

**Questions for the Record from Senator Sheldon Whitehouse**  
**U.S. Senate Caucus on International Narcotics Control**  
**“The Precursor Pipeline”**  
**Submitted on October 30, 2023**

## 1. Fentanyl Scheduling

**Fentanyl remains temporarily scheduled in the U.S. The likely existence of additional lethal and life-saving fentanyl-related substances (FRS), which would be included in class-wide scheduling, has driven differing legislative proposals.**

**□ What language would DEA/DOJ like to see in fentanyl scheduling legislation? In your response, please be sure to include DEA/DOJ’s recommendations for the re-scheduling and researching of FRS that could be antidotes, such as naloxone and buprenorphine.**

**Response:**

Although fentanyl is a Schedule II controlled substance, traffickers are continually altering its chemical structure to create new substances to evade regulation and prosecution, sometimes with tragic results. While the Administration and Congress worked together to temporarily close this loophole by temporarily making all FRS Schedule I drugs, which carry additional reporting requirements and penalties, this measure expires on December 31, 2024.

DEA supports the Biden/Harris legislative proposal transmitted to Congress on September 2, 2021, that would permanently control all FRS as Schedule I drugs.<sup>1</sup> It should be noted that naloxone and buprenorphine are not FRS and are not part of the temporary FRS order; buprenorphine is separately controlled, while naloxone is not controlled. The legislative proposal would also create a streamlined process for HHS to recommend removal or rescheduling of FRS that are subsequently found to not have a high potential for abuse, as defined by the Controlled Substances Act. The proposal also establishes a simplified process that would align research registration for all Schedule I substances more closely with the research registration process for Schedule II substances. The proposal also calls for a GAO study of the impact of permanent FRS class-wide scheduling, including its impact on research, civil rights, and the illicit manufacturing and trafficking of FRS. This legislative proposal is also in the Administration’s “Detect and Defeat” Counter-Fentanyl Legislation Proposal. The recommendations also included provisions to facilitate research on FRS and would establish a simplified process to align research registrations for all Schedule I substances more closely with the process for Schedule II substances to expand research and advance evidence-based public policy.

## 2. DEA Illicit Finance/Money Laundering Counter-Threat Team

**Per Administrator Milgram’s testimony before the House Judiciary Subcommittee on Crime and Federal Government Surveillance hearing in July of this year, the DEA has built a counter-threat**

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<sup>1</sup> <https://whitehouse.gov/ondcp/briefing-room/2021/09/02/biden-harris-administration-provides-recommendations-to-congress-on-reducing-illicit-fentanyl-related-substances/>

team “devoted solely to the illicit finance and the money laundering” of the Sinaloa and Jalisco New Generation cartels.

**How many illicit finance or money laundering indictments have been executed by this new counter-threat team?**

**Response:** The illicit finance counter threat team (CTF) is a targeting and intelligence analysis group. Its role is to improve DEA’s visibility of the cartels’ illicit financial infrastructure; provide direct assistance to DEA field groups already engaged in investigating drug money launderers working for, or on behalf of the cartels; and to identify new money laundering targets. The CTF is currently providing significant resources and coordinating current investigations on high level money launderers for the Sinaloa and Jalisco Cartels. The CTF provides critical assistance to our field that allows the field to build the investigations that will result in illicit finance and money laundering indictments.

**Can you describe assets seized, accounts closed, financial flows stymied as a result of the counter-threat team’s analyses and investigations?**

**Response:** CTF is not an enforcement arm of the DEA. However, CTF has contributed to existing field investigations in which millions in drug proceeds have been seized. Those seizures targeted Sinaloa Cartel drug proceeds in several cities throughout the country. In the future, based on the continued coordination and analysis of the DEA’s Attorney General Exempt Operations (AGEO) program, the CTF will assist with more asset seizures in the field. These “field leads” will not only contribute to drug money seizures affecting the cartels but will lead to the development of sources, to further target the entire structure of the cartels.

