

SPECIAL REPORT

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EDWIN J. MEESE III CENTER FOR LEGAL AND JUDICIAL STUDIES

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The Criminal Responsibility of Parties Who Traffic in Fentanyl Precursor Chemicals

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Along with Mexican Transnational Criminal Organizations, parties that are responsible for the illicit manufacturing, shipment, and distribution of fentanyl precursor chemicals and allied equipment to Mexico—with the implicit blessing of the Chinese Communist Party—are legally responsible for the illicit fentanyl that kills scores of thousands of Americans every year. Some parties—the CCP in particular—have a financial motive to aid and support the TCOs’ smuggling and distribution practices along with a conscious intent to weaken the United States and make China the world’s most powerful nation. It is time to wake up to what the CCP and Mexican TCOs are doing to the United States and put an end to our fentanyl problem and China’s nefarious ambitions.

Introduction

Until eliminated as a public health threat during the 20th century, the deadly pathogen “smallpox” was a word that struck terror into the heart of whomever heard it. Today, a new term evokes that response: “fentanyl.” According to the Centers for Disease Control and Prevention, “[a]pproximately 69% of all drug overdose deaths in 2023 involved synthetic opioids other than methadone (primarily reflects illegally made fentanyl),”¹ and the Commission on Combating Synthetic Opioid Trafficking reported in 2022 that “[o]verdoses involving illegally manufactured fentanyl are now the leading cause of death for [Americans] ages 18 through 45.”² A particularly disturbing trend has been the increase in the deaths of minors who use counterfeit pills containing deadly amounts of fentanyl.³

According to the National Institute on Drug Abuse, 107,941 Americans died because of drug overdoses in 2022, and synthetic opioids other than

methadone—principally fentanyl—accounted for 73,838 of these fatalities.⁴ That is “the equivalent of a packed Boeing 737 crashing every single day.”⁵ The combination of adverse effects that illicit fentanyl has on the United States—viz., the degradation of our way of life through addiction and death of a large percentage of our population;⁶ the rise of numerous outdoor drug-abuse “colonies” spread out across the nation;⁷ the enduring pain suffered by people who have lost loved ones or friends;⁸ the massive financial costs imposed on our productive capacity, health care services, and criminal justice systems;⁹ and the murder of hundreds of thousands of people—impacts our economic health as well as our domestic and national security.¹⁰

This *Special Report* addresses that problem by examining the federal criminal liability of parties who supply the Mexican Transnational Criminal Organizations (TCOs), colloquially known as cartels, with the precursor chemicals necessary to synthesize fentanyl.¹¹ It summarizes why and how fentanyl came to plague the United States; discusses the law governing the responsibility of intermediaries for providing traffickers and street-level sellers with ingredients, equipment, and other items that might be useful in illegal drug synthesization; and examines why parties in the People’s Republic of China (PRC) and Mexico bear responsibility for their participation in the TCOs’ smuggling and distribution operations. The conclusion is this: The parties involved in the knowing production of fentanyl precursors intended for shipment to the Mexican TCOs are liable under U.S. criminal law for their part in the distribution of the illicit fentanyl that is killing thousands of Americans.¹²

Fentanyl: A Good Drug that Broke Bad

First developed late in the 1950s by the Belgian chemist Paul Jannssen, fentanyl was approved by the U.S. Food and Drug Administration (FDA) in 1972 as a Schedule II controlled substance under the Comprehensive Drug Abuse Prevention and Control Act of 1970.¹³ Unlike heroin, which is a product of the poppy plant,¹⁴ fentanyl, like every other novel psychoactive substance,¹⁵ is a synthetic drug, manufactured entirely in a laboratory from precursor chemicals.¹⁶ Given the likelihood (if not certainty) that specific precursor compounds will be used to create illicit controlled substances,¹⁷ federal law regulates those chemicals as well as their finished products.¹⁸

The Controlled Substances Act requires the Drug Enforcement Administration (DEA) to include on what it has labeled the Special Surveillance List (SSL) chemicals, along with items such as equipment, that are most often used as precursor chemicals in the illicit production of controlled

substances.¹⁹ Prepared in consultation with domestic and foreign law enforcement officials, forensic laboratory experts, and other knowledgeable parties, the SSL specifies for parties involved in the manufacture and distribution of chemical compounds the ones with which they should be especially careful because they are commonly used by clandestine laboratories to illicitly manufacture drugs like fentanyl.²⁰

Drug traffickers will attempt to use unregulated precursor chemicals to manufacture fentanyl,²¹ along with its analogs and related substances, while evading detection.²² Synthesizing fentanyl does not demand a Ph.D. in organic chemistry²³ or a professionally equipped laboratory.²⁴ In fact, some formulation methods are available on the Internet.²⁵ For that reason, the DEA amends the Special Surveillance List as necessary,²⁶ although keeping up with illicit fentanyl “cooks” is no mean feat.²⁷

Fentanyl is far more potent than the baseline analgesic morphine—50–100 times more powerful—because fentanyl more easily crosses the blood–brain barrier.²⁸ Some fentanyl analogs and related substances are far more powerful still. For example, sufentanyl is 500 times more powerful than morphine, and carfentanil, an elephant tranquilizer, is 10,000 times more potent than morphine.²⁹ Think of those numbers this way: While a miniscule amount of fentanyl can kill a person, a mere speck of carfentanil will have the same effect.³⁰

When produced by legitimate pharmaceutical companies and prescribed by a licensed physician, fentanyl can be used safely for therapeutic purposes.³¹ Because of its rapid onset and short duration, anesthesiologists use it during surgery as a sedative. Because of its powerful analgesic effect, oncologists prescribe it in its patch format as a painkiller for end-stage cancer patients. Fentanyl can alleviate suffering when properly used by a licensed physician.

But fentanyl can also be an effective killer when used outside medical care because it can produce respiratory depression, sometimes completely and instantly.³² Some dealers intentionally mix powdered fentanyl with heroin, cocaine, or methamphetamine as a less expensive dilutant or for its additional “kick;” other dealers add it negligently by failing to sanitize a workspace where “baggies” are prepared.³³ Whatever the reason, the result can prove deadly. A miniscule amount of fentanyl, perhaps just 10–15 grains—*grains*, not *grams*—can prove instantly fatal.³⁴ The upshot is this: Fentanyl has killed more of our fellow citizens, often unwittingly, than many hearts can bear.³⁵

Fentanyl is an attractive product for traffickers and smugglers. Synthesizing it in a laboratory is less expensive and time-consuming than planting

and growing poppies for heroin manufacture, waiting for the plants to mature, protecting the growing fields during that period, manufacturing and transporting the final product, and smuggling it into this country—all without tipping off law enforcement.³⁶ Because of its great potency,³⁷ only a small quantity of fentanyl is necessary, allowing traffickers to ship the drug to parties in the United States via the U.S. mail system or private carriers.³⁸ Individual small packages that do not call attention to themselves are difficult to identify as part of the billions of letters and packages sent to the United States, particularly if the final leg of their shipment originates in a nation that is friendly to ours such as Canada.³⁹ As a result, those packages can hide in plain sight like individual snowflakes in a blizzard.⁴⁰ Another approach has been to ship the final product to Mexico, where the TCOs use established distribution routes to smuggle the drug across our southwest border and then transport it to local distributors.⁴¹

In 2019, however, Xi Jinping, President of China and General Secretary of the Chinese Communist Party (CCP), agreed with then-President Donald Trump to take steps to prevent the shipment of illicitly manufactured fentanyl to this nation.⁴² As a result, Chinese companies shifted their approach to fentanyl trafficking. They abandoned manufacturing and smuggling the *finished product* into Mexico for retransmission into the United States in favor of shipping fentanyl's *precursor chemicals* to Mexico, where the TCOs use them to synthesize the final product anywhere that a moderately talented chemist can put together a makeshift or “low rent” laboratory that is quite unlike the ones used by legitimate pharmaceutical companies.⁴³ In effect, some Chinese companies use what pool players call a “two-cushion double” (viz., a shot in which the cue ball bounces the object ball off two cushions before the latter falls into a pocket).⁴⁴ The effect on Americans is the same, however, regardless of the number of intermediate steps involved in fentanyl smuggling. Fentanyl remains deadly in the United States—the third of the three nations in this mercantile system for illicit drugs—whether it is synthesized in China or in Mexico.⁴⁵

That raises some issues that did not arise when Chinese companies themselves manufactured fentanyl and the TCOs were only finished-product smugglers. The reason is that some precursors also have legitimate uses in the synthesis of noncontraband compounds. The shipment of only precursor chemicals therefore raises a question that would not arise in the case of contraband: Can the government hold criminally liable—as co-conspirators with illicit fentanyl traffickers or accessories to their illegal scheme—parties who only manufacture and transport fentanyl precursor chemicals that are not themselves deemed contraband?

