were urging them to consider for scheduling. China's reform measures, effective in October 2015, allow their drug control authorities to consider public health harm in other countries, including the United States.

A key moment in enhanced cooperation on synthetic drugs came in October 2015, when, following similar discussions, China implemented domestic control on 116 New Psychoactive Substances (NPS), including a number of fentanyl analogues, and streamlined its procedures to control additional substances.

On December 28, 2017, China's Ministry of Public Security announced scheduling controls on two key fentanyl precursor chemicals, NPP and 4-ANPP. This action, taken with U.S. encouragement, also complied with the decision taken by the UN Commission on Narcotic Drugs (CND) in March 2017, to impose international controls on the precursors. The scheduling controls took effect on February 1, 2018. Chinese control of these substances, combined with the effects of prior control efforts, on the availability of these substances in the United States is significant and reaffirms the need for the continued collaboration between DEA and the NCB.

On March 1, 2017, China's National Narcotics Control Commission announced scheduling controls on four fentanyl-class substances: carfentanil; furanyl fentanyl; valeryl fentanyl; and, acryl fentanyl. This announcement was the culmination of the ongoing efforts of the United States and the Government of China, and reaffirms an expanding bilateral collaborative commitment to countering illicit fentanyl. On July 1, 2017, China controlled U-47700, also in compliance with the March 2017 CND decision. While not a fentanyl class substance, U-47700 is a powerful synthetic opioid that has been trafficked and misused in the United States. On August 29, 2018, the Government of China announced the control of an additional 32 NPS, bringing the total number of NPS and precursor chemicals controlled to 175 since 2015.

DEA will continue to engage the Chinese on the control of emerging fentanyl analogues and other NPS. We are further encouraged that the Chinese are willing to engage in discussions and technical exchanges with DEA regarding scheduling fentanyl as a class. In spite of the complexity of this process, and the fact that Chinese authorities claim that domestic misuse of

fentanyl and related substances is not a problem in China, they have continued to show an understanding of the problem and a willingness to listen and discuss class scheduling.

As the opioid epidemic continues, the Department and DEA are committed to working with Chinese officials through well-established bilateral efforts, including the high-level mechanisms noted above: liaison presence; the CNWG; the BDIWG; the scientific working group, as well as enhancing collaboration with DEA's interagency partners stationed abroad and in the United States.

Mexico

The Department and DEA continue to expand the robust relationship between Mexico and the United States, particularly with regards to countering the threat from heroin and synthetic opioids.

Mexico is the primary producer and supplier of heroin to the United States, and as poppy cultivation in Mexico has increased over the last three years, the Department and DEA have engaged with the Government of Mexico to address this issue. 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 as a video teleconference, co-chaired by Mission Mexico and ONDCP and regularly attended by the National Security Council, DEA, the Department of Defense (DOD) U.S. Northern Command, and the Department of State Bureaus of Western Hemisphere Affairs and 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 between 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.

SIGNIFICANT ENFORCEMENT AND DOMESTIC EFFORTS

Heroin Fentanyl Task Force

The DEA Special Operations Division's (SOD) Heroin/Fentanyl Task Force (HFTF) working group consists of several agencies using a joint "whole of government" approach to counter the fentanyl/opioid epidemic in the United States. The HFTF consists of personnel from DEA, ICE, HIS, and CBP, supplemented by the Federal Bureau of Investigation (FBI) and USPIS. The HFTF utilizes every resource available, including support from the Department's 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 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 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 shutting down of the largest criminal marketplace on the Internet, AlphaBay. As outlined by the Attorney

General and DEA's then 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.

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 all "fentanyl related substances," which includes any substance structurally related to fentanyl based on specific chemical changes not otherwise controlled in any other schedule.

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 will be 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 will be based in specific cities, their investigations will not be geographically limited. DEA has always, and will continue, to pursue investigations wherever the evidence leads.

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. 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.

ADDITIONAL AUTHORITIES TO COMBAT SYNTHETIC DRUG THREAT

Illicit manufacturers and distributors have and will continue, if unabated, to stay one-step ahead of any state or federal drug-specific banning or control action by introducing and repackaging new synthetic products that are not listed as such in any of the controlled substance schedules. Given the proliferation of synthetic analogues, including fentanyl, across the nation, it is necessary to explore novel solutions to more expeditiously schedule these new substances.

H.R. 2851, the "Stop the Importation and Trafficking of Synthetic Analogues Act of 2017 or SITSA, as passed by the House of Representatives, would provide critical tools to DEA to address the rapid proliferation, trafficking, and misuse of synthetic drugs. The proposed Schedule A would allow the Attorney General to more efficiently control synthetic analogue substances as they emerge, providing law enforcement with a much needed tool to enable us to keep up with this fast-moving threat. The bill also includes a provision that criminalizes exports of substances to a country where they are banned or controlled, regardless of their control status in the United States. This provision would enact a law in the United States parallel to the one we are asking China to consider. DEA believes that the enactment of SITSA and other scheduling-related legislation would show the United States' commitment to combating this scourge.

CONCLUSION

DEA will continue to engage the Government of China 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 the interagency and foreign partners in targeting, indicting, and arresting leadership of criminal networks, both foreign and domestic.

We look forward to continuing to work with Congress to find solutions necessary to address the threats posed by fentanyl, its analogues, and other NPS.