



Department of Justice

**STATEMENT OF THE
U.S. DEPARTMENT OF JUSTICE**

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**BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

**FOR A HEARING ENTITLED
TACKLING THE OPIOID CRISIS: A WHOLE-OF-GOVERNMENT
APPROACH**

PRESENTED

December 17, 2019

**Statement of the Department of Justice
Before the United States Senate Committee on the Judiciary
For a Hearing Entitled “Tackling the Opioid Crisis: A Whole-of-Government Approach”
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Chairman Graham, Ranking Member Feinstein, and Members of the Committee: thank you for the opportunity to discuss the dangers posed by opioid abuse and steps the Department of Justice (Department) is taking to combat this crisis wherever possible. We both hold positions within the Department uniquely positioned and integral to the Department’s efforts to tackling the opioid crisis. As the Director of Opioid Enforcement and Prevention Efforts, I hold a position that was created for the sole purpose of ensuring the Department is properly formulating and implementing resources to the fullest lawful extent, with the express goal of preventing opioid abuse. As the Assistant Administrator of the Diversion Control Division, I oversee the group charged with the responsibility to prevent, detect, and investigate the diversion of controlled pharmaceuticals and listed chemicals from legitimate sources while ensuring an adequate and uninterrupted supply for legitimate medical, commercial, and scientific needs. We appreciate the opportunity to share with you all the Department is doing on this front.

According to the Centers for Disease Control and Prevention, more than 70,000 Americans lost their lives to drug abuse in 2017, and well over half of those deaths involved opioids. While overdose deaths are one of the most devastating effects of the opioid crisis, drug abuse has also led to millions of property crimes and violent crimes, and its ripple effects on families, communities, and the nation are far reaching. This is why, in October 2017, the President’s Administration declared the opioid crisis a nationwide public health emergency. Over the past two years, the Department has been committed to attacking this crisis with every tool it has at its disposal.

Stopping the Flow of Illicit Opioids

Temporary Schedule I Status for Fentanyl-like Substances

The potency of illicit substances structurally related to fentanyl, commonly called “fentanyl analogues” or “fentanyl-like substances” was one of the chief factors of the public health crisis. Fentanyl is approximately 100 times more potent than morphine, and some of the illicit substances structurally related to fentanyl tend to be even more potent than fentanyl itself. Because of its potency and low dosage range, one kilogram of fentanyl illegally purchased in China for \$3,000-\$5,000 can generate upwards of \$1.5 million in revenue on the illicit market—and is enough illicit fentanyl to supply approximately 110,000 users for 3 days with their addictions. .

In recognition of the unprecedented and continuing escalation in opioid-related overdoses, on February 6, 2018, the Drug Enforcement Administration (DEA) used its authority under Section 201 of the Controlled Substances Act¹ to place all non-scheduled fentanyl-like

¹ 21 U.S.C. § 811(h)(1).

substances into Schedule I *temporarily*, on an emergency basis, for two years to combat these dangerous substances.² As a result, anyone who possesses, imports, distributes, or manufactures any illicit, fentanyl-like substance is subject to criminal prosecution in the same manner as any other Schedule I controlled substance. This makes it easier for federal agents to seize and investigate traffickers of fentanyl-like substances, and for prosecutors to prosecute such traffickers.

The positive impacts since implementation are significant. The class control in China has substantially slowed the rate at which new fentanyl-related substances are introduced to, and being encountered in, the illicit market. Prior to this action, DEA observed a rapid and continuous emergence of new illicit fentanyl-like substances each time it scheduled a fentanyl-like substance. Under the United States temporary emergency scheduling order, there is little incentive for domestic drug trafficking organizations to invent new substances in the fentanyl family for the purpose of evading DEA's control and as a consequence, DEA has encountered fewer new illicit fentanyl analogues. Class-wide scheduling of fentanyl-related substances produces solid law enforcement results.

Dismantling Dark Web Sites

Dark web sites are accessed by networks that use masked IP addresses designed to conceal information that could reveal the identity or whereabouts of the website and its customers. Its layer of anonymity has created a hotbed of illegal activity, including the sale of illicit opioids. Today, some of the most prolific drug suppliers operate largely on the dark web. Dismantling them is a priority for the Department.