This *Special Report* focuses on the criminal responsibility of the parties in that chain of events. They will principally be found in China, but some might reside in Mexico too. The Supreme Court of the United States addressed the criminal responsibility of that two-cushion double shot decades ago, and it might need to do so again now.

The Legal Responsibility for Manufacturing or Selling Items Used in a Crime

General Principles of Conspiratorial Liability. The legal responsibility of parties who knowingly engage in illicit drug trafficking is well settled. Numerous federal and state laws forbid the importation, manufacture, distribution, and possession of illicit drugs,⁴⁶ and the case reports are filled with descriptions of successful prosecutions for conduct undertaken both domestically⁴⁷ and beyond our shores.⁴⁸ For example, the distribution of heroin has been an offense under federal law since the Harrison Narcotics Tax Act of 1914.⁴⁹ It remains so today,⁵⁰ and every state punishes its distribution or possession⁵¹ as well as conspiracy to traffic in that drug.⁵² Thus, knowledge that heroin is contraband is so often and widely communicated and so well known among the public today that no reasonable adult could believe otherwise.⁵³

The government can prove a party's involvement in illegal drug trafficking, including joining a conspiracy to engage in that conduct, in several ways: by the eyewitness testimony of an undercover law enforcement agent or a former participant who has become a prosecution witness,⁵⁴ through statements made by a co-conspirator during the course of and in furtherance of the conspiracy,⁵⁵ by a videotape or audiotape of a transaction or other incriminating conduct,⁵⁶ or by circumstantial evidence.⁵⁷ In fact, contrary to what we hear on television, circumstantial evidence is commonly used because "most conspiracies are clandestine in nature," making it difficult for the government "to present direct evidence of the agreement."⁵⁸ Being "sympathetic to this problem," the federal courts have ruled that the government and jury may "rely on inferences drawn from the course of conduct of the alleged conspirators."⁵⁹ In the Supreme Court's words, "[t]he proof, by the very nature of the crime, must be circumstantial and therefore inferential to an extent varying with the conditions under which the crime may be committed."⁶⁰

Proof of criminal responsibility through circumstantial evidence becomes a more complicated matter, however, when the substance at issue is not heroin or another well-known article of contraband. An

automobile dealership does not become a party to a bank robbery by selling a car to someone who, unbeknownst to the seller, intends to use it as the getaway car. By contrast, loaning your car to someone who asks you to use it in a bank robbery getaway *does* make you a willing participant in a conspiracy to commit a robbery (or aiding and abetting it⁶¹). The reason is that, with full knowledge of its intended use, you have freely contributed an instrumentality of the crime to the perpetrators. You are as guilty of that bank robbery as are the people who enter the bank and execute their plan.

The further removed from the final product a chemical substance is, the weaker the connection to illegality is. Plastic sandwich bags are used to transport food as well as “rocks” of crack cocaine. Razor blades are used for shaving as well as separating powdered cocaine into inhalable lines. Indeed, the larger the number of entirely legitimate uses for a particular widget, the more difficult it is to deem it a characteristic article used in drug trafficking. Just as drug traffickers use cell phones to communicate with suppliers, bankers, and distributors, law enforcement officers and the public use cell phones for all the myriad uses they now have in our lives.⁶² Grocery stores do not become parties to the illegal drug trade by selling foodstuffs to traffickers even though food is essential to life. The relationship between a cell phone or food and drug trafficking is far too attenuated and the number of people who purchase it without any involvement in crime too immense to justify the inference that a grocer has sought to further the goals of traffickers simply by selling them that product.

How, then, do we decide what facts make someone a partner in crime? Two Supreme Court decisions are particularly relevant. Each one addresses the proof necessary to establish participation in a conspiracy when the evidence relates to an article of commerce that can be used for good or ill.⁶³

The Supreme Court’s Decisions in *Falcone* and *Direct Sales*. The first decision is *United States v. Falcone*.⁶⁴ There, the government sought to convict parties (“jobbers or distributors”) who had sold sugar, yeast, and cans to some people who used them to distill liquor illegally. Even though some of the sellers knew that their products would be used for bootlegging, the Court found that the evidence was insufficient to convict the sellers of conspiring to distill alcohol illegally.⁶⁵ The Court found that “[t]he evidence respecting the volume of sales to any known to be distillers is too vague and inconclusive to support a jury finding that respondents knew of a conspiracy from the size of the purchases,” even assuming that (an issue the Court did not decide) “the knowledge would make them conspirators or aiders or abettors of the conspiracy.”⁶⁶

By contrast, in the second case, *Direct Sales Co. v. United States*,⁶⁷ a registered drug manufacturing company and licensed wholesaler sold morphine to John Tate, a physician, in quantities far greater than any physician would prescribe in the ordinary course of medicine.⁶⁸ Some of the other physicians who overprescribed morphine previously had been convicted of drug trafficking. The federal government had advised Direct Sales four years before charging the company that “it was being used as a source of supply by convicted physicians,” but Direct Sales continued its profitable program of quantity sales to physicians like Tate.⁶⁹ The Supreme Court found that evidence sufficient to prove that Direct Sales had conspired with Tate to distribute morphine illegally.⁷⁰ The Court also concluded that the *Direct Sales* case was materially different from *Falcone* for several reasons.

The Court began with the proposition that *Falcone* did not create a “sweeping insulation” from responsibility for any party who sells goods to a buyer with an “illegal and known intended use.”⁷¹ The *Falcone* case “comes down merely to this,” the Court explained: “[O]ne does not become a party to a conspiracy by aiding and abetting it, through sales of supplies or otherwise, unless he knows of the conspiracy; and the inference of such knowledge cannot be drawn merely from knowledge the buyer will use the goods illegally.”⁷² The facts in *Direct Sales* “show much more than the evidence did” in *Falcone*.⁷³ The articles in *Falcone* “were articles of free commerce, sugar, cans, etc.” that could be resold without any restriction, registration, or other limitation once the seller parted company with them.⁷⁴ “When they left the seller’s stock and passed to the purchaser’s hands, they were not in themselves restricted commodities, incapable of further legal use except by compliance with rigid regulations, such as apply to morphine sulphate,”⁷⁵ distribution of which was regulated by the Harrison Narcotic Tax Act of 1914.⁷⁶ Just as “[g]angsters, not hunters or small boys, comprise the normal private market for machine guns,” morphine “addicts furnish the normal outlet for morphine which gets outside the restricted channels of legitimate trade.”⁷⁷

That difference in clientele and product—“like that between toy pistols or hunting rifles and machine guns”—was critical for two reasons.⁷⁸ One was that, while “[a]ll articles of commerce may be put to illegal ends,” not all “have inherently the same susceptibility to harmful and illegal use.”⁷⁹ The other reason was that not all articles of commerce “embody the same capacity, from their very nature, for giving the seller notice the buyer will use them unlawfully.”⁸⁰ But some do. “[N]arcotic drugs, machine guns and such restricted commodities” have an “inherent capacity for harm” and are

“restricted” for that reason. Those differences in the nature of the products make “a difference in the quantity of proof required to show knowledge that the buyer will utilize the article unlawfully.”⁸¹

To be sure, not every sale of a restricted item, the Court wrote, would prove the existence of a conspiracy.⁸² “But this is not to say that a seller of harmful restricted goods has license to sell in unlimited quantities, to stimulate such sales by all the high-pressure methods,” or to subvert the “restrictions” imposed on the sale of dangerous goods, because the markets for the two types of products are materially different.⁸³ The “difference in the commodities”—goods that may be freely sold without restriction versus ones that are highly regulated and whose limited distribution is enforced by the criminal law—“has a further bearing upon the existence and the proof of intent.”⁸⁴ When there are “black markets for dope,” a jury may find that “the supplier not only knows and acquiesces, but joins both mind and hand with him to make its accomplishment possible.”⁸⁵ Proof of the existence of “such a system, working in prolonged cooperation with a physician’s unlawful purpose to supply him with his stock in trade for his illicit enterprise,” the Court reasoned, poses “no legal obstacle to finding that the supplier not only knows and acquiesces, but joins both mind and hand with him to make its accomplishment possible.”⁸⁶ In that setting, a jury may take “[t]he step from knowledge to intent and agreement.”⁸⁷ Why? Because “[t]here is more than suspicion, more than knowledge, acquiescence, carelessness, indifference, lack of concern. There is informed and interested cooperation, stimulation, instigation.”⁸⁸

Atop that, the Court decided, “there is also a ‘stake in the venture’ which, even if it may not be essential, is not irrelevant to the question of conspiracy.”⁸⁹ Direct Sales’ “stake” was in profiting from this venture, “which it knew could come only from its encouragement of Tate’s illicit operations.”⁹⁰ In effect, Direct Sales and Tate were partners, the former serving as a distributor and the latter as a dealer. “In such a posture the case does not fall doubtfully outside either the shadowy border between lawful co-operation and criminal association or the no less elusive line which separates conspiracy from overlapping forms of criminal cooperation.”⁹¹

