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February 12, 2025

The Honorable John Thune
Senate Majority Leader
United States Senate SD-511
Washington, DC 20510

The Honorable Chuck Schumer
Senate Democratic Leader
United States Senate
322 Hart Senate Office Building
Washington, DC 20510

Via Email and U.S. Mail

Re: Pass the HALT Fentanyl Act (H.R. 27/S.B. 331)

Dear Majority Leader Thune and Democratic Leader Schumer:

Despite the decades-long proliferation of fentanyl analogues and the obvious problems with the then-current mechanisms for prosecution of fentanyl-analogue traffickers, it was not until 2018 that the Drug Enforcement Administration (DEA) classified fentanyl analogues as Schedule I drugs, and only then on a temporary basis.¹ As that temporary scheduling came to an end, however, Congress failed to take the responsible course and schedule them permanently.² Instead, fentanyl analogues' status as Schedule I drugs has become a political plaything in Congress and

¹ Sarah N. Lynch, *U.S. lawmakers seek permanent ban on illicit types of fentanyl*, Reuters (Mar. 7, 2022), <https://tinyurl.com/28wbzxx4>.

² See, e.g., National Association of Attorneys General, *Deadly Fentanyl Loophole Should be Closed by Passing Federal Legislation Endorsed by State and Territory Attorneys General* (Aug. 23, 2018), <https://tinyurl.com/5bkx5nke> (bipartisan group of 52 state and territory attorneys general urging Congress to permanently schedule fentanyl analogues).

remains at the mercy of repeated temporary extensions, the most recent of which will expire less than two months from now—on March 31, 2025.³

Placing fentanyl analogues on Schedule I is the correct move, but it must be done *permanently*. To ensure that law enforcement can continue to prosecute the sale and use of illicit fentanyl analogues, the undersigned Attorneys General of 25 States respectfully ask the Senate to permanently schedule all current and future fentanyl analogues as Schedule I drugs by passing the vital HALT Fentanyl Act (H.R. 27/S.B. 331) as soon as possible. The House of Representatives recently passed this bill with an overwhelming bipartisan majority. The Senate should do the same to the bipartisan bill co-sponsored by Senators Chuck Grassley, Bill Cassidy, and Martin Heinrich.

The United States is experiencing a cataclysmic surge of overdose deaths due to the lethal amounts of fentanyl and fentanyl-related substances that cross the southwestern land border unimpeded. Each year, fentanyl and fentanyl analogues kill Americans at a rate that rivals World War II or the Civil War. In 2023, drug overdoses killed more than 100,000 Americans, and synthetic opioids like fentanyl caused 69% of those overdose deaths.⁴ The HALT Fentanyl Act will provide permanent tools to help staunch the damage caused by fentanyl analogues' incursion into the United States.

The cause of this fentanyl scourge is clear: Mexican drug cartels, including the Sinaloa Cartel and the Jalisco New Generation Cartel, import dangerous raw materials from China, use them to produce deadly synthetic opioids at low cost, and unlawfully transport those opioids across the U.S. border.⁵ In FY2024, U.S. Customs and Border Protection seized 21,889 pounds of cartel-smuggled fentanyl crossing into the United States.⁶ That is enough fentanyl to kill the entire population of the United States fourteen times over.⁷

The federal government's response to this existential threat under the Biden Administration was woefully deficient. As fentanyl poured over the United States-Mexico border, the Department of Homeland Security chose to eliminate⁸ the very program designed to prevent transnational criminal organizations and gangs from exploiting migrants "to bring drugs, violence, and illicit goods into American communities."⁹ Indeed, the Biden Administration's abject refusal to secure our border—one of the basic duties of any government—was a direct cause of this crisis.

Even more fundamentally, however, the federal government has not equipped law enforcement with the tools needed to prosecute the sale and use of illicit fentanyl analogues.

³ See American Relief Act, Pub. L. No. 118-158 (2024).

⁴ Centers for Disease Control National Center for Health Statistics, *U.S. Overdose Deaths Decrease in 2023, First Time Since 2018* (May 15, 2024), <https://tinyurl.com/3wn6k44y>.

⁵ U.S. Drug Enforcement Administration, *Fentanyl Deaths Climbing, DEA Washington Continues the Fight* (Feb. 16, 2022), <https://tinyurl.com/356khj7f>.

⁶ U.S. Customs and Border Protection, *Drug Seizure Statistics* (Jan. 14, 2025), <https://tinyurl.com/4vhmrkyn>.

⁷ U.S. Drug Enforcement Administration, *Facts about Fentanyl*, <https://tinyurl.com/bdhypctr> (noting that one kilogram of fentanyl is enough to kill 500,000 people).

⁸ See U.S. Department of Homeland Security, *Termination of the Migrant Protection Protocols (MPP)* (Oct. 29, 2021), <https://tinyurl.com/4uvc98ts>.

⁹ U.S. Department of Homeland Security, *Migrant Protection Protocols* (Jan. 24, 2019), <https://tinyurl.com/5ywfmmhj>.