**Which formal channels does the DEA illicit finance counter-threat team use for information sharing and coordination with other relevant federal partners, including Treasury, State, and DHS?**

**Response:** The CTF continues to conduct all necessary deconfliction checks through the DEA Special Operations Division (SOD) and local deconfliction systems.

### **3. Attorney General Exempt Operations (AGEOs)**

**The Department of Justice’s “Attorney General Exempt Operations” (AGEOs) program allows the DEA to conduct undercover money laundering operations and, when carried out effectively, generate income and pay for themselves. Unfortunately, in 2020, the DOJ Inspector General found numerous, critical deficiencies in the DEA’s oversight of its AGEOs.**

**It has been three years since the AGEO audit report. What steps has DEA taken to improve guidance, oversight, and management of its AGEO programs?**

**Response:** DEA has taken significant steps to reform the AGEO program, and has implemented many reform steps beyond those recommended by the Office of the Inspector General, including:

- Implemented a quarterly reporting requirement for AGEOs;

- Required additional details and safeguards when applying for full AGEO privileges to ensure the activity is consistent with DEA’s priorities and policies;
- Implemented a robust evaluation of DEA’s AGEOs;
- Replaced the previous money laundering tracking system with a restructured money laundering application to track all undercover financial transaction requests;
- Created a team with financial expertise to efficiently analyze data associated with individuals and businesses identified through money laundering investigations;
- Implemented safeguards surrounding the usage of the AGEO program in the foreign arena;
- Implemented safeguards for monitoring undercover money laundering transactions in cryptocurrency;
- Implemented policies and procedures for effective oversight of project generated income earned during the course of undercover money laundering operations;
- Strengthened existing safeguards, including additional restrictions on caps for an AGEO’s lifespan and money laundering cap limits;
- Created a Counter Threat Team (CTT) that has been tasked with identifying and targeting high-level money launderers responsible for the command and control of money laundering within the cartels; and
- Limited the duration of AGEOs to have a focus on maximum response.

**Does DEA have real-time reporting capabilities to monitor their AGEO programs as was recommended in DEA’s Foreign Operation Review Report published in March 2023?**

**Response:** Yes. DEA implemented several tools to assist in “real-time” reporting of the AGEO program’s measurable statistics, including requiring AGEOs to have on-line banking access that permits for active DEA oversight. These tools are constantly being updated and adjusted to ensure that the most efficient and effective data is available to DEA for effectively monitoring the AGEO program.

**How many AGEO programs has DEA opened, continued, and closed so far in calendar year 2023, and what results have been achieved?**

**Response:** In calendar year 2023, DEA closed four. This does not include shelf accounts. The currently open AGEO investigations continue to target the money laundering structure of international drug traffickers. The utilization of AGEOs has resulted in seizures of illicit drugs and the dismantling of foreign and domestic criminal drug organizations.

**How do these figures compare to previous years?**

**Response:** The figures from calendar year 2023, are down from approximately twenty AGEO’s in 2022.

#### **4. National Drug Threat Assessment Reporting**

**DEA has not issued a National Drug Threat Assessment (the Assessment) since its report covering 2020. This assessment has historically included sections to describe illicit finance trends and the activities of transnational criminal organizations.**

□ **When will the next iteration of the National Drug Threat Assessment be published?**

**Response:** The 2024 NDTA was released by DEA on May 9, 2024.<sup>2</sup>

## **5. Regulating and Stemming Precursor Chemicals**

□ **Many precursor chemicals have both licit and illicit uses. What practical challenges does DEA have in intercepting or regulating precursor chemicals because of their dual-use?**

**Response:** Under the Controlled Substances Act (CSA), DEA has authority to designate chemicals that can be used to illicitly manufacture controlled substances as either “List I” or “List II.” List I chemicals are defined as chemicals that, in addition to legitimate uses, are used in manufacturing a controlled substance in violation of the CSA and are “important” to the manufacture of a controlled substance. List II chemicals are chemicals not included in List I that, in addition to legitimate uses, are used in – but are not “important” to – the manufacturing of a controlled substance in violation of the CSA. Additionally, DEA has the authority to publish the Special Surveillance List which identifies “laboratory supplies” that are used in the manufacture of controlled substances and listed chemicals.