In 2019, the Department conducted major operations that struck at the heart of Darknet criminal behavior. First, prosecutors and agents worked along their Europol counterparts to takedown both the Wall Street and Valhalla Darknet marketplaces, two of the largest online criminal marketplaces operating worldwide. The Department also charged and arrested two defendants who operated DeepDotWeb, a now-seized clear net website that was used to facilitate the dark net drug trade.

The Department's recent successes in dismantling dark web sites is due in large part to the Department's Joint Criminal Opioid and Darknet Enforcement (J-CODE) team, an FBI initiative established in January 2018. This team of agents, analysts, and professional staff with expertise in drugs, gangs, and health care fraud, along with federal, state, and local law enforcement partners from across the U.S. Government, focuses on disrupting the sale of drugs via the Darknet and dismantling criminal enterprises that facilitate this trafficking. Since J-CODE's establishment, there have been two successful takedowns. Most recently, Operation SaboTor was executed in April 2019. It resulted in 61 arrests and the shutdown of 50 Darknet

² 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).

accounts. Ultimately, 299.5 kilos of drugs, 51 firearms, and over \$7 million was seized as a result of this operation.

Mexican and Chinese Fentanyl Suppliers

The Department has been diligently working to prosecute both Mexican Cartels and Chinese suppliers who traffic fentanyl and fentanyl analogues into the United States. The Mexican Cartels, or other traffickers and distributors in the United States, are also mixing but fentanyl has been found in or mistaken for other drugs such as methamphetamine, heroin, and cocaine. This is contributing to the overdose deaths throughout the country as unknowing drug users are ingesting this deadly poison. The Department is using all the tools at its disposal to combat these Cartels. Most notably, the Department recently won the conviction of Sinaloa Cartel leader Joaquin “El Chapo” Guzman Loera, who was sentenced to life plus 20 years along with a \$12.6 billion forfeiture order. Additionally, the Department has been working with the Treasury Department and State Department in a coordinated fashion to target and dismantle the Jalisco New Generation Cartel (CJNG). In this vein, the Department announced the indictment of 14 leaders and members of the CJNG, along with U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) sanctions of 63 separate individuals and entities in Mexico tied to the CJNG through the “Kingpin Act”. Lastly, the State Department announced a \$10 million reward for information leading to the arrest of the leader of the CJNG, Nemesio Cervantes, aka “El Mencho.”

The Mexican cartels are sourcing both fentanyl and its precursors from China, and the Department has been working to identify and disrupt those fentanyl suppliers. In two specific cases, the Department indicted Chinese nationals who were selling illicit fentanyl and fentanyl analogues online and shipping these drugs into the United States. In one of those cases, the traffickers were even touting their ability to create custom-ordered drugs and avoid detection from customs and law enforcement when shipping. In August of this year, the Departments of Justice and Treasury along with the White House announced sanctions against these criminals, including unique sanctions targeting cryptocurrency assets. While we do not have an extradition treaty with the People’s Republic of China, these indictments, coupled with Treasury’s OFAC sanctions, have sent a strong message to illicit fentanyl suppliers.

Operation Synthetic Opioid Surge (S.O.S.)

Operation Synthetic Opioid Surge (S.O.S.) is an initiative that focuses on illicit opioids in the following ten districts that have seen some of the highest overdose death rates in the country: the Eastern District of California; the Eastern District of Kentucky; the District of Maine; the District of New Hampshire; the Northern District of Ohio; the Southern District of Ohio; the Western District of Pennsylvania; the Eastern District of Tennessee; the Northern District of West Virginia; and the Southern District of West Virginia. This program focuses on reducing the supply of deadly synthetic opioids in high-impact areas while also trying to identify illicit wholesale distribution networks. The prosecutors in these districts work towards prosecuting all readily-provable cases involving illicit synthetic opioids. This surge also involves a coordinated DEA operation to ensure that leads from street-level cases are used to identify large-scale distributors. High impact areas and street level cases are commonly identified from clusters of overdoses. In the first year of the program, over 300 cases were charged in these ten districts.

Many districts have focused on “death resulting” cases where a street dealer is held accountable for the overdose death their distribution caused.

