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March 13, 2023

Attorney General Merrick Garland
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Garland:

From April 2020 to April 2021, we lost an estimated 101,167 Americans to drug overdose.¹ It was the first time in United States history that estimated overdose deaths exceeded 100,000 for any 12-month period.² And the numbers keep rising, with the likely toll around 108,000 for the period between May 2021 and May 2022.³ These deaths represent more than mere statistics. The men and women who lost their lives to overdose were fathers and mothers, sons and daughters, neighbors, colleagues, and friends. Unfortunately, we have seen little response from the Biden Administration, and I have grave concerns about how the Department of Justice is handling this overdose crisis.

I. Background

Fentanyl is the primary cause of overdose deaths in the United States, contributing to 73% of overdose deaths in Kentucky⁴ and an estimated 82% nationwide.⁵ Fentanyl is a powerful synthetic opioid that is similar to morphine. Like morphine, fentanyl helps treat severe pain.⁶ But for illicit users, fentanyl provides an intense short-term high,

¹ Ahmad FB, Cisewski JA, Rossen LM & Sutton P., *Provisional Drug Overdose Death Counts*, Centers for Disease Control and Prevention (last updated Jan. 11, 2022), <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm>.

² *Drug Overdose Deaths in the U.S. Top 100,000 Annually*, Centers for Disease Control and Prevention (Nov. 17, 2021), https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2021/20211117.htm. The CDC originally reported an estimated 100,306 deaths for the period of April 2020 to April 2021. That estimate seemingly has been revised to 101,167. *See id.*

³ *See supra* note 1.

⁴ *2021 Overdose Fatality Report*, Ky. Office of Drug Control Policy, p. 1 (May 3, 2022), *available at* [https://odcp.ky.gov/Reports/2021%20Overdose%20Fatality%20Report%20\(final\).pdf](https://odcp.ky.gov/Reports/2021%20Overdose%20Fatality%20Report%20(final).pdf).

⁵ *Synthetic Opioid Overdose Data*, Centers for Disease Control and Prevention (last updated June 6, 2022), <https://www.cdc.gov/drugoverdose/deaths/synthetic/index.html>.

⁶ *Fentanyl*, Drug Enforcement Administration (2022), <https://www.dea.gov/factsheets/fentanyl>.

temporary feelings of euphoria, slowed respiration, and general feelings of relaxation.⁷ Illegal fentanyl most often presents as a powder or tablet made to look like candy or a legitimate prescription pill.⁸ Because fentanyl is so powerful, and so cheap to produce, it remains a popular ingredient to mix with other illicit drugs, rendering them both more powerful and less expensive.⁹

Today, around one-third of all illicit pills are laced with fentanyl, meaning users often have no idea that they are consuming such lethal poison.¹⁰ The level of fentanyl in many of the pills widely available is enough to kill.¹¹ Indeed, the potency of fentanyl cannot be overstated.¹² It is 50 times more potent than heroin and 50 to 100 times more potent than morphine.¹³ The Drug Enforcement Administration reports that just two milligrams—depicted below alongside a penny—can cause a lethal overdose.¹⁴



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⁷ *Id.*

⁸ *Fentanyl Drug Facts*, National Institute on Drug Abuse (June 2021), <https://nida.nih.gov/publications/drugfacts/fentanyl>.

⁹ *Dose of Reality: Get the Facts on Opioids*, Wisconsin Department of Health Services (last updated Oct. 16, 2022), <https://www.dhs.wisconsin.gov/opioids/facts.htm>; see *infra* note 13.

¹⁰ Rhitu Chatterjee, *Teen drug overdose deaths rose sharply in 2020, driven by fentanyl-laced pills*, NPR (Apr. 12, 2022), <https://www.npr.org/sections/health-shots/2022/04/12/1092309418/teen-drug-overdose-deaths-rose-sharply-in2020-driven-by-fentanyl-laced-pills>.

