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Rob Portman, Ranking Member

ADDRESSING THE SUPPLY CHAIN OF SYNTHETIC DRUGS IN THE UNITED STATES

MINORITY STAFF POLICY REPORT

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AND GOVERNMENTAL AFFAIRS**

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ADDRESSING THE SUPPLY CHAIN OF SYNTHETIC DRUGS IN THE UNITED STATES

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EXECUTIVE SUMMARY

Opioids are killing Americans, and transnational criminal organizations (TCOs) are adeptly shifting tactics to ensure that a steady supply of these deadly drugs continues to flow into our communities. Increasingly dominant in this battle are cheap and deadly synthetic opioids, like illicit fentanyl. Two of the key channels through which these drugs flow into our country are the supply chain of precursor drugs, commonly moving from China through the United States to drug labs in Mexico, and then the supply chain of finished product from those Mexican labs crossing into the United States, often through Ports of Entry (POE) along the nation's southwest border.¹

Under the leadership of Ranking Member, Senator Portman, Senate Homeland Security and Governmental Affairs Committee minority staff have studied these two principal supply chains in order to broaden public insights into how these drugs enter our communities and what changes the U.S. should make in order to have increased success at preventing them from entering our country.

This report outlines how TCOs exploit legitimate U.S. trade via in-bond shipments to transship chemical precursors from foreign countries through the U.S. to Mexico. The supply chain has shifted with synthetic drug precursor chemicals now being shipped from China to Mexico for final production in clandestine laboratories before smuggling them into the U.S. through the southwest border. As TCOs seek to utilize the most efficient and effective shipping routes to commingle their illicit cargo with legitimate trade, they are using Transportation & Export (T&E) and Immediate Export (IE) programs to ship precursors from China to Mexico after transiting through the U.S. Customs and Border Protection (CBP) receives limited information to assist their targeting efforts as these are in-bond shipments where the commodity only enters the U.S. to be immediately exported into Mexico. Additionally, under current policies, these chemical shipments are exempt from certain disclosure requirements.

This report also outlines how the Department of Homeland Security (DHS) does not have adequate authorities to perform investigations to counter TCOs. Title 21 of U.S. Code authorizes only the Drug Enforcement Administration (DEA) and the FBI to investigate narcotic and other controlled substance crimes. DHS agencies, which have the primary responsibility of combating contraband, such as drugs, entering the U.S. under Title 19 (Customs), but they lack Title 21 authority, and their employees must rely on cross-designation from DEA. This creates unnecessary obstacles and limitations, most notably for Homeland Security

¹ Lauren Greenwood & Kevin Fashola, *Illicit Fentanyl from China: An Evolving Global Operation*, U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION (Aug. 24, 2021), https://www.uscc.gov/sites/default/files/2021-08/Illicit_Fentanyl_from_China-An_Evolving_Global_Operation.pdf

Investigations (HSI), which has statutory authority to investigate all aspects of TCO criminal activity except drugs.

Technology and modernization deficiencies at and between land POEs along the southwest border limit the U.S. ability to mount a successful strategy to counter TCOs methods to smuggle illicit narcotics into the U.S. Low non-intrusive inspection (NII) rates are a gaping hole in border security. Over 84 percent of the fentanyl seizures in FY 2022 occurred at designated ports of entry from passenger and commercial vehicles and pedestrians. Despite the effectiveness of NII, CBP currently only scans 2 percent of all passenger vehicles and 15 percent of all commercial vehicles at the southwest border. In addition, unlike international air or sea travel, CBP receives little to no advanced passenger information (API) for individuals seeking to make entry into the U.S. at southwest land ports of entry. Furthermore, with over 8,000 cross border incursions by unmanned aircraft systems in a recent one year period, the lack of authorities and limited success in targeting unmanned aircraft systems (UAS) operated by TCOs hinder law enforcement efforts.

Congress plays an important role in this fight by establishing national priorities and providing the funding resources needed to protect Americans. No single action will completely choke the synthetic opioid supply chain, but pragmatic and achievable steps outlined in this report can be taken.

A. The Committee's Research Methodology

This review began following the Biden administration's release of its first National Drug Control Strategy. The review examines the massive influx of fentanyl and other synthetic drugs entering our country and the Federal Government's actions in response. Beginning in June 2021 and through early 2022, the Committee received over twenty briefings from Federal agencies and partners leading the Government's effort to detect and deter the illicit supply chain of synthetic drugs and improve our enforcement capabilities.

Briefers to the Committee included senior leaders of the Office of National Drug Control Policy (ONDCP), Drug Enforcement Administration (DEA), Customs and Border Protection (CBP), Homeland Security Investigations (HSI), Department of State Bureau of International Narcotics and Law Enforcement (INL) and the Bureau of Western Hemisphere Affairs, U.S.-China Economic and Security Review Commission (USCC), CBP National Targeting Center (NTC), and other subject matter experts. Additionally, the Committee visited the Rio Grande Valley, Texas border area and spoke with DHS officials stationed in the McAllen and Brownsville area. This included touring the Brownsville Veterans Port of Entry (POE) and seeing first-hand the technology CBP employs to detect these deadly narcotics.

In the course of its oversight, the Committee held a hearing on May 5, 2022 titled Securing and Ensuring Order on the Southwest Border, where members heard directly from government witnesses on the evolving illicit activity of TCOs. Additionally the Committee held several other hearings covering important parts of this issue such as improving southwest border POEs, countering unmanned aircraft systems, and multiple hearings with DHS Secretary Alejandro Mayorkas.

B. Findings of Fact

- (1) **Not permanently scheduling fentanyl-related substances in the Controlled Substances Act limits law enforcement abilities to fight it.** The U.S. has created temporary scheduling orders on fentanyl and its analogues, but not permanently scheduling it in the Controlled Substances Act limits law enforcement by reducing regulatory authorities and penalties and by signaling to other countries, such as China—which has permanently scheduled fentanyl—that the U.S. is not taking the Fentanyl crisis as seriously as it could.
- (2) **The United Nations Commission on Narcotic Drugs has scheduled the primary precursor chemicals used for the production of fentanyl, but the U.S. must be vigilant in monitoring alternate precursors to keep pace with adaptations by transnational criminal organizations.** As traditional synthetic drug precursors become regulated and targeted, TCOs are switching to alternate precursors that have legal uses and are not controlled. TCOs also alter or mislabel shipments of precursors and exploit the abstract nature of chemical nomenclature and classification systems to avoid detection of scheduled substances.
- (3) **The *Synthetics Trafficking and Overdose Prevention (STOP) Act* largely eliminated mail delivery of fentanyl, but waivers to the act create potential gaps.** The STOP Act increased the security of U.S. inbound international mail packages by requiring advanced electronic data (AED) to be submitted for enhanced vetting by CBP. However, CBP can issue waivers for shipments from countries that it determines do not have the capacity to collect and transmit AED. This gap creates the potential for criminal organizations to transship fentanyl or other drugs through over 100 STOP ACT exempted countries.
- (4) **TCOs exploit legitimate U.S. trade via in-bond shipments to transship chemical precursors from foreign countries through the U.S. to Mexico.** The supply chain has shifted with synthetic drug precursor chemicals now being shipped from China to Mexico for final production in clandestine laboratories before smuggling them into the

U.S. through the southwest border. As TCOs seek to utilize the most efficient and effective shipping routes to commingle their illicit cargo with legitimate trade, they are using Transportation & Export (T&E) and Immediate Export (IE) programs to ship precursors from China to Mexico after transiting through the U.S. CBP receives limited information to assist their targeting efforts as these are in-bond shipments where the commodity only enters the U.S. to be immediately exported into Mexico. Additionally, under current policies, these chemical shipments are exempt from certain disclosure requirements.

- (5) **DHS does not have adequate authorities to perform investigations to counter transnational criminal organizations.** Title 21 of U.S. Code authorizes only DEA and the FBI to investigate narcotic and other controlled substance crimes. DHS agencies, which have the primary responsibility of combating contraband, such as drugs, entering the U.S. under Title 19 (Customs), but they lack Title 21 authority, and their employees must rely on cross-designation from DEA. This creates unnecessary obstacles and limitations, most notably for HSI, which has statutory authority to investigate all aspects of TCO criminal activity except drugs.
- (6) **Low non-intrusive inspection (NII) rates are a gaping hole in border security.** NII systems deployed at various POEs are large-scale scanning technology that enable CBP to detect contraband, such as narcotics and weapons, as well as materials that pose potential nuclear and radiological threats. Over 84 percent of the fentanyl seizures along the southwest border in FY 2022 occurred at designated POEs from passenger and commercial vehicles and pedestrians. Despite the effectiveness of NII, CBP currently only scans 2 percent of all passenger vehicles and 15 percent of all commercial vehicles at the southwest border.
- (7) **Unlike international air or sea travel, CBP receives little to no advanced passenger information (API) for individuals seeking to make entry into the U.S. at southwest land ports of entry.** API improves efficiency by allowing risk-informed screening determinations and increasing successful interdictions, thus enhancing border security while reducing congestion for legitimate travel. The lack of API results in CBP having limited information in making screening determinations, reducing successful interdictions and increasing processing time for legitimate border crossings.
- (8) **Technology and modernization deficiencies at and between land POEs along the southwest border limit operations.** The

need to implement more NII scanning equipment and API technology is contingent on infrastructure improvements at POEs. This includes between POEs with the increase in the smuggling of synthetic drugs through these areas. Additionally, even after these modernization efforts are put in place, they cannot reach their full potential until staffing shortages are addressed.

- (9) **The lack of authorities and limited success in targeting unmanned aircraft systems (UAS) operated by TCOs hinder law enforcement efforts.** With over 8,000 cross border incursions by UAS in a recent one year period, CBP is the only federal agency along the southwest border authorized to detect and mitigate UAS. Additionally, only five areas of responsibility along the border are designated as covered assets by DHS to allow the mitigation of drones.

C. Recommendations

- (1) Congress should pass the *Federal Initiative to Guarantee Health by Targeting Fentanyl (FIGHT Fentanyl) Act* and take action to schedule fentanyl and fentanyl-related substances permanently in the Controlled Substances Act, which will enhance law enforcement efforts and lead to more effective diplomacy with international partners.
- (2) CBP should reduce the number of STOP Act waivers. These waivers create a backdoor, through which the mail system, could once again, be used as a delivery mechanism for Fentanyl and synthetic opioids.
- (3) CBP should work to improve visibility on global supply chains by developing strategies to prevent Transportation & Export (T&E) and Immediate Export (IE) in-bond shipments from being exploited by TCOs to transship chemical precursors. This should include requiring advanced notification and data be submitted for all in-bond chemical shipments and designating common precursor chemicals used to make synthetic drugs as controlled commodities for end-to-end transparency.
- (4) The U.S. should leverage the mission of the World Customs Organization to develop international standards to monitor and target the global shipments of chemical precursors that are commonly used to create synthetic drugs. So doing would foster cooperation and facilitate legitimate trade, modeled after their Programme Global Shield.

- (5) Congress should grant Title 21 drug authority to DHS components, such as HSI and CBP, which have responsibility for combating TCOs and stopping the illicit flow of synthetic drugs from entering our country.
- (6) CBP should significantly increase NII of passenger and commercial vehicles and pedestrians entering land POEs with the goal of reaching 100 percent.
- (7) CBP should improve and deploy more API processes at southwest border land POEs, such as pre-primary scanning, license plate readers, and radio frequency identification ready lanes, to enhance vetting efforts without impeding legitimate trade and travel.
- (8) DHS should invest in more technology, modernization, and staffing at and between land POEs. This includes POE infrastructure improvements to allow for more NII scanning and API processes, autonomous surveillance towers in remote border areas, more CBP officers and technicians, and more HSI agents.
- (9) Increased bilateral cooperation from Mexico is needed on data sharing and operations, and with increased cooperation, Congress could improve international task forces by authorizing HSI to pay stipends to its foreign vetted task force members.
- (10) DHS should designate the entire southwest border as a covered asset to allow for UAS mitigation and expand the number Federal agencies to have the authorization to detect and mitigate along the border.

I. BACKGROUND

A. Devastating Consequences

Synthetic opioid drugs, such as fentanyl, are devastating American communities. Casualties from these drugs are counted among men and women, among the young and those more seasoned in years, among all races, and among both the affluent and the impoverished.² One such casualty was Tiffany Leigh Robertson from northeast Ohio, who at the age of 26 in 2015, passed away from fentanyl poisoning after ingesting a counterfeit pill.³ Tiffany was the only daughter of Virginia Krieger, who addressed Ranking Member Portman and Senate Homeland Security and Governmental Affairs Committee Republicans during a Border Crisis Roundtable Discussion in 2021.

As a bereaved mother and co-founder of The Fentanyl Awareness Coalition, Krieger has worked tirelessly to put a face on the opioid crisis and its devastating effects on countless families. In 2018, enactment of the *Synthetics Trafficking and Overdose Prevention (STOP) Act* and related policy changes interrupted a part of the fentanyl supply chain that brought about Tiffany's death. The STOP Act and implementing policies impeded the direct shipment of synthetic opioids from China to the U.S. via the U.S. Postal Service (USPS).⁴ Thereafter, however, suppliers in China further shifted supply chain logistics, and as Krieger highlighted at the roundtable in 2021, the crisis continues as deadly drugs still make their way into the U.S. today. In June of this year, the *Columbus Dispatch* reported on the deaths of two female students at The Ohio State University.⁵ These bright students took counterfeit Adderall pills that were unknowingly laced with fentanyl. Families and communities are devastated by such tragedies, which recur far too frequently in the United States.

Notwithstanding past policy efforts—including some recent successes—fentanyl-related deaths in the United States continue to soar. Recent data from the National Center for Health Statistics at the Centers for Disease Control and Prevention (CDC) shows that a record number of lives in communities across the

² *Roundtable Discussion on the Realities of the Border Crisis*, U.S. Senate Homeland Security and Governmental Affairs Committee 117th. Cong. (Oct. 20, 2021), (testimony of Virginia Krieger, Co-President, Lost Voices of Fentanyl).

³ *Id.*

⁴ *Combatting the Opioid Crisis: Oversight of the Implementation of the STOP Act*, hearing before the Permanent Subcommittee on Investigations of the United States Senate Homeland Security and Governmental Affairs Committee (Dec. 10, 2020), (testimony of Robert Cintron Vice President, Logistics United States Postal Service), <https://about.usps.com/newsroom/testimony-speeches/121020-vp-logistics-statement-on-keeping-opioids-out-of-the-us-mail-and-stop-act.htm>

⁵ *Autopsy reports confirm two Ohio State students died of accidental fentanyl overdoses*, THE COLUMBUS DISPATCH (June 28, 2022), <https://www.dispatch.com/story/news/local/2022/06/28/autopsy-reports-confirm-ohio-state-students-died-fentanyl-overdoses/7759211001/>

country are still being lost to illicit narcotics, and specifically fentanyl.⁶ The U.S. Department of Health and Human Services designated this crisis an epidemic on October 26, 2017.⁷ According to the CDC, total drug overdose deaths in the United States climbed from an estimated 93,655 in 2020 to 107,622 in 2021, and fentanyl is attributed to 71,238—over two-thirds—of the 2021 overdose deaths.⁸ Moreover, hope for a trend reversal in 2022 seems unlikely with the CDC projecting 109,247 drug overdose deaths between April 2021 and March 2022, a 9.7 percent increase from the previous period.⁹ These deaths are largely driven by the proliferation of fentanyl, as opioids accounted for almost 75 percent of all overdose deaths in 2020, with 82.3 percent of opioid-involved overdose deaths containing synthetic opioids.¹⁰