Stopping Prescription Opioid Abuse

Task Forces

When it comes to curbing prescription opioid abuse, the Department is making significant progress to help crack down on over-prescription. One of the top priorities of the Department is to identify and prosecute medical professionals partaking in health care fraud and the illegal distribution of opioids. In service to this goal, the Department has instituted a number of strike forces tailored to specific districts and regions plagued by the opioid crisis.

Nationwide, the Department has established 14 health care fraud strike forces in 23 districts. Areas covered include Los Angeles, Dallas, Houston, the Gulf Coast, Tampa, Orlando, Miami, the District of Columbia, Brooklyn, Detroit, Chicago, and Newark/Philadelphia. Together, these strike forces have conducted over 1,300 investigations and charged over 300 doctors with health care fraud involving opioids in FY 2018, a 52 percent increase from the previous fiscal year.

One successful task force is the Appalachian Regional Prescription Opioid Strike Force (ARPO), a joint law enforcement effort that pools the resources and expertise of the Health Care Fraud Unit in the Criminal Division’s Fraud Section, the U.S. Attorney’s Offices for ten federal districts, as well as law enforcement partners at the FBI, U.S. Department of Health and Human Services Office of the Inspector General (HHS-OIG), and U.S. Drug Enforcement Administration (DEA). The mission of the ARPO Strike Force is to identify and investigate health care fraud schemes in the Appalachian region and surrounding areas, and to effectively and efficiently prosecute medical professionals and others involved in the illegal prescription and distribution of opioids. Since its October 2018 establishment, the ARPO Strike Force has charged more than 70 defendants who are collectively responsible for distributing more than 40 million pills. These medical professionals were charged with drug trafficking offenses with stiff penalties for their diversion of opioids.

ARPO’s efforts are not exclusively prosecutorial, however. Rapid response teams within the strike force work with HHS to ensure that persons physically dependent on or suffering from addiction to opioids are not getting turned away from the care they need just to seek out street dealers by directing these individuals to legitimate medical professionals and treatment resources.

Another notable task force is the Department-wide Prescription Interdiction & Litigation Task Force (PIL Task Force). This initiative includes senior officials from the offices of the Attorney General, the Deputy Attorney General, and the Associate Attorney General, as well as senior officials from the Executive Office for U.S. Attorneys, the Civil Division, and the Criminal Division. This Department-wide effort is designed to use every tool the Department has at its disposal to combat the opioid crisis at every level of the distribution system. The PIL Task Force also established a working group to: (1) improve coordination and data sharing

across the federal government to better identify violations of law and patterns of fraud related to the opioid crisis; (2) evaluate possible changes to the regulatory regime governing opioid distribution; and (3) recommend changes in laws.

The PIL Task Force builds upon and expands the efforts of the existing Opioid Fraud and Abuse Detection Unit (OFADU). Created in August 2017, the Unit uses sophisticated data analysis to identify and prosecute individuals who are contributing to the opioid crisis. OFADU is comprised of 12 experienced Assistant US Attorneys assigned to hot spots around the nation. Their focus is solely on investigating and prosecuting health care fraud related to prescription opioids, including pill mill schemes and pharmacies that unlawfully divert or dispense prescription opioids for illegitimate purposes. So far, over 400 cases have been charged as a result of their efforts.

These Task Forces have produced impressive results with indictments, settlements and convictions of major pharmaceutical manufacturers, distributors and senior executives in these companies as well. The Department remains committed to holding those responsible for the diversion of prescription opioids accountable.

Education and Prevention

The Department also uses its resources to help prevent opioid abuse before it takes place. This occurs through school outreach, partnerships with Native American tribes, and training for medical professionals.

Another example of initiatives aimed toward high school aged students includes Opioid Awareness Summits, which bring together selected youth ambassadors to hear from people impacted by the opioid crisis and train them on how to educate other students in their high school about opioid abuse.

DEA also works to educate its registrant community to stop potential diversion before it occurs. DEA has educated over 13,000 pharmacists and other pharmacy personnel in all 50 states, D.C., and Puerto Rico, and is now hosting similar events for practitioners (e.g., doctors, dentists, veterinarians) to educate them on pre-emptive steps that can be taken to prevent diversion. Since May 2018, DEA has held over 19 conferences in 10 locations, reaching over 4,600 healthcare professionals.