¹¹ *DEA Reveals Criminal Drug Networks Are Flooding the U.S. with Deadly Fentanyl*, Drug Enforcement Administration (Dec. 16, 2021), <https://www.dea.gov/press-releases/2021/12/16/dea-reveals-criminal-drug-networks-are-flooding-us-deadly-fentanyl>.

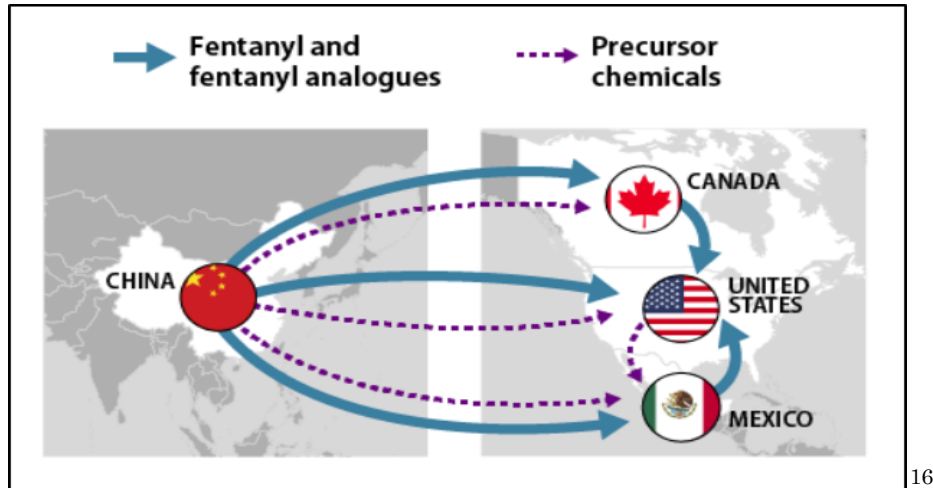
¹² *Fentanyl Facts*, Centers for Disease Control and Prevention (last updated Feb. 23, 2022), <https://www.cdc.gov/stopoverdose/fentanyl/index.html>.

¹³ *Department of Justice Announces Results of Enforcement Surge to Reduce the Fentanyl Supply Across the United States*, Department of Justice (Sept. 27, 2022), <https://www.justice.gov/opa/pr/departement-justice-announces-results-enforcement-surge-reduce-fentanyl-supply-across-united>; *supra* note 9.

¹⁴ *Facts about Fentanyl*, Drug Enforcement Administration (2022), <https://www.dea.gov/resources/facts-about-fentanyl>.

¹⁵ *Synthetic Opioids: Considerations for the Class-Wide Scheduling of Fentanyl-Related Substances*, U.S. Government Accountability Office (Apr. 12, 2021), <https://www.gao.gov/products/gao-21-499>.

Most fentanyl is not made within our borders. The below image captures the current flow of fentanyl to North America:



As the graphic demonstrates, China has facilitated the fentanyl problem in two ways: (1) shipping fentanyl directly to America and (2) supplying Mexican drug cartels with the ingredients—known as “precursor chemicals”—to make fentanyl.¹⁷ Historically, China has shipped fentanyl to America primarily through international mail.¹⁸ The use of this brazen strategy has declined in recent years.¹⁹ Conversely, the supply of fentanyl from Mexico is increasing, with our southern border now the primary entry point for most fentanyl trafficked and used in the United States.²⁰ Mexican cartels manufacture fentanyl in clandestine laboratories with precursor chemicals sourced from China.²¹ The cartels then smuggle the finished product across our southern border.²²

¹⁶ *Illicit Fentanyl, China’s Role, and U.S. Foreign Policy Options*, Congressional Research Service (last updated Dec. 21, 2018), available at https://www.everycrsreport.com/files/2018-12-21_IF10890_47bef109ce3b2fd408ed6e5fa859c37ac47afe12.pdf.

¹⁷ *Id.*; see also DEA Intelligence Report, Fentanyl Flow to the United States (Jan. 2020), available at https://www.dea.gov/sites/default/files/2020-03/DEA_GOV_DIR-008-20%20Fentanyl%20Flow%20in%20the%20United%20States_0.pdf (noting that “Mexico and China are the primary source countries for fentanyl and fentanyl-related substances trafficked directly into the United States”).