Finally, in the eyes of the law, Direct Sales and Tate were co-conspirators in the illegal distribution of morphine even though they never met and never formally agreed to become partners in crime. Under the facts of that case, their agreement, even though only “tacit,” was sufficient to render Direct Sales fully liable for conspiracy.⁹² “Not the form or manner in which the understanding is made, but the fact of its existence and the further one of making it effective by overt conduct are the crucial matters.”⁹³

The lower courts have elaborated on the Supreme Court's decisions in *Falcone* and *Direct Sales*. For example, the circuit courts have concluded that the government need not prove that a party knows all the details of the conspiracy or the entire crew of co-conspirators; knowledge of the "essentials of the conspiracy" is sufficient.⁹⁴ To establish that knowledge, the government can rely on facts—buttressed by a healthy dose of "common sense"⁹⁵—such as repeated bulk sales of highly regulated or illegal products, the limited number of lawful uses for a product, characteristics (such as a pungent odor) of an illegal drug manufacturing facility, and others—from which a jury can infer a party's knowledge of a conspiracy's goal and willingness to join it.⁹⁶ Finally, jurors and courts may draw reasonable inferences as to what drug traffickers know from the nature of the business in which they are involved. For example, smugglers deal with mid-level traffickers who in turn sell to retail distributors, so the smugglers know what will happen to their products.⁹⁷

Legal Responsibility for Manufacturing, Smuggling, or Distributing Fentanyl Precursor Chemicals

With those principles in mind, we can now examine what we know about the production, shipment, and use of fentanyl precursor chemicals and the equipment (such as pill presses) used to disguise that drug as an ordinary, safe pharmaceutical.⁹⁸ It turns out that, given the widespread nature of the fentanyl problem in America, the culpability of the higher-ups in the chain, from manufacturing fentanyl's precursor chemicals to their shipping to Mexico to their synthesization into the final product to their street-level distribution, might be even clearer than it would be for the lower-level workers in that process.

Application of *Falcone* and *Direct Sales* to Production, Distribution, and Use of Fentanyl's Precursor Chemicals. The Supreme Court's *Falcone* and *Direct Sales* decisions teach us valuable lessons about what types of basic facts permit the inference that a party is aware of and joins in a conspiracy to create, smuggle, and sell fentanyl. The following subparts examine what we know about the role of fentanyl's precursor chemicals as well as the production, smuggling, and distribution of the final product. It is doubtless the case that the United States intelligence and law enforcement communities know far more about those steps than what is described below, which is based on government and international reports, research by scholars, and media accounts of the fentanyl trade. Nonetheless, even publicly available information shows that upstream parties are criminally liable for participating in fentanyl trafficking.

Precursor Chemicals Used Only to Synthesize Fentanyl. Fentanyl precursors are often “ready-made building blocks created from common industrial chemicals.”⁹⁹ Think of them as cookie batter. Just as you can bake cookies from scratch but the premixed batter saves you time, so too some immediate fentanyl precursors make it easier to synthesize the final product by allowing you to skip some early steps in the process.¹⁰⁰ That batter is relevant when determining what a reasonable buyer and seller knew about the product at issue and the uses to which it could be put. In any event, because even remote precursors can be modified and combined to produce fentanyl, all antecedent compounds (within reason) can supply evidence of the intent to synthesize illicit fentanyl.

The best proof is the possession of precursors that have no known legitimate use other than the production of fentanyl. In 2024, the United Nations International Narcotics Board (UNINCB), “an independent and quasi-judicial control organ, established by treaty, for monitoring the implementation of the international drug control treaties,”¹⁰¹ prepared a list of 153 fentanyl-related substances with no known legitimate medical use.¹⁰² Accordingly, depending on the context, the production or distribution of precursors used exclusively, or perhaps even primarily, to synthesize illicit fentanyl can justify the inference that the seller and buyer were engaged in the criminal enterprise of manufacturing that drug.

Precursor Chemicals Used to Synthesize Illicit Fentanyl but Also for Lawful Purposes. If you have chemicals with legitimate and highly desirable uses, the case becomes a more difficult one to prove. One factor that troubled the Supreme Court in *Falcone* was that the items at issue, such as “sugar, yeast or cans,”¹⁰³ were ordinary “articles of free commerce” that could be sold and resold without any restriction, registration, or other limitation.¹⁰⁴ Also, the “jobbers or distributors” who sold those items were not employees of or the exclusive suppliers to “the distiller defendants.”¹⁰⁵ Only “some” of those products wound up with bootleggers.¹⁰⁶

In *Falcone*, the Court was troubled—quite properly—by the prospect that the sale of goods or merchandise that could be used for a host of entirely lawful uses would render a legitimate business official guilty of conspiring to manufacture and distribute bootleg alcohol even if the seller knew that the buyer had a reputation as a bootlegger. In some (perhaps many) such instances, deeming the sale of an innocuous item of commerce—say, a flashlight or bottled water—to someone suspected of breaking the law as tantamount to willfully joining a criminal enterprise could criminalize the sale of an extraordinarily large number of ordinary products. That would extend the criminal law much further than any reasonable person could

justify. For such reasons, the Supreme Court drew a line in *Falcone* and *Direct Sales* to exclude parties that society would not ordinarily deem criminals. In the Court's words in *Falcone*, "one who without more [knowledge of the conspiracy] furnishes supplies to an illicit distiller is not guilty of conspiracy even though his sale may have furthered the object of a conspiracy to which the distiller was a party but of which the supplier had no knowledge."¹⁰⁷

That being said, the government's burden of proof is not Sisyphean. The *Direct Sales* decision allows a jury to consider the totality of the facts and circumstances surrounding a transaction when it decides the guilt or innocence of a party accused of becoming a member of a criminal enterprise.¹⁰⁸ Other factors can help to prove that a seller was a willing participant in a conspiracy rather than an unwitting dupe.

Marketing Efforts Designed to Enable a Purchaser to Synthesize Fentanyl Illicitly. Highly incriminating evidence can come in the form of the marketing efforts some companies use to disguise and sell their chemicals. For example, some Chinese companies make it easy to prove that they are complicit in the manufacturing and trafficking of illicit fentanyl by "openly market[ing] their wares as ingredients for illicit drugs," by "provid[ing] molecular diagrams of fentanyl precursors," or by offering "instructions on how to chemically tweak [their products] to get them ready to be synthesized into fentanyl."¹⁰⁹ Those companies are essentially taunting the United States to do something to stop them while knowing that the Chinese government will not take action against them. Brazenly advertising how purchasers can use a company's precursors to manufacture illicit fentanyl or daring American law enforcement authorities to stop those sales certainly qualifies as highly probative evidence of guilt.

Steps Taken to Disguise the Nature of the Product Shipped to Known Drug Traffickers for the Illicit Manufacture of a Deadly Drug. The disguised shipment of fentanyl precursor chemicals to organized criminal enterprises known to synthesize, smuggle, and distribute the finished product is a simple and straightforward type of proof that can demonstrate knowledge of wrongdoing. The proof can come in the form of fraudulent documents such as shipping manifests, bills of lading, and payment records; use of multiple sources to obtain smaller amounts of the same chemicals; transshipment of chemicals through more than one country; transshipment of packages through multiple freight forwarders and other middlemen to "launder" its origination point"; changes in transshipment routes; use of false identities for the shipper and recipient; mislabeling of fentanyl as a different cargo; placement of fentanyl in hidden locations among legitimate

cargos; bribery (or intimidation) of customs officials at the ports of departure, transshipment, and ultimate receipt; and the like.¹¹⁰ The primary risk is that one might repeat the same course of business too often thereby giving away one's technique. The only limit on how to evade detection is the parties' imagination.

Consider these examples. In 2021, the U.S.–China Economic and Security Review Commission, a federally chartered body, found that “Chinese traffickers are using various strategies to circumvent new [Chinese] regulations,” such as “focusing on chemical precursors, relocating some manufacturing sites to India, rerouting precursor shipments through third countries, and leveraging marketing schemes to avoid detection.”¹¹¹ According to the DEA, the handoff from Chinese companies to the Mexican TCOs works as follows:

The Sinaloa and Jalisco cartels and their chemical suppliers in China rely on deliberate mislabeling, multi-phase shipping maneuvers, and other evasive techniques to get fentanyl precursor chemicals into Mexico without being detected by law enforcement or stopped by international chemical regulators. Suspect vendors and dark web marketplaces based in China use certain keywords or phrases to indicate their willingness to defy bans and restrictions, such as “discreet delivery,” “no customs issues,” or “100% guaranteed delivery or free reshipment.” In shipping notifications, vendors sometimes hide the shipment details by embedding them in photos or images that do not raise suspicions. Cargo containing these chemicals can be deliberately mislabeled or misspelled or contain the Chemical Abstracts Registry number instead of the chemical name—a number unlikely to be known by shippers, freight forwarders, or port workers. China-based chemical suppliers prefer cryptocurrency payments over other forms, and encrypted messaging and communications platforms. The Mexican cartels use international export brokers, consignees, third-party countries, and other methods to anonymize the contents and source of the chemical shipments. The cartels also use legitimate but likely complicit companies in the United States, Mexico, and India to import chemicals for subsequent diversion to clandestine fentanyl labs in Mexico.¹¹²

Such efforts to disguise the nature of shipments is a testament to knowledge of the illegalities that the TCOs commit as well as the shippers' interests in partnering with the TCOs to make profits that “come only from” their “encouragement and supply” of the TCOs' illicit operations.¹¹³ Moreover, proof of efforts to disguise or obscure fentanyl trafficking is not materially different from what the Supreme Court found persuasive in *Direct Sales* to establish criminal responsibility.