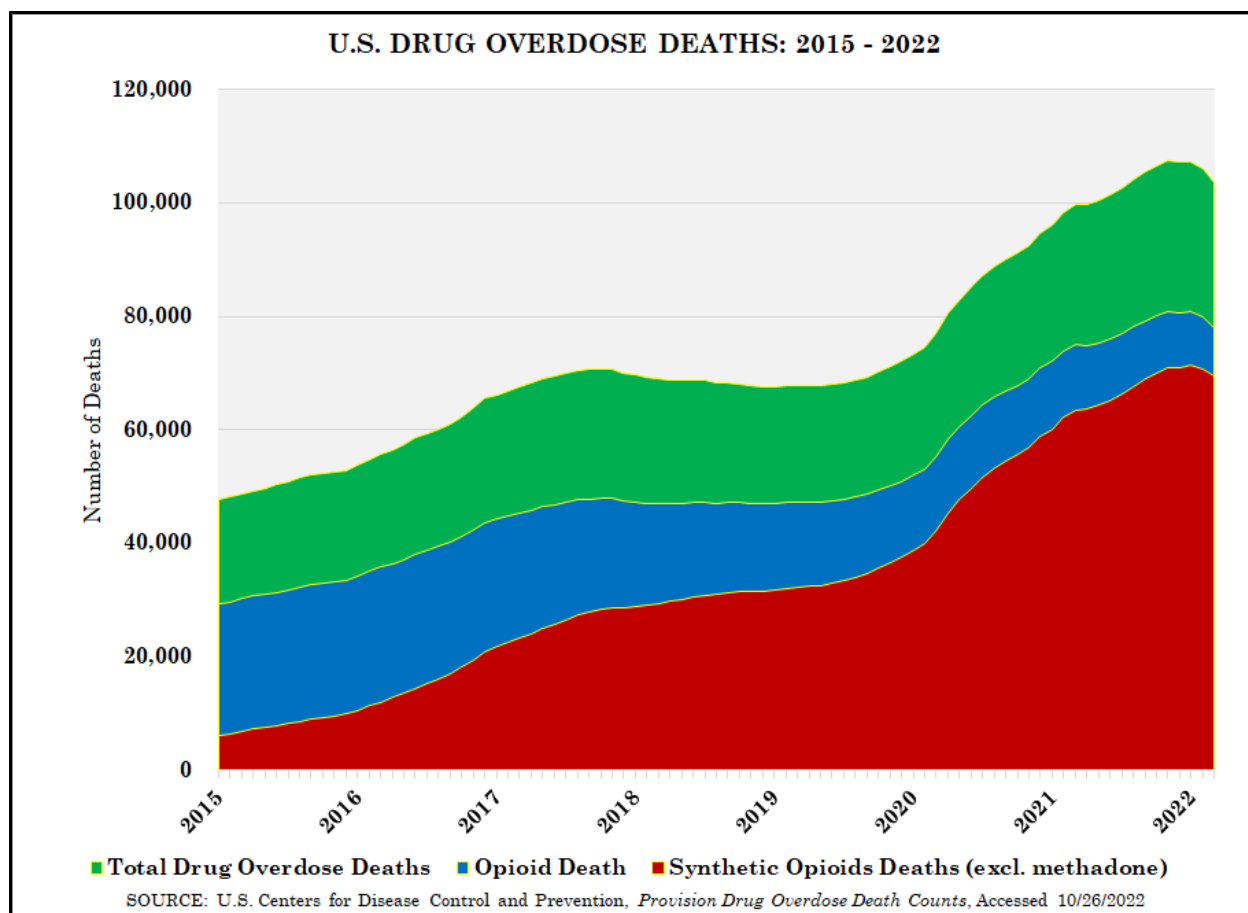
⁶ *Synthetic Opioid Overdose Data*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/drugoverdose/deaths/synthetic/index.html>

⁷ Press Release, *HHS Acting Secretary Declares Public Health Emergency to Address National Opioid Crisis*, U.S. DEPT. OF HEALTH AND HUMAN SERVICES (Oct. 26, 2017), <https://public3.pagefreezer.com/browse/HHS.gov/31-12-2020T08:51/https://www.hhs.gov/about/news/2017/10/26/hhs-acting-secretary-declares-public-health-emergency-address-national-opioid-crisis.html>.

⁸ *U.S. Overdose Deaths In 2021 Increased Half as Much as in 2020 – But Are Still Up 15%*, CENTERS FOR DISEASE CONTROL AND PREVENTION (May 11, 2022), https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2022/202205.htm

⁹ *Provisional Drug Overdose Death Counts*, CENTER FOR DISEASE CONTROL AND PREVENTION, CTR. FOR HEALTH STATISTICS, (updated Feb. 9, 2022), <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm>

¹⁰ *Drug Overdose Deaths Remain High*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/drugoverdose/deaths/index.html>



B. Drug Trafficking and Transnational Criminal Organizations

The term “drug cartel” has been in the American lexicon for decades, but additional related terms have come into usage, such as “drug trafficking organization” (DTO) and “transnational criminal organization” (TCO). TCOs are defined by Executive Order as “groups, networks, and associated individuals who operate transnationally for the purpose of obtaining power, influence, or monetary or commercial gain, wholly or in part by illegal means, while advancing their activities through a pattern of crime, corruption, or violence, and while protecting their illegal activities through a transnational organizational structure and the exploitation of public corruption or transnational logistics, financial, or communication mechanisms.”¹¹ TCO is the broadest term, and TCOs are often referred to as cartels or DTOs;¹² in this paper, the terms may be used

¹¹ Exec. Order No. 14060, 86 Fed. Reg. 71793, *Establishing the United States Council on Transnational Organized Crime*, (Dec. 15, 2021), <https://www.govinfo.gov/app/details/FR-2021-12-20/2021-27605>

¹² CONG. RESEARCH SERV., R41576, *Mexico: Organized Crime and Drug Trafficking Organizations* (June 7, 2022), <https://crsreports.congress.gov/product/pdf/R/R41576>

interchangeably. In short and as it relates to the fentanyl supply chain, TCOs supply the broad financial architecture and offer the logistics for delivering the necessary precursors to labs in Mexico where synthetic opioids are produced; DTOs—which may also be part of the TCO—then traffic the finished product into the United States.

C. History of the Opioid Crisis

1. Origins of the Opioid Crisis

The current explosion of fatal opioid overdoses stems from the period of 1999 to 2011 when consumption of oxycodone in the United States increased by nearly 500%,¹³ and the opioid pain reliever overdose death rate nearly quadrupled.¹⁴ In a November 2016 report, the Surgeon General noted that the “over-prescription of powerful opioid pain relievers beginning in the 1990s led to . . . a resurgence of heroin use, as some users transitioned to using this cheaper street cousin of expensive prescription opioids.”¹⁵

During this pharmaceutical prescription opioid boom, initially suppliers were based in both China and Mexico, with product coming from China via the USPS, and from Mexico via the southwest border. While the majority of seizures and product have always come from Mexico, fentanyl from China through the mail was a notable and dangerous component of the supply chain. However, corresponding with increased U.S. diplomatic pressure on China outlined later in this report and enactment of federal legislation in 2018,¹⁶ which included passage of the STOP Act—following a January 24, 2018 hearing and release of a U.S. Senate Homeland Security & Governmental Affairs Committee (HSGAC) Permanent Subcommittee on Investigations (PSI) Staff Report, “Combating the Opioid Crisis: Exploiting Vulnerabilities in International Mail”¹⁷—between FY 2018 and FY 2020, CBP synthetic opioid seizures from China declined by 99.6% percent.¹⁸

¹³ Andrew Kolodny et al., *The Prescription Opioid and Heroin Crisis: A Public Health Approach to an Epidemic of Addiction*, 36 ANNUAL REVIEW OF PUBLIC HEALTH, 559-74 (Jan. 12, 2015), <https://www.annualreviews.org/doi/10.1146/annurev-publhealth-031914-122957>

¹⁴ *Id.*

¹⁵ *Facing Addiction in America: Surgeon General’s Report on Alcohol, Drugs, and Health*, DEP’T OF HEALTH AND HUMAN SERVS. (Nov. 2016), <https://addiction.surgeongeneral.gov/sites/default/files/surgeon-generals-report.pdf>

¹⁶ Substance Use-Disorder Prevention That Promotes Opioid Recovery and Treatment for Patients and Communities Act, Pub. L. No.115-271 (Oct. 24, 2018), <https://www.congress.gov/115/plaws/publ271/PLAW-115publ271.pdf>.

¹⁷ *Combating the Opioid Crisis: Exploiting Vulnerabilities in International Mail*, Staff Report, United States Senate Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations (Jan. 25, 2018), <https://www.govinfo.gov/content/pkg/CHRG-115shrg30696/pdf/CHRG-115shrg30696.pdf>

¹⁸ *Id.*

Today, the incursion of illicit fentanyl into the United States is centralized at the southwest border,¹⁹ but its production involves international contributors, with both China and Mexico being key players. Mexican and Chinese TCOs work together as precursor chemicals are sent from China to Mexico, often through the Port of Los Angeles.²⁰ Precursors are the chemical ingredients of manufactured illicit drugs but also have legal uses such as in “pharmaceuticals, cosmetics, perfumes, cleaning agents, pesticides, insecticides, fertilizers, lubricants, explosives as well as in various other industries.”²¹ China largely plays the role of precursor supplier while Mexico performs the role of manufacturer and distributor.²² With easily accessible precursors from China, Mexican TCOs firmly established a market for cheap counterfeit prescription opioid pills laced with deadly fentanyl. While Mexican cartels still traffic heroin along with other traditional illicit narcotics, fentanyl, which is often delivered through counterfeit pills, has become a favored means to meet the demand for pain relievers in the United States.

These illegally manufactured narcotics containing fentanyl are made to appear like real prescription opioid medications such as oxycodone (OxyContin, Percocet), hydrocodone (Vicodin), and alprazolam (Xanax). This disguising is accomplished by means of illicit pill press laboratories, which are now common in Mexico, with some even present in the U.S. These labs employ chemists who are becoming more efficient in measuring fentanyl, which leads to stronger doses and addictions for their clients.²³ Then, these labs produce pills in two forms—the tableting variety, wherein “powdered and granular solids, or semi-solid material” is compacted into solid tablet pills,²⁴ and the encapsulating variety, wherein shells or capsules are filled “with any powdered, granular, semi-solid, or liquid material.”²⁵

While counterfeit pills may look like genuine prescription drugs, quality control in such drugs varies widely, and DEA lab analyses in 2022 reveals that

¹⁹ *Federal Government Perspective: Improving Security, Trade, and Travel Flows at the Southwest Border Ports of Entry: Hearing before the Subcommittee on Government Operations and Border Management of the Senate Homeland Security and Governmental Affairs Committee*, 117th. Cong. (Nov. 17, 2021), Senator Rob Portman questioning of CBP Deputy Executive Assistant Commissioner Diane J. Sabatino, <https://www.hsgac.senate.gov/media/minority-media/portman-presses-federal-witnesses-on-increase-in-fentanyl-coming-over-southern-border>

²⁰ Briefing to HSGAC on Illicit Precursor Investigations, HOMELAND SECURITY INVESTIGATIONS (Jan. 14, 2022).

²¹ *Fact Sheet on Precursor Control, World Drug Report 2014*, UNITED NATIONS OFFICE ON DRUGS AND CRIME, https://www.unodc.org/documents/wdr2014/Fact_Sheet_Ch2_2014.pdf

²² *Illicit Fentanyl from China: An Evolving Global Operation*, U.S.-CHINA ECON. AND SECURITY REV. COMMISSION (USCC) (Aug. 24, 2021), https://www.uscc.gov/sites/default/files/2021-08/Illicit_Fentanyl_from_China-An_Evolving_Global_Operation.pdf

²³ Briefing to HSGAC on Fentanyl Drug Trafficking, U.S. DRUG ENFORCEMENT ADMIN. (Jan. 19, 2022).

²⁴ 21 CFR 1300.02, *Definitions Relating to Listed Chemicals*, <https://www.ecfr.gov/current/title-21/chapter-II/part-1300/section-1300.02>

²⁵ *Id.*

three out of every five counterfeit pills with fentanyl contains a potentially lethal dose.²⁶ Beyond the greater efficiency of chemists measuring fentanyl doses, this increased lethality is also due to many TCOs operating as “polydrug organizations.” A polydrug organization produces and distributes more than one type of drug, and in the criminal underground of illegal opioids and synthetic opioids, it is common for the production to occur within a shared space, such that drugs are unintentionally mixed. Cocaine and synthetic opioids, such as fentanyl, may be packaged together without the knowledge of either the user or the seller, which can lead to adverse reactions.²⁷ This is how black market generic Xanax tablets turn deadly with trace amounts of fentanyl mixed with the base drug.²⁸ Similarly, deaths from drug poisoning involving cocaine have increased by more than 250 percent from 2010 to 2018.²⁹ Combining fentanyl with other drugs leads users to inadvertently ingest stronger opioids than those to which their bodies are accustomed, leading to an increased chance of addiction or overdose.³⁰ As a result of the alarming increase in lethality and availability of counterfeit prescription pills, the DEA released a public safety alert on September 27, 2021, detailing the harms of unintentional overdoses.³¹

2. Seizures and Incursion Points

As overdose deaths rise, there has been a corresponding increase in the amount of fentanyl seized at the southwest border.³² However, the reality is that U.S. law enforcement can only guess at the total amount of illicit fentanyl, and other illicit narcotics, that are actually smuggled into the U.S. The available data is based on the fentanyl seized primarily at POEs, which is only part of the total. Estimates largely from POE seizures are the primary source used to form our understanding of how and where fentanyl is crossing the U.S. borders, so there is much we simply do not know.³³

²⁶ *Response to HSGAC*, U.S. DRUG ENFORCEMENT ADMIN., OFFICE OF CONGRESSIONAL AFFAIRS, (Dec. 20, 2022), <https://www.dea.gov/alert/dea-laboratory-testing-reveals-6-out-10-fentanyl-laced-fake-prescription-pills-now-contain#>

²⁷ Nat'l Drug Assessment Threat, 2020, U.S. DRUG ENFORCEMENT ADMIN.

²⁸ *Drug Fact Sheet: Counterfeit Pills*, U.S. DRUG ENFORCEMENT ADMIN. (May 13, 2021), <https://www.dea.gov/sites/default/files/2021-05/Counterfeit%20Pills%20fact%20SHEET-5-13-21-FINAL.pdf>

²⁹ Nat'l Drug Assessment Threat, 2020. U.S. DRUG ENFORCEMENT ADMIN. 31-32.

³⁰ *Fentanyl Drug Facts*, NIH NATIONAL INSTITUTE ON DRUG ABUSE (June 2021), <https://www.drugabuse.gov/publications/drugfacts/fentanyl>

³¹ Press Release, *DEA Issues Public Safety Alert on Sharpe Increase in Fake Prescription Pills Containing Fentanyl and Meth*, U.S. DRUG ENFORCEMENT ADMIN. (Sept. 27, 2021), <https://www.dea.gov/press-releases/2021/09/27/dea-issues-public-safety-alert>

³² *Drug Seizure Statistics*, U.S. CUSTOMS AND BORDER PROTECTION, <https://www.cbp.gov/newsroom/stats/drug-seizure-statistics>

³³ CONG. RESEARCH SERV., *Illicit Drug Flows and Seizures in the United States: What Do We [Not] Know?*, (July 3, 2019), <https://crsreports.congress.gov/product/pdf/R/R45812>

In Fiscal Year (FY) 2022, CBP seized a record high 14,700 pounds of fentanyl, an increase of 31 percent from FY 2021 and 206 percent from FY 2020.³⁴ Ninety-six percent of these seizures occurred at the southwest border and of those, approximately 84 percent occurred at ports of entry (POEs) via vehicles and pedestrian crossings.³⁵ To put these numbers in perspective, the DEA estimates that 2 mg of fentanyl is a potentially lethal dose, meaning 14,700 pounds of fentanyl is potentially more than 3.3 billion lethal doses.³⁶

Mexican TCOs employ a variety of methods to smuggle fentanyl, heroin, and other illicit opioids into the U.S., and they do so by utilizing a range of concealment methods to hide their drug shipments. Methods include having vehicles retrofitted with concealed compartments that are used to hide narcotics. More complex and intricate aftermarket modifications make the detection of illicit drug loads challenging for law enforcement.³⁷ Body carriers, or drug mules, who conceal narcotics on their body or under their clothing or inside their body cavities, also continue to be used by TCOs to facilitate the movement of drugs.

Beyond the POEs, Border Patrol has seen a recent increase in hard narcotics, such as methamphetamine, smuggled through desert and remote mountainous areas. U.S. Border Patrol is concerned that this tactic of smuggling methamphetamine on foot through the desert may become a trend for trafficking hard narcotics into the United States. As demand for narcotics increases, TCOs utilize different smuggling methods to further escalate their operations.³⁸ From FY 2021 to FY 2022, Border Patrol fentanyl seizures increased 120% along the southwest border.³⁹ Though CBP maintains that the vast majority of fentanyl still enters the U.S. through POEs,⁴⁰ Border Patrol officials have told the Committee that they believe more drugs are being smuggled between POEs due to a decrease in Border Patrol agents patrolling the areas, as those agents have been reassigned with processing unlawful migrants to address the ongoing surge.⁴¹

³⁴ *Drug Seizure Statistics F.Y. 2022*, U.S. CUSTOMS AND BORDER PROTECTION.