One challenge with intercepting listed chemicals is that they have a legitimate use and, therefore, without additional information such as intended use, it can be difficult to determine the legality of the planned usage of the chemical in question. The second challenge is that the statutory definition of a “regulated person” or a “regulated transaction” can make it difficult to monitor the use of chemicals that are not listed. Accordingly, since certain listed chemicals are easier to procure and harder for the government to intercept, it is not uncommon for clandestine manufacturers of illicit synthetic drugs to incorporate listed and unlisted chemicals in the manufacturing process whenever possible to obscure their illicit activity.

□ **What would DEA suggest we do to more effectively regulate these precursor chemicals and disrupt their trafficking?**

**Response:** DEA believes addressing the precursor chemical supply chain is crucial in combating the opioid epidemic. The Administration has several legislative proposals in its “Detect and Defeat” Counter-Fentanyl Proposal, which has been shared with Congress. Those proposals include tackling de minimis abuse by providing Customs and Border Protection the authority to demand additional documentation and other information addressing de minimis packages and would impose a corresponding penalty on violators. This would enable customs officials to more effectively analyze risk, identify patterns of concern, and take action against those abusing the system. Another piece of the Administration’s Counter Fentanyl Proposal is the permanent scheduling of fentanyl-related substances. This legislative proposal would permanently make all illicitly produced fentanyl-related substances schedule I drugs while also creating a streamlined process for HHS to identify and remove or reschedule FRS that are subsequently found to not have a high potential for abuse. It also establishes a simplified process to align research registrations for all schedule I substances more closely with the process for schedule II substances to expand research and advance evidence-based public policy consistent with the

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<sup>2</sup> <https://www.dea.gov/sites/default/files/2024-07/2024%20NDTA-updated%207.5.2024.pdf>

Administration's 2021 recommendations to Congress. Moreover, as most of the chemicals used to manufacture illicit synthetic drugs found in drug markets in the United States originate in the People's Republic of China and other countries, it is imperative to cooperate with international partners to strengthen enforcement efforts related to illicit manufacturing and trafficking of synthetic drugs, such as synthetic opioids. Further, we look forward, and welcome the opportunity, to working with Congress on potential legislative solutions.

**Questions for the Record from Senator Charles E. Grassley  
U.S. Senate Caucus on International Narcotics Control  
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**Former Deputy Attorney General Rosen issued a memo titled “Adjudication of Venue Disputes Related to Multi-district Investigations and Prosecutions of International Narcotics Trafficking.” Also known as the Rosen memo, it was designed to sort out agency and jurisdiction issues for international narcotics cases.**

**Was this memo in effect in May 2022?**

**Response:** Yes. The memo issued by former Deputy Attorney General Rosen is dated February 2020.

**The Justice Department indicted the Chapitos in the Southern District of California, Northern District of Illinois, District of Columbia, and Southern District of New York. According to the Justice Department, the Chapitos have the largest, most violent fentanyl trafficking operation in the world. The New York Times reported an inter-agency dispute over the Chapitos cases.**

**Did the DEA-lead Special Operations Division hold a de-confliction meeting with the District of New York, Southern District of California, and Northern District of Illinois?**

**Response:** DEA participated extensively in the deconfliction process.

**I asked you about the VA’s contract with Mr. Jose Cordero, a former associate of Administrator Milgram’s, who was awarded a sole source contract with DEA, and whether it was the DEA’s practice for its employees to clear their work through contractors like Mr. Cordero and his company. You responded that, “DEA supervisors do not report to any contractor.” This contradicts information I’ve received from multiple credible whistleblowers, who say that even senior agents in charge of DEA field offices had to clear their work through Mr. Cordero. Please answer the following:**

**Were DEA employees *ever* required to in any manner clear their work through Mr. Cordero, or otherwise in any way instructed to do so, during the course of his contract with the DEA? If so, describe in detail the role Mr. Cordero played at DEA and provide documentation for all instructions issued to any DEA employees related to the need to consult with or seek approval from Mr. Cordero.**

**Response:** The Office of the Inspector General has been conducting a two-year audit into some DEA contracts, and we await the outcome of the review.