Use of a Nontraditional Process to Synthesize Illicit Fentanyl. Mexican TCOs sometimes manufacture fentanyl using sophisticated laboratory equipment,¹¹⁴ but that is unnecessary; fentanyl production requires only elementary knowledge of chemistry and basic laboratory skills along with rudimentary facilities.¹¹⁵ Even high-school dropouts can learn the necessary steps, which can be learned by assisting more experienced parties.¹¹⁶ One such cook said that “whipping up the drug was as easy as ‘making chicken soup.’”¹¹⁷ A current common production process, known as the “one-pot Gupta method” and named after Pradeep Kumar Gupta, the Indian scientist who invented that streamlined production method for battlefield medicine use, does not require sophisticated equipment in a modern pharmaceutical-quality laboratory.¹¹⁸ The average person would know that producing a powerful drug—a fact known to participants because of the masks they must wear while “cooking”—under such circumstances is not how legitimate pharmaceuticals are prepared.¹¹⁹

Laundering the Proceeds of Illicit Drug Trafficking. There is strong evidence that Chinese nationals have worked with Mexican TCOs to launder the cartels’ drug trafficking proceeds.¹²⁰ The existence of money laundering is proof of knowledge of guilt, and proof of laundering is a matter of public knowledge.¹²¹ In April 2015, the Financial Crimes Enforcement Network (colloquially known as FinCen), a component of the U.S. Department of the Treasury, concluded that Mexico and China have laundered the proceeds of sales of fentanyl precursors and processed fentanyl through the United States banking system. FinCen concluded that “the Mexican [TCOs]” and “chemical brokers leveraged front companies, money mules, and U.S.-based intermediaries to procure fentanyl precursor chemicals.”¹²² As the House Select Committee on the Strategic Competition Between the United States and the Chinese Communist Party concluded in 2024, “[t]he fentanyl crisis has helped CCP-tied Chinese organized criminal groups become the world’s premier money launderers” and has “enriched the PRC’s chemical industry” while having “a devastating impact on Americans.”¹²³

The Heavily Regulated Nature of the Industry. The production and sale of fentanyl precursors is a heavily regulated business under American law. That fact is relevant when considering a company’s or person’s knowledge of what the law demands. Several Supreme Court decisions make that point. In each one, the Court emphasized that the highly regulated nature of the activities at issue justified the conclusion that a party can be held criminally liable for illegal conduct even without proof that the charged parties knew that their actions were illegal and that they intended to break the law.

One example is *United States v. International Minerals and Chemicals Corp.*¹²⁴ Charged with knowingly transporting hazardous chemicals (sulfuric acid and hydrofluosilicic acid) in violation of federal shipping regulations, the company sought to have the charges dismissed because they did not allege that the firm knowingly violated the law. The Supreme Court rejected that argument. The Court reasoned that, although “[a] person thinking in good faith that he was shipping distilled water when in fact he was shipping some dangerous acid would not be covered” by the act,¹²⁵ where “dangerous or deleterious devices or products or obnoxious waste materials are involved, the probability of regulation is so great that anyone who is aware that he is in possession of them or dealing with them must be presumed to be aware of the regulation.”¹²⁶ The Supreme Court’s other cases are to the same effect.¹²⁷ As a result, parties involved in the production or shipping of fentanyl precursor chemicals can be deemed to be held criminally liable if and when they ship or transport such chemicals to the Mexican TCOs.

Buttressing that legal presumption is the fact that, as noted above, federal law requires (inter alia) that chemicals and equipment that could be used to manufacture illicit drugs be listed on a Special Surveillance List to help legitimate businesses identify their intended or possible use.¹²⁸ Since 2021, the U.S. Department of the Treasury’s Office of Foreign Asset Control has imposed sanctions on more than 290 foreign individuals and companies involved in the illicit fentanyl business.¹²⁹ Among the sanctioned parties have been “[China]-based suppliers of fentanyl precursor chemicals and manufacturing equipment; chemical brokers based in the PRC, Mexico, and other jurisdictions; Mexico-based manufacturers, smugglers, and traffickers of illicit fentanyl and other synthetic opioids,” and “money launderers that obfuscate the illicit proceeds sustaining the supply chain.”¹³⁰

Does consideration of these factors pose a risk of convicting innocent parties? No. There is no serious risk that prosecution of fentanyl trafficking intermediaries will ensnare innocent parties. On the contrary, here, as in *Direct Sales*, “[t]here is more than suspicion, more than knowledge, acquiescence, carelessness, indifference, lack of concern. There is informed and interested cooperation, stimulation, instigation.”¹³¹ The parties involved in the illicit trafficking of fentanyl precursors know how those chemicals will be used. In particular, organized criminal elements in the PRC, along with the PRC government and the CCP, likely do or should know full well what is happening in their nation but have not stopped it.¹³²

The Business of Illicit Fentanyl Trafficking. Consider the principal culprits in the nation's fentanyl deaths. One is the group of Chinese companies that manufacture fentanyl production equipment, including die molds, used to manufacture counterfeit fentanyl-containing pills¹³³ as well as the precursor chemicals—or the “pre-precursor chemicals”¹³⁴—used to synthesize the final product.¹³⁵ China has a massive chemical sector that annually contributes trillions of dollars to its national economy and employs thousands of workers.¹³⁶ That factor and others might explain why the Chinese government and CCP have refused to suppress the shipment of fentanyl precursors to the other principal culprit in America's fentanyl crisis.¹³⁷

“The China–Mexico connection grew,” the U.S.–China Economic and Security Review Commission found, “when Chinese traffickers increased fentanyl precursor sales to Mexican cartels.”¹³⁸ The “Chinese chemical manufacturers sell fentanyl precursors at extremely low margins,” DEA Deputy Chief of Foreign Operations Matthew Donahue explained. As a result, there is “an unlimited and endless supply of precursors chemicals...coming from China to Mexico,” and “Chinese traffickers have virtually ceased making analogues to focus solely on precursors” while also shipping “large-scale industrial size pill presses to Mexico” for the TCOs' use.¹³⁹ As the House Select Committee on the Strategic Competition Between the United States and the Chinese Communist Party put it, “the PRC ‘has done little to halt the flow of fentanyl to the United States’” because “‘Mexican drug trafficking groups continue to almost exclusively source fentanyl precursor and pre-precursor chemicals in China, synthesize them into fentanyl, and smuggle them to the United States.’”¹⁴⁰ For example, in 2022, the DEA seized more than 379 million lethal doses of fentanyl, and in 2023, “a single PRC chemical manufacturer shipped enough fentanyl precursors to produce over 25 million lethal doses to just one undercover agent.”¹⁴¹ The involvement of some Chinese companies in fentanyl trafficking is clear.¹⁴²

Once the precursors arrive in Mexico, the second principal culprit—the Mexican TCOs—takes over.¹⁴³ They control the ports into which the precursor chemicals arrive.¹⁴⁴ They manufacture the final products in powder or pill forms and smuggle them into the United States, disperse the drug along established trafficking routes, and see to its retail distribution.¹⁴⁵ Together, the Chinese companies and Mexican criminal enterprises, with the acquiescence of their governments,¹⁴⁶ have been responsible for nearly all of the illicit fentanyl that has entered United States and therefore have caused scores of thousands of overdose deaths. The illicit production, distribution, and use of that drug is a form of chemical warfare that has victimized the American public for almost four years.¹⁴⁷

Nor do the Chinese firms and Mexican TCOs act alone in this regard. Chinese chemical and pharmaceutical companies act with the support and assistance of the PRC government and the CCP.¹⁴⁸ In fact, China's chemical companies, the PRC government, and the CCP have a symbiotic relationship with regard to fentanyl,¹⁴⁹ with each one benefitting from actions taken by the other two¹⁵⁰ even though some of that activity might be illegal under Chinese law.¹⁵¹ According to the House Select Committee's *CCP and Fentanyl* report on China's involvement in the fentanyl trade, the CCP-controlled PRC government:

