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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

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May 20, 2016

R. Gil Kerlikowske
Commissioner
U.S. Customs and Border Patrol
1300 Pennsylvania Avenue, NW
Washington, DC 20229

Dear Commissioner Kerlikowske:

Illicitly produced fentanyl has rapidly joined heroin as a deadly follow-on to the prescription opioid epidemic in the United States. In recent testimony to this committee, you touched on efforts the U.S. Customs and Border Patrol (CBP) is making to stop smuggling of illicit fentanyl and its analogs. Following up on your testimony, I am writing to learn more about the agency's efforts and potential areas that could be strengthened or improved, and to highlight concerns I have about this dangerous scourge.

In response to a national surge in fentanyl overdoses and law enforcement seizures, the Centers for Disease Control and Prevention (CDC) late last year issued a national health advisory warning of fentanyl's dangers.¹ In January, the CDC followed up by reporting that overdose deaths attributed to synthetically manufactured opioids increased 80% from 2013 and 2014.² The CDC attributed this jump to the increased availability of illicit fentanyl sold in pill or powder form, which differs from "pharmaceutical" fentanyl that is prescribed by doctors, oftentimes to late stage cancer patients, in patches or lozenges.³

I have grown concerned in recent weeks about the potential for fentanyl abuse to spread to Oregon and other western states, after an outbreak of overdoses in several northern California communities.⁴ Until now, fentanyl overdoses most often have been associated with states in the Midwest and New England, where, for example, Maine reported fentanyl-related deaths increasing 867% between 2013 and 2015.⁵ And last year, more than 330 people died from fentanyl overdoses in Massachusetts.⁶

¹ U.S. Centers for Disease Control and Prevention, *Increases in Fentanyl Drug Confiscations and Fentanyl-related Overdose Fatalities*, Health Advisory Network, CDCHAN-00384 October 26, 2015, <http://emergency.cdc.gov/han/han00384.asp>.

² Centers for Disease Control and Prevention, *Increases in Drug and Opioid Overdose Deaths — United States, 2000–2014*, MMWR: Morbidity and Mortality Weekly Report, January 1, 2016; 64(50):1378-82, <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6450a3.htm>.

³ *Ibid.*

⁴ Erin Allday, "Overdose Deaths Linked to Pills Containing Fentanyl," *San Francisco Chronicle*, April 2, 2016, <http://www.sfchronicle.com/health/article/Overdose-deaths-linked-to-pills-containing-7224779.php>.

⁵ Katharine Q. Seelye, "Heroin Epidemic is Yielding to a Deadlier Cousin: Fentanyl," *New York Times*, March 25, 2016, <http://www.nytimes.com/2016/03/26/us/heroin-fentanyl.html>.

⁶ *Ibid.*

One tragic aspect of the prescription opioid epidemic is that some people who become addicted to prescription opioid drugs turn to heroin or illicit pills, largely because they cost less, and are easier to acquire.⁷ A recent CDC investigation of Ohio overdose deaths that occurred during 2014 found that “[t]wo-thirds of all fentanyl-related and approximately 60% of heroin-related decedents had a record of opioid prescription at some point during the seven years period preceding their death.”⁸ Furthermore, investigators found that 27.6% of people who died from overdose deaths had received a prescription for opioids in the previous month.”⁹

Fentanyl is particularly dangerous because it is significantly stronger than heroin and prescription opioids, increasing the likelihood of overdose and death. In an effort to increase margins, drug dealers have used fentanyl, which is cheaper than heroin to produce, to “cut” or outright replace heroin or pills. The Drug Enforcement Administration (DEA) testified this month that due to fentanyl’s “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.”¹⁰ For unsuspecting users who believe they are ingesting or injecting a weaker opiate, ingesting or injecting fentanyl oftentimes results in death.

I want to ensure you are aware of the recent developments in California, and request that you provide information about efforts the CBP is taking to staunch the drug’s flow into the country. My understanding is that overseas manufacturers are the primary source of fentanyl’s underlying compounds, which means that CBP plays a key role in controlling the drug’s entry into the country. According to recent congressional testimony, your agency has observed a sharp rise in seizures of synthetically made opioids such as fentanyl – from 2.4 pounds during fiscal year 2013, to 8.2 pounds seized in FY 2014, and 197.8 pounds during FY 2015.¹¹

Late last month, health officials in Sacramento and neighboring Yolo County reported that 54 people overdosed on pills laced with illicit fentanyl in March and April – 13 of those people died.¹² Patients told doctors they were unaware that the pills they bought contained fentanyl.¹³ The Centers for Disease Control and Prevention (CDC) also recently noted a similar outbreak in San Francisco.¹⁴ Earlier this year in Orange County, where additional fentanyl-related overdoses

⁷ Theodore Cicero, et al., “The Changing Face of Heroin Use in the United States,” *JAMA Psychiatry* 71, no. 7, (July 2014): 821-826, <http://archpsyc.jamanetwork.com/article.aspx?articleid=1874575>.