**When and why was Mr. Cordero’s contract with DEA ended?**

**Response:** The purchase order with options ended on September 7, 2023. The last option year of the contract was unexercised.

**What was the total amount DEA spent on the contract with Mr. Cordero?**

**Response:** The amount DEA spent on the contract was \$721,593.04.

**If DEA employees were required to report to or clear work with Mr. Cordero, please describe why this process was implemented and what role, if any, Ms. Milgram and Mr. Louis Milione played in the award of the contract with Mr. Cordero and/or the implementation of this process. In awarding a contract to Mr. Cordero without competition, DEA cited special skills Mr. Cordero had, “including experience in rigorously identifying and analyzing data, developing and implementing crime prevention strategies, and understanding and designing technology solutions.”<sup>2</sup> As I pointed out in my April 20 letter, these don’t seem like skills possessed by only one person or company, and they seem to be skills one would expect DEA and main Justice to have in-house. This raises questions about whether DEA should have awarded this contract without competition and whether precious resources were wasted on unnecessary contracting and favoritism.**

**Response:** The Office of the Inspector General has been conducting a two-year audit into some DEA contracts, and we await the outcome of the review.

**What steps did DEA take to determine whether its own employees were capable of performing similar data analysis and development of crime prevention strategies before awarding his contract? In answering, please explain in detail why DEA determined an award without competition was warranted and the names of all DEA officials who were involved in making this decision.**

**Response:** The Office of the Inspector General has been conducting a two-year audit into some DEA contracts, and we await the outcome of the review.

**DEA, in its notice of the sole source contract to Mr. Cordero, claimed that The Cordero Group was unique because he/it had expertise in an, “all-in-one proprietary system for formulating law enforcement strategies to curb drug-related violence in cities, states and the federal arena.”**

**Before awarding a sole source contract to Mr. Cordero, please describe in detail what steps DEA took to determine whether or not other vendors had similar, or even superior, capabilities, and what steps were taken to determine if DEA had talent in-house to design a system to accomplish similar results.**

**Response:** The Office of the Inspector General has been conducting a two-year audit into some DEA contracts, and we await the outcome of the review.

Was the referenced “all-in-one proprietary system” used by Mr. Cordero or his company in the work performed under the contract with DEA? If so, how was it used, what were the results, and did this serve as the basis for directing the work of agents in the field?

**Response:** The Office of the Inspector General has been conducting a two-year audit into some DEA contracts, and we await the outcome of the review.

In my April 20, 2023, letter to Administrator Milgram, I pointed to other questionable contracts. This included a sub-contract with Ms. Lena Hackett, the President of Community Solutions, Inc. Press reports stated that DEA budgeted an astonishing \$257 an hour for her services, triple the hourly rate for DEA’s top civil servants.<sup>4</sup> Ms. Hackett also had a pre-existing connection with Administrator Milgram related to work Ms. Milgram did in Indianapolis. Records in my possession show that Ms. Hackett participated in meetings with operations policy staff and at least one Assistant Special Agent in Charge about topics ranging from Bureau of Prisons medication administration to Operation Overdrive.

Another questionable contract was awarded to “a New York City publicist,” Ms. Julia Pacetti, President of JPM/Verdant. It is reported that Ms. Pacetti’s firm collected \$11,500 a month with expenses to, “write news releases, handle interview requests and arrange news conferences” for DEA.<sup>7</sup> It is unclear why those services would be needed, since DEA has its own Office of Public Affairs, whose job it is to, “engage the media, law enforcement partners, communities, and educators,” regarding DEA’s work.

