



STATE OF FLORIDA

ASHLEY MOODY
ATTORNEY GENERAL

July 18, 2022

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

RE: DECLARE FENTANYL A WEAPON OF MASS DESTRUCTION

Dear Mr. President:

58,220 Americans died in the Vietnam War.¹ Seven months ago, the CDC released its provisional data for drug overdose deaths for 2021. For the first time in this country's history, more than 100,000 Americans died from drug overdoses.² 75,673 of those overdose deaths were from opioids, primarily fentanyl.³ In the last two years, more than double the Americans who died in the entire Vietnam War have died from synthetic opioids.⁴ Fentanyl has become the leading cause of death among adults ages 18-45, claiming more young lives than COVID-19, cancer, car accidents, or suicide.⁵ Fentanyl impacts more than those who use it. It can kill first responders and good Samaritans who seek to resuscitate overdosed users.⁶

I am not equivocating overdose deaths of Americans to those of American's who fought and gave their last full measure of devotion for this country. I provide those numbers to give context to the stark carnage that this country is experiencing. Fentanyl has hit the State of Florida hard, like many other States across this country, and the death toll is increasing at an alarming, exponential rate. In 2020, fentanyl related overdose deaths increased by fifty-nine percent to

¹ <https://www.archives.gov/research/military/vietnam-war/casualty-statistics> .

² https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2021/20211117.htm .

³ *Id.*

⁴ <https://www.cdc.gov/drugoverdose/epidemic/index.html>;

<https://www.cdc.gov/drugoverdose/deaths/synthetic/index.html>

⁵ <https://www.nytimes.com/2022/05/19/health/pills-fentanyl-social-media.html>.

⁶ <https://www.cdc.gov/niosh/topics/fentanyl/risk.html> (containing the CDC's guidance to first responders regarding approaching illicit drug scenes because of fentanyl's risk).

5,806.⁷ In the first six months of 2021, deaths related to fentanyl increased again to more than 3,210.⁸ About ten days ago within twenty-four hours, nineteen people overdosed on fentanyl with nine people dying in rural Gadsden County, Florida.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

In the nearly two years that your administration has been in office, you have done little to abate this American tragedy. Indeed, many of your policies have exacerbated the death toll needlessly wasting America's youth. Almost a year ago on July 21, 2021, you described fentanyl as a "dead set killer of people."¹¹ You acknowledged in that town hall meeting that China was sending fentanyl to Mexico and that fentanyl was killing Americans.¹² While record amounts of fentanyl have been interdicted by law enforcement in the last year,¹³ the historic number of overdose deaths from fentanyl demonstrate that large amounts of fentanyl are still making it across our southern border. As your Administrator of Drug Enforcement Administration (the "DEA") said yesterday, fentanyl is "poisoning Americans at record rates" and it is the "deadliest threat [the DEA] ha[s] ever seen."¹⁴ New, different, and additional tactics are needed to curb this needless slaughter of American youth.

While there are many acts and steps that your administration could take, like stopping the overwhelming influx of illegal immigrants and further fortifying the southern border, I realize that your administration will not or is incapable of taking those actions. Your administration has dangerously failed to recognize the ties between criminal drug cartels and both the surge of illegal immigration and the flood of fentanyl into this country. The State of Florida will continue actively litigating against your administration's failure to follow federal immigration law to force your administration to protect the border and effectively deal with the existential threat that the border crisis represents. But, while that disagreement plays out in court, I would urge you to take a different action that has bipartisan support: declare fentanyl a weapon of mass destruction pursuant to your authority under the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. §§1701 et seq. or, alternatively, urge Congress to pass the "Fentanyl is a WMD Act."

There is not serious dispute that fentanyl could be weaponized causing a mass casualty event. The Russian army purportedly weaponized fentanyl to end a hostage crisis twenty years

⁷ <https://www.fdle.state.fl.us/MEC/Publications-and-Forms/Documents/Drugs-in-Deceased-Persons/2020-Annual-Drug-Report-FINAL.aspx>.

⁸ <https://www.fdle.state.fl.us/MEC/Publications-and-Forms/Documents/Drugs-in-Deceased-Persons/2021-Interim-Drug-Report-FINAL.aspx>.

⁹ <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.

¹⁰ <https://www.washingtonpost.com/nation/2022/03/12/west-point-cadets-overdose-fentanyl/>

¹¹ <https://www.cincinnati.com/story/news/politics/2021/07/21/joe-biden-cnn-town-hall-transcript/8051311002/> .

¹² In reality, as you are aware, Chinese companies are sending to Mexico the precursor chemicals for fentanyl and other synthetic opioids, and cartels in clandestine labs are producing synthetic opioids and smuggling those opioids into this country across the southern border.

¹³ <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> .

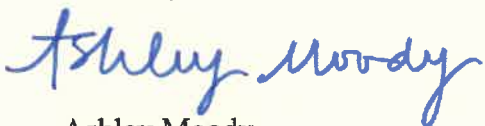
¹⁴ <https://video.foxnews.com/v/6309584306112#sp=show-clips>.

ago, killing more than 120 hostages in the process.¹⁵ The debate on this topic seems to center around some experts who believe that the likelihood of use of fentanyl as a weapon of mass destruction is remote and that there are other chemicals more likely to be weaponized. That may be true, but the same likely could have been said about a commercial airliner striking a building before September 11, 2001. 9/11 happened and we now have enhanced security because of the risk that a terrorist or non-state actor could utilize an airplane as a weapon. Relying on non-state criminal actors and terrorists to think or act as expected is a losing proposition. The reality is that the deadliness of fentanyl combined with its sheer availability in Mexico to criminal cartels and non-state actors makes it an increasingly likely weapon for use. The other criticism lodged against treating fentanyl as a weapon of mass destruction is that fentanyl is a narcotics control problem. Again, that is true, but 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. Fentanyl's deadliness combined with so much fentanyl being manufactured make it unique compared to other narcotics. Again, your own DEA Administrator has called fentanyl "the deadliest threat [the DEA] ha[s] ever seen."¹⁶ We need bold action to meet that threat and end it. If treating fentanyl as a weapon of mass destruction has the salutary effect of also advancing narcotics control policy, what is the harm in making the declaration.

Given how many Americans are being murdered, the whole federal government and every tactic and capability that we have should be utilized to stop the death and destruction that fentanyl is causing. Designating fentanyl as a weapon of mass destruction would require the Department of Homeland Security and the Drug Enforcement Administration 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 Chinese 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. As an example, the United States works to disrupt the supply chains of other chemical, biological, radiological, or nuclear weapons. It is not hard to imagine that similar tactics could reduce the flow of precursor chemicals and equipment to the criminal cartels in Mexico, reducing the resulting amount of fentanyl flowing into this country.

Mass deaths. Lives shattered. More than two hundred Americans die every day from opioids, primarily fentanyl, leaving broken families struggling with incomprehensible loss. I urge you take immediate and decisive action to protect Americans and declare fentanyl a weapon of mass destruction.

Sincerely,



Ashley Moody
Florida Attorney General

¹⁵ <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>.

¹⁶ <https://video.foxnews.com/v/6309584306112#sp=show-clips>.