

Congress of the United States
Washington, DC 20515

September 9, 2021

The Honorable Merrick B. Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Ms. Regina M. LaBelle
Acting Director
Office of National Drug Control Policy
1800 G. Street NW
Washington, DC 20006

Ms. Anne Milgram
Administrator
U.S. Drug Enforcement Administration
8701 Morrisette Drive
Springfield, VA 22151

Dear Attorney General Garland, Acting Director LaBelle, and Administrator Milgram:

The temporary emergency scheduling of fentanyl-related substances is set to expire in a matter of weeks. At a time when overdoses in America are surging,¹ the Biden-Harris Administration has been slow to engage on this crisis. Now that the Administration has finally provided recommendations to Congress, we write to request additional information about these proposals.

On September 2, 2021, the Administration submitted a legislative proposal to Congress on how to reduce the supply and demand of illicit fentanyl-related substances.² The Administration's proposal supports a permanent class-wide scheduling of fentanyl-related substances into Schedule I of the Controlled Substances Act (CSA), but it eliminates certain quantity-based mandatory minimum penalties for drug traffickers and loosens research restrictions for all Schedule I substances.³ The Administration also recommended allowing a federal court to vacate or reduce the sentence of an individual sentenced for an offense involving a fentanyl-related substance if that substance is later removed or rescheduled from Schedule I of

¹ Bill Chappell, *Drug Overdoses Killed a Record Number of Americans In 2020, Jumping by Nearly 30%*, NPR, (July 14, 2021).

² The White House, Press Release, *Biden-Harris Administration Provides Recommendations to Congress on Reducing Illicit Fentanyl-Related Substances*, (Sept. 2, 2021).

³ *Id.*

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the CSA.⁴ While we support permanent scheduling of fentanyl-related substances, other aspects of the Administration's proposal would shield drug traffickers from pushing poisonous drugs into our communities rather than hold them accountable by imposing existing penalties. We are particularly concerned that the provisions removing mandatory minimum penalties for fentanyl-related substance offenses would hinder prosecutorial efforts against serious drug traffickers, and could even incentivize sophisticated criminal organizations to import and traffic fentanyl-related substances.⁵

As Congress considers the Administration's recommendations and other legislative proposals, we request additional information to better understand the Administration's approach to fight our country's opioid crisis. We submitted multiple requests to be consulted and collaborate as a partner in drafting a legislative proposal, but those requests were not accommodated. Since we were not provided the opportunity to more fully engage and discuss these issues, we ask that you please provide the following information:

1. A list of all the stakeholders that the Administration had meaningful and substantive consultations with in determining its proposed recommendations to Congress on class-wide scheduling of fentanyl-related substances;
2. Whether the Administration would still support permanently placing fentanyl-related substances into Schedule I of the CSA if those fentanyl-related substances are not excluded by class from certain quantity-based mandatory minimum penalties associated with drug trafficking;
3. A list of examples in which federal law enforcement authorities have found that mandatory minimum penalties associated with fentanyl-related substances have supported criminal investigations to pursue high-level drug traffickers;
4. If a substance scheduled under the CSA which had mandatory minimum sentences was subsequently stripped of mandatory minimums; and
5. The Justice Department reported eight cases with fentanyl-related substance charges between 2018, when the temporary class-wide schedule was adopted, and December 2020. Explain why the Administration believes it supports a dramatic shift in policy to reduce mandatory minimum penalties associated with fentanyl-related substances when there have only been a few quantity-based cases.

Please provide this information as soon as possible, but no later than 5:00 p.m. on September 23, 2021. The House Committee on the Judiciary has jurisdiction pursuant to Rule X

⁴ *Id.*

⁵ See *Defeating Fentanyl: Addressing the Deadliest Drugs Fueling the Opioid Crisis: Hearing before the S. Comm. on the Judiciary, Subcomm. on Crime and Terrorism, 115th Cong. (2018)* (testimony of Christina E. Nolan, U.S. Atty., D. Vt., U.S. Dep't. of Justice).

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of the Rules of the House of Representatives to conduct oversight of matters concerning “criminal law enforcement and criminalization,”⁶ and the Senate Committee on the Judiciary has similar jurisdiction under Rule XXV of the Rules of the Senate.⁷

Thank you for your prompt attention to this matter.

Sincerely,



Jim Jordan
Ranking Member
House Committee on the Judiciary



Charles Grassley
Ranking Member
Senate Committee on the Judiciary

cc: The Honorable Jerrold L. Nadler
Chairman
House Committee on the Judiciary

The Honorable Dick Durbin
Chairman
Senate Committee on the Judiciary

⁶ Rules of the House of Representatives, R. X, 117th Cong. (2021).

⁷ Rules of the Senate, R. XXV, 117th Cong. (2021).