⁸ Centers for Disease Control and Prevention, *Undetermined risk factors for fentanyl-related overdose deaths — Ohio, 2015*, Epidemic Intelligence Service, EpiAid 2016-003 Trip Report Epi2; p. 27 and Table 8, http://www.healthy.ohio.gov/~media/HealthyOhio/ASSETS/Files/injury%20prevention/Ohio%20PDO%20EpiAid%20Trip%20Report_Final%20Draft_3_18_2016.pdf.

⁹ *Ibid.* p. 27

¹⁰ Synthetic Drugs, Real Danger, Before the House Subcomm. On Crime, Terrorism, Homeland Security, and Investigations, 114th Cong., (2016) (written testimony of Louis J. Milione, Deputy Assistant Administrator of the Drug Enforcement Administration), <https://judiciary.house.gov/wp-content/uploads/2016/05/DEA-Milione-Synthetics-Testimony-REVISED.pdf>.

¹¹ Border Security and America’s Heroin Epidemic: The Impact of the Trafficking and Abuse of Heroin and Prescription Opioids in Wisconsin, Before the Senate Comm. on Homeland Security and Governmental Affairs, 114th Cong., (2016) (written testimony of R. Gil Kerlikowske, Commissioner of U.S. Customs and Border Patrol), <http://www.hsgac.senate.gov/download/testimony-kerlikowske-2016-04-15>.

¹² Claudia Buck, “Yolo County Reports Second Death from Illicit Fentanyl Painkillers,” *Sacramento Bee*, April 20, 2016, <http://www.sacbee.com/news/local/health-and-medicine/article72969272.html>.

¹³ *Ibid.*

¹⁴ U.S. Centers for Disease Control and Prevention, Counterfeit Norco Poisoning Outbreak — San Francisco Bay Area, California, March 25–April 5, 2016, *MMWR: Morbidity and Mortality Weekly Report*, April 29, 2016; 65(16):420–423, <http://www.cdc.gov/mmwr/volumes/65/wr/mm6516e1.htm>.

and deaths have occurred, the DEA recently broke up an illegal production operation that allegedly used raw materials imported from China to manufacture fentanyl pills.¹⁵

While Oregon health officials have not observed a spike in the number of deaths or overdoses connected to fentanyl, illicit fentanyl has begun to appear in Oregon, as demonstrated most recently by a Portland-area college student who nearly died this month when she used fentanyl.¹⁶ The report of this overdose coincides with an increasing number of fentanyl samples being submitted to Oregon's state forensics lab.¹⁷ Furthermore, at least five overdoses in the Portland detention center in 2014 and 2015 were directly linked to a drug ring connected to illicit fentanyl manufactured in China.¹⁸ Members of the ring also have pled guilty to shipping drugs from Oregon to North Dakota, where it was distributed.¹⁹

Having observed the rapid increase of illicit fentanyl overdose deaths in other states, these pockets of uptake in Oregon are of considerable concern, particularly given the nexus with the use and abuse of prescription opioids. As you may know, the most recent National Survey on Drug Use and Health found that Oregon had the highest rate of non-medical prescription drug use in the United States.²⁰

To better understand the issues surrounding illicit fentanyl, please answer the following questions:

1. Please provide up-to-date figures on the amount of illicit synthetically made opioids that CBP has seized during FY 2016. Which illicit synthetic opioids are most frequently seized?
2. What is the approximate street value of the illicit synthetically made opioids that were seized by CBP during FY 2015? How much would an equivalent amount of heroin (i.e. equivalent weight) be worth?
3. Please provide a geographic breakdown of:
 - a. The ports where illicit synthetically made opioids were seized by CBP in FY 2015. Please include the weight that was seized at each location;

¹⁵ Jenna Chandler, "Newly Popular and Deadly Fentanyl Pills are Being Made in Orange County's backyard," *Orange County Register*, April 12, 2016, <http://www.ocregister.com/articles/fentanyl-711890-drug-beach.html>.

¹⁶ Lynne Terry, "New Designer Drug with Fentanyl Nearly Kills Portland-area Student," *The Oregonian*, May 13, 2016, http://www.oregonlive.com/health/index.ssf/2016/05/new_designer_drug_with_fentanyl.html.

¹⁷ Oregon-Idaho High Intensity Drug Trafficking Area, *Threat Assessment and Counter-Drug Strategy (Program Year 2016)*, (June 2015) at p. 32

¹⁸ Bryan Denson, "3 OD on dangerous drug in Portland jail; feds say inmate smuggled contraband inside her body," *The Oregonian*, March 14, 2015, http://www.oregonlive.com/portland/index.ssf/2015/03/three_od_on_dangerous_drug_smu.html.