Controlled substances are divided into five schedules under the Controlled Substances Act based on whether they have a currently accepted medical use in treatment in the United States, their relative abuse potential, and their likelihood of causing dependence when abused.¹⁰ DEA has classified fentanyl itself as a Schedule II drug because of its high potential for abuse yet accepted medical use for the treatment of certain cancer patients.¹¹ But fentanyl is only part of the problem: the federal government has not similarly addressed illicit fentanyl analogues, even though these analogues have no medical use and are more lethal than fentanyl, as evidenced by the higher rate of death and serious bodily injury resulting caused by their use.¹²

Fentanyl was first synthesized in 1960 as a medicine for treating pain, and was approved by the U.S. Food and Drug Administration as an intravenous anesthetic in 1972.¹³ Fentanyl analogues—drugs that are developed to imitate fentanyl, but are not chemically identical—soon appeared.¹⁴ Fentanyl analogues “quickly bec[a]me just as deadly” as fentanyl itself: “by the mid to late 1980s, over ten analog[ue]s were identified on the black market and were reported to be responsible for overdoses related to laced heroin.”¹⁵

Fentanyl analogues pose a unique enforcement problem: although fentanyl itself is a Schedule II drug, fentanyl analogues’ “chemical make-up, once easily altered, is no longer banned by law.”¹⁶ This “begins a game of cat and mouse: federal agents race to identify and ban the analog[ue]s while chemists continue to make new ones.”¹⁷ These unique characteristics made analogue-by-analogue remediation efforts impossible. For instance, DEA exercised its temporary scheduling authority under 21 U.S.C. § 811(h) to place temporarily into Schedule I dozens of synthetic drugs, several of which are fentanyl analogues.¹⁸ But, as Deputy Attorney General Rod J. Rosenstein explained, Chinese fentanyl distributors would “take advantage of the fact that the fentanyl molecule can be altered in numerous ways to create a fentanyl analogue that is not listed as illegal under U.S. [] law; when regulators are able to identify the new fentanyl and make it illegal, the distributors quickly switch to a new, unlisted fentanyl analogue.”¹⁹

Prosecution under the Analogue Act, 21 U.S.C. § 813, fared no better. The Analogue Act ostensibly provides that a controlled substance analogue shall “to the extent intended for human consumption, be treated, for the purposes of any Federal law as a controlled substance in schedule

¹⁰ U.S. Department of Justice Drug Enforcement Administration, *Drug Scheduling* (Jul. 10, 2018), <https://tinyurl.com/3hp6xvbr>.

¹¹ Chris Battiloro, *Fentanyl: How China’s Pharmaceutical Loopholes are Fueling the United States’ Opioid Crisis*, 46 Syracuse J. Int’l. L. & Com. 343, 370 (2019).

¹² United States Sentencing Commission, *Fentanyl and Fentanyl Analogues: Federal Trends and Trafficking Patterns* (Jan. 2021), at 5, <https://tinyurl.com/yfh64us2>.

¹³ Agneta Hendershot, *Solving the Fentanyl Problem Beyond the Border: A Call for an International Solution*, 9 Penn St. J. L. & Int’l Aff. 216, 223–24 (2020).

¹⁴ *Id.* at 224.

¹⁵ *Ibid.* (quotation marks omitted).

¹⁶ *Ibid.* (quotation marks omitted).

¹⁷ *Ibid.* (quotation marks omitted).

¹⁸ Rachel L. Rothberg & Kate Stith, *Fentanyl: A Whole New World?*, 46 J. L. Med. & Ethics 314, 319 (2018).

¹⁹ U.S. Dep’t of Justice, *Deputy Attorney General Rod J. Rosenstein Delivers Remarks on Enforcement Actions to Stop Deadly Fentanyl and Other Opiate Substances from Entering the United States* (Oct. 17, 2017), <https://tinyurl.com/3pfzr8tf>.

I.”²⁰ Although unlisted fentanyl analogues are arguably already banned under the Analogue Act, prosecution under that statute is difficult.²¹ In order to convict fentanyl-analogue traffickers, prosecutors must prove that the new analogue is “intended for human consumption” and “substantially similar” to an already listed substance.²² This often results in a legal dispute between conflicting scientific expert witnesses testifying to the chemical structure of the drugs in dispute.²³

Placing fentanyl analogues on Schedule I must be done permanently. Permanent scheduling allows the criminal prosecution of anyone caught possessing, distributing, or manufacturing illicit variations of the drug—“a task previously burdensome for prosecutors”—without the uncertainty of whether the temporary authorization will expire during the prosecution.²⁴ Permanently changing the scheduling of fentanyl analogues “would eliminate lengthy litigation and permit prosecutors to quickly remove those involved in the illicit narcotic market from the streets.”²⁵ Such legislative action “would allow authorities to keep pace with clandestine labs attempting to bypass regulations by altering the chemical structures of controlled substances.”²⁶

The fentanyl crisis has devastated many American communities, families, and lives, including those in our respective States. This national catastrophe requires a serious federal solution. Permanently scheduling fentanyl analogues as Schedule I drugs will allow the federal government to engage resources thus far underutilized in the fight against the fentanyl epidemic, putting drug cartels and traffickers on notice and saving American lives. We urge you to take up and pass the HALT Fentanyl Act as soon as possible.

Sincerely,



Jason S. Miyares
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Attorney General of Iowa

²⁰ 21 U.S.C. § 813.

²¹ Rothberg & Stith, *A Whole New World*, *supra* n.18, at 319; see also *McFadden v. United States*, 576 U.S. 186, 191–95 (2015) (describing a multi-pronged, complicated *mens rea* requirements for conviction).

²² 21 U.S.C. §§ 802(32), 813.

²³ Battiloro, *China’s Pharmaceutical Loopholes*, *supra* n.11, at 370.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Ibid.*



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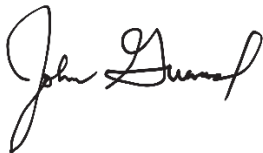
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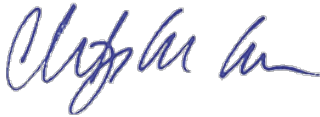
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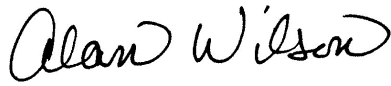
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