1. **Directly subsidizes the manufacturing and export of illicit fentanyl materials and other synthetic narcotics through tax rebates.** Many of these substances are illegal under the PRC's own laws and have no known legal use worldwide. Like its export tax rebates for legitimate goods, the CCP's subsidizing of illegal drugs incentivizes international synthetic drug sales from the PRC. The CCP has never disclosed this program.
2. **Gave monetary grants and awards to companies openly trafficking illicit fentanyl materials and other synthetic narcotics.** There are even examples of some of these companies enjoying site visits from provincial PRC government officials who complimented them for their impact on the provincial economy.
3. **Holds ownership interest in several PRC companies tied to drug trafficking.** This includes a PRC government prison connected to human rights abuses owning a drug trafficking chemical company and a publicly traded PRC company hosting thousands of solicitations of open drug trafficking on its sites.
4. **Fails to prosecute fentanyl and precursor manufacturers.** Rather than investigating drug traffickers, PRC security services have not cooperated with U.S. law enforcement and have even notified targets of U.S. investigations when they received requests for assistance.
5. **Allows the open sale of fentanyl precursors and other illicit materials on the extensively monitored and controlled PRC internet.** A review of just seven e-commerce sites found over 31,000 instances of PRC companies selling illicit chemicals with obvious ties to drug trafficking. Undercover communications with PRC drug

trafficking companies (whose identities were provided to U.S. law enforcement) revealed an eagerness to engage in clearly illicit drug sales with no fear of reprisal.

6. **Censors content about domestic drug sales but leaves export-focused narcotics content untouched.** The PRC has censorship triggers for domestic drug sales (e.g., “fentanyl + cash on delivery”), but no such triggers exist to monitor or prevent the export of illicit narcotics out of the PRC.
7. **Strategically and economically benefits from the fentanyl crisis.** The fentanyl crisis has helped CCP-tied Chinese organized criminal groups become the world’s premier money launderers, enriched the PRC’s chemical industry, and had a devastating impact on Americans.¹⁵²

Over the past seven years, the Mexican TCOs have operated largely with the acquiescence of the Mexican government.¹⁵³ Mexico’s immediate past president, Andres Manuel López Obrador, adopted a policy of “abrazos no balazos”—hugs not bullets, viz., attacking poverty, not the cartels—which only emboldened the TCOs by effectively giving them a pass.¹⁵⁴ We know that this approach was a massive failure both for the United States and for Mexico.

The Relevance of Motive. Despite what most people see on television, motive, unlike intent or knowledge, is not a necessary element of proof of a crime.¹⁵⁵ Motive refers to the desire to achieve a certain end; intent refers to the actor’s state of mind at the time that he commits the external act(s) necessary for a crime.¹⁵⁶ “Motive has been said to be that something in the mind, or that condition of the mind, which incites to the action, or the moving power which impels action, induces action, or gives birth to a purpose.”¹⁵⁷ A person can intend to kill for multiple reasons—to defend himself against an unlawful murderous assault, to carry out a lawful execution, to defeat an enemy in war, and so forth—but *why X* committed a crime against *Y* ordinarily is less important than *what X’s intent* was.¹⁵⁸ The reason is that a crime is the union of act and intent, not motive.¹⁵⁹

Nonetheless, the two concepts are related. A person’s motive, the “emotional urge” to achieve “a particular result,” can “prompt an intent to bring about that end” and result in the action necessary to accomplish it.¹⁶⁰ Accordingly, even though motive is not an element of an offense, it is relevant for a different reason. Proving that a particular party was strongly

motivated to commit a specific crime is relevant proof that he or she committed it when the government's proof is circumstantial because it helps to identify who is the responsible party.¹⁶¹

Here, both profit and nonprofit motives are at work. The steps that the CCP and PRC have taken to spread illicit fentanyl have benefitted those parties domestically and internationally.

The Profit Motive. Start with the domestic benefits, of which there are several: Trafficking in fentanyl's precursors (and their finished product) "has enriched the PRC itself"; it has "empowered its organized crime assets through lucrative money laundering"; it has "offer[ed] PRC elites a means to move a certain amount of their capital abroad, thus diminishing the risk of their dissent"; and it has "enrich[ed] PRC companies."¹⁶² Fentanyl trafficking has enriched the Chinese chemical companies, the CCP, and the Mexican TCOs at the cost of American lives.

The Nonprofit Motives. PRC-sourced fentanyl has wreaked havoc in this nation.¹⁶³ The PRC sees "drug warfare as an effective tactic in asymmetric warfare" because it "weakens a country"¹⁶⁴ from within in multiple ways: It limits the number of people able and qualified to serve in the military by killing or addicting thousands of military-age men and women. It forces a nation to spend resources on the interdiction of fentanyl and its precursors, as well as the investigation, prosecution, incarceration, and treatment of drug traffickers and users. It foments internal dissension in America over the proper treatment of people suffering from substance abuse. It affords China leverage in international negotiations because China does not distinguish between this subject and others subject to negotiation.¹⁶⁵ And it allows China to absolve itself for its participation in the production, synthesis, and distribution of illicit fentanyl by using propaganda to blame "the decadence of American-led western democracies" for their fentanyl use.¹⁶⁶

The upshot is this: Publicly available facts, caselaw, and common sense combine to teach us that the people involved in this activity are far from being innocent parties mistakenly caught up in a criminal enterprise. These companies and parties did not stumble across the line of illegality. Companies *that* sell precursor chemicals on the "Dark Web,"¹⁶⁷ *that* market precursor chemicals to strangers and tell purchasers how to synthesize fentanyl illegally,¹⁶⁸ *that* disguise their packages,¹⁶⁹ *that* use phony documents to identify the contents of their packages and shipments,¹⁷⁰ *that* run false flag operations,¹⁷¹ *that* (unlike legitimate, well-known pharmaceutical companies) synthesize fentanyl precursors in "open-air labs in rural areas such as forests or remote ranches" or in "ventilated laboratories inside apartments and houses in cities such as Culiacán," Sinaloa, the "epicenter

of [illicit fentanyl] production” in Mexico,¹⁷² and *that* launder their receipts—companies that use those practices know that they are on the wrong side of the law.¹⁷³

Members of organized crime groups in China, the CCP, the PRC government, the companies knowingly involved in the disguised shipment of precursor chemicals to the Mexican TCOs—each of those entities has a profit or nonprofit motive. Some seek to profit from sales of precursors to the Mexican TCOs, while Chinese government officials, acting at the behest of the CCP, charge export fees that help to fund China’s domestic activities and international ambitions. That helps to prove their complicity in illicit fentanyl trafficking. Atop that, the CCP and PRC have another, deeper motive: the desire to inflict as much pain, both personal and financial, as possible on the West, particularly the United States, to weaken this nation so that China can surpass the United States militarily and economically and become a global hegemonic ruler.

Conclusion

Along with the TCOs, parties such as organized crime entities and the companies responsible for the illicit manufacturing, shipment, and distribution of fentanyl precursor chemicals and allied equipment to Mexico—operating with the implicit blessing of the CCP—are legally responsible for the illicit fentanyl that is smuggled into the United States, is then trafficked across the nation, and winds up killing scores of thousands of Americans every year. Those parties cannot escape their responsibility by claiming that the fault lies entirely with the people who have a demand for, purchase, and use that drug. As the Supreme Court explained in *Direct Sales*, a company that becomes a business partner with an ongoing criminal enterprise and has a “stake” in its success is no less guilty than the person who directly distributes an illicit drug to a specific user.

Moreover, some of those parties—the CCP in particular—not only have a financial motive to aid and support the TCOs’ smuggling and distribution practices, but also have a conscious intent to weaken the United States so that China can take its place as the world’s most powerful nation. It is time that we woke up to what China and its associates are doing to the United States—with the Mexican TCOs’ help—and put an end to our fentanyl problem and China’s ambitions.