Bryan Denson, "Feds Say OD Death in Portland Jail Linked to International Fentanyl Smuggling Ring," *The Oregonian*, July 27, 2015, http://www.oregonlive.com/portland/index.ssf/2015/07/powerful_synthetic_opioid_kill.html.

¹⁹ U.S. Department of Justice, "Oregon Man Pleads Guilty for Role in Multiple Overdose Deaths and Injuries in 'Operation Denial,'" March 7, 2016, <https://www.justice.gov/usao-nd/pr/oregon-man-pleads-guilty-role-multiple-overdose-deaths-and-injuries-operation-denial>.

²⁰ U.S. Substance Abuse and Mental Health Administration, *State Estimates of Nonmedical Use of Prescription Pain Relievers*, National Survey on Drug Use and Health, January 13, 2013, <http://www.samhsa.gov/data/sites/default/files/NSDUH115/NSDUH115/sr115-nonmedical-use-pain-relievers.pdf>.

- b. The origin countries from which the seized synthetically made opioids were shipped. Please include the total weight that was seized from each origin country; and
 - c. The destinations state or district within the United States of the illicit synthetically made opioids that were seized. Please include the weight that was seized for each destination.
4. My understanding is that illicit fentanyl and its analogs are primarily manufactured internationally – in China, Mexico or Canada – before being brought into the United States for sale.
 - a. To the extent that the precursor chemicals to illicit fentanyl are brought into the United States – rather than as a finished product – does CBP have sufficient authority to seize these chemicals if there is reasonable suspicion that the chemicals would be used to produce illicit fentanyl or its analogs?
 - b. Has the agency observed any change in the quantity or value of imports of precursor chemicals that are used to manufacture fentanyl?
5. When the Orange County production operation noted above was raided, it was reported that authorities seized a “pill press” used to manufacturer illicit fentanyl pills. DEA agents who recently met with my staff expressed concern that more illicit fentanyl production sites may become more common in the United States. Please provide:
 - a. Information regarding your agency’s role in monitoring the import (or export) of pill presses, also known as tableting or encapsulation machines; and
 - b. Any available data regarding the number of these machines that have been seized at ports in recent years, including but not limited to the ports where they are seized, their destinations and their origins.
6. What challenges do fentanyl analogs, i.e. small molecular modifications to the drug, pose for the agency’s efforts to stop their importation? Please include a discussion of any legal issues, technical limitations and physical surveillance. Please also describe how the monitoring and interdiction of incoming heroin differs from illicit synthetic opiates.
7. Regarding staffing, you recently testified that CBP has a shortfall of employees.
 - a. Does the agency have sufficient staffing at the border for drug control?
 - b. If not, what is the staffing shortfall?
 - c. How would additional staff be used and allocated to address the influx of illicit fentanyl being brought into the country?
8. Does CBP have adequate technology to identify changing fentanyl drug compounds in a timely fashion?
 - a. What types of additional technology would be helpful in your agency’s efforts?

- b. In testimony to the Committee on Finance, you stated that the agency does not have test kits that can identify illicit fentanyl. Do such test kits exist? What benefit would they provide? What is the approximate number your agency would need, and what would the approximate cost be?
9. Are additional data from shippers and/or analytics tools needed? Does your agency have adequate legal authority to collect these data?
10. In testimony to the Committee on Finance, you stated that limited information from state medical examiners regarding fentanyl overdoses has been a barrier to understanding the scope of the fentanyl problem.
 - a. Please provide additional information about the challenges this issue has presented for your agency, and approaches to addressing them;
 - b. Are there examples of medical examiners who have developed or are developing better surveillance of fentanyl-induced overdoses?
11. In testimony to the Committee on Finance, you indicated that the growth of e-commerce presents challenges for the monitoring and interdiction of illicit fentanyl:
 - a. Please describe the challenges that e-commerce presents.
 - b. You indicated that more work needs to be done with the U.S. Postal Service; please describe steps that need to be taken and a timeline for those steps.
 - c. Please describe best practices from your partnerships from private shippers such as FedEx, UPS and DHL that can be applied to more effectively working with the U.S. Postal Service.
12. Please list any other departments or agencies within the Finance Committee's jurisdiction that Customs and Border Patrol is working with on issues related to controlling illicitly produced fentanyl. Please describe the activities being undertaken with those other entities.
13. Please provide any additional information you think may be that your agency faces in its attempts to control smuggling of fentanyl and other synthetic opioids?

Please provide answers to these questions, and the requested data, no later than the close of business on June 20, 2016. If you or your staff has any questions, please contact Peter Gartrell or Jayme White on my Committee staff; they can be reached at (202) 224-4515.

Thank you for your assistance and attention to this important matter.

Sincerely,



Ron Wyden
Ranking Member