



February 4, 2025

The Honorable Charles Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Richard Durbin
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Grassley, Ranking Member Durbin, and Members of the Committee:

My name is Jeffrey A. Singer. I am a Senior Fellow in Health Policy Studies at the Cato Institute. I am also a medical doctor specializing in general surgery and have been practicing that specialty in Phoenix, Arizona, for over 40 years. The Cato Institute is a 501(c)(3) non-partisan, non-profit, tax-exempt educational foundation dedicated to the principles of individual liberty, limited government, free markets, and peace. Cato scholars conduct independent research on a wide range of policy issues. To maintain its independence, the Cato Institute accepts no government funding. Cato receives approximately 80 percent of its funding through tax-deductible contributions from individuals. The remainder of its support comes from foundations, corporations, and the sale of books and other publications. The Cato Institute does not take positions on legislation.

Fentanyl is just the latest manifestation of what drug policy analysts call “the iron law of prohibition.”¹ A variant of what economists call the Alchian-Allen Effect, the shorthand version of the iron law states, “the harder the law enforcement, the harder the drug.” Enforcing prohibition incentivizes those who market prohibited substances to develop more potent forms that are easier to smuggle in smaller sizes and can be subdivided into more units to sell. The iron law of prohibition is why fentanyl replaced heroin as the primary cause of overdose deaths in the United States.

The Centers for Disease Control and Prevention began seeing fentanyl-related overdose deaths rise in 2012. Drug trafficking organizations added fentanyl to heroin to enhance its potency and make it easier to smuggle and subdivide into a greater number of units to sell. By 2016, fentanyl-related deaths eclipsed deaths from heroin and diverted prescription pain pills. By 2017, fentanyl was found in more than 50 percent of opioid-related overdose deaths. By 2022, it was involved in roughly 90 percent of deaths.²

The Covid pandemic accelerated fentanyl’s prominence among black market drug users. Border closures, lockdowns, and other pandemic policies made it more challenging to transport opium and opium gum to drug dealers to be processed into heroin. Pandemic-related supply chain problems created shortages of the commercial chemical acetic anhydride—used to make cigarette filters, aspirin, and other products—which is necessary to convert the morphine in opium to diacetyl-morphine, which Bayer branded as heroin when it developed the drug in the 1890s.³

On the other hand, fentanyl and fentanyl analogs can be easily synthesized in clandestine labs by modifying its fundamental ingredient, piperidine. Piperidine is a chemical used to make numerous pharmaceuticals and is in abundant supply. And because fentanyl and its analogs are entirely synthetic, drug cartels don't need to rely on growing and transporting opium.

These factors, plus the tighter border controls in response to the pandemic, made it an easy business decision for the drug cartels to switch out heroin for fentanyl. With pandemic policies relaxed, it still makes sense for the cartels to stick with what works for them.

The drug trafficking organizations initially obtained fentanyl precursors from labs in China. However, as the US has pressured China to curtail precursor production, precursors are now coming from labs in India, Myanmar, other parts of Southeast Asia, and even Canada.⁴

With continued law enforcement pressure on fentanyl precursor suppliers, other highly potent synthetic opioids are becoming more attractive for drug trafficking organizations to produce and sell. Recently, the Drug Enforcement Administration has been detecting synthetic opioids called nitazenes, a benzimidazole derivative, in the illicit drug supply. Benzimidazoles are used to produce various useful medicines, so trafficking in illicit nitazene precursors may be harder to detect.⁵

Another law enforcement intervention of adding as-yet unapproved fentanyl analogs, also called fentanyl-related substances, to the Drug Enforcement Administration's Schedule I is ill-advised. First, many fentanyl analogs are used medically to control pain and assist in anesthesia, including sufentanil, alfentanil, and remifentanil. An outright ban on developing fentanyl analogs will stifle advances in therapeutic research.

Second, placing a drug on Schedule I will not deter drug cartels. Heroin has been listed on Schedule I for more than 50 years, and it has not deterred heroin trafficking or heroin use. Schedule I psychedelic drugs, particularly mushrooms, are gaining popularity, especially in the affluent and well-educated population. And cannabis, on Schedule I for more than 60 years, is now legal in about half the states. In 2023, 40 percent of adults aged 19 to 30 and 26 percent of adults aged 35 to 50 reported using cannabis.⁶ There is no reason to believe that making fentanyl analogs Schedule I will work any better.

The Drug Enforcement Administration added fentanyl-related substances to Schedule I in 2018. It did nothing to curtail the overdose rate, which spiked to 113,000 per year during the COVID-19 pandemic and only now is returning to pre-pandemic levels, still almost 100,000 per year.

Meanwhile, fentanyl analogs continue to appear in the illicit drug supply. On December 5, 2024, the Centers for Disease Control and Prevention reported that carfentanil, an elephant tranquilizer, is re-emerging in the illegal drug market and causing overdose deaths.⁷ The DEA classifies carfentanil as Schedule II because it has accepted veterinary medical uses.

Perhaps more worrisome, nitazenes are threatening to cause the next wave of overdose deaths across the Americas.⁸

Finally, increasing mandatory minimum sentences for possessing or dealing in illicit fentanyl and fentanyl-related substances, or even threatening drug dealers with life imprisonment or the death penalty, is also unlikely to deter the drug trade. Most drug dealers already factor the risk of death into their decision to get into the business and, correctly, have a greater fear of being killed by rival cartels and dealers than by the United States Department of Justice.⁹

In summary, the HALT Act, which continues classifying fentanyl-related substances as Schedule I, is an exercise in futility. It will not deter drug trafficking organizations from developing and trafficking fentanyl and fentanyl-related substances. Still, it may unintentionally hasten the emergence of new and more dangerous synthetic opioids like nitazenes. It will also make it more burdensome for pharmaceutical researchers seeking to develop new and helpful medications derived from or related to fentanyl. And, if the past is prologue, the Act's expansion of mandatory minimum penalties is unlikely to deter traffickers from the lure of easy money selling drugs.

Sincerely,

Jeffrey A. Singer, MD, FACS

Senior Fellow, Cato Institute

¹ <https://filtermag.org/infographic-the-iron-law-of-prohibition/>

² <https://usafacts.org/articles/are-fentanyl-overdose-deaths-rising-in-the-us/>

³ <https://www.unodc.org/documents/data-and-analysis/covid/Covid-19-and-drug-supply-chain-Mai2020.pdf>

⁴ <https://www.msnbc.com/opinion/msnbc-opinion/trump-tariffs-fentanyl-drug-war-china-canada-mexico-rcna181947>

⁵ <https://www.usatoday.com/story/opinion/2024/01/23/synthetic-opioid-nitazene-more-deadly-fentanyl/72245437007/>

⁶ <https://nida.nih.gov/news-events/news-releases/2024/08/cannabis-and-hallucinogen-use-among-adults-remained-at-historic-highs-in-2023#:~:text=Cannabis%20use%20in%20the%20past,increase%20from%20five%20years%20ago.>

⁷ <https://www.cdc.gov/mmwr/volumes/73/wr/mm7348a2.htm>

⁸ <https://www.oas.org/ext/DesktopModules/MVC/OASDnnModules/Views/Item/Download.aspx?type=1&id=1045&lang=1>

⁹ <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/03/more-imprisonment-does-not-reduce-state-drug-problems> and <https://deathpenaltyinfo.org/policy-issues/policy/deterrence>