³⁵ *Id.*

³⁶ *Facts about Fentanyl*, U.S. DRUG ENFORCEMENT ADMIN., (Apr. 29, 2021), <https://www.dea.gov/resources/facts-about-fentanyl>

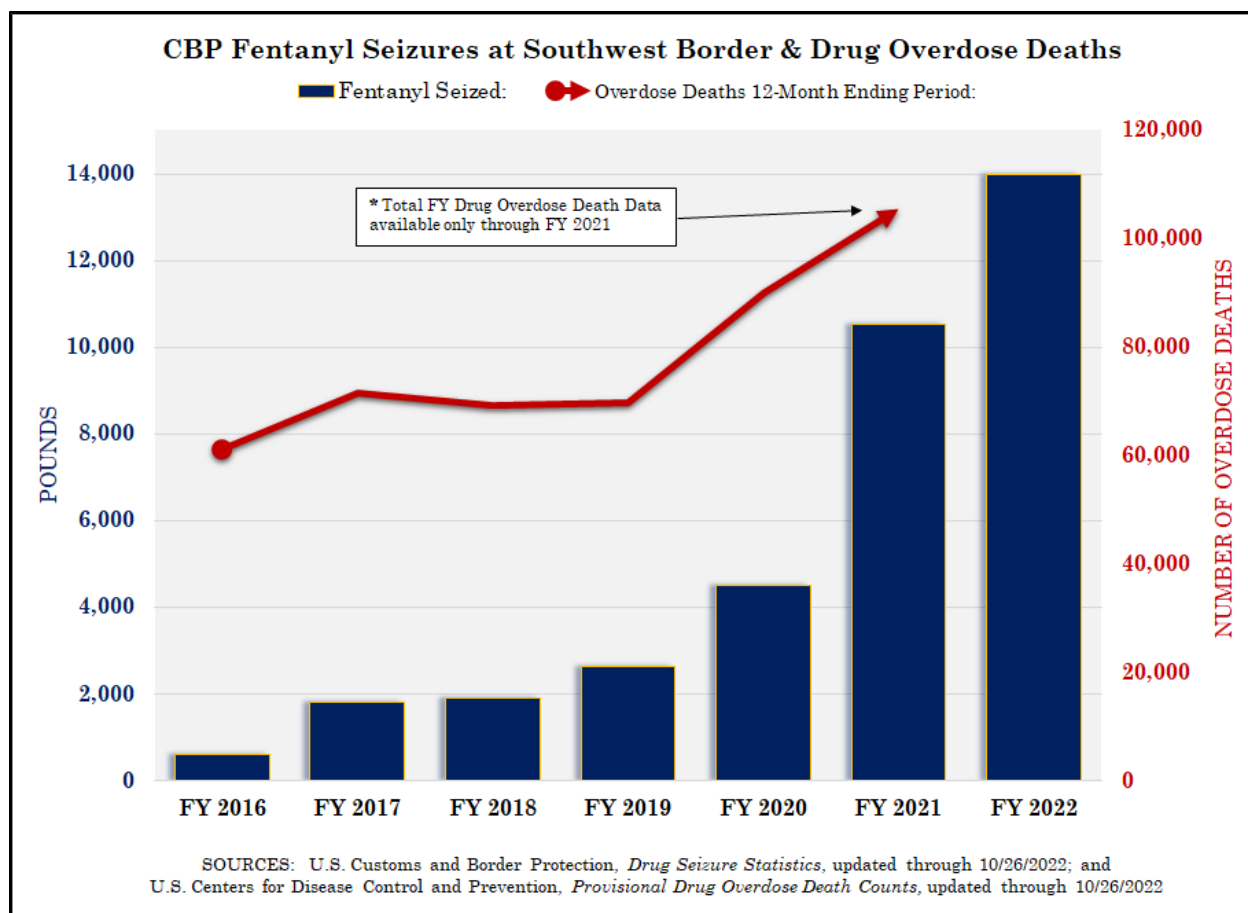
³⁷ *2020 National Drug Threat Assessment*, U.S. DRUG ENFORCEMENT ADMIN.

³⁸ Press Release, *Border Patrol Seizes 102 lbs of Narcotics, Arrest 5 Drug Smugglers in Remote Desert Pass*, U.S. CUSTOMS AND BORDER PROTECTION (July 19, 2019), <https://www.cbp.gov/newsroom/local-media-release/border-patrol-seizes-102-lbs-narcotics-arrest-5-drug-smugglers-remote>

³⁹ *Drug Seizure Statistics F.Y. 2022*, U.S. CUSTOMS AND BORDER PROTECTION.

⁴⁰ *Securing and Ensuring Order on the Southwest Border: Hearing before the Senate Homeland Security and Governmental Affairs Committee*, 117th Cong. (May 5, 2022) (written testimony of Acting Chief Operating Officer Benjamin “Carry” Huffman, U.S. Customs and Border Protection), <https://www.hsgac.senate.gov/hearings/securing-and-ensuring-order-on-the-southwest-border>

⁴¹ Border Patrol Briefing – McAllen sector, HSGAC Staff. Delegation to Border Patrol RGV Centralized Processing Center, (Apr. 13, 2022).



3. National and International Response

Beginning with the Obama administration, the U.S. engaged with China to address illicit fentanyl trafficking by scheduling fentanyl analogues.⁴² Fentanyl analogues are illicit—and often deadly—alterations of the medically prescribed drug fentanyl. The analogues have similar—but not the same—chemical structure, and they mimic the pharmacological effects of the original drug.⁴³ In the case of fentanyl, analogues have modifications to the core fentanyl molecule, as recognized by the DEA in the temporary scheduling of fentanyl-related substances, and there

⁴² *Statement by National Security Council Spokesperson Ned Price on U.S.-China Enhanced Control Measures for Fentanyl*, THE WHITE HOUSE, (Sept. 3, 2016), <https://obamawhitehouse.archives.gov/the-press-office/2016/09/03/statement-national-security-council-spokesperson-ned-price-us-china>.

⁴³ *Explainer Article: Fentanyl Analogues*, PACIFIC NORTHWEST NATIONAL LABORATORY, <https://www.pnnl.gov/explainer-articles/fentanyl-analogs>

are potentially 3,024 analogue variations from the fentanyl molecule, some being less potent and others, like carfentanil, being significantly more potent.⁴⁴

In October 2015, China added 116 psychotropic substances, including six types of fentanyl analogues, to the supplementary list of the Measures for the Control of Non-Medicinal Narcotic Drugs and Psychotropic Drugs.⁴⁵ China also committed to putting additional scrutiny on U.S.-bound exports of controlled substances that were prohibited in the U.S., but not in China, and they agreed to increase the exchange of law enforcement and scientific information to control substances and chemicals of concern.⁴⁶ Between 2015 and 2018, the Chinese government banned 175 chemicals related to synthetic drugs, 32 of which were fentanyl analogues and fentanyl precursors.⁴⁷

In 2019, the Trump administration encouraged China to schedule the entire class of fentanyl drugs, and prohibit the production, sale, and export of all fentanyl-class drugs except by authorized firms with licenses granted by the Chinese government. Scheduling all types of fentanyl marked the first time the PRC ever scheduled an entire class of drugs.⁴⁸ In addition to the class-wide scheduling of fentanyl, China increased efforts to eliminate illicit fentanyl in their country by:

- Investigating suspected illicit fentanyl manufacturing bases;
- Scrubbing drug-related content from the internet;
- Cutting off online communication and transaction channels for criminals;
- Pressuring parcel delivery services to require that senders register their real names;
- Increasing inspections of international parcels;
- Setting up special teams to conduct criminal investigations focused on manufacturing and trafficking of fentanyl substances and other drugs;

⁴⁴ *The Countdown: Fentanyl Analogues and the Expiring Emergency Scheduling Order: Hearing before the U.S. Senate Judiciary Committee*, 116th. Cong. (June 4, 2019), (written testimony of Kemp L. Chester, Assistant Director of the National Opioids and Synthetics Coordination Group Office of National Drug Control Policy), <https://www.judiciary.senate.gov/download/chester-testimony>

⁴⁵ *Control of Fentanyl-Related Substances*, THE LANCET PSYCHIATRY (July 2019), [https://www.thelancet.com/journals/lanpsy/article/PIIS2215-0366\(19\)30218-4/fulltext](https://www.thelancet.com/journals/lanpsy/article/PIIS2215-0366(19)30218-4/fulltext)

⁴⁶ *Statement by National Security Council Spokesperson Ned Price on U.S.-China Enhanced Control Measures for Fentanyl*, THE WHITE HOUSE (Sept. 23, 2016), <https://obamawhitehouse.archives.gov/the-press-office/2016/09/03/statement-national-security-council-spokesperson-ned-price-us-china>.

⁴⁷ *Tackling Fentanyl: The China Connection: hearing before the Committee on Foreign Affairs, Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations*, 115th. Cong. (Sept. 6, 2018), (prepared statement of Kirsten D. Madison, Assistant Secretary of State for International Narcotics and Law Enforcement Affairs), <https://www.congress.gov/115/chr/CHRG-115hhrg31451/CHRG-115hhrg31451.pdf>

⁴⁸ Vanda Felbab-Brown, *Fentanyl and Geopolitics: Controlling Opioid Supply from China*, BROOKINGS INSTITUTE (July 8, 2020), https://www.brookings.edu/wp-content/uploads/2020/07/8_Felbab-Brown_China_final.pdf

- Strengthening information-sharing and case cooperation with “relevant countries,” including the United States, with the goal of dismantling transnational drug smuggling networks; and
- Increasing development of technology for examining and identifying controlled substances.⁴⁹

China denies that it remains a hub that enables the mass production of illicit fentanyl, asserting that they have taken more resolute actions against fentanyl than the United States.⁵⁰ In September 2021 remarks from China’s embassy in the U.S., the official Chinese spokesperson argued that the United States has not matched China’s strict regulations: “the biggest producer and user of fentanyl drugs in the world, the U.S. has a fentanyl problem more rampant than other countries, but it has not yet officially scheduled fentanyl substances.”⁵¹ However, despite China advancing regulations relating to fentanyl and its analogues, precursor chemicals continue to originate from China, and they remain the critical element in the supply chain feeding Mexican cartels and enabling the drug overdose crisis in America today.⁵²

4. China and Precursors

After studying China’s role in today’s illicit fentanyl market, the U.S.-China Economic and Security Review Commission (USCC) assessed that China has difficulty regulating fentanyl precursor production due to the large number of chemical and pharmaceutical companies, which produce precursor chemicals with legitimate uses.⁵³ As the principal chemical supplier for Mexican Cartels, “China is doing little by way of know your customer (KYC) to ensure these chemicals are destined for legitimate consumers.”⁵⁴ Given China’s visibility into their banking system and their strong surveillance state, its claims of not being able to do more to identify illicitly sourced transactions are not credible.⁵⁵ Further, the USCC also points out that “regulating illicit fentanyl production is not a domestic priority for China since the production of such fentanyl is economically lucrative, while the

⁴⁹ CONG. RESEARCH SERV. R45790, *The Opioid Epidemic: Supply Control and Criminal Justice Policy – Frequently Asked Questions* (July 28, 2019), <https://crsreports.congress.gov/product/pdf/R/R45790>.

⁵⁰ *Remarks by the Spokesperson of the Chinese Embassy in the United States on the Fentanyl Issue*, EMBASSY OF THE PEOPLE’S REPUBLIC OF CHINA IN THE UNITED STATES (Sept. 2, 2021), http://www.china-embassy.org/eng/lcvt/sgfyrbt/202109/t20210903_9031414.htm

⁵¹ *Id.*

⁵² Vanda Felbab-Brown, *The China Connection to Mexico’s Illegal Economies*, BROOKINGS INSTITUTE, (Feb. 4, 2022), <https://brook.gs/3EaiE16>

⁵³ *Response to HSGAC*, U.S.-China Economic and Security Review Commission (USCC), (Dec. 20, 2022).

⁵⁴ *Response to HSGAC*, U.S. DEPT OF JUSTICE, OFFICE OF LEGISLATIVE AFFAIRS, (Dec. 20, 2022).

⁵⁵ Briefing to HSGAC on Chinese Precursor Chemicals for Illicit Fentanyl Production, U.S.-CHINA ECON. SECURITY REV. COMMISSION (USCC) (Dec. 16, 2021).

negative consequences occur mostly outside of China.”⁵⁶ DEA reinforces this view, noting that absent an internal drug problem, China is unlikely to let fentanyl trafficking stand in the way of their commerce.⁵⁷

Sanctioning Chinese actors involved in this illicit market is part of the U.S. approach. While studies suggest that sanctioning Chinese pharmaceutical and chemical companies is an effective way to disrupt precursor distribution flowing from China, it may be difficult to differentiate whether the Chinese company is complicit in the criminal activity, or if there are bad actor employees of the company that should be the target.⁵⁸

Still, the government of China places a premium on reputation, and they would like to avoid a damaging label such as “narco-state” or “narco-state enabler.”⁵⁹ Securing greater cooperation from China on precursors will require the U.S. and other countries to publicly pressure China to address its role as the preeminent synthetic drug precursor distributor.”⁶⁰ According to CBP, China’s enforcement level of exports of fentanyl precursors is low, primarily due to many chemical precursors not being illegal. CBP noted that information sharing between China and the U.S. is minimal, with the overwhelming effort on the U.S. side.⁶¹

The fentanyl synthetic opioid trade is enabled by a series of important partnerships. Chinese criminals taught Mexican TCOs how to produce fentanyl, facilitating the shift of production to Mexico. Mexican TCOs subsequently secure the bulk of their precursors from China. Increasingly, Chinese criminal organizations are engaged in laundering of drug proceeds on behalf of the Mexican TCOs. The law enforcement environment is made more complex by the broader surge in Chinese nationals seeking to get around currency restrictions put in place by Beijing that limit the amount of currency an individual can transfer out and limiting overseas cash withdrawals from Chinese bank issued cards. Asian criminal organizations have seized the opportunity to provide currency services, laundering U.S. dollar drug proceeds with Chinese nationals and Mexican TCOs.⁶²

⁵⁶ *Response to HSGAC*, U.S.-China Economic and Security Review Commission (USCC), (Dec. 20, 2022).

⁵⁷ Briefing to HSGAC on Fentanyl Drug Trafficking, U.S. DRUG ENFORCEMENT ADMIN. (Jan. 19, 2022).

⁵⁸ Briefing to HSGAC on Chinese Precursor Chemicals for Illicit Fentanyl Production, U.S.-CHINA ECON. SECURITY REV. COMMISSION (USCC) (Dec. 16, 2021).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Briefing to HSGAC on Opioids and Mexican Cartels, U.S. CUSTOMS AND BORDER PROTECTION, OPERATION OF FIELD OPERATIONS (Aug. 23, 2021).

⁶² Nat’l Drug Assessment Threat (2020), U.S. DRUG ENFORCEMENT ADMIN.

5. Mexico and the Finished-Product Pipeline

Illicit narcotics trafficking and transnational criminal activity have been a longstanding focus of the U.S. and Mexico bilateral relationship. Responding to a request for assistance from then-Mexican President Felipe Calderón, U.S. funding for the Mérida Initiative was signed into law by President George Bush on June 30, 2008. The initiative provided equipment and training in support of law enforcement operations and technical assistance to promote the long-term reform, oversight and professionalism of foreign security agencies.⁶³ The Mexican government pledged to tackle corruption while the U.S. government pledged to address drug demand and the illicit trafficking of firearms and bulk currency to Mexico.

Over time, as new administrations formed in both countries, the scope of the Mérida Initiative broadened. From FY 2011 - FY 2017, the initiative focused on (1) combating TCOs through intelligence sharing and law enforcement operations; (2) institutionalizing the rule of law while protecting human rights through various sector reform; (3) creating a 21st century U.S.-Mexican border through improving immigration enforcement in Mexico; and (4) building strong and resilient communities by addressing root causes of violence and reducing drug demand. President Trump's executive orders on combatting TCOs prioritized reducing synthetic drug production, improving border interdiction and port security, and combating money laundering.⁶⁴

On October 8, 2021, the U.S. announced the establishment of the U.S.-Mexico Bicentennial Framework for Security, Public Health, and Safe Communities, which was described as an effort to establish a comprehensive, long-term approach to pursue the safety and security of both countries.

The framework focused on three goals:

(1) Protect our People by preventing and reducing substance abuse, the exploitation of vulnerable people, homicides, and high-impact crime;

(2) Prevent Trans border Crime by securing modes of travel and commerce with strengthened oversight and coordination at POE; improving container control and detection of chemical precursors; increasing enforcement capacity to control synthetic drugs and precursors; reducing arms trafficking; and

⁶³ *Merida Initiative*, U.S. STATE DEP'T ARCHIVE, <https://2001-2009.state.gov/p/inl/merida/index.htm>

⁶⁴ CONG. RESEARCH SERV., R7-5700, *U.S.-Mexico Security Cooperation: From the Mérida Initiative to the Bicentennial Framework* (Apr. 7, 2022), <https://www.crs.gov/reports/pdf/IF10578/IF10578.pdf>

disrupting the capacity of TCOs and their illicit supply chains, with a particular focus on drug laboratories and precursors chemicals; and

(3) Pursue Criminal Networks by disrupting financial networks and reducing their ability to profit; collaborating on investigations and prosecutions; and by increasing bilateral operation to facilitate the extradition of TCO members under each nation's laws.⁶⁵

While accurate statistics for Mexican Customs inspections and seizures are unknown, recent assessments of Mexico POEs identified several areas for improvement in operational efficiency for the screening and interdictions of both north and southbound border traffic.⁶⁶ Areas for improvement include adequately training staff and vetting customs personnel manning POEs; more reliance on targeted information-driven inspections rather than random inspections; maximizing the capabilities of US-provided scanning technology; data sharing and coordination and between Mexican POEs and between U.S. and Mexican POEs; and implementation of a defense in depth strategy extending south from the border with interior checkpoints along major traffic corridors.⁶⁷

CBP currently focuses most of its vehicle scans on inbound traffic, with limited attention allocated to outbound traffic scanning efforts.⁶⁸ The current U.S. border security infrastructure and allocation of resources limits CBP's ability to target outbound traffic,⁶⁹ which underscores need for Mexico to control its own border and increase its enforcement capacity to stop contraband and illicit proceeds from reaching the cartels.

Today, Mexico has weak seaport security and there is a limited ability of Mexican authorities to detect and screen for illicit shipments and maintain full operational control.⁷⁰ Mexico's land border screening remains weak, and they have only limited ability to inspect vehicles and persons entering their country in a consistent manner.⁷¹ Despite Mexican government's claims of having a strong interest in preventing weapons trafficking and other illicit movements from the

⁶⁵ *Fact Sheet: U.S.-Mexico High-Level Security Dialogue*, THE WHITE HOUSE, (Oct. 8, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/10/08/fact-sheet-u-s-mexico-high-level-security-dialogue/>

⁶⁶ Briefing on Smart Border Initiative, SANDIA NATIONAL LABORATORY & DEPARTMENT OF STATE BRIEF WITH HSGAC (Nov. 18, 2021).

⁶⁷ *Response to HSGAC*, SANDIA NATIONAL LABORATORY, OFFICE OF GOVERNMENT RELATIONS, (Dec. 20, 2022)

⁶⁸ Briefing to HSGAC on Opioids and Mexican Cartels, U.S. CUSTOMS AND BORDER PROTECTION, OFFICE OF FIELD OPERATIONS (Aug. 23, 2021).

⁶⁹ *Id.*

⁷⁰ Briefing to HSGAC on Synthetic Opioids and Mexican Cartels, HOMELAND SECURITY INVESTIGATIONS, August 17, 2021.

⁷¹ *Id.*

U.S., it has not dedicated considerable resources to southbound inspections or enforcement at the border.

U.S. law enforcement agencies point to lack of willingness and cooperation as the most significant roadblock to deeper and more successful joint Mexico-U.S. law enforcement activity.⁷² Narcotic seizures made by Mexico are often not investigated or properly documented, enabling those responsible to continue their illicit activity.⁷³ Mexico's commitment to support counternarcotic efforts also comes into question when they only dedicate a small number of agents to assist DEA from their large Agencia de Investigación Criminal.⁷⁴ Only within the last year have some bureaucratic roadblocks been removed to allow assigned agents to query basic law enforcement databases and utilize DEA provided vehicles.⁷⁵ Additionally, there have been instances of unnecessary delay in responding to urgent life and death cases,⁷⁶ and death investigations by the Mexican government often lack "thoroughness, rigor, and persistence, which is reflected in the low effective prosecution rate."⁷⁷

The relationship between the Mexican government and the DEA has been extremely strained since President Andrés Manuel López-Obrador's inauguration in 2018,⁷⁸ and later compounded by the arrest and release of former Mexican Secretary of Defense General Salvador Cienfuegos on drug trafficking charges in the U.S. Following the General Cienfuegos incident, Mexico responded by severely reducing their cooperation with U.S. law enforcement. This included not approving any new visas for DEA agents for over one year and intentionally releasing evidence in a criminal matter in attempts to embarrass the U.S.⁷⁹ Mexico also passed a national security law that restricted information sharing with U.S. authorities and removed diplomatic immunity for foreign security agents.⁸⁰ Mexico later negotiated

⁷² Briefing to HSGAC on Fentanyl Drug Trafficking, U.S. DRUG ENFORCEMENT ADMIN. (Jan. 19, 2022).

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Response to HSGAC*, U.S. DEPT OF JUSTICE, OFFICE OF LEGISLATIVE AFFAIRS, (Dec. 20, 2022).

⁷⁶ Briefing to HSGAC on Fentanyl Drug Trafficking, U.S. DRUG ENFORCEMENT ADMIN. (Jan. 19, 2022).

⁷⁷ *Response to HSGAC*, U.S. DEPT OF JUSTICE, OFFICE OF LEGISLATIVE AFFAIRS, (Dec. 20, 2022).

⁷⁸ *Id.*

⁷⁹ Briefing to HSGAC on Fentanyl Drug Trafficking, U.S. DRUG ENFORCEMENT ADMIN. (Jan. 19, 2022).

⁸⁰ José de Córdoba and Santiago Pérez, *Mexico Passes Law Curbing Operations of Foreign Security Agents*, WALL STREET JOURNAL, (Dec. 15, 2020), <https://www.wsj.com/articles/mexico-passes-law-curbing-operations-of-foreign-security-agents-11608059949>

a reduction in restrictions from this law with the Biden Administration, but it did so only after using it as leverage in discussions.⁸¹

The rise and expansion of Mexican cartels and the inability of the Mexican government to reduce violent crimes has led to an alarming increase of homicides. Mexico has experienced an 84% increase in murders since 2015 and is home to the five cities with the highest homicide rates in the world: Tijuana, Ciudad Juarez, Uruapan, Irapuato, and Ciudad Obregon.⁸² From September 2020 to March 2021, 139 Mexican politicians, government officials, and political candidates were murdered.⁸³ Organized crime and cartel operations continue to spread throughout Mexico, contributing to the historically high homicide rates as the country has experienced a 40.5 percent organized crime rate increase since 2015.⁸⁴ In 2021, former U.S. ambassador to Mexico, Christopher Landau, estimated that between 35 and 40 percent of Mexican territory is controlled by drug cartels.⁸⁵

Despite the threat posed by organized crime, Mexico's commitment of resources to its security—including the military, which has a primary role in combatting drug cartels—lags behind other countries in the Western Hemisphere. On average from 2007 to 2020, Mexico allocated less than 0.5% of their Gross Domestic Product (GDP) on its military, one of the lowest numbers in Latin America.⁸⁶

D. Governing and Pending Laws and Regulations

1. Scheduling

Permanently scheduling fentanyl-related substances would help federal law enforcement agents in their effort to combat DTOs trafficking fentanyl. Scheduling refers to a system wherein drugs are classified by DEA from schedule I—minimal medicinal benefit high risk for abuse—to schedule V—which are consider low risk

⁸¹ Briefing to HSGAC on Fentanyl Drug Trafficking, U.S. DRUG ENFORCEMENT ADMIN. (Jan. 19, 2022).

⁸² *2021 Mexico Peace Index: Key Data From This Year's Report*, VISION OF HUMANITY, <https://www.visionofhumanity.org/mexico-peace-index-2021-by-the-numbers/>

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *The Bicentennial Framework for Security Cooperation: New Approach or Shuffling the Pillars of Merida?* CENTER FOR STRATEGIC & INTERNATIONAL STUDIES, (Oct. 9, 2021), <https://www.csis.org/analysis/bicentennial-framework-security-cooperation-new-approach-or-shuffling-pillars-m%C3%A9rida>

⁸⁶ Teresa Romero, *Military expenditure as percentage of Gross Domestic Product (GDP) in Mexico from 2007 to 2020*, STATISTA, (May 23, 2022), <https://www.statista.com/statistics/793995/military-expenditure-share-gdp-mexico/>

for abuse.⁸⁷ On February 6, 2018, the DEA issued a temporary scheduling order to schedule fentanyl-related substances and their chemical compounds that are not currently listed in any schedule of the *Controlled Substances Act* (CSA), into schedule I.⁸⁸ A schedule I controlled substance, more specifically, is a drug, substance, or chemical that has high potential for abuse; has no currently accepted medical use; and is subject to regulatory controls and administrative, civil, and criminal penalties.⁸⁹ While schedule I narcotics do not have a medical use, fentanyl is sometimes used to treat medical patients with chronic pain, who are physically tolerant to other opioids.⁹⁰

The DEA determined it was necessary to conduct this action in order to avoid an imminent hazard to public safety. Through the *Temporary Reauthorization and Study of the Emergency Scheduling of Fentanyl Analogues Act*, which became law on February 6, 2020, Congress extended this temporary control of fentanyl-related substances to January 28, 2021.⁹¹ Since then, Congress extended the order several times, most recently to December 31, 2022,⁹² with debate ongoing about future extensions.⁹³

On February 22, 2021, the *Federal Initiative to Guarantee Health by Targeting (FIGHT) Fentanyl Act* was introduced in the U.S. Senate. The bill would permanently place fentanyl-related substances as a class into schedule I of the CSA. Fentanyl related substances include any substance that is structurally related to fentanyl by modifying its chemical structure.⁹⁴

Also, the Government Accountability Office (GAO) published a report on April 21, 2021, titled “Considerations for the Class-Wide Scheduling of Fentanyl-Related Substances.” This report considered the impact of three potential actions

⁸⁷ *Drug Scheduling*, U.S. DRUG ENFORCEMENT ADMIN. (Nov. 18, 2022), <https://www.dea.gov/drug-information/drug-scheduling>

⁸⁸ *Schedules of Controlled Substances: Temporary Placement of Fentanyl-Related Substances in Schedule I*, 83 Fed. Reg. 5188, (Feb. 6, 2018), <https://www.govinfo.gov/app/details/FR-2018-02-06/2018-02319>

⁸⁹ *Drug Scheduling*, U.S. DRUG ENFORCEMENT ADMIN. (Nov. 18, 2022), <https://www.dea.gov/drug-information/drug-scheduling>.

⁹⁰ *Fentanyl Drug Facts*, NIH, NATIONAL INSTITUTE ON DRUG ABUSE (June 2021), <https://www.drugabuse.gov/publications/drugfacts/fentanyl>.

⁹¹ *Rules – Placement of Four Specific Fentanyl-Related Substances in Schedule I*, U.S. DRUG ENFORCEMENT ADMIN, DIVERSION CONTROL DIVISION, (May 4, 2021), https://www.deadiversion.usdoj.gov/fed_regs/rules/2021/fr0504_4.htm

⁹² Consolidated Appropriations Act, 2022, H.R.2471, 117th Cong., <https://www.congress.gov/bill/117th-congress/house-bill/2471/text>

⁹³ As of this report’s publication, the manager’s amendment (S.A.6552) to the *Fiscal Year 2023 Omnibus Appropriations Act* (H.R.2617) being considered by Congress would further extend this order to December 31, 2024. <https://www.congress.gov/117/crec/2022/12/19/168/197/CREC-2022-12-19.pdf#page=279>

⁹⁴ Federal Initiative to Guarantee Health by Targeting Fentanyl Act, S.339, 117th Cong., <https://www.congress.gov/bill/117th-congress/senate-bill/339> Accessed on 10/20/2

regarding the scheduling of fentanyl related substances: (1) allow the temporary scheduling order to expire; (2) schedule as a class without modifications; and (3) legislatively schedule as a class with modifications.⁹⁵

GAO determined that letting the temporary scheduling expire and allowing DEA to individually schedule specific fentanyl substances or use the analogue provisions in the CSA to prosecute cases involving unscheduled substances might address concerns that class-wide scheduling could result in convictions for substances that may not be harmful. However, this measure would not be sufficient to deter the creation of new and potentially dangerous substances.⁹⁶

Permanently scheduling fentanyl-related substances as a class would allow for more severe penalties to be imposed and reduce incentives to make new and existing fentanyl substances. However, there would be potential challenges created, including the time required to obtain approval to conduct research on schedule I substances and potentially overreaching sentencing guidelines for less harmful substances. Allowing modifications to the temporary scheduling order to include removing barriers to research and streamlining the process of removing substances from schedule I if they are discovered to have no abuse potential would ease concerns of permanently scheduling fentanyl-related substances as a class.⁹⁷

According to the DEA, taking action to permanently schedule fentanyl and its analogues, would provide the agency with additional regulatory authority and give other law enforcement agencies a greater capability to combat fentanyl trafficking. Furthermore, by acting on this issue, the U.S. would be in a stronger position in its ongoing outreach to countries like Mexico, to press foreign countries to follow suit.⁹⁸

In addition to scheduling fentanyl, and fentanyl-related substances, some precursors should also be scheduled. At the urging of U.S. officials, on March 16, 2017, the United Nations Commission on Narcotic Drugs, added two fentanyl precursors, 4-anilino-N-phenethylpiperidine (ANPP) and N-phenethyl-4-piperidone (NPP), and a fentanyl analog called butyrfentanyl, to their international control list. Five years later, on March 16, 2022, CND added three more fentanyl precursor chemicals including 4-anilinopiperidine (4-AP), 1-(tert-butoxycarbonyl)-4-phenylaminopiperidine (boc-4-AP), and N-phenyl-N-(piperidin-4-yl) propionamide (norfentanyl).⁹⁹ However, scheduling does not keep pace with innovation in the

⁹⁵ *Synthetic Opioids: Considerations for the Class-Wide Scheduling of Fentanyl-Related Substances* U.S. GOVERNMENT ACCOUNTABILITY OFFICE, (Apr. 12, 2021).

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ Briefing to HSGAC on Fentanyl Drug Trafficking, U.S. DRUG ENFORCEMENT ADMIN. (Jan. 19, 2022).

⁹⁹ *Press Release: At Urging of U.S., UN Commission Acts Against “Precursor” Chemicals Used to Produce Illicit Fentanyl*, THE WHITE HOUSE (Mar. 16, 2022),

illicit drug production industry, and since many precursors have licit uses, they are not subject to controls. Traffickers have intentionally moved to use these precursors rather than those controlled under international agreements. This has limited CBP's efforts in attempting to control or seize chemical precursors outright, and it is believed that cartels and TCOs will increasingly use basic household chemicals.¹⁰⁰

Controlling all precursors is not feasible. One Office of National Drug Control Policy (ONDCP) official explicitly acknowledged this during a July 8, 2021 meeting with HSGAC, stating: "We are pretty soon going to reach the limits of our ability to control chemical inputs."¹⁰¹ CBP and ONDCP, in a follow-up briefing, reiterated the focus should be on synthetic drugs as a group, not individual drugs. They reaffirmed there are too many ways around established precursors as they're currently tracking 1,200 variations and attempting to schedule chemical precursors is not a likely to be effective as organizations continue to move onto more commonly available alternatives.¹⁰²

To avoid scrutiny and detection, Chinese criminal organizations are now altering the abstract nature of the chemical nomenclature and classification systems to make it more difficult to track precursors. In addition to changing terminology, DEA and CBP are identifying new chemicals that are being created as precursors for fentanyl production and Mexican TCOs are recruiting chemists to create new unscheduled precursor chemicals for production.¹⁰³ Another new technique utilized by chemists is to add a tert-butyloxycarbonyl protecting group (BOC), or a small molecule, to the organic synthesis of a precursor drug changing its make-up and moving it off the regulated substance list. Once this new chemical is shipped to Mexico, chemists remove the BOC to revert it back to its original state.¹⁰⁴

CBP has fifteen laboratories working to stay ahead of the evolving science of precursors and synthetic drug production.¹⁰⁵ Ultimately, while regulating these chemicals is helpful where they stay one step away from the final product, many are multiple steps away. CBP noted that it may be of value to target the recruitment of the scientists who transform these drugs to disincentive their participation in the

<https://www.whitehouse.gov/ondcp/briefing-room/2022/03/16/at-urging-of-u-s-un-commission-acts-against-precursor-chemicals-used-to-produce-illicit-fentanyl/>

¹⁰⁰ Briefing to HSGAC on Synthetic Drugs and Fentanyl, U.S. CUSTOMS AND BORDER PROTECTION, OFFICE OF FIELD OPERATIONS (Nov. 23, 2021).

¹⁰¹ Briefing to HSGAC on Synthetic Opioids, OFFICE OF NATIONAL DRUG CONTROL POLICY (July 8, 2021).

¹⁰² *Id.*

¹⁰³ Briefing to HSGAC on Synthetic Opioids and Mexican Cartels, Homeland Security Investigations (Aug. 17, 2021).

¹⁰⁴ Briefing to HSGAC on Fentanyl Drug Trafficking, U.S. DRUG ENFORCEMENT ADMIN. (Jan. 19, 2022).

¹⁰⁵ *Response to HSGAC*, U.S. CUSTOMS AND BORDER PROTECTION, OFFICE OF CONGRESSIONAL AFFAIRS (Dec. 20, 2022).

illicit synthetic drug business.¹⁰⁶ While there are no known regulatory avenues to dissuade chemists from engaging in laboratory work with illicit narcotics, especially those in foreign countries, criminal enforcement options could deter involvement.

2. Synthetics Trafficking and Overdose Prevention (STOP) Act of 2018

There were a number of positive developments that led Chinese DTOs to change tactics, including the passage of the STOP Act and successful law enforcement targeting in the U.S. Significant factors in this tactics change were U.S. bilateral and multilateral diplomatic efforts to secure China's scheduling and enforcement of new regulations on fentanyl as a class. These actions led to Chinese TCOs shifting business models, largely eliminating mail delivery of the deadly drug to the U.S., and further increasing exportation of chemical precursors to Mexico, where finished fentanyl product is produced and subsequently smuggled into the U.S. Today, it is suspected that almost all illicit fentanyl in the U.S. originates from Chinese precursors.¹⁰⁷

On October 24, 2018, President Trump signed into law the *Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act*, which included several individual acts and provisions, including STOP Act, which was introduced by Senator Rob Portman. This bipartisan bill was introduced after an investigation that was led by Sen. Portman and HSGAC PSI. This investigation detailed how drug traffickers were exploiting vulnerabilities in the U.S. international mail system to easily ship synthetic drugs, such as fentanyl, from China into the U.S. through the USPS.¹⁰⁸

The new statute requires advanced electronic data (AED) on all inbound international packages, including packages originating from China, and it requires the USPS to refuse any inbound international packages without AED.¹⁰⁹ AED information includes various parcel dataset points such as sender/recipient information, content description, weight, declared value, and other shipping information that can be used by U.S. law enforcement to target inbound suspicious packages for additional screening.¹¹⁰

¹⁰⁶ *Id.*

¹⁰⁷ Vanda Felbab-Brown, *The China Connection to Mexico's Illegal Economies*, BROOKINGS INSTITUTE, (Feb. 4, 2022), <https://brook.gs/3EaiE16>.

¹⁰⁸ HSGAC Permanent Subcommittee on Investigations, *Combatting the Opioid Crisis: Exploiting Vulnerabilities in International Mail* (Jan. 2018).

¹⁰⁹ SUPPORT for Patients and Communities Act, Pub. L. No. 115-271 (Oct. 24, 2018), <https://www.congress.gov/115/plaws/publ271/PLAW-115publ271.pdf>

¹¹⁰ *Mandatory advance electronic data (AED)*, 19 C.F.R. § 145.74 <https://www.ecfr.gov/current/title-19/chapter-I/part-145/subpart-G/section-145.74> (last amended Nov. 15, 2022).

Following the passage of this bill, the USPS raised concerns that requiring 100% AED compliance could disrupt international mail flow due to their obligation to return shipments that did not provide advanced data. In a HSGAC PSI hearing on December 10, 2020, USPS Vice President of Logistics Robert Cintron testified that while efforts are still ongoing to meet the requirements of the STOP Act, their work depends on foreign postal operators and working with CBP on remedial measures that could be applied to inbound shipments containing goods that are not accompanied by AED.¹¹¹ Cintron also highlighted that U.S. Postal Inspection Service data showed a 71 percent drop in international seizures from FY 2018 to FY 2019 and a 93 percent drop from FY 2019 to FY 2020. This led him to believe that illicit drug producers and smugglers have responded by shifting away from international mail as over 97 percent of their current seizures come from the domestic mail stream. Many of these seizures originated from the southwest border and may suggest opioids are entering the country through other means.¹¹² This coincides with fentanyl seizures made by CBP increasing almost 77% from FY 2019 to FY 2020 at the southwest border.¹¹³

On March 15, 2021, CBP issued an interim rule and put in place regulations to implement the STOP Act.¹¹⁴ These regulations were delayed past the established October 2019 deadline and were later incorporated into the rule on AED.¹¹⁵ This rule required 100% AED transmittal information, but also allowed for numerous exclusions. The exclusion criteria includes letter class mail and documents, items for the blind, returned U.S. parcels, and shipments from Army Post Office (APO), Fleet Post Office (FPO), and Diplomatic Post Office (DPO) addresses. It also excludes shipments from countries that CBP determines: (1) do not have the capacity to collect and transmit AED; (2) represent a low risk for mail shipments with violations; or (3) account for low volumes of mail shipments that can be effectively screened for compliance through an alternative means. CBP must re-evaluate these determinations annually.¹¹⁶

While these regulations have moved the issue forward, approximately 128 countries currently have waivers from STOP Act requirements, raising question

¹¹¹ *Combating the Opioid Crisis: Oversight of the Implementation of the STOP Act: Hearing before the Permanent Subcommittee on Investigations of the Homeland Security and Governmental Affairs Committee*, 117th. Cong. (Dec. 10, 2020) (Statement of Robert Cintron Vice President, Logistics, United States Postal Service),

<https://www.hsgac.senate.gov/imo/media/doc/Cintron%20Testimony1.pdf>.

¹¹² *Id.*

¹¹³ Drug Seizure Statistics, U.S. CUSTOMS AND BORDER PROTECTION, (Nov. 14, 2022).

¹¹⁴ U.S. Customs and Border Protection Rule, 86 Fed. Reg. 14245, *Mandatory Advance Electronic Information for International Mail Shipments*, (Mar. 15, 2021),

<https://www.federalregister.gov/documents/2021/03/15/2021-04373/mandatory-advance-electronic-information-for-international-mail-shipments>

¹¹⁵ Mandatory advance electronic data (AED), 19 C.F.R. § 145.74, <https://www.ecfr.gov/current/title-19/chapter-I/part-145/subpart-G/section-145.74> (last amended Nov. 15, 2022).

¹¹⁶ *Id.*

about whether the regulations are actually effective. Countries exempted from STOP Act requirements could allow criminal organizations to transship, or move contraband through an exempted country to the U.S. instead of directly shipping to avoid the AED requirement.

3. Title 21 Authority

Narcotics and other controlled substances within the United States are governed by parts of Title 21 of the United States Code. This drug enforcement authority was given solely to the DEA in 1973 by President Nixon with the merger of the Office for Drug Abuse Law Enforcement and the Office of National Narcotics Intelligence.¹¹⁷ Much consideration has been given to the optimal placement of this authority and coordination over the past 50 years as criminal tactics and methods have changed, often leading to cross-jurisdiction complexities and turf wars that put American security at risk.

In 1982, elements of the Title 21 authority were extended by the Attorney General to the Federal Bureau of Investigation (FBI). Still, while sharing the same mission on drug enforcement and at times working jointly together, both DEA and FBI operate independently of each other, including establishing their own investigative strategies and priorities.¹¹⁸

Then, another agency historically engaged in combatting illicit drugs was the U.S. Customs Service. That agency's mission was to safeguard U.S. borders and investigate smuggling organizations, however, in furtherance of creating the DEA, in 1973 President Nixon transferred all functions related to the suppression of narcotics vested with the Secretary of the Treasury, the then parent department of the U.S. Customs Service, to the Attorney General.¹¹⁹ Following this action, the Department of Justice (DOJ) Office of Legal Counsel stated in 1986 that the U.S. Customs Service did not have independent authority to carry out drug investigations.¹²⁰ This resulted in the U.S. Customs Service relying on limited authorities to interdict and investigate international drug smuggling organizations,

¹¹⁷ *Executive Orders: Executive Order 11727--Drug law enforcement*, NATIONAL ARCHIVES (effective July 1, 1973), <https://www.archives.gov/federal-register/codification/executive-order/11727.html>

¹¹⁸ *Report to U.S. Senate Committee on Governmental Affairs on Coordination Between DEA and the FBI*, GOV. ACCOUNTABILITY OFFICE, (March 1990), <https://www.gao.gov/assets/ggd-90-59.pdf>

¹¹⁹ *Reorganization Plan No. 2 of 1973*, U.S. HOUSE OF REPRESENTATIVES, OFFICE OF THE LAW REVISION COUNSEL (Mar. 28, 1973), <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title5a-node84-leaf182&num=0&edition=prelim>

¹²⁰ *Combatting Illicit Drugs: DEA and ICE Interagency Agreement Has Helped to Ensure Better Coordination of Drug Investigations* GOV'T. ACCOUNTABILITY OFFICE (July 2011), <https://www.gao.gov/assets/gao-11-763.pdf>

while a large amount of drugs flooded across the southwest border and through the maritime arena.

In 1994, the DEA signed an interagency agreement with the U.S. Customs Service where they cross-designated a limited number of Customs agents with this authority. However, the authority was contingent on a border nexus, and Customs Agents could only investigate individuals and organizations involved with the smuggling of controlled substances across the international border and ports of entry. Also, the agreement prohibited the U.S. Customs Service from engaging in domestic or non-smuggling counternarcotic investigations, requiring DEA approval for all drug enforcement operations or actions. After the Department of Homeland Security (DHS) was created in 2003, the U.S. Customs Service was split into the CBP and U.S. Immigration and Customs Enforcement (ICE). These agencies became parties of this agreement.¹²¹

Still, coordination under Title 21 authority remained an issue as this agreement limited the number of ICE agents that could investigate drug smuggling. A new interagency cooperation agreement (ICA) followed in 2009, under which DEA allowed ICE to nominate an unlimited number of agents to be cross-designated by DEA. However, approval is at the discretion of DEA. Under this agreement, ICE and Homeland Security Investigations (HSI) agents who are approved for cross designation must have duties that include the investigation of narcotics cases with a clearly articulable nexus to the border or POE, including the transportation and staging activities within the United States or between the source or destination country and the United States.¹²² Additional steps have since been taken as the federal government attempts to keep up with evolving trends in drug smuggling, including the Attorney General in 2015 granting the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) authority to seize and administratively forfeit property involved with Title 21 since the illicit use of firearms are synonymous with criminal drug activity of TCOs.¹²³

Today, TCOs smuggle most of the cross-border fentanyl into the U.S., along with heroin, cocaine, and methamphetamines.¹²⁴ This is to be expected as TCOs manufacture both synthetic drugs from precursors, often coming from China, and plant-based narcotics. Further, the illicit activity of these TCOs extends beyond drug trafficking to include human smuggling and trafficking, firearms trafficking, and public corruption—all serious matters that pose serious homeland security

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Authorization To Seize Property Involved in Drug Offenses for Administrative Forfeiture*, 80 Fed. Reg. 9987, (Feb. 25, 2015), <https://www.federalregister.gov/documents/2015/02/25/2015-03839/authorization-to-seize-property-involved-in-drug-offenses-for-administrative-forfeiture-2012r-9p>

¹²⁴ Nat'l Drug Assessment Threat 2020, U.S. DRUG ENFORCEMENT ADMIN.

threats and public safety concerns.¹²⁵ DHS was created in the wake of the deadly terrorist attacks perpetrated on September 11, 2001, and a significant amount of their authorities come from Title 19 (Customs) and Title 8 (Immigration), as it was believed by integrating these once siloed authorities, it would better protect national security and strengthen public safety with the idea that the more investigative authorities an agency possesses, the more effective it will be.¹²⁶ DHS has the critical mission of combatting TCOs with unique authorities, expertise, and geographic placement along the southwest border, unavailable to other federal departments. Since TCO criminal activities expand beyond drug smuggling, DHS plays an important role with their statutory authority to investigate all of these crimes involved with TCOs, except narcotics.

However, the lack of independent Title 21 authority for DHS impedes their ability to combat TCOs in multiple ways. The ICA grants DEA ultimate decision-making authority regarding HSI's exercise of Title 21, and not only can DEA pause or stop HSI investigations, they must also approve them. In FY 2021 alone, the administratively burdensome and counterproductive process was necessary for HSI's 11,406 drug investigations and 2,589 drug enforcement operations.¹²⁷ In the time-sensitive environment of drug smuggling, this has resulted in lost opportunities for successful investigations and interdictions. Another example of how the lack of Title 21 authority negatively impacts HSI is their inability to utilize State & Local law enforcement task force officers (TFOs) for drug smuggling investigations. Since HSI receives Title 21 authority through cross-designation, HSI—unlike FBI or DEA—cannot provide Title 21 cross-designation to its TFOs who could substantially assist with the impeding the flow of fentanyl into local communities.¹²⁸

Expanding Title 21 authority to DHS would relieve DEA of unnecessary and time-consuming oversight responsibilities and liberate HSI and DHS to work more effectively secure the border. Granting DHS independent Title 21 authority would improve the United States' ability to combat TCOs and provide the necessary resources to choke the supply chain bringing fentanyl and other illicit narcotics into American communities.

II. PRECURSOR SUPPLY CHAIN—CHINA TO MEXICO

The vast majority of counterfeit pills containing fentanyl brought into the U.S. today are produced in Mexico, and the chemical precursors, necessary to

¹²⁵ *Id.*

¹²⁶ *Creation of the Department of Homeland Security*, U.S. DEPT OF HOMELAND SECURITY, <https://www.dhs.gov/creation-department-homeland-security>

¹²⁷ Briefing with Senate Homeland Security and Governmental Affairs Committee and Committee on the Judiciary Response, HOMELAND SECURITY INVESTIGATIONS (Aug. 26, 2022).

¹²⁸ *HSI: Efforts to Combat the Production of Fentanyl and Methamphetamine*, CONGRESSIONAL STAFF BRIEFING (Mar. 8, 2022).

produce synthetic opioids, are primarily supplied by TCOs in China.¹²⁹ This is a recent shift in strategy by Chinese criminal networks. Previously, much of their finished fentanyl product was exported to the U.S. through exploiting the international mail and shipping system.¹³⁰ This section will review and discuss ways in which the U.S. is, or could be, strengthening its ability to counter the TCOs that are delivering chemical precursors to Mexico.

A. The Current Precursor Supply Chain

The regulation of licit chemical precursors is challenging, yet there have been successful efforts to interdict and seize precursors at various points in the supply chain. Any licit chemical precursor is subject to seizure if evidence shows it is intended for illicit narcotics production.¹³¹

Precursor supply chains are transnational, and hence for effective trade regulation and cooperation among the U.S. and foreign partners, it is critical to identify, target and interdict illicit precursor shipments. Pursuing illicit precursor chemical shipments and effectively disrupting the illicit synthetic opioid supply chain before illicit drugs are manufactured would significantly reduce the burden of detecting and seizing finished fentanyl product at the border.

The origin and trafficking of chemical precursors varies depending on the illicit narcotic being produced. Chemicals needed to produce methamphetamine are predominantly transported through maritime shipping due to the large quantities needed.¹³² While the majority of methamphetamine precursors originate from China, due to the significant amount needed, Mexican TCOs also acquire them from other countries such as India, Germany, and Turkey. These other countries are commonly a point of origin due to their large chemical and pharmaceutical industries.¹³³

For fentanyl precursors, air cargo is the cartels' preferred shipment method as a much smaller quantity is needed to mass produce the product, and it is the most expedient delivery method.¹³⁴ Fentanyl precursors predominately originate from China. Mexican TCOs often acquire their precursors through legitimate Chinese companies while posing as fraudulent chemical companies or through illicit online vendors. This can often be challenging to investigate due to the legitimate appearance of the transactions.¹³⁵

¹²⁹ 2020 National Drug Threat Assessment, U.S. DRUG ENFORCEMENT ADMIN., 14-17.

¹³⁰ Briefing to HSGAC on Fentanyl Drug Trafficking, US. STATE DEP'T (July 8, 2021).

¹³¹ Briefing to HSGAC on Precursors, Homeland Security Investigations (Dec. 9, 2021).