Endnotes

1. Cntrs. for Disease Control & Prevention, Opioids, Overdose Prevention: Fentanyl (2025), <https://www.cdc.gov/overdose-prevention/about/fentanyl.html#:~:text=While%20fentanyl%20is%20a%20powerful,deaths%20in%20the%20United%20States> [hereafter CDC, Fentanyl].
2. See, e.g., COMMISSION ON COMBATING SYNTHETIC OPIOID TRAFFICKING, FINAL REPORT 1 (2022), https://www.rand.org/pubs/external_publications/EP68838.html#:~:text=This%20final%20report%20describes%20items%20involving%20the%20illegal,executive%20branch%20agencies%20and%20congressional%20committees%20and%20leadership (last visited Aug. 17, 2025) [hereafter SYNTHETIC OPIOID COMM'N]; see also, e.g., Joseph Friedman et al., *Trends in Drug Overdose Deaths Among US Adolescents, January 2020 to June 2021*, 327 JAMA 1398, 1398–99 (2022) (“In 2021, fentanyls were identified in 77.14% of adolescent overdose deaths, compared with 13.26% for benzodiazepines, 9.77% for methamphetamine, 7.33% for cocaine, 5.76% for prescription opioids, and 2.27% for heroin.”) (footnotes omitted); *Fentanyl—The Most Dangerous Illegal Drug in America*, RAND, Essay (2020), <https://www.rand.org/pubs/articles/2020/fentanyl-the-most-dangerous-illegal-drug-in-america.html> (last visited Aug. 17, 2025) (“Drug overdoses kill more Americans than car crashes, gunshots, or AIDS at its peak. But it’s no longer just a crisis of prescription pills or heroin. It’s a crisis of fentanyl. Deaths involving it and other synthetic opioids have surged from around 3,000 in 2013 to more than 30,000 in 2018.”); Testimony of Bryce Pardo Before the House Committee on Homeland Security, Subcomm. on Intelligence and Counterterrorism and Subcomm. on Border Security, *Facilitation, and Operations, on Illicit Supply of Fentanyl and Other Synthetic Opioids: Transitioning Markets and Evolving Challenges*, 116th Cong. (2019). For discussions of illicit fentanyl and the wreckage it has produced, see, for example, SYNTHETIC OPIOID COMM'N, *supra*; BRYCE PARDO ET AL., THE FUTURE OF FENTANYL AND OTHER SYNTHETIC OPIOIDS, RAND 3, App. A 165–67 (2019); BEN WESTHOFF, FENTANYL, INC.: HOW ROGUE CHEMISTS ARE CREATING THE DEADLIEST WAVE OF THE OPIOID EPIDEMIC (2022); John J. Coleman & Robert L. DuPont, *Fentanyl as Sentinel: The Deadly Threat of Illegal Synthetic and Counterfeit Drugs*, HERITAGE FOUND. Backgrounder No. 3436 (2019); Paul J. Larkin, *Twenty-First Century Illicit Drugs and Their Discontents: The Scourge of Illicit Fentanyl*, HERITAGE FOUND. LEGAL MEMORANDUM No. 313 (2022).
3. Claire Klobucista & Mariel Ferragamo, COUNCIL ON FOREIGN RELATIONS, *Fentanyl and the U.S. Opioid Epidemic* (Dec. 22, 2023) (“Another concerning trend is the rise of fentanyl deaths in youths between ten and nineteen years old. Fatal fentanyl overdoses nearly doubled in teens between 2019 to 2021. Experts attribute some of this rise to the ease of purchasing counterfeit pills through social media.”); Larkin, *supra* note 2, at 12–13 & nn.128–35.
4. NAT'L INST. ON DRUG ABUSE, *Drug Overdose Death Rates* (May 14, 2024), <https://nida.nih.gov/research-topics/trends-statistics/overdose-death-rates> (last visited Aug. 17, 2025); Alexandra Amaducci et al., *Naloxone Use in Potent Opioid and Fentanyl Overdoses in Emergency Department Patients*, 6 JAMA NETWORK OPEN e32331264 (Aug. 29, 2023), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2808868?resultClick=1>; Yu-Jang Su et al., *Clinical Characteristics in New Psychoactive Substance Users: A Single Center Study*, 102 MEDICINE 25, 26 (2023) (“The use of illicit drugs and overdose is a serious problem in the United States and Europe. The age-adjusted rate of overdose deaths was 207 per million in 2018 in the United States and 23.7 per million in Europe.”) (endnote omitted); Erin J. Stringfellow et al., *Enumerating Contributions of Fentanyls and Other Factors to the Unprecedented 2020 Rise in Opioid Overdose Deaths: Model-Based Analysis*, 2 PNAS NEXUS (2003), <https://pmc.ncbi.nlm.nih.gov/articles/PMC10069612/pdf/pgad064.pdf> (last visited Aug. 17, 2025). The fentanyl crisis also has two other considerable costs. One estimate is that the crisis cost the nation almost \$1.5 trillion in 2020, or 7 percent of our gross domestic product. SELECT COMMITTEE ON THE STRATEGIC COMPETITION BETWEEN THE UNITED STATES AND THE CHINESE COMMUNIST PARTY, THE CCP'S ROLE IN THE FENTANYL CRISIS 5 (Apr. 16, 2024) [hereafter HOUSE SELECT COMM. REPORT, CCP AND FENTANYL]. The numbers have decreased only slightly since 2021. See BRIAN TSAI, U.S. DEP'T OF HEALTH & HUMAN SERVS., CNTRS. FOR DISEASE CONTROL & PREVENTION, NAT'L CNTR. FOR HEALTH SERVS., NCHS: A BLOG OF THE NAT'L CNTR. FOR HEALTH STATISTICS, *U.S. Overdose Deaths Decrease in 2023, First Time Since 2018* (2024) (“Provisional data from CDC's National Center for Health Statistics indicate there were an estimated 107,543 drug overdose deaths in the United States during 2023—a decrease of 3% from the 111,029 deaths estimated in 2022. This is the first annual decrease in drug overdose deaths since 2018.”).
5. HOUSE SELECT COMM. REPORT, CCP AND FENTANYL, *supra* note 4, at 2; see also *House Select Comm. on the Chinese Communist Party, The CCP's Role in American Fentanyl Epidemic Hearing: Witness Testimony and Opening Remarks*, Written Statement of former U.S. Attorney General William P. Barr 2 (Apr. 16, 2024), <https://selectcommitteeontheccp.house.gov/media/witness-testimony/ccps-role-american-fentanyl-epidemic-hearing-witness-testimony-and-opening> [hereafter *House Select Comm., CCP and Fentanyl Hearing*] (“To put this in perspective, during the bloodiest single year of World War II, we lost 106,000 troops killed in action. In short, we are now sustaining year-in-and-year-out a casualty rate from drug overdoses that exceed[s] the death total we suffered in a World War.”). More recently, fentanyl-caused drug overdose deaths have declined, but the cause of the drop-off is unclear. See, e.g., Noah Weiland & Jan Hoffman, *Trump Administration Ties Tariffs to Fatal Fentanyl Overdoses, Which Are Declining*, N.Y. TIMES, Mar. 4, 2025, <https://www.nytimes.com/2025/03/04/us/trump-tariffs-fentanyl-canada-mexico-china.html> (“Between September 2023 and September 2024, roughly 87,000 people died of drug overdoses, a decline of almost 24 percent compared with the same period a year earlier, according to the most recent C.D.C. update. Around 55,000 of the deaths were attributed to synthetic opioids such as fentanyl, a decrease of around 30 percent.”); Noah Weiland, *Drug Overdose Deaths Are Dropping. The Reasons Are Not Perfectly Clear*, N.Y. TIMES, Sept. 21, 2024, <https://www.nytimes.com/2024/09/21/us/politics/drug-overdose-deaths-decrease.html> (“Between April 2023 and April 2024, overdose deaths declined by about 10 percent nationally to roughly 101,000, according to preliminary data published recently by the Centers for Disease Control and Prevention. That amounted to the largest decrease on record, according to the Biden administration. Nonfatal overdoses are also down more than 10 percent.”).
6. See, e.g., Matthew F. Garnett & Arialdi M. Miniño, U.S. CNTRS. FOR DISEASE CONTROL & PREVENTION, *Drug Overdose Deaths in the United States, 2003–2023*, at 2 (2024) (noting that “the age-adjusted rate of drug overdose deaths nearly quadrupled from 8.9 in 2003 to 32.6 in 2022” but slightly “decreased to 31.3 in 2023”); *id.* at 4 (“The age-adjusted rate of drug overdose deaths involving synthetic opioids other than methadone, which includes fentanyl, fentanyl analogs, and tramadol, was mostly stable from 2003 (0.5 deaths per 100,000 standard population) to 2013 (1.0) and then increased through 2021 (21.8), with different rates of change over time.... From 2022 to 2023, the rate decreased by 2.2% from 22.7 to 22.2.”).

