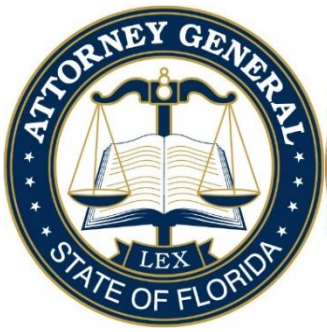

September 14, 2022

The Honorable Joseph R. Biden, Jr.
President of the United States
The White House
1600 Pennsylvania Ave.
Washington, D.C. 20500

Dear Mr. President:

As attorneys general of our respective states, we are deeply involved in the fight to end the national opioid crisis. Collectively, as a group on a bipartisan basis, we recently concluded several large, historic settlements that will give each of us resources to battle this crisis. As you well know, the national opioid crisis is not and has not been a static event. Instead, the opioid epidemic in this country has evolved over time from prescription opioids to heroin to synthetic opioids, namely fentanyl. Currently, fentanyl is exacerbating the death toll increasing exponentially every year for the last several years. The purpose of this letter is to propose an unorthodox solution that may help abate or at least slow the crisis's trajectory while also protecting Americans from a mass casualty event from fentanyl. We ask that you consider classifying illegal fentanyl as a weapon of mass destruction or, if you conclude you do not have authority to do so, urge Congress to pass legislation to do so.

According to the New York Times, the supply of tainted pills, crudely pressed and shipped to the U.S. by Mexican cartels using chemicals from China and India, has escalated dramatically in recent years.[1] While record amounts of fentanyl have been interdicted by law enforcement in the last year,[2] the historic number of overdose deaths from fentanyl demonstrate that large amounts of fentanyl are still entering the United States. Enough fentanyl has been seized in the last year to kill every man, woman, and child in the United States several times over. Indeed, given fentanyl's lethality, the amounts being interdicted and seized are inconsistent with what one would expect from drug trafficking activity and are indicative of either purposeful conspiracy to murder Americans or an effort to stockpile a dangerous chemical weapon.

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[1] https://www.nytimes.com/2022/05/19/health/pills-fentanyl-social-media.html

[2] https://www.dea.gov/press-releases/2022/04/06/dea-warns-increase-mass-overdose-events-involving-deadly-fentanyl; https://www.cbp.gov/newsroom/local-media-release/cbp-officers-south-texas-ports-entry-post-significant-increases-0 ; https://gov.texas.gov/news/post/operation-lone-star-seizing-record-amounts-of-fentanyl-dps-crime-lab-finds-fentanyl-in-most-street-drugs .

Due to the low cost of production, inherent lethality and vast availability of the substance, fentanyl would be an ideal choice for bad actors to use as a chemical weapon. We are aware of scenarios that different federal and state agencies have considered utilizing and causing mass casualty events. Just two milligrams of fentanyl is needed to kill an adult, and it can easily be placed in other substances. In fact, it already is—according to reports, at least one-third of illicitly manufactured pills are contaminated with fentanyl—users often have no idea that they are consuming this poison.[3] In addition to different government agencies looking at fentanyl related scenarios, fentanyl has already been used as a weapon—the Russian army used it to end a hostage crisis two decades ago, killing more than 120 hostages in the process.[4] The threat of a state enemy using this drug to do harm to the American people cannot be understated.

Designating fentanyl as a weapon of mass destruction would require the Department of Homeland Security and the DEA to coordinate with other agencies or parts of agencies, including the Department of Defense, about fentanyl. Thinking about curbing the problem in different, new ways may disrupt what the foreign companies and drug cartels involved are doing or at least make it more expensive or difficult. While those agencies would develop federal policy, one could imagine techniques utilized to prevent proliferation or to detect the transportation of existing weapons of mass destruction could be used with fentanyl.

We understand that there are two main criticisms against declaring fentanyl a weapon of mass destruction: (1) that fentanyl is a drug control problem, and we are attempting to solve a drug control problem by classifying the substance, which has legitimate, limited uses as a weapon; and (2) that no state or non-state actor has weaponized fentanyl other than the Russian incident discussed above. As to the first criticism, the fact that classifying fentanyl would have a ancillary effect of preventing the deaths of tens of thousands of Americans would be an additional, beneficial reason to classify fentanyl. Given fentanyl's lethality, low cost, and abundant availability, waiting for some state or non-state actor to utilize it as weapon before it is classified as such seems to be the same type of reasoning that kept the government from investigating foreign nationals learning to fly, but not land planes in the lead up to September 11th.