Please provide the amount per hour Ms. Hackett and Community Solutions, Inc. were paid, a detailed description of the reason for Ms. Hackett’s sub-contract, and a description of the work she performed. Please provide the same for Ms. Pacetti and JPM/Verdant.

**Response:** From August 1, 2022 to August 19, 2022, Lena Hackett was paid \$248.40 per hour for a total of \$29,808.00. From August 20, 2022 to July 20, 2023, Lena Hackett was an employee of The Clearing and received \$257.09 per hour for a total of \$405,173.78. She also worked as an employee of The Clearing from July 20, 2023 until November 30, 2023 and was paid \$266.09 per hour for a total of \$154,465.20. Her total combined payment for these three periods was \$589,446.98.

The Office of the Inspector General continues to conduct a two-year audit into some DEA contracts, and we await the outcome of the review.

Did anyone at DEA in any way request, suggest, or otherwise discuss with anyone at The Clearing that Ms. Hackett and/or her company, Community Solutions, Inc., be chosen for this sub-contract? If so, who had this contact with The Clearing? Please provide the same for Ms. Pacetti and JPM/Verdant with respect to the prime contractor for that award.

**Response:** The Office of the Inspector General has been conducting a two-year audit into some DEA contracts, and we await the outcome of the review.

Whistleblowers have alleged to my office that DEA has instructed contractors to hire specific subcontractors, contrary to the normal procedure of the contractor choosing the best subcontractor for a particular contract, and that again, some of these involve individuals who have a past association with the Administrator. This again raises the possibility of favoritism and waste of resources.

Have there been any instances where anyone at DEA in any way requested, suggested, or discussed with any contractor the hiring of a specific subcontractor since June 28, 2021? If so, please name each such prime contractor, the proposed subcontractor requested, suggested, or discussed, and the name of the DEA official who had contact with the prime contractor.

**Response:** The Office of the Inspector General has been conducting a two-year audit into some DEA contracts, and we await the outcome of the review.

I asked you about the DEA's contract with WilmerHale for the production of a supposedly-independent report on DEA's foreign operations. When that report was ultimately issued, it was weak and substandard, largely quoting from publicly-available sources. It failed to name names or seek accountability for the DEA's failure to oversee its foreign operations and root out corruption in those offices. The American people and the Taxpayers have the right to obtain information about this contract, to ensure that it was truly independent and that taxpayer money was properly expended. DEA has failed to respond to my information requests, and WilmerHale has informed me that DEA prevented it from providing information as well on the basis of purported confidentiality provisions in DEA's contract with WilmerHale and a purported attorney-client relationship WilmerHale allegedly had with DEA, a relationship that even if true would call the independence of the report into question.

Please describe, in a separate attachment if necessary, all edits that DEA requested or made to the report, before or after it was submitted by WilmerHale to DEA. Provide all copies.

**Response:** The Office of the Inspector General has been conducting a two-year audit into some DEA contracts, and we await the outcome of the review.

How much taxpayer money was spent on the contract with WilmerHale?

**Response:** \$1,342,646.16. The contract with WilmerHale can be found at <https://www.dea.gov/sites/default/files/2023-05/Contract%20with%20Wilmer%20Cutler%20Pickering%20Hale%20and%20Door%20LLP.pdf>.

Is it the DEA's position that WilmerHale was acting in an attorney-client relationship when it prepared the report on DEA's foreign operations, and if so, does DEA invoke the attorney-client privilege in denying my information requests? If DEA is invoking this privilege, please provide a detailed explanation for why you believe an attorney-client relationship was created by a mere request to prepare a factual report on DEA failures and why you believe a Common Law privilege overrides a request for information from Congress.

**Response:** The Department's Office of Legislative Affairs is available to discuss any specific information requests regarding this matter.

**What provision of the governing contract with WilmerHale does DEA invoke to deny the information I've requested on the basis of confidentiality, and what legal justification do you offer for denying a congressional request for information by citing a taxpayer-funded contract?**

**Response:** The contract with WilmerHale can be found at <https://www.dea.gov/sites/default/files/2023-05/Contract%20with%20Wilmer%20Cutler%20Pickering%20Hale%20and%20Door%20LLP.pdf>.