7. See, e.g., SAM QUINONES, *THE LEAST OF US: TRUE TALES OF AMERICA AND HOPE IN THE TIME OF FENTANYL AND METH* 265 (2021) (“[M]any encampments are simply meth colonies. They provide a community for users, creating the kinds of environmental cues that USC psychologist Wendy Wood found crucial in forming habits. Encampments are places where addicts flee from treatment, where they can find the warm embrace of approval for their meth use.”). The Kensington area of Philadelphia is but one example. See, e.g., Charles Fain Lehman, *Inside the East Coast’s Largest Open-Air Drug Market*, CITY J., Winter 2025 (“Kensington, Philadelphia, has been called many things over the years. The Walmart of Heroin. The Las Vegas of Drugs. ‘How do you know the toothbrush was invented in Kensington?’ one longtime Philadelphia drug user joked. ‘Because anywhere else, they would have called it the toothbrush.’”).
8. A survey found that 19 percent of respondents personally knew someone who died from a drug overdose. See Alison Athey et al., *An Overlooked Emergency: More Than One in Eight US Adults Have Had Their Lives Disrupted by Drug Overdose Deaths*, 114 AM. J. PUB. HEALTH 276, 277 Tbl. 1 (2024).
9. See, e.g., SYNTHETIC OPIOID COMM’N, *supra* note 2, at ix (“In 2018, according to the White House Council of Economic Advisers, the cost of overdose fatalities was \$696 billion, despite being roughly two-thirds of annual overdose deaths today. It is therefore reasonable to estimate that drug overdoses are now costing the United States approximately \$1 trillion annually.”); Emma Colton, *Fentanyl’s Financial Grip on US Skyrocketed to \$2.7T at Height of Biden Admin: Study*, FOX NEWS, Feb. 7, 2025, <https://www.foxnews.com/politics/fentanyls-financial-grip-us-skyrocketed-2-7-trillion-height-biden-admin-study?msocid=0a404e6e13146a7220d35ae9125b6bc0> (“The Council of Economic Advisers, an agency within the executive office that advises the president on economic policy, on Friday released a study detailing that the opioid epidemic cost the U.S. \$2.7 trillion in 2023 when considering costs related to loss of life, loss of quality of life, loss of labor force productivity, crime and costs to the healthcare system.”); Feijun Luo et al., CNTRS. FOR DISEASE CONTROL & PREVENTION, *Morbidity & Mortality Weekly Rep., State-Level Economic Costs of Opioid Use Disorder and Fatal Opioid Overdose—United States, 2017*, at 1 (2010) (“The economic cost of the U.S. opioid epidemic in 2017 was estimated at \$1,021 billion, including cost of opioid use disorder estimated at \$471 billion and cost of fatal opioid overdose estimated at \$550 billion.”) (endnote omitted).
10. See, e.g., ANNUAL THREAT ASSESSMENT OF THE U.S. INTELLIGENCE COMMUNITY 5 (2025) [hereafter 2025 INTELLIGENCE ASSESSMENT] (“Western Hemisphere-based TCOs [Transnational Criminal Organizations] and terrorists involved in illicit drug production and trafficking bound for the United States endanger the health and safety of millions of Americans and contribute to regional instability.”); Robert Greenway, Andrés Martínez-Fernández & Wilson Beaver, *How the President Can Use the U.S. Military to Secure the Border with Mexico*, HERITAGE FOUND. SPECIAL REPORT No. 309 (2025) (“The unchecked growth of Mexican drug cartels poses a rapidly increasing threat to U.S. national security and the well-being of the American public.”); see also, e.g., *House Select Comm., CCP and Fentanyl Hearing*, *supra* note 5, Written Statement of former DEA Chief of Operations Ray Donovan 1–2 <https://selectcommitteeontheccp.house.gov/media/witness-testimony/ccps-role-american-fentanyl-epidemic-hearing-witness-testimony-and-opening> (“As a former DEA Special Agent and leader, I am taken aback with the speed and effectiveness Chinese criminal organizations exhibited in partnering with Mexican transnational criminal organizations to assume control of the fentanyl distribution and money laundering trades. The assistance and complicity of the PRC and CCP show the activity is not only a law enforcement or public health issue, but a genuine threat to our national security, killing Americans at a rate of well over 100,000 per year.”). In fact, in 2022, the bipartisan Commission on Combating Synthetic Opioid Trafficking found that “illicit synthetic opioids have the effect of a slow-motion weapon of mass destruction in pill form” that is “not just a public health emergency but a national emergency that threatens both the national security and economic well-being of the country.” SYNTHETIC OPIOID COMM’N, *supra* note 2, at ix.
11. See DRUG ENFORCEMENT ADMIN., U.S. DEP’T OF JUSTICE, NATIONAL DRUG THREAT ASSESSMENT 2024, DEA-DCT-DIR-010-24, at 10 (2024) [hereafter 2024 DEA DRUG THREAT ASSESSMENT] (“A defining characteristic of all organized crime groups is involvement in any illegal venture that results in profit, drug trafficking being among the most lucrative. The Sinaloa Cartel is most closely identified with drug trafficking, but are also engaged in extortion, the theft of petroleum and ores, weapons trafficking, migrant smuggling, and prostitution.”).
12. There are two important fentanyl-related questions that are beyond the scope of this *Special Report*: (1) Should illicit fentanyl production or trafficking that results in death be treated as a capital crime? (2) Is the fentanyl epidemic merely a larger-scale drug problem than ones we have witnessed before or is it a materially different type of drug epidemic, one that is different in kind from the heroin or methamphetamine problems that we have seen from the early 20th century to the present? In that regard, an issue is whether the fentanyl problem is demand-driven, supply-driven, or a combination of both. I will address those issues in future publications.
13. The FDA approved fentanyl as a Schedule II controlled substance under the Controlled Substances Act of 1970 (CSA), which was Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970. Pub. L. No. 91-513, 84 Stat. 1242 (codified as amended at 21 U.S.C. §§ 801–904 (West 2025)). A “controlled substance” is “a drug or other substance, or immediate precursor, included in Schedule I, II, III, IV, or V of part B of this title,” except for “distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in subtitle E of the Internal Revenue Code of 1954.” 21 U.S.C. § 802(6). The CSA incorporates the definition of a “drug” from the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 201(g)(1).
14. See HUMBERTO HERNANDEZ & THERISSA A. LIBBY, *HEROIN: ITS HISTORY, PHARMACOLOGY, AND TREATMENT* (2010).
15. Novel psychoactive substances are produced in a lab from other chemical compounds. For a discussion of laboratory-synthesized novel psychoactive substances, see, for example, 2024 DEA DRUG THREAT ASSESSMENT, *supra* note 11, at 44–45; NOVEL PSYCHOACTIVE SUBSTANCES: CLASSIFICATION, PHARMACOLOGY, AND TOXICOLOGY (Paul I. Dargan & David M. Wood eds., 2d ed. 2022); ROY GERONA, *DESIGNER DRUGS* (2024); Bertha K. Madras, *The Growing Problem of New Psychoactive Substances*, in *NEUROPHARMACOLOGY OF NEW SCIENTIFIC SUBSTANCES 1* (Michael H. Baumann et al. eds., 2017); UNITED NATIONS OFF. ON DRUGS & CRIME, *THE CHALLENGE OF NEW PSYCHOACTIVE SUBSTANCES* (2013); Jonathan P. Caulkins & Keith Humphreys, *New Drugs, Old Misery: The Challenge of Fentanyl, Meth, and Other Synthetic Drugs*, MANHATTAN INST. ISSUE BRIEF (2023); Paul J. Larkin, *Twenty-First Century Illicit Drugs and Their Discontents: The Challenges Posed by Novel Psychoactive Substances*, HERITAGE FOUND. SPECIAL REPORT No. 282 (2024).