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

B. Transportation & Export and Immediate Export Trade

Illicit trade shipments of contraband follow the course set by legitimate trade as closely as possible. As a strategy, legitimate businesses look to utilize the most convenient and cost-effective shipping routes, as do criminal organizations who often commingle the two to avoid detection. Law enforcement has identified an emerging smuggling trend where cargo shipments of chemicals that are used to produce precursors for synthetic drugs are now transshipping from China through the U.S. into Mexico as in-bond shipments.¹³⁶

This smuggling method involves the growing trend of legitimate trade movements called Transportation & Export (T&E) and Immediate Export (IE). These are in-bond movements that can be used as cost effective methods to transport commodities through the U.S. to another country instead of directly shipping to that country. In-bond trade movements have recently grown in volume due to the increase of e-commerce warehouses in Mexico.¹³⁷ In these types of trade movements, the shipment arrives at a U.S. port from a third country where it is then transited through the U.S. and immediately exported into Mexico through a different port (T&E) or the goods are immediately exported into Mexico from the same U.S. port, at which it arrived (IE). The benefit of this process for commerce is that it allows for imported goods to enter at one U.S. POE “without appraisalment or payment of duties and transported by a bonded carrier to another [POE] or other authorized destination provided all statutory and regulatory conditions are met.”¹³⁸ In FY 2018, the value of in-bond T&E and IE movements to Mexico was \$4.29 billion. That number grew to \$14.88 billion in FY 2019 and \$13.33 billion in FY 2020. However, in FY 2021, the amount of trade value utilizing this movement increased over 535% to \$84.80 billion¹³⁹ and increased even further to \$99.4 billion in FY 2022.¹⁴⁰

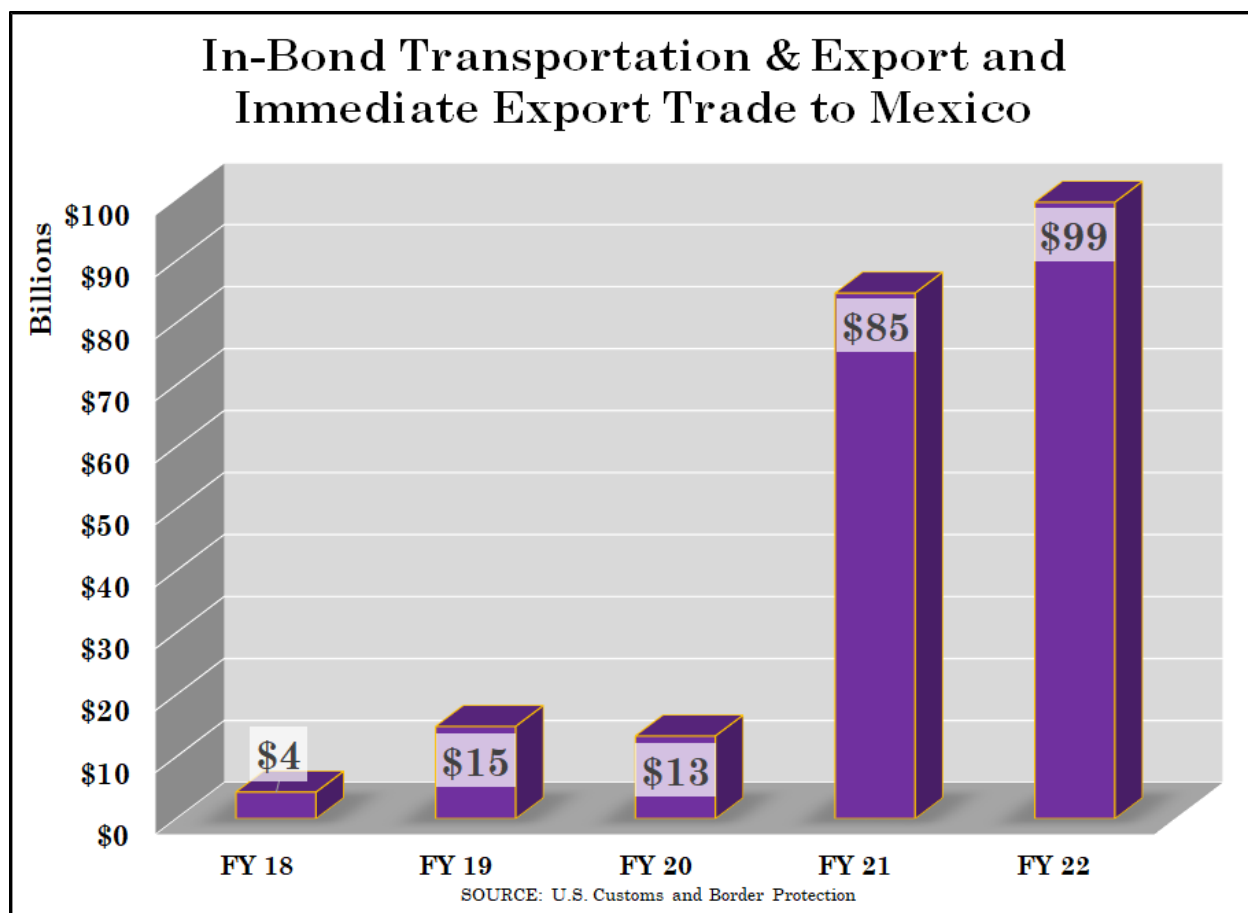
¹³⁶ Briefing to HSGAC on Precursors, Homeland Security Investigations (Dec. 9, 2021)..

¹³⁷ *Id.*

¹³⁸ *In-Bond Regulatory Changes Frequently Asked Questions*, U.S. CUSTOMS AND BORDER PATROL, (Last Modified: May 27, 2022), <https://www.cbp.gov/border-security/ports-entry/cargo-control/bond/bond-regulatory-changes-faqs#:~:text=The%20in%2Dbond%20process%20allows,and%20regulatory%20conditions%20are%20met.>

¹³⁹ *Response to HSGAC*, U.S. CUSTOMS AND BORDER PROTECTION (Feb. 9, 2022).

¹⁴⁰ *Response to HSGAC*, U.S. CUSTOMS AND BORDER PROTECTION (November 29, 2022).



The data information transmitted to CBP for these types of shipments is significantly less than what they receive for a formal entry. This includes a lower digit code that does not detail all of the combined items in the shipment. Additionally, other information is not required such as the chemical name, country of origin, country of shipment, consignee name, and the manufacturer name. The more data submitted to CBP allows them to more efficiently facilitate lawful trade and deter and respond to bad actors.

C. DEA Form 486

Each person, who imports or exports certain chemicals, is required to notify the Attorney General no later than 15 days before the transaction is to take place¹⁴¹ via the DEA Form 486.¹⁴² While this form can assist with precursor targeting

¹⁴¹ *Notification, suspension of shipment, and penalties with respect to importation and exportation of listed chemicals*, 21 USC § 971, <https://www.govinfo.gov/app/details/USCODE-2011-title21/USCODE-2011-title21-chap13-subchapII-sec971>

¹⁴² *DEA Form 486*, U.S. DRUG ENFORCEMENT AGENCY, [https://www.dea.gov/diversion.usdoj.gov/21cfr_reports/chemicals/486_instruct.htm](https://www.dea.gov/diversion/usdoj.gov/21cfr_reports/chemicals/486_instruct.htm)

efforts for these transshipments, it is not required for the emerging in-bond T&E and IE shipments.

CBP does not recommend a change to all in-bond shipments to require the same information as a formal entry.¹⁴³ So doing could negatively affect legitimate trade and create potential unfair trade practices for domestic U.S. companies. Additionally, it would be difficult to enforce as carriers only have limited information. Instead, CBP recommends legislation to either require certain chemical items to be considered controlled commodities, such as weapons, that transship through the U.S., or require the DEA Form 486 for in-bond shipments and provide that information to CBP.¹⁴⁴ This would create a reporting requirement on specific chemicals from the carrier to U.S. authorities. This regulation would provide additional data to law enforcement to enhance their efforts to target and track chemicals that are intended to produce synthetic drugs.¹⁴⁵

D. Adapting Past Models to Address the Current Situation

To choke the flow of synthetic opioids into the United States, a broader global strategy needs to be adopted that begins with attacking the precursor supply chain from China to Mexico. To this end, CBP has several initiatives underway to modernize legal authorities on how and when it collects data on the importation and exportation of goods within the U.S. for the purpose of making timely risk and admissibility determinations. CBP's 21st Century Customs Framework (21CCF) is currently being developed in consultation with the Commercial Customs Operations Advisory Committee (COAC), which consists of non-governmental individuals and firm members that are affected by the commercial operations of CBP.¹⁴⁶

The goals of 21CCF are: (1) Achieve end-to-end supply chain transparency by improving visibility into global supply chains, thereby strengthening CBP's ability to detect violators, support ethical production methods for goods, and level the playing field for domestic industry; (2) drive data-centric decision-making by expanding information submissions and improving data sharing capabilities, which would enable CBP and its partner government agencies to make quicker admissibility decisions, before goods even arrive at the border; and (3) identify and allocate risk to appropriate parties by reimagining the entry processes and procedures, allowing CBP to better identify risk in the supply chain and allocate risk to best suited parties.¹⁴⁷

¹⁴³ Briefing to HSGAC, U.S. CUSTOMS AND BORDER PROTECTION, (Mar. 31, 2022).

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *21st Century Customs Framework*, U.S. CUSTOMS AND BORDER PROTECTION, (last modified: Sept. 28, 2022), <https://www.cbp.gov/trade/21CCF>

¹⁴⁷ *Id.*

As part of COAC, CBP is working with trade partners to redesign the regulatory and the technical processes for in-bond shipments. This would tighten controls, allow for easier exchange, open lines of communications, and finish the automation effort. Special circumstances could be used for suspect shipments with a high risk of diversion, or for goods that may pose a risk to the U.S. in current or future form.

These steps have the potential to disrupt the precursor supply chain to labs in Mexico. However, while they would be an important first step, the reality is that chemical precursor production takes place in countries around the globe and illicit drug producers are likely to further diversify their supply chains over time to counteract enforcement efforts. Hence, there arises the immediate need to support a global coordinated effort through the World Customs Organization (WCO) and Customs officials from member countries to utilize red flag indicators to notify recipient countries of suspected shipments of synthetic drug precursors, giving advance notification of shipments that require additional investigation. Working with legitimate industry partners, and utilizing “know your customer” regulations, the WCO could potentially assist law enforcement efforts by identifying certain chemical precursors that are commonly used to produce synthetic drugs and that are en route to high-threat regions. These efforts would enhance the current WCO Drugs and Precursors Programme that was designed with an aim toward international and inter-agency cooperation.¹⁴⁸

The WCO has experience with enacting similar strategies. In November 2010, it partnered with the International Criminal Police Organization (INTERPOL) and the United Nations Office on Drugs and Crime to endorse its Programme Global Shield, which is a long-term endeavor to combat the illicit diversion of materials to manufacture improvised explosive devices (IEDs). This program looked to secure the global supply chain and enhance public safety by monitoring the licit movement of thirteen of the most common chemical precursors that could be used to manufacture IEDs. The program involves customs administrations from more than 90 countries sharing information on precursor chemicals that have been seized, imported, transited, or exported to, through, or from their countries. Additionally, the program offers training, technical assistance and operational exercises.¹⁴⁹ The U.S. could suspend or remove CBP’s Customs Trade Partnership against Terrorism (CTPAT) certifications from companies, a

¹⁴⁸ *Drugs and Precursors Programme*, WORLD CUSTOMS ORGANIZATION, <http://www.wcoomd.org/en/topics/enforcement-and-compliance/activities-and-programmes/drugs-programme.aspx#:~:text=In%20this%20context%2C%20the%20World,subject%20to%20restrictions%20and%20prohibitions.>

¹⁴⁹ *Improvised Explosive Devices (IEDs) Programme Global Shield*, WORLD TRADE ORGANIZATION, <http://www.wcoomd.org/en/topics/enforcement-and-compliance/activities-and-programmes/security-programme/programme-global-shield.aspx>

trusted partnership between CBP and private companies involved with the international supply chain, for repeated violations.¹⁵⁰

The effectiveness of applying such measures in the attempt to choke the fentanyl precursor supply chain would also hinge on improving law enforcement cooperation among China, Mexico, the U.S., and other global partners. Such cooperation would be vital to successfully target and prevent these chemical precursor shipments from originating and arriving at their final destinations. Increased information and trade data sharing would have a direct impact on U.S. law enforcement's ability to interdict and maximize its resources.¹⁵¹

III. FINISHED PRODUCT SUPPLY CHAIN—MEXICO TO THE U.S.

A. Enhancing Border Security to Disrupt the Flow of Drugs

In addition to securing the nation's border, CBP also protects our nation's economic security while facilitating lawful international trade and travel. CBP's Office of Field Operations (OFO) is responsible for carrying out this mission at all POEs. On a typical day in FY 2021 CBP OFO processed 491,688 passengers and pedestrians, 159,598 incoming privately owned vehicles, and 89,598 truck, rail, and sea containers containing \$7.6 billion worth of imported products.¹⁵² While the southwest border land POEs play a critical role in trade and travel and significantly contribute to U.S. economic prosperity, CBP believes they are the most commonly used smuggling route for synthetic drugs into the U.S., based on the volume of seizures made.¹⁵³ This asserting may be true, but it is difficult to either prove or disprove such an assertion when an unknown amount of synthetic drugs are smuggled into the U.S. across the vast distances between POEs along the nation's southwestern border.

Non-Intrusive Inspections

Based on CBP's deduction that POEs are the preferred route for drug traffickers, there are staggering holes in U.S. border security that need to be plugged in order to choke the fentanyl supply chain. One of the biggest gaps is the low non-intrusive inspection (NII) rate. NII technology includes large-scale X-ray

¹⁵⁰ Briefing to HSGAC on Illicit Precursor Investigations, U.S. DRUG ENFORCEMENT ADMIN. (Jan. 14, 2022).

¹⁵¹ Briefing to HSGAC on Synthetic Drugs, U.S. DEPT. OF STATE, INTERNATIONAL NARCOTICS LAW ENFORCEMENT AFFAIRS (July 9, 2021).

¹⁵² *On a Typical Day in Fiscal Year 2021*, U.S. CUSTOM AND BORDER PATROL, (last modified: May 10, 2022), <https://www.cbp.gov/newsroom/stats/typical-day-fy2021>

¹⁵³ Brief to HSGAC, U.S. CUSTOMS AND BORDER PROTECTION, OFFICE OF FIELD OPERATIONS (Aug. 23, 2021).

and gamma-ray imaging systems that enables CBP to detect contraband, such as narcotics and weapons, as well as materials that pose potential nuclear and radiological threats. NII systems are in use at various U.S. land, sea, and air POEs, often by means of portable and handheld devices. Advanced NII technology is even being designed to detect anomalies electronically and reduce reliance on human interpretation. NII systems are force multipliers that enable CBP to screen and examine a larger portion of the stream of commercial traffic more effectively while facilitating the flow of international trade and travel.¹⁵⁴

With approximately 11 million containers arriving by truck and 2.7 million containers arriving by rail every year at U.S. land POEs,¹⁵⁵ the ability to screen cargo shipments in a timely manner is vital. To help prioritize these shipments with limited resources, CBP currently utilizes an advanced risk-based strategy to focus time and resources on high-risk shipments that allows for detection, identification, and prevention of potential threats.¹⁵⁶

In FY 2021, CBP operated 385 NII systems at their POEs to conduct approximately 7.8 million examinations. This is an increase from FY 2020, when CBP operated 350 NII systems and conducted approximately 6.4 million examinations. However, these statistics have remained relatively static since FY 2014 when CBP operated 313 NII systems and conducted 7.23 million examinations.¹⁵⁷ As of October 26, 2022, all POEs along the southwest border have NII systems to scan privately owned and commercially operated vehicles,¹⁵⁸ however, only 10 percent of all vehicle types were scanned in 2022.¹⁵⁹

¹⁵⁴ *Non-Intrusive Inspection (NII) Technology*, U.S. CUSTOMS AND BORDER PROTECTION, (May 2013), https://www.cbp.gov/sites/default/files/documents/nii_factsheet_2.pdf

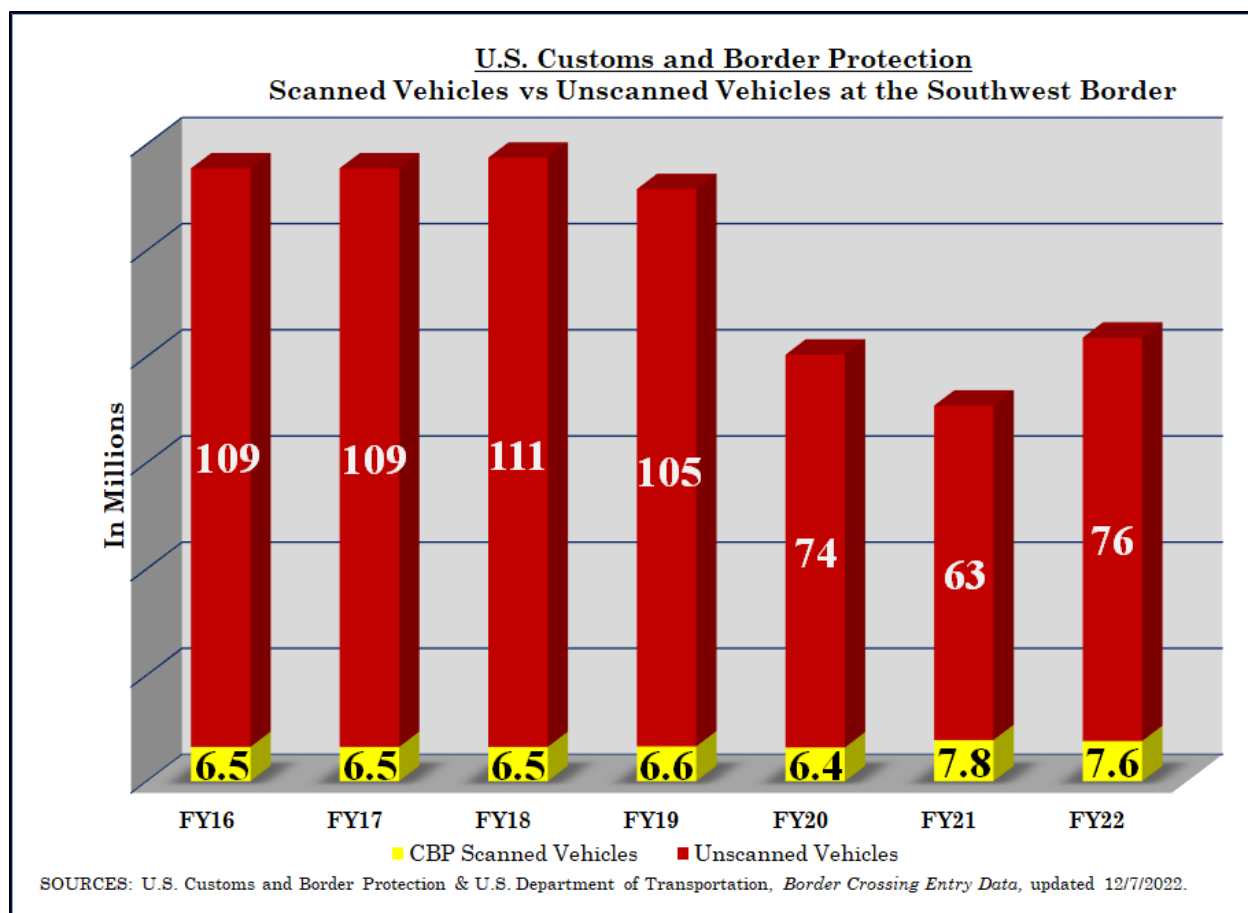
¹⁵⁵ *Cargo Security and Examinations*, U.S. CUSTOMS AND BORDER PROTECTION, (last modified May 23, 2022), <https://www.cbp.gov/border-security/ports-entry/cargo-security>

¹⁵⁶ *Federal Government Perspective: Improving Security, Trade, and Travel Flows at the Southwest Border Ports of Entry: Hearing before the Subcommittee on Government Operations and Border Management of the Senate Homeland Security and Governmental Affairs Committee*, 117th. Cong. (Nov. 17, 2021) (Written testimony of DEAC Diane Sabatino, Deputy Executive Assistant Commissioner, Office of Field Operations, U.S. Customs and Border Protection), <https://www.hsgac.senate.gov/imo/media/doc/Testimony%20-%20Sabatino%20-%20GOVOPS%20-%20Nov%2017.pdf>

¹⁵⁷ *Securing America Ports Act Data, QFR Response to HSGAC*, U.S. CUSTOMS AND BORDER PROTECTION, (Dec. 3, 2021).