**As you are aware, attorneys have a duty of loyalty to their clients. This means that if an attorney-client relationship existed between WilmerHale and DEA, WilmerHale would be limited in the extent to which it could publicly criticize DEA in its report without its permission, a clear conflict for a supposedly independent work product. If you are invoking an attorney-client relationship with WilmerHale, how is this consistent with DEA's description of the foreign operations report as "independent"?**

**Response:** WilmerHale's report can be found at <https://www.dea.gov/sites/default/files/2023-03/DEA%20Foreign%20Review%20Report.pdf>.

**My office has inquired since July about the termination of Mr. Brian Besser, a veteran DEA agent and former Special Agent in Charge of your Rocky Mountain Division. Mr. Besser is one of a long list of SES-level employees no longer with DEA since Administrator Milgram took office, raising questions about the DEA's ability to achieve its critical missions with the loss of senior officials. In addition, Mr. Besser's termination raises at least the appearance of possible whistleblower retaliation, since he provided information supporting my investigation into alleged contract irregularities in April of this year and then was subject to discipline. He has also advised my office that he cooperated with the Inspector General's investigation of those contracting issues, before he was notified of his proposed termination. My staff has requested information from DEA on this action and provided a release for records related to Mr. Besser. So far DEA has not responded, and I ask you to do so right away.**

**Has anyone at DEA ever ordered DEA employees to search the electronic devices, text messages, emails, computer systems, phones, or any other sources of information to find out who was cooperating with the inspector general's investigation or communicating with Congress? If so, please provide all details.**

**Response:** DEA would never condone the suggested conduct. If the suggested conduct occurred, evidence of such conduct would be forwarded to the OIG for a full inspection. On specific questions into DEA personnel matters, DEA policy prohibits comments or discussions on personnel matters.

**Do you agree to cooperate with my inquiry into Mr. Besser's termination and provide the information I have requested, including all records related to the investigation conducted by the**

**Office of Professional Responsibility into the allegations that DEA cited to justify Mr. Besser's termination? If not, why not?**

**Response:** On specific questions into DEA personnel matters, DEA policy prohibits comments or discussions on personnel matters.

**In the past 20 years, how many times has DEA disciplined any agent for allegations similar to those DEA cited in its termination of Mr. Besser? In your answer, please provide a summary of the factual predicate for each disciplinary action that was taken, as well as whether the employee had any prior allegations that may have justified the discipline.**

**Response:** On specific questions into DEA personnel matters, DEA policy prohibits comments or discussions on personnel matters.

**Questions for the Record from Senator Ben Ray Luján**  
**U.S. Senate Caucus on International Narcotics Control**  
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**There are differences between suspicious orders of opioids and suspicious orders of buprenorphine in the Suspicious Order Report System, but too often the line is not clear. The lack of formal guidance from the DEA has created chilling effects on access to buprenorphine due to the perceived risks of crossing an undefined threshold by the DEA. For example, in counties like Rio Arriba County, which had the highest drug overdose death rate in the state of New Mexico last year, doctors, hospitals and pharmacies were not able to fill prescriptions for buprenorphine in part because of an assumption that the DEA has a cap on the quantity of buprenorphine that can be dispensed. In December 2022, Congress directed the DEA to clarify the difference between suspicious orders of opioids and suspicious orders of buprenorphine in the SORS. But I believe that the DEA has failed to develop and provide sufficiently clear guidance for pharmacists, wholesalers, distributors, and patients for accessing buprenorphine.**

**□ Mr. Kimbell, will you commit to initiate a multi-agency evaluation of buprenorphine with the Food and Drug Administration and Substance Abuse and Mental Health Services Administration to eliminate access gaps to buprenorphine to reduce overdose and death from opioid use disorder?**

**Response:** DEA is continuing to work with FDA and SAMHSA on developing clear guidance on suspicious orders of buprenorphine in the Suspicious Order Report System (SORS).