We are deeply troubled by the threat that fentanyl poses to America. The seriousness of that threat is informed by the fact that in the 12-month period ending in Feb. 2022, more than 75,000 Americans died from overdose of synthetic opioids, mainly fentanyl.[5] With statistics this staggering, we cannot forget that each number represents a human life, and thousands of families and loved ones struggling with incomprehensible loss. Fentanyl is the number one killer of adults 18-45.

Like many other states across this country, fentanyl has hit the State of Florida hard, and the death toll is increasing at an alarming, exponential rate. In 2020, fentanyl related overdose

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[3] https://www.npr.org/sections/health-shots/2022/04/12/1092309418/teen-drug-overdose-deaths-rose-sharply-in-2020-driven-by-fentanyl-laced-pills

[4] https://www.nytimes.com/2002/10/29/world/hostage-drama-in-moscow-the-toxic-agent-us-suspects-opiate-in-gas-in-russia-raid.html; https://www.baltimoresun.com/news/bs-xpm-2002-10-31-0210310178-story.html.

[5] https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm

deaths increased by 59 percent to 5,806.[6] In the first six months of 2021, deaths related to fentanyl increased again to more than 3,210.[7] Last month, within 24 hours, 19 people overdosed on fentanyl with nine people dying in rural Gadsden County, Florida.[8] Only seven days later, police in Tampa responded to a convenience store where seven people were found unresponsive after unknowingly overdosing on fentanyl.[9] That followed other mass fentanyl poisoning events across the country, including another overdose event in Florida in March involving five vacationing West Point cadets, including two who were simply attempting to resuscitate their comrades.[10]

During the same period, fentanyl-involved deaths increased 18.3 percent in Connecticut from 2019 to 2020, and another 13.2 percent from 2020 to 2021. In 2021, 1,312 Connecticut accidental intoxication deaths involved fentanyl.[11] And like Florida, Connecticut has experienced its share of horrific stories involving fentanyl. As just one example, in January of this year, police found 100 bags of fentanyl in the bedroom of a 13-year-old boy who suffered a fatal fentanyl overdose at a Hartford, Connecticut school. Police found an additional 60 bags of highly potent fentanyl hidden in areas throughout his school.[12]

Treating this solely as a narcotics control problem has failed to curb the proliferation of increasing quantities of chemicals that can cause a mass casualty event. Your own DEA Administrator has called fentanyl "the deadliest threat [the DEA] ha[s] ever seen."[13] We should treat it as such— thus bold action must be taken. We must not sit idly by until a terrorist chooses to inflict harm using this substance on a large group of Americans—our countrymen are already dying from this poison. We cannot wait for tragedy to strike when proactive steps can be taken now to preserve American lives. We urge you take immediate and decisive action and declare fentanyl a weapon of mass destruction.

Sincerely,

Ashley Moody
Florida Attorney General

William Tong
Connecticut Attorney General

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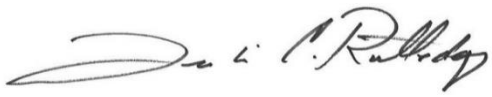
[6] https://www.fdle.state.fl.us/MEC/Publications-and-Forms/Documents/Drugs-in-Deceased-Persons/2020-Annual-Drug-Report-FINAL.aspx.
[7] https://www.fdle.state.fl.us/MEC/Publications-and-Forms/Documents/Drugs-in-Deceased-Persons/2021-Interim-Drug-Report-FINAL.aspx.
[8] https://www.tallahassee.com/story/news/2022/07/05/gadsden-county-fentanyl-drugs-overdose-deaths-florida-quincy-havana-narcan-chattahoochee-gretna/7808948001/. Gadsden County is a small North Florida county that was spared most of the worst of the opioid crisis.
[9] https://www.wfla.com/news/hillsborough-county/7-found-unresponsive-in-tampa-after-consuming-bad-drugs-police-say/
[10] https://www.washingtonpost.com/nation/2022/03/12/west-point-cadets-overdose-fentanyl/
[11] https://portal.ct.gov/-/media/OCME/Statistics/Calendar-Years.pdf
[12] https://abcnews.go.com/Health/100-bags-fentanyl-found-bedroom-13-year-died/story?id=82490833
[13] https://video.foxnews.com/v/6309584306112#sp=show-clips.



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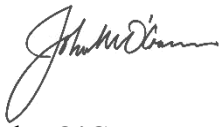

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