¹⁸ U.S. Senate Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, *Combatting the Opioid Crisis: Exploiting Vulnerabilities in International Mail* (Jan. 24, 2018), available at <https://www.hsgac.senate.gov/imo/media/doc/Combatting%20the%20Opioid%20Crisis%20-%20Exploiting%20Vulnerabilities%20in%20International%20Mail1.pdf>.

¹⁹ *China Primer: Illicit Fentanyl and China’s Role*, Congressional Research Service (last updated Dec. 8, 2022), available at <https://crsreports.congress.gov/product/pdf/IF/IF10890>.

²⁰ Congressional Research Service, *Trends in Mexican Opioid Trafficking and Implications for U.S.-Mexico Security Cooperation* (Dec. 9, 2022), available at <https://crsreports.congress.gov/product/pdf/IF/IF10400>.

²¹ U.S. Drug Enforcement Administration, 2020 National Drug Threat Assessment at pp. 7, 17, 18.

²² *Id.* at 16.

In fiscal year 2022, the U.S. government seized over 14,000 pounds of fentanyl.²³ According to some estimates, that is enough to kill nearly ten times the population of the United States.²⁴ Similarly, as of March 2, 2023, Customs and Border Protection had seized around 12,500 pounds of fentanyl since October 2022.²⁵ That is a 249% increase year-over-year.²⁶ This is why DOJ recently admitted that Mexican cartels mass producing and supplying fentanyl are “[t]he most urgent threat to our communities, our kids, and our families.”²⁷ In fact, you recently described the situation as a “horrible epidemic unleashed on purpose” by Mexican cartels.²⁸ Your DOJ is not taking a firm enough stance to prevent the flow of fentanyl through our porous borders.

II. DOJ’s Failures in Addressing the Fentanyl Crisis

Without hyperbole, this crisis is a life-threatening issue. Fortunately, we know some ways to address the problem. First, we must inform Americans of fentanyl’s dangers and support law enforcement officers and prosecutors who serve on the front lines in the fight to keep such drugs off our streets. My office has done this by urging the federal government to take a tougher stance on fentanyl entering the country,²⁹ supporting efforts to increase court-ordered drug treatment,³⁰ and listening to the needs of law enforcement and community leaders. I also recently launched Operation Fight Fentanyl, a statewide campaign to increase awareness, hear from Kentuckians about how fentanyl has impacted their families, and work with communities across the Commonwealth to stop the spread of fentanyl drugs.

²³ Nicole Sganga & Camilo Montoya-Galvez, *Fentanyl seizures rise at U.S.-Mexico border – here’s why*, CBS News (Feb. 3, 2023), <https://www.cbsnews.com/news/fentanyl-seizures-rise-u-s-mexico-border-heres-why/>.

²⁴ See *supra* n. 14 (basing estimates on one kilogram killing 500,000 people, where 14,000 pounds equals 6,350 kilograms; this amounts to about 3.2 billion deaths, and the U.S. population is about 331 million).

²⁵ *Drug Seizure Statistics FY2023*, U.S. Customs and Border Protection, <https://www.cbp.gov/newsroom/stats/drug-seizure-statistics> (last visited Mar. 2, 2023).

²⁶ *Id.*

²⁷ *Department of Justice Announces results of Enforcement Surge to Reduce the Fentanyl Supply Across the United States*, Department of Justice (Sept. 27, 2022), <https://www.justice.gov/opa/pr/department-justice-announces-results-enforcement-surge-reduce-fentanyl-supply-across-united>.

²⁸ Oversight of the Department of Justice: Hearing Before the Senate Committee on the Judiciary, 118 Cong., Mar. 1, 2023.

²⁹ *Attorney General Cameron Joins 16-State Coalition Urging Department of State to Fight Fentanyl*, Kentucky.gov (Jan. 14, 2022), <https://kentucky.gov/Pages/Activity-stream.aspx?n=AttorneyGeneral&prId=1166>.