Also, DEA rolled out its 360 Strategy in November 2015. This effort is comprised of targeted enforcement, regulatory engagement, and community outreach in areas that are amongst the hardest hit by opioids with the goal of reducing the cycle of violence and addiction generated by the link between drug cartels, violent street gangs and opioid abuse and misuse. Thus far, DEA's 360 Strategy has been deployed in 17 cities nationwide.

A key component of DEA's 360 Strategy is the community outreach effort, which brings together key stakeholders in each city, such as the U.S. Attorney's Office, state and local law enforcement, public health, faith-based organizations, educators, the business community, the media, and prevention and treatment providers to reduce the impact of opioid misuse and addiction.

The 360 Strategy provides intensive training and technical assistance resources to help the community establish a sustainable plan of action to achieve long-term outcome-oriented performance measures, such as decreases in prescription drug misuse and heroin abuse among target populations.

As part of the 360 program, DEA has also partnered with the Discovery Channel's, Discovery Education to develop and deploy Operation Prevention, a set of free science-based digital tools and lesson plans geared for elementary, middle, and high school students. It includes helpful resources for parents and for the community to learn about the science of addiction, how opioids affect the body, brain, and how everyone – students, teachers, and parents, can be part of the solution. Since its launch in 2017, Operation Prevention's resources have reached an estimated 4.4 million students, with more than 73,000 lesson plan and activity downloads and nearly 140 million twitter impressions.

Additionally, a number of US Attorneys have begun to reach out to local medical, pharmacy, and nursing schools to discuss the opioid problem from a law enforcement perspective and emphasize the importance of compliance with medical practices and the consequences of diversion. Other prevention efforts include public safety announcements tailored to specific communities. Highway billboards, movie theatre previews, newspaper print ads, and social media campaigns are just some examples of how US Attorneys are trying to prevent opioid abuse in their districts.

Opioid-Specific Grant Opportunities

The Department's Bureau of Justice Assistance (BJA) has established the Comprehensive Opioid Abuse Program (COAP) with the express goal of reducing opioid abuse and overdoses. In service to this goal, COAP offers grant opportunities to help states, local governments, and tribal governments develop and implement comprehensive efforts that identify, respond to, treat, and support those impacted by the opioid crisis.

One focus of COAP is the development and implementation of prescription drug monitoring programs (PDMPs). PDMPs help to prevent individuals who are doctor shopping from being able to obtain controlled prescription pharmaceuticals from multiple doctors, and they serve as a vital tool to help prevent and detect the diversion and abuse of prescription opioids. Although almost all PDMPs are state-run, many PDMPs work closely with federal agencies and have received federal assistance through education and funding. Through the Harold Rogers Grant Program, COAP helps establish or enhance PDMP systems, facilitate inter and intrastate data sharing, and improve the quality and accuracy of PDMP data. Indeed, these grant funds have helped grow PDMPs nationally. The FY 2019 appropriation of \$30 million allowed COAP to award 13 grants to states and counties nationwide, which directly benefited the people of Colorado, Illinois, Missouri, New Jersey, Ohio, Kentucky, Washington, Rhode Island, North Carolina, Oklahoma, Pennsylvania, Texas, and Florida.

BJA also manages the Residential Substance Abuse Treatment for State Prisoners Program (RSAT), which provides grant funds to state, local, and tribal governments in the development and implementation of substance abuse treatment programs in their respective

correctional and detention facilities. Funds are also available to create and maintain community reintegration services for those who have been released from incarceration. Since 2017, RSAT has served over 50,000 individuals.

Through the Office of Juvenile Justice and Delinquency Prevention (OJJDP), the Department also provides grant opportunities to help state and local governments develop and implement programs for youth who have been affected by the nation's opioid crisis. The Opioid Affected Youth Initiative provides funding to help identify and implement intervention opportunities and data-driven, coordinated responses, while the Mentoring Opportunities for Youth Initiative supports youth mentoring organizations that have a demonstrated partnership with a substance abuse treatment agency. The Department also directs resources to youth who have been victimized by the opioid crisis, through Office for Victims of Crime's Enhancing Community Responses to the Opioid Crisis: Serving our Youngest Victims grant program. These funds may be used to support a number of services, including school-based, foster care, counseling, child advocacy, tutoring, medical-based, and faith-based programs.