¹⁵⁸ *Response to HSGAC*, U.S. CUSTOMS AND BORDER PROTECTION, OFFICE OF CONGRESSIONAL AFFAIRS, (Nov. 2, 2022).

¹⁵⁹ *Border Crossing Entry Data*, U.S. CUSTOMS AND BORDER PROTECTION, U.S. DEPT. OF TRANSPORTATION, (updated Dec. 7, 2022, utilizing statistics provided by those agencies).



Expanding NII deployment and usage should be a priority as NII technology is a critical tool to increase U.S. border security to counter the illicit flow of fentanyl and other contraband. Among the tools used by CBP—NII, analytical targeting and officer intuition—NII results in approximately 90 percent of the total seizures made by CBP.¹⁶⁰ This is the case even though CBP currently scans less than 2 percent of primary passenger vehicles and 15 percent of fixed occupant commercial vehicles crossing the southwest border.¹⁶¹

In an effort to increase scanning operations, the *Securing America’s Ports Act* (P.L.116-299) was approved by Congress and signed into law by President Trump. This law requires DHS to develop a plan to increase to 100 percent the rates of scanning of commercial and passenger vehicles and freight rails entering the U.S. over the next six years.¹⁶² Within 60 days of the law’s enactment, DHS provided Congress with their plan, the Large Scale NII Scanning Plan, required by this act.

¹⁶⁰ Written testimony of DEAC Diane Sabatino, (Nov. 17, 2021).

¹⁶¹ *Id.*

¹⁶² *Securing America’s Ports Act*, Pub. L. 116-299, (Jan. 5, 2021), <https://www.congress.gov/116/plaws/publ299/PLAW-116publ299.pdf>

The report estimated that after considering FY 2019 appropriations for NII technology, it would need approximately \$1.35 billion to acquire an additional 413 systems to reach 100 percent scanning capability along both northern and southern borders.¹⁶³ With FY 2019 appropriated funding, CBP expects to increase NII scans of passenger vehicles to 40 percent and commercial vehicles to 72 percent by FY 2023.¹⁶⁴ However, the administration appears to have no plans to increase scanning beyond this rate based on the DHS FY 2023 Congressional Budget including zero dollars for NII equipment.¹⁶⁵

Further, the report was not fully responsive to the statute. The law requires DHS to provide estimated costs with an acquisition plan including acquisition, operations, and maintenance costs for large-scale, NII systems or similar technology, and associated costs for any necessary infrastructure enhancements or configuration changes at each POE. Instead, CBP estimated the unit price of an NII scanning system for passenger vehicles at \$4.32 million and \$6.05 million for a commercial vehicle scanning system and applied it equally to all POEs. The report also does not detail benchmarks to achieving incremental progress toward 100 percent scanning, as mandated in the act.¹⁶⁶

CBP also failed to detail specifically where these NII systems would be installed at each POE. There are various options for physical locations, including pre-primary, primary, and secondary inspection areas, and neither location nor the location's projected traffic and other impacts were detailed by CBP.¹⁶⁷ The report only advised that CBP does not anticipate an increase in primary inspection wait times as a result from the implementation of this operation. Further, CBP does not address how current wait times would be maintained if there are no projected impacts on traffic.¹⁶⁸

Shifting to 100 percent scanning would increase the scanning of all vehicles by approximately 900 percent and per CBP, increasing scanning would likely increase the probability of interdicting suspect shipments.¹⁶⁹ However, CBP believes that increased NII scanning would not result in the need to increase

¹⁶³ Large Scale Non-Intrusive Inspection Scanning Plan, U.S. DEPT OF HOMELAND SECURITY, (Mar. 3, 2022).

¹⁶⁴ *Id.*

¹⁶⁵ *U.S Customs and Border Protection, Budget Overview, Congressional Budget Justification Fiscal Year 2023*, U.S. DEPT HOMELAND SECURITY, https://www.dhs.gov/sites/default/files/2022-03/U.S.%20Customs%20and%20Border%20Protection_Remediated.pdf

¹⁶⁶ *Id.*

¹⁶⁷ Large Scale Non-Intrusive Inspection Scanning Plan, U.S. DEPT OF HOMELAND SECURITY (Mar. 3, 2022).

¹⁶⁸ Congressional Budget Justification Fiscal Year 2023. U.S. DEPT OF HOMELAND SECURITY.

¹⁶⁹ *Id.*

personnel as staff would be enabled to work smarter by leveraging the newly installed technology.¹⁷⁰

In FY 2021, CBP awarded two contracts to procure drive-through NII systems that would be deployed in FY 2024. These systems would reduce the current time per scan from 8 minutes to less than 4 minutes and would increase commercial vehicle scanning to over 90 percent.¹⁷¹ Additional NII scanning capability is being pursued for pedestrian crossings for suspected internal carriers of narcotics and contraband to avoid expending resources for hospital visits to conduct invasive body searches.¹⁷²

CBP's biggest challenges to achieving 100 percent NII scanning capability are that each POE is different, and there is no standard approach to implementation due to disparate infrastructures across the southern border. Additionally, large amounts of bandwidth are needed to store and transmit x-ray vehicle scans.¹⁷³

B. Border Modernization and Technology

1. Port of the Future Concept

Typically land POEs that are older and built in remote or congested areas do not have the physical infrastructure necessary to efficiently facilitate today's cross-border traffic volume,¹⁷⁴ and they are insufficient for CBP's current threat and operational environment. The lack of infrastructure certainly impedes CBP's effort to move toward 100% scanning of inbound traffic.

With new advances in technology and the importance of modernizing land POEs, CBP is in a multi-year process of implementing a Port of the Future concept of operations (CONOPs) starting with the southwest border. This CONOPs would be based on three concepts: First, drive-through systems would be used for primary and pre-primary inspection traffic to decrease processing times and increase throughput. Second, to create an integrated viewing platform with the latest anomaly-detection technology capabilities, scanning and detection equipment would be fully linked with other CBP systems, including license plate readers, Radio Frequency Identification (RFID) scanners, and facial recognitions. Third, command centers would control the flow of traffic through the port and allow for more efficient use of CBP officers to enhance enforcement.¹⁷⁵

¹⁷⁰ *Id.*

¹⁷¹ Written testimony of DEAC Diane Sabatino, Senate HSGAC Hearing, (Nov. 17, 2021).

¹⁷² *Port of the Future Brief to HSGAC*, U.S. CUSTOMS AND BORDER PROTECTION, (Dec. 16, 2021).

¹⁷³ *Id.*

¹⁷⁴ Written testimony of DEAC Diane Sabatino, Senate HSGAC Hearing, (Nov. 17, 2021), note 168.

¹⁷⁵ *Port of the Future Brief to HSGAC*, U.S. CUSTOMS AND BORDER PROTECTION, (Dec. 16, 2021).

CBP currently has two working models of this Port of the Future Concept, and the agency intends to expand with additional NII procurements and implementation of various technology such as ready lanes, RFID and license plate readers (LPRs). CBP has identified the required allotment of NII equipment along with cost estimates for implementation through its NII Scanning Plan that was released in March 2022.¹⁷⁶ However, NII scanning capability and other advanced technology to support the Port of the Future CONOPs would need additional resources from Congress.

Criminal organizations constantly change their methodologies to avoid detection. The modernization of land POEs, to include its physical facilities, staffing, integrated technology, business processes, and partnerships are necessary to ensure CBP can stop threats without impeding the flow of legitimate trade and travel.¹⁷⁷

These challenges involve the actual implementation of this technology, but one concern to consider after CBP achieves 100 percent or a significant increase in NII scanning capability is a lack of staffing. If an increase in NII scanning results in an increase in narcotic seizures, inadequate staffing will become a bigger issue. Local CBP OFO officials in Brownsville, Texas support utilizing non-law enforcement technician positions to supplement CBP Officers in adjudicating scan images and processing seizures to avoid having to reassign officers from security lanes. However, the current grade level for these technicians is too low at GS-5 - 7, and these same officials recommend a higher level, based on the position's importance to the mission.¹⁷⁸

While CBP does not believe this deployment would result in the need for additional officers to protect against negative effect on their enforcement posture and the flow of traffic,¹⁷⁹ HSI has stated to Congress that this would affect their resources. HSI dedicates 20 percent of their work hours to responding to all CBP narcotic POE seizures. These POE efforts include the formal arrests of all violators, investigating criminal organization culpability, and coordinating with the U.S. Attorney's Office for prosecution.¹⁸⁰ Just as border narcotic seizures are necessary to prevent illegal drugs from entering the country, so too are thorough

¹⁷⁶ Large Scale Non-Intrusive Inspection Scanning Plan, DEP'T HOMELAND SECURITY, (Mar. 3, 2022).

¹⁷⁷ *Id.*

¹⁷⁸ Briefing to HSGAC Staff Delegation on Brownsville Veterans Bridge Port of Entry, U.S. CUSTOMS AND BORDER PROTECTION, (Apr. 14, 2022).

¹⁷⁹ Large Scale Non-Intrusive Inspection Scanning Plan, U.S. DEP'T OF HOMELAND SECURITY, (Mar. 3, 2022).

¹⁸⁰ *Federal Government Perspective: Improving Security, Trade, and Travel Flows at the Southwest Border Ports of Entry: Hearing before the Senate Committee on Homeland Security and Governmental Affairs*, (Nov. 17, 2021), <https://www.hsgac.senate.gov/hearings/federal-government-perspective-improving-security-trade-and-travel-flows-at-the-southwest-border-ports-of-entry>

investigations and prosecutions of critical importance to degrade TCO's capabilities and effectiveness.

2. Advanced Passenger Information

Unlike international air or sea travel, CBP often receives no advance passenger information (API) for land entries.¹⁸¹ This limits traveler screening processes that could be conducted before an individual arrives at the land POE. API is not only ideal for enhanced border security measures, but it also reduces congestion to allow for more efficient travel. This is more of a concern since DHS lifted non-essential travel cross-border restrictions with Canada and Mexico in November 2021.

CBP recently introduced a smartphone application that allows border crossers to apply in advance for a Form I-94. Foreign visitors can apply for an I-94 to adjust their status or extend their stay while in the U.S.¹⁸² The "CBP One" app allows border crossers to be pre-vetted via user inputted information, and, if approved, they can acquire their I-94 when CBP advises that they may do so at a designated time. This alleviates the wait time and resources CBP would need to dedicate when applicants previously applied in-person upon crossing the border.¹⁸³ This application has the potential for expansion to more types of advanced land POE border screening facilities where individuals can notify CBP of their intention to cross the border, thus allowing for earlier screening and prioritized inspection.

While this API technology may be incorporated in the future, CBP utilizes other traveler processing technology that improves the efficiency and effectiveness of operations at land POEs. Examples include RFIDs, Ready Lanes, and LPRs. This technology provides CBP with API that is utilized to streamline the inspection process and provide CBP with valuable extra time to detect threats.¹⁸⁴

In FY 2021, approximately 58 percent of arriving travelers used either Ready Lanes or Dedicated Commuter Lanes to expedite their entry into the U.S.¹⁸⁵ Ready Lanes are primary vehicle lanes dedicated to travelers who present RFID-enabled travel documents, such as a U.S. passport or a U.S. visa. When approaching the land POE, the traveler is provided an opportunity for their RFID documents to be scanned electronically from an in-lane reader that transmits the information to the CBP officer located at the primary inspection station. The CBP officer then conducts law enforcement database queries on the identified travelers inside the vehicle to determine if a further inspection is needed. The same screening process

¹⁸¹ Written testimony of DEAC Diane Sabatino, Senate HSGAC Hearing, (Nov. 17, 2021).

¹⁸² *Id.*

¹⁸³ *Port of the Future Brief to HSGAC*, U.S. CUSTOMS AND BORDER PROTECTION, (Dec. 16, 2021).

¹⁸⁴ Written testimony of DEAC Diane Sabatino, Senate HSGAC Hearing, (Nov. 17, 2021).

¹⁸⁵ *Id.*

is conducted on the vehicle as its license plate information is captured through an LPR, also located in the pre-primary area as traveler wait in line to approach the land POE.¹⁸⁶

Another technology used to automate the entry process into the U.S. is biometric facial comparison technology. This technology provides CBP with an efficient and secure way to verify the identity of persons entering and exiting the U.S. in addition to providing travelers with a secure, touchless travel experience. This enhanced process only takes a few seconds and is more than 98 percent accurate.¹⁸⁷ It is currently in use at nearly all airports, but its deployment at land POEs, to include personal vehicle and commercial vehicle environments, has not been as rapid due to geographical and operational challenges. This technology is currently in use at all pedestrian POEs along the southwest border, 21 land POEs along the northern border and 10 locations for closed-loop cruises.¹⁸⁸

Since the USA Patriot Act was signed into law in October 2001, Congress has expanded the deployment of automated entry and exit. Further, Congress has passed additional legislation calling on DHS to accelerate the full implementation of an automated biometric entry-exit system, and President Trump issued Executive Order 13780 on Protecting the Nation from Foreign Terrorist Entry into the United States.¹⁸⁹

Biometric facial comparison technology has been useful in documenting crossings and detecting over 950 imposters attempting to enter the U.S. since 2018, and it can also be utilized in a similar manner as RFID enabled documents that provide API to CBP. In September 2021, CBP began testing this technology for travelers in vehicle primary lanes at the Anzalduas, Texas POE. This technology has also previously been used for processing commercial truck drivers and passengers at primary inspection point with the new Truck Manifest Modernization cargo processing system.¹⁹⁰

Utilizing and developing new kinds of technology to collect API at land POEs is imperative to enhance border security, while facilitating efficient flow of legitimate trade and travel. Unlike most airports, each land POE has its own individual infrastructure, stakeholders, and partnerships that come with varying advantages and constraints. CBP is currently working to address these inconsistencies in the Future of Traveler Inspection (FTI) initiative that would

¹⁸⁶ Written testimony of DEAC Diane Sabatino, Senate HSGAC Hearing, (Nov. 17, 2021).

¹⁸⁷ *CBP facial biometric technology detects impostor entering the U.S. in Blaine*, U.S. CUSTOMS AND BORDER PROTECTION, (Dec. 6, 2021), <https://www.cbp.gov/newsroom/local-media-release/cbp-facial-biometric-technology-detects-impostor-entering-us-blaine>

¹⁸⁸ Written testimony of DEAC Diane Sabatino, Senate HSGAC Hearing, (Nov. 17, 2021).