³⁰ *Tackling the Drug Epidemic*, Attorney General Daniel Cameron – Priorities (2022), <https://ag.ky.gov/Priorities/Tackling-the-Drug-Epidemic/Pages/default.aspx>; see also Attorney General Daniel Cameron (@kyoag), Twitter (July 12, 2020, 12:16 PM), https://twitter.com/kyoag/status/1282348121826250752?s=20&t=nWdLTZueotmK_OH2MPaxeg.

Second, we must get help for those who suffer from fentanyl and other opioid use disorders. In 2021, along with attorneys general from over 40 states, I approved a \$26 billion settlement with Janssen, Inc., (owned by Johnson & Johnson), Cardinal Health, McKesson Corp., and AmerisourceBergen to secure funds for prevention, treatment, education, and related opioid abatement programs.³¹ This is the second-largest multi-state settlement in U.S. history.³² Since then, as Attorney General I have secured a total of \$842 million to combat the opioid epidemic in Kentucky, which is driven primarily by fentanyl.³³

At the same time, rather than using your resources and bully pulpit to unite the country in the fight against fentanyl, you have instead weaponized DOJ to be a liberal policymaker. Under your leadership, DOJ seems intent on relaxing criminal penalties for certain fentanyl traffickers and even breaking existing law to allow *more* access to illegal drugs, like fentanyl.

A. DOJ supports proposals that relax criminal penalties for certain fentanyl traffickers.

One year ago, the Biden Administration's Office of National Drug Control Policy released legislative recommendations on addressing illicit fentanyl analogues.³⁴ One of these recommendations exempts certain fentanyl offenders from the mandatory minimums that govern criminal sentencing.³⁵ In other words, the Office of National Drug Control Policy proposed legislative changes that, in all likelihood, would *reduce* the jail time for certain fentanyl offenses. DOJ signed off on this proposal.³⁶

Exempting fentanyl offenses from mandatory minimums would encourage the creation and spread of novel fentanyl drugs.³⁷ The current mandatory minimum scheme covers all

³¹ *Attorney General Cameron Announces \$26 Billion Agreement with Opioid Distributors and Manufacturer*, Kentucky.gov (July 21, 2021), <https://www.kentucky.gov/Pages/Activity-stream.aspx?n=AttorneyGeneral&prId=1092>.

³² *See, e.g.,* Carlie Porterfield, *Johnson & Johnson and Drug Distributors Finalize \$26 Billion Settlement to End Opioid Crisis Lawsuits*, Forbes (Feb. 25, 2022), <https://www.forbes.com/sites/carlieporterfield/2022/02/25/johnson--johnson-and-drug-distributors-finalize-26-billion-settlement-to-end-opioid-crisis-lawsuits/?sh=17f9fb4f79b6>.

³³ *Tackling the Drug Epidemic*, Opioid Abatement Advisory Commission (OAAC), <https://www.ag.ky.gov/Priorities/Tackling-the-Drug-Epidemic/Pages/Opioid-Abatement-Advisory-Commission.aspx>.

³⁴ *Biden-Harris Administration Provides Recommendations to Congress on Reducing Illicit Fentanyl-Related Substances*, The White House (Sept. 2, 2021), <https://www.whitehouse.gov/ondcp/briefing-room/2021/09/02/biden-harris-administration-provides-recommendations-to-congress-on-reducing-illicit-fentanyl-related-substances/>.

³⁵ *Id.*

³⁶ *Id.*

³⁷ Letter from Deputy Assistant Attorney General Joseph Gaeta to Hon. Jim Jordan & Hon. Charles E. Grassley (May 11, 2021), *available at* https://www.grassley.senate.gov/imo/media/doc/justice_dept.drug-enforcement-administration-to-grassley-jor

fentanyl drugs, including analogues. However, the proposal your DOJ supports would pluck fentanyl analogue traffickers out of this structure and give them lighter sentences. Drug dealers are savvy and will see this more lenient penalty structure as an incentive to create new fentanyl drugs.³⁸ This could have a deadly impact. For example, a prevalent analogue—carfentanil—is estimated to be more than 1,000 times more potent than morphine.³⁹ DOJ should not be encouraging the creation of more analogues like carfentanil.