Lastly, the Office of Community Oriented Policing Services (COPS) offers a competitive award program designed to advance public safety by providing funds to investigate illicit activities related to the distribution of heroin or the unlawful distribution of prescription opioids. The Anti-Heroin Task Force Program provides funding to state law enforcement agencies with high rates of primary treatment admissions for heroin and other opioids. Though task force participation is not required, agencies electing to participate in a task force do receive additional consideration. In FY 2019, the COPS Office awarded more than \$27.7 million in grant funding to 19 state law enforcement agencies.

In addition to these opioid-specific grant programs, there are a number of programs throughout the Department that support the prevention and treatment of substance abuse on a larger scale. These programs include the Adult Drug Court Discretionary Grant Program, the Veterans Treatment Court Program, the Juvenile and Family Drug Treatment Court Program, the Juvenile Tribal Healing to Wellness Program, the Residential Substance Abuse Treatment for State Prisoners Program, the Justice and Mental Health Collaboration Program, and several National Institute of Justice research and forensic science grants.

Ways the Department is Working to Improve

Office of Inspector General (OIG) Report

On October 1, 2019, the Department's Office of the Inspector General (OIG) published its review of the Drug Enforcement Administration's Regulatory and Enforcement Efforts to Control the Diversion of Opioids. The report identifies ways the Department and DEA can enhance their abilities to detect the diversion of controlled substances such as opioids. The Department and DEA appreciate the OIG's assessment of the programs involved in the report and the opportunity to discuss improvements made to increase the regulatory and enforcement efforts to control the diversion of opioids.

Although the report references data as far back as 1999, the scope of the report starts in Fiscal Year (FY) 2010 through FY 2017 and addresses a review of DEA's Diversion Control

Division (DC). DC is responsible for regulating and enforcing Titles II and III of the CSA, which require importers, exporters, manufacturers, distributors, dispensers, and healthcare practitioners that handle controlled substances to register with DEA. When controlled substance transactions fall outside the closed system of authorized distribution, the activity constitutes diversion. DEA is working diligently to put in place additional tools, and recently, on October 23, 2019, DEA launched a new centralized database for distributors to report Suspicious Order Reports, along with other regulatory improvements that will better allow DEA to identify and investigate registrants that violate the CSA. The 2018 enactment of the SUPPORT for Patients and Communities Act (P.L. 115-271), has enhanced DEA's ability to better detect and combat diversion of pharmaceutical opioids. Implementation continues and DEA, in consultation with the Department, will work with OIG to update its processes and will provide routine updates on its progress.

The OIG report identified other areas for improvement, including revising field division work plans to allow more flexibility to target registrants for investigation and a recommendation to revive a drug abuse warning network to identify and respond to emerging drug abuse trends and new illicit drug analogues. In fact, DEA has already modified the Controlled Substance and Chemical Regulatory Work Plan to allow for greater flexibility of investigators. Additionally, DEA has begun to develop a program to connect symptom causation and newly emerging illicit synthetic drugs such as synthetic cannabinoids, synthetic cathinones, fentanyl-related substances, and other hallucinogens.

Legislative Action to aid the Department

Permanent Scheduling of Fentanyl

Absent congressional action, DEA's emergency temporary scheduling action controlling fentanyl-related substances is set to expire on February 6, 2020. As a result, these substances will become noncontrolled, and the Department and DEA will enter into relatively unknown territory. Temporary class control has been shown to be incredibly effective in substantially reducing the number of fentanyl analogue encounters in the United States. Without further action, the Chinese government China will have done more than the United States to control fentanyl and its related analogues via scheduling.

The class of fentanyl-like substances needs to be statutorily and permanently scheduled. A legislative solution to permanently schedule fentanyl-like substances as a class by codifying DEA's temporary emergency scheduling order is absolutely essential to tackle the opioid crisis this country currently faces. The Department and DEA strongly support a proactive and succinct approach to permanently scheduling of fentanyl-like substances in Schedule I that includes measures to mitigate the potential negative impact of such scheduling on research with these substances, and to expedite the descheduling of such substances with no or low abuse potential, while maintaining our research community's access to these compounds.

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 the opioid crisis.