¹⁸⁹ CONG. RESEARCH SERV, R7-5700, *Biometric Entry-Exit System: Legislative History and Status*, (Aug. 27, 2020), <https://www.crs.gov/Reports/IF11634>

¹⁹⁰ Written testimony of DEAC Diane Sabatino, Senate HSGAC Hearing, (Nov. 17, 2021).

create unified standards for traveler processing to be efficient and streamlined, enabling officers to focus on enforcement; responsive to new threats by providing timely and relevant intelligence to officers; and secure and touchless in a post-COVID-19 environment.¹⁹¹

3. Transferring Ownership of Ports of Entry from GSA to CBP

Of the 167 land POEs expanding across the northern and southwest border, the U.S. General Services Administration (GSA) owns and operates 101 of them including 41 of the 47 along the southwest border. CBP owns and operates 40 land POEs, primarily in northern smaller, rural areas, and the remaining locations are leased from local governments and private entities.¹⁹² CBP and GSA work closely together while utilizing a capital prioritization process and methodology that considers operational and facility data to determine the highest priority projects for improvement. This is critical as more than two-thirds of land POEs have not received any capital improvements over the past decade due to limited resources.¹⁹³ For land POEs owned by GSA, CBP has delegated authority from GSA to perform an individual ancillary repair or alteration project if the work is less than or equal to \$100,000. For work that exceeds this amount, CBP must contact their local GSA office to coordinate.¹⁹⁴

In the FY 2022 budget, \$660 million was allocated for CBP OFO facilities to include land POEs along the northern and southern borders in addition to District Field Offices and Port Offices.¹⁹⁵ The FY 2023 budget did not include funding for OFO facilities due to the Infrastructure Investment and Jobs Act providing \$3.4 billion to GSA and \$430 million to CBP to modernize land POEs.¹⁹⁶ This funding is for infrastructure modernization that will facilitate the addition of NII but doesn't include the technology itself.

4. Autonomous Surveillance Towers

Beyond POEs, one beneficial tool that CBP has implemented to counter the supply chain smuggling of narcotics through the desert, as well as for unlawful migration, is the deployment of autonomous surveillance towers. Autonomous surveillance towers operate off-grid with 100 percent renewable energy and provide

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Delegation of Authority, Part 102-72*, U.S. GENERAL SERVICES ADMIN., (Last reviewed July 29, 2022), <https://www.gsa.gov/policy-regulations/regulations/federal-management-regulation-fmr/i451768>

¹⁹⁵ Congressional Budget Justification Fiscal Year 2023, U.S. DEPT. OF HOMELAND SECURITY, 306.

¹⁹⁶ *Id.* at 406.

independent surveillance operations 24 hours per day, 365 days per year.¹⁹⁷ These towers are suited for remote and rural locations that enable Border Patrol agents to remain focused on their interdiction mission rather than operating surveillance systems. The towers scan the environment with radar to detect movement and analyze the imagery using algorithms to autonomously identify items of interest such as people or vehicles. Border Patrol agents are then alerted and have the opportunity to respond if needed. These towers have a small geographic footprint and minimize the impact to land owners and public lands.¹⁹⁸

CBP first began to implement these towers in 2018 and they plan to deploy 200 more by the end of FY 2022.¹⁹⁹ Through the FY 2022 Appropriations Act Supplement, which was signed into law on March 15, 2022, the Biden administration awarded an additional \$21 million for more towers as part of a larger funding package dedicated to Border Patrol technology.²⁰⁰

C. Bilateral Partnerships with Mexico to counter TCOs

Despite renewed bilateral efforts with the U.S., the Mexican government continues to lack sufficient safeguards to prevent or discourage corruption, and this significantly impedes Mexico's drug control efforts.²⁰¹ The Biden administration plans to use the Bicentennial Framework for Security to drive greater cooperation around security issues, including drug trafficking and organized crime.²⁰²

1. Joint Binational Operations

Joint binational cooperation and operations between the U.S. and Mexico have been successful when the priorities of both nations are aligned, and the Mexican government is an active participant. This is evident in recent captures of TCO kingpins and the success of foreign vetted task forces. However, more opportunities remain, such as updating trade agreements to increase interdiction efforts, for this partnership to better counter TCO activities.

¹⁹⁷ *CBP's Autonomous Surveillance Towers Declared a Program of Record along the Southwest Border*, U.S. CUSTOMS AND BORDER PROTECTION, (July 7, 2020), <https://www.cbp.gov/newsroom/national-media-release/cbp-s-autonomous-surveillance-towers-declared-program-record-along>

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ FY2022 Consolidated Appropriations and Supplemental Appropriations Act, Pub. L. No. 117-103, (Mar. 15, 2022), <https://www.congress.gov/117/plaws/publ103/PLAW-117publ103.pdf>

²⁰¹ *2021 International Narcotics Control Strategy Report*, U.S. STATE DEPT, (Mar. 21, 2021), <https://www.state.gov/2021-incsr-volume-i-drug-and-chemical-control-as-submitted-to-congress/>

²⁰² *Joint Statement: 2022 U.S.-Mexico High-Level Security Dialogue*, THE WHITE HOUSE, (Oct. 14, 2022), https://www.whitehouse.gov/briefing-room/statements-releases/2022/10/14/joint-statement-2022-u-s-mexico-high-level-security-dialogue/?utm_source=link.

Criminal activity at the border affects both the U.S. and Mexico, and it requires the attention and commitment from both nations. While U.S. efforts on preventing the importation of contraband into the U.S. far exceeds those by Mexico, there needs to be a reciprocal effort where law enforcement agencies from both countries share best practices. Additionally, NII equipment purchased for Mexico has not been utilized and, in many cases involving technology, now has an expired licenses.²⁰³ NII scanning capability needs to increase for both countries along with a shared imagery system and process from Mexico to the U.S. to more effectively detect illegal narcotics and contraband.²⁰⁴

2. International Vetted Units

An important asset for U.S. law enforcement efforts overseas are the use of international vetted units that are comprised of foreign law enforcement officials and prosecutors who act in a task force capacity with U.S. law enforcement stationed in those countries. Applicants for these units typically have to pass certain security evaluations, such as strict continuous vetting, a background check, a polygraph examination, and receive extensive training from U.S. authorities. These units operate under their own host country authority and work with their U.S. counterparts on bilateral investigations that affect both countries.²⁰⁵

The DEA established vetted units in Bolivia, Colombia, and Mexico in 1996 through the FY 1997 Omnibus Appropriations Act, and other agencies such as FBI and HSI followed suit.²⁰⁶ Today, DEA's vetted units play a significant role in their counter-narcotics efforts, and this is enhanced by their ability to provide salary stipends on top of the basic pay earned by member of the international vetted units, and in addition to training and equipment. The salary stipends are provided monthly and vary in amount depending on the rank of the individual. This authority is also extended to other federal agencies, such as the U.S. Secret Service, whose authority is granted through foreign assistance due to their unique overseas mission.²⁰⁷

Not all agencies whose mission is to combat TCOs have this capability, such as HSI. HSI's international vetted units, or Transnational Criminal Investigative Units (TCIU), are located in thirteen different countries. They identify targets, collect evidence, share intelligence, and facilitate the prosecution of TCOs both in-

²⁰³ *Brief to HSGAC*, SANDIA NATIONAL LABORATORIES, (Nov. 18, 2021).

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ CONSOLIDATED APPROPRIATIONS ACT, 2021, Pub. Law.116-260, <https://www.congress.gov/116/plaws/publ260/PLAW-116publ260.pdf> Accessed on 10/20/22

country and through the U.S. judicial system.²⁰⁸ The inability for HSI to provide salary stipends has resulted in a high turnover rate as TCIU personnel seek employment opportunities that offer higher compensation. This high turnover rate is detrimental to HSI's efforts to combat transnational crime, especially given the time and fiscal resources required to recruit, train, and vet new TCIU members and the need for continuity to bring long-term, complex U.S. investigations to a successful conclusion.²⁰⁹

D. Unmanned Aircraft Systems Operated by TCOs

More law enforcement authority is needed to successfully target unmanned aircraft systems (UAS) operated by TCOs. While land POEs along the southwest border are commonly exploited to smuggle hard narcotics into the United States, TCOs have taken advantage of and utilized common commercial off-the-shelf technologies to enhance their efforts. This includes operating small UAS or “drones” to both smuggle small packages of hard narcotics, such as fentanyl, into the U.S., and to conduct intelligence, surveillance, and reconnaissance (ISR) of operational patterns and law enforcement to maximize drug smuggling efforts.²¹⁰

According to the DEA, Mexican cartels have been using drones for almost a decade, citing a study that estimated 150 drones crossed the border into the United States in 2012 alone.²¹¹ DHS's UAS and Science and Technology (S&T) programs report that sampling from two locations along the southwest border in an eleven month span from 2020 - 2021 showed 2,500 sensor detections of UAS.²¹² Additionally, data from this study indicates that drones have made dozens of trips back and forth across the border, suggesting that UASs are now regularly used as “aerial mules” by Mexican cartels.²¹³ According to DHS, from August 2021 to May 2022, CBP detected more than 8,000 illegal cross-border flights at the southwest border.²¹⁴

²⁰⁸ *Transnational Criminal Investigative Units*, U.S. IMMIGRATION & CUSTOMS ENFORCEMENT, (Updated: Jan. 12, 2021), <https://www.ice.gov/partnerships-centers/transnational-criminal-investigative-units>

²⁰⁹ *Efforts to Combat the Production of Fentanyl and Methamphetamine*, HOMELAND SECURITY INVESTIGATIONS CONGRESSIONAL STAFF BRIEFING, (Mar. 8, 2022).

²¹⁰ Briefing to HSGAC, Senate Judiciary, and Senate Commerce regarding Countering Unmanned Aircraft Systems (C-UAS), U.S. DHS, DOJ, FAA, (June 22, 2021).

²¹¹ Rey Koslowski & Marcus Schulzke, *Drones along Borders: Border Security UAVs in the United States and the European Union*, INTERNATIONAL STUDIES PERSPECTIVES, (April 2008). https://www.albany.edu/~rk289758/documents/Koslowski&Schulzke_Drones_along_Borders_ISA.pdf

²¹² Briefing to HSGAC, Senate Judiciary, and Senate Commerce Regarding Countering Unmanned Aircraft Systems (C-UAS), DHS, DOJ, FAA, (June 22, 2021).

²¹³ *Id.*

²¹⁴ Protecting the Homeland from Unmanned Aircraft Systems: Hearing before the Senate Committee on Homeland Security and Governmental Affairs, 117th Cong., (July 14, 2022) (written statement of Samantha Vinograd, Acting Assistant Secretary, U.S. Homeland Security), <https://www.hsgac.senate.gov/hearings/protecting-the-homeland-from-unmanned-aircraft-systems>

The exact number of drone incursions into the U.S. is unknown due to the size and quantity of UAS that are being utilized, and the limitations of technology, radar dead zones, and TCOs utilizing detection evasion by masking their UAS signatures, a technique that allows UAS to go undetected from third parties by hiding their flight path data. Additionally, TCOs have begun to utilize GPS only flights through mobile hotspots to avoid networks and law enforcement mitigation efforts.²¹⁵ Another important statistic that has not been publically released is how many of the thousands of cross-border UAS intrusions have been successfully mitigated by CBP.²¹⁶ However, according to DHS, from the intrusions they have mitigated, they resulted in the seizure of hundreds of pounds of hard narcotics.²¹⁷ These seizures only come from five border areas of responsibility (AORs) that have been designated as covered assets from the Secretary of DHS.²¹⁸ While they are currently in the process of designating three more border AORs, there are areas of the border where, even if CBP has the authority to mitigate a UAS, they cannot do so as the AOR is not a covered asset.²¹⁹

This is a growing concern with Da-Jiang Innovations (DJI), a Chinese-based UAS manufacturer with locations inside the U.S. DJI is the largest manufacturer of commercial and consumer based UASs in the U.S. and globally.²²⁰ DJI UAS models can be modified by criminals to subvert detection for this purpose. On December 16, 2021, the U.S. Department of Treasury's Office of Foreign Assets Control (OFAC) placed sanctions on DJI due to the company being identified as actively supporting the biometric surveillance and tracking of ethnic and religious minorities in China, particularly the predominantly Muslim Uyghur minority in Xinjiang. As a result of these sanctions, U.S. persons would be prohibited from purchasing or selling certain publicly traded DJI securities.²²¹

The increased usage of UAS by TCOs has a direct effect on law enforcement efforts on both the southern and northern borders. Not only are UAS directly smuggling contraband and replacing human scouts for various cross-border criminal smuggling activity, but they also create public safety issues when narcotics, such as

²¹⁵ Briefing to HSGAC, Senate Judiciary, and Senate Commerce regarding Countering Unmanned Aircraft Systems (C-UAS), U.S. DEPT OF HOMELAND SECURITY, (Jan. 25, 2022).

²¹⁶ Briefing to HSGAC, Senate Judiciary, and Senate Commerce Regarding Countering Unmanned Aircraft Systems (C-UAS), U.S. DEPT OF HOMELAND SECURITY, (Aug. 29, 2022).

²¹⁷ Written testimony of Samantha Vinograd, (July 14, 2022).

²¹⁸ *Response to HSGAC*, U.S. DEPT OF HOMELAND SECURITY, *OFFICE OF CONGRESSIONAL AFFAIRS*, (Dec. 20, 2022).

²¹⁹ *Id.*

²²⁰ *FY 2020 Industrial Capabilities Report – Report to Congress*, U.S. DEPT OF DEFENSE, OFFICE OF THE UNDER SECRETARY OF DEFENSE FOR ACQUISITION & SUSTAINMENT, (Jan. 2021), <https://media.defense.gov/2021/Jan/14/2002565311/-1/-1/0/FY20-INDUSTRIAL-CAPABILITIES-REPORT.PDF>

²²¹ *Treasury Identifies Eight Chinese Tech Firms as Part of The Chinese Military-Industrial Complex*, U.S. DEPT OF TREASURY, (Dec. 16, 2021), <https://home.treasury.gov/news/press-releases/jy0538>

fentanyl, haphazardly fall from the sky into communities, becoming easily accessible by the unsuspecting.²²² Additionally, these criminal organizations have even weaponized UAS to deliver and detonate C4 explosives and shrapnel to attack rival cartels.²²³ While such attacks have not happened in the U.S. yet, these attacks elsewhere demonstrate that TCOs are strengthening their capabilities, including the threat of conducting their own aerial surveillance and smuggling fentanyl by UAS.

In efforts to counter the use of UAS by bad actors, including TCOs, The *Preventing Emerging Threats Act of 2018* was passed by Congress to authorize the DOJ and the DHS to mitigate credible UAS threats.²²⁴ Federal agencies are required to have this Congressional authorization to disrupt, disable, or seize control of a UAS. This also includes detecting, identifying, monitoring, and tracking a UAS without prior consent of the operator, by means of intercepting communications to control the UAS and to use reasonable force to disable, damage, or destroy a UAS.²²⁵ This legislation was extended to December 16, 2022 under the recently passed continuing resolution. DHS has advised reauthorization is needed from its assessment of the evolving threat landscape and addressing key gaps and vulnerabilities.²²⁶

IV. CONCLUSION

On the front-end, TCOs are exploiting our trade system, using legitimate commerce to mask their supply chain for delivering precursors through the U.S. to Mexico, and on the back-end they are using POEs and our open southern border by using migrants to distract and occupy Border Patrol agents in order to move their finished illegal products, including fentanyl, along their supply chain into American communities. To make significant gains in curbing the stream of deadly drugs poisoning Americans, Congress and the administration should take immediate

²²² *Counter Unmanned Aerial Systems (C-UAS) Information Report*, HOMELAND SECURITY INVESTIGATIONS: OPERATIONAL TECHNOLOGY AND CYBER DIVISION, (Provided to HSGAC July 8, 2022).

²²³ Karol Suárez, *Drug cartels attack enemies and spread terror with weaponized drones in US, Mexico*, COURIER JOURNAL, (May 24, 2021), <https://www.courier-journal.com/story/news/crime/2021/05/24/el-mencho-cjng-mexican-drug-lords-use-drones-spread-terror/5131708001/>

²²⁴ 6 U.S.C. § 124n, *Protection of certain facilities and assets from unmanned aircraft*, <https://www.govinfo.gov/content/pkg/USCODE-2020-title6/pdf/USCODE-2020-title6-chap1-subchapII-partA-sec124n.pdf>

²²⁵ *Protecting Against the Threat of Unmanned Aircraft Systems (UAS)*, DHS CISA – INTERAGENCY SECURITY COMMITTEE, (Nov. 2020).

²²⁶ *Assessing the Department of Homeland Security's Efforts to Counter Unmanned Aircraft Systems*, Hearing before the House Committee on Homeland Security 117th. Cong, (Mar. 31, 2022), <https://homeland.house.gov/activities/hearings/assessing-the-department-of-homeland-securitys-efforts-to-counter-unmanned-aircraft-systems>

action, such as outlined in this paper's recommendations, with a goal to choke the supply chain and dismantle these TCOs.