Along with 17 other attorneys general, I recently urged President Biden to classify illicit fentanyl as a weapon of mass destruction.⁴⁰ Thus, it is confounding that while 18 attorneys general urged that fentanyl be treated as an agent of chemical warfare, DOJ—under your leadership—sought to eliminate existing penalty structures for fentanyl analogue traffickers. DOJ’s approach is misguided and dangerous.

B. Supervised injection sites increase access to illegal drugs, like fentanyl, and may violate existing law.

It has been reported that, despite controlling federal law, DOJ may permit the use of supervised injection sites.⁴¹ As you know, supervised injection sites are public facilities for drug users to consume illicit drugs under the supervision of medical staff. Supervised injection sites are concerning for several reasons, primarily that the creation of such sites likely violates federal law. Last year, the United States Court of Appeals for the Third Circuit agreed with the Trump Administration, concluding that it is a federal crime to open and operate a supervised injection site for illegal drug use.⁴² The court stated,

danfentanylanalogues.pdf (“With the clarity and certainty of class scheduling, drug trafficking organizations now have little incentive to invent new [fentanyl-related substances] for the purpose of evading federal law enforcement.”).

³⁸ *Id.* Additionally, under current law traffickers typically face—barring certain sentencing enhancements—a maximum sentence of 20 years for distribution, manufacture, or possession with intent to distribute. 21 U.S.C. § 841(a)(1). DOJ should be working with Congress to provide federal prosecutors with more tools, including the separate charge of felony murder, to hold fentanyl traffickers accountable. See John P. Walter, David W. Murray, *Fentanyl Is a Public Health and National Security Threat*, Hudson Institute (Dec. 19, 2022), <https://www.hudson.org/drug-policy/fentanyl-public-health-national-security-threat>; see also S. 4876, 117th Cong. (2nd Sess. 2022). Instead, DOJ is seeking to relax the penalties for those pushing fentanyl drugs.

³⁹ Julie O’Donnell et al., *Overdose Deaths with Carfentanil and Other Fentanyl Analogs Detected — 10 States, July 2016–June 2017*, 67 MMWR 767 (July 13, 2018), available at <https://www.cdc.gov/mmwr/volumes/67/wr/pdfs/mm6727a4-H.pdf> at 767.

⁴⁰ Letter from Attny. Gen. Moody, et al., *Multistate Letter on Fentanyl as a Weapon of Mass Destruction* (Sept. 1, 2022), available at [http://myfloridalegal.com/webfiles.nsf/WF/GPEY-CJ9SJ9/\\$file/Multistate+WMD+Policy+Letter_9.15.22_18+AGs.pdf](http://myfloridalegal.com/webfiles.nsf/WF/GPEY-CJ9SJ9/$file/Multistate+WMD+Policy+Letter_9.15.22_18+AGs.pdf).

⁴¹ Jennifer Peltz & Michael Balsamo, *Justice Dept. signals it may allow safe injection sites*, AP News (Feb. 8, 2022), <https://apnews.com/article/business-health-new-york-c4e6d999583d7b7abce2189fba095011>.

⁴² *United States v. Safehouse*, 985 F.3d 225 (3rd Cir. 2021).

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“[t]hrough the opioid crisis may call for innovative solutions, local innovation may not break federal law.”⁴³

The law has not changed since the Third Circuit’s decision. DOJ’s support for supervised injection sites would encourage the use of illegal drugs by giving the federal government’s stamp of approval to such use. This is a profoundly dangerous signal to send.

III. Conclusion

As the nation’s top federal law enforcement officer, it is your job to protect Americans. Fentanyl is pervasive and deadly. Its ongoing and easy availability will not stop without serious action. I urge you to take such action now, starting with reversing the DOJ policies outlined above.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Cameron", written in a cursive style.

DANIEL CAMERON
Attorney General of Kentucky

⁴³ *Id.* at 229.