16. See 21 U.S.C. § 802(23) (“The term ‘immediate precursor’ means a substance—(A) which the Attorney General has found to be and by regulation designated as being the principal compound used, or produced primarily for use, in the manufacture of a controlled substance; (B) which is an immediate chemical intermediary used or likely to be used in the manufacture of such controlled substance; and (C) the control of which is necessary to prevent, curtail, or limit the manufacture of such controlled substance.”); Larkin, *supra* note 2.
17. Precursor chemicals are “ready-made building blocks created from common industrial chemicals. Certain types of precursors are particularly prized by illicit fentanyl producers because they function as shortcuts to making the finished product. One senior U.S. administration official compared it to using ‘premixed brownie batter’ versus trying to whip up a batch from scratch.” Daisy Chung et al., *Fentanyl’s Deadly Chemistry: How Rogue Labs Make Opioids*, REUTERS, July 25, 2024, <https://www.reuters.com/investigates/special-report/drugs-fentanyl-supply-chain-process/> (last visited Aug. 17, 2025).
18. See 21 U.S.C. § 802(23) (quoted *supra* note 16), (34) & (35), § 830; see also *id.* at §§ 811(e), 814, 821–822; 21 C.F.R. §1310.2 (West 2025). Congress initially focused on precursor chemicals used to produce the synthetic illicit drug methamphetamine. See Comprehensive Methamphetamine Control Act of 1996, Pub. L. No. 104-237, 110 Stat. 3099 (codified as amended in scattered sections of 19, 21, 28, and 42 U.S.C.). Because fentanyl, like meth, is a synthetic drug, the 1996 act’s authority can also be used to regulate fentanyl precursor chemical compounds. More recently, Congress has specifically targeted illicit fentanyl production by passing the Halt All Lethal Trafficking of Fentanyl Act (HALT Fentanyl Act) and the Fentanyl Eradication and Narcotics Deterrence Off (FEND Off_ Fentanyl Act. To date, fentanyl-related substances have been temporarily classified under CSA Schedule I. The HALT Fentanyl Act would make that classification permanent.
19. “The Special Surveillance List identifies laboratory supplies which are used in the manufacture of controlled substances and listed chemicals. The CSA defines ‘laboratory supply’ as ‘a listed chemical or any chemical, substance, or item on a special surveillance list published by the Attorney General which contains chemicals, products, materials, or equipment used in the manufacture of controlled substances and listed chemicals.’ The CSA provides for a civil penalty of not more than \$250,000 for the distribution of a laboratory supply to a person who uses, or attempts to use, that laboratory supply to manufacture a controlled substance or a listed chemical, if that distribution was made with ‘reckless disregard’ for the illegal uses to which such a laboratory supply will be put.” DRUG ENFORCEMENT ADMIN., U.S. DEP’T OF JUSTICE, *Special Surveillance List of Chemicals, Products, Materials and Equipment Used in the Manufacture of Controlled Substances and Listed Chemicals*, 88 FED. REG. 73,044, 73,044 (2024) (footnotes omitted) [hereafter DEA, *Surveillance List*]; DRUG ENFORCEMENT ADMIN., U.S. DEP’T OF JUSTICE, *Control of the Immediate Precursor Norfentanyl Used in the Illicit Manufacture of Fentanyl as a Schedule II Controlled Substance*, 85 FED. REG. 21,320 (2020).
20. “The publication of the Special Surveillance List serves two purposes. First, it informs individuals and firms of the potential use of the items on the list in the manufacture of controlled substances and listed chemicals. Second, it reminds individuals and firms that civil penalties may be imposed on them if they distribute a laboratory supply to a person who uses, or attempts to use, that laboratory supply to manufacture a controlled substance or a listed chemical, in violation of the CSA, with reckless disregard for the illegal uses to which such a laboratory supply will be put. The publication of the updated Special Surveillance List provides an increased level of public awareness and law enforcement control to prevent the diversion of laboratory supplies used for the manufacture of listed chemicals and controlled substances.” DEA, *Surveillance List*, *supra* note 19, at 73,044 (footnotes omitted); see also U.S. DEP’T OF STATE, *Advisory to the Chemical Manufacturing Industry on Illicit Activity and Methods Related to the Manufacturing of Fentanyl and Synthetic Opioids* 8 (2019) (listing “30 chemical reactants reported in literature for the several possible methods of fentanyl synthesis”).
21. See U.N. INT’L NARCOTICS CONTROL BD., PRECURSORS 2024, No. E/INCB/2024/4, at 6 (2025) [hereafter 2024 INCB PRECURSORS] (“Non-scheduled chemicals, that is, chemicals not listed in Table I or Table II of the 1988 Convention [Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances], have become a major source of supply for illicit drug manufacture.”).
22. “A designer’s products might have a complicated structure, but his or her goal is quite simple: Create a new compound that mimics the psychoactive effects of a category of existing but illegal drugs that possesses a new chemical structure that is not clearly outlawed by federal or state-controlled substances laws or by international agreements to which the United States is a signatory. NPS are designed to attract users who have their own goals: obtaining a ‘legal high,’ evading standard drug detection analyses, or pursuing ‘novelty’ in drug experiences. A chemist’s goal is not necessarily to create a product that will endure forever or monopolize the NPS market even for a short period, but rather to make a quick buck by synthesizing a new compound that will attract ‘psychonauts’ searching for ‘the ultimate high.’” Larkin, *supra* note 15, at 2–3 (footnotes omitted).
23. One fentanyl cook in Sinaloa, Mexico, the home of the powerful Sinaloan TCO, described the process as being “as easy as ‘making chicken soup.’” Chung et al., *supra* note 17; see *id.* (“This cook, who left school at age 12, got his start as an assistant to another producer. Fentanyl recipes are prized assets, he said. His mentor was stingy with information and forbade him from taking notes. But within six months the apprentice had memorized all the steps and went into business for himself.”). Nonetheless, the Mexican TCOs have been recruiting university students with degrees in chemistry to serve as their “cooks.” See, e.g., Natalie Kitroeff & Paulina Villegas, *Mexican Cartels Lure Chemistry Students to Make Fentanyl*, N.Y. TIMES, Dec. 1, 2024, <https://www.nytimes.com/2024/12/01/world/americas/mexico-fentanyl-chemistry-students.html> (“In their quest to build fentanyl empires, Mexican criminal groups are turning to an unusual talent pool: not hit men or corrupt police officers, but chemistry students studying at Mexican universities. [¶] People who make fentanyl in cartel labs, who are called cooks, told The New York Times that they needed workers with advanced knowledge of chemistry to help make the drug stronger and ‘get more people hooked,’ as one cook put it.”).
24. See INT’L NARCOTICS CONTROL BD., REPORT 2024, E/INCB/2024/1, at 5 (2025) [hereafter 2024 INCB REPORT] (“[T]raffickers have begun to acquire sophisticated, higher-capacity and commercial-grade manufacturing equipment and technologies that enable industrial-scale manufacture. Access to online e-commerce platforms has also allowed actors to purchase and even design customized reactors that can accommodate thousands of litres of reactants, as well as specialized tablet presses and equipment that can boost yields and are difficult for authorities to disassemble or destroy.”).

25. See, e.g., Carlos A. Valdez et al., *An Efficient, Optimized Synthesis of Fentanyl and Related Analogs*, 9 PLOS ONE 108250 (2014).
26. See, e.g., 21 C.F.R. § 1310.02 (2024) (adding chemicals to the list of chemicals of special concern); U.S. DEP'T OF JUSTICE, DRUG ENFORCEMENT ADMIN., Docket No. DEA-1086, *Special Surveillance List of Chemicals, Products, Materials and Equipment Used in the Manufacture of Controlled Substances and Listed Chemicals*, 88 FED. REG. 73,044 (Oct. 24, 2023); U.S. DEP'T OF JUSTICE, DRUG ENFORCEMENT ADMIN., *DEA Adds Precursor Chemicals Used to Make Illicit Fentanyl to the Special Surveillance List* (Oct. 30, 2023), <https://www.dea.gov/stories/2023/2023-10/2023-10-30/dea-adds-precursor-chemicals-used-make-illicit-fentanyl-special> ("The Comprehensive Methamphetamine Control Act of 1996 requires that the SSL identify chemicals, products, materials, and equipment that can be used to manufacture controlled substances. The list typically includes items identified by DEA to be most frequently used in clandestine production. [¶] The SSL is a resource to help businesses that sell supplies, including chemicals intended to be used in laboratories, identify potentially dangerous substances and equipment that might be misappropriated for illicit purposes, such as the synthesis of dangerous drugs. The chemicals added to the SSL on October 24, 2023 include phenethyl bromide, propionyl chloride, and sodium borohydride, which can be used in the illicit manufacture of fentanyl and fentanyl analogues. This update also clarifies and emphasizes that tableting machines explicitly include punches and dies, which are used in the production of fake pills, as well as 28 precursor chemicals that can be used to illicitly manufacture synthetic drugs, such as amphetamine, methamphetamine, PCP, LSD.").
27. Here's why: Fentanyl consists of four different molecular groups: a piperidine ring, an aniline ring, an alkyl chain, and an acyl group. The critical element is comprised of the piperidine ring and one or two of the other basic components. The federal government tightly controls precursors such as 4-ANPP and norfentanyl because they are "only one chemical reaction away from fentanyl itself." Chung et al., *supra* note 17. Enterprising chemists try to circumvent federal restrictions by using "creative chemistry"—perhaps learned at Mexican universities, see *supra* note 23—to transform similar types of precursor compounds into fentanyl analogues, some of which are far more powerful than basic fentanyl. *Id.*; Maurice Tamman et al., *We Bought Everything Needed to Make \$3 Million Worth of Fentanyl. All It Took Was \$3,600 and a Web Browser*, REUTERS, July 25, 2024, <https://www.reuters.com/investigates/special-report/drugs-fentanyl-supplychain/> ("Another trick is to tweak the chemical structure of a precursor to circumvent regulations. Such 'designer' precursors can still be used to make fentanyl or one of its analogs, which are often just as potent as fentanyl, or even more so."). Chemical suppliers can readily evade existing regulations because "hundreds of different chemicals can be used to make these synthetic opioids." *Id.* As Rahul Gupta, Director of the White House Office of National Drug Control Policy, put it, "It's whack-a-mole." *Id.* Complicating the regulatory and law enforcement burden is that legitimate companies use some fentanyl precursors to synthesize some lawful and desirable products, including "pesticides and lifesaving medications, such as anti-tumor and anti-malarial drugs." Chung et al., *supra* note 17. The result is that precursors cannot be prohibited altogether, while tightly regulating them is complicated. *Id.* And if you thought that matters could not get worse, even rudimentary labs can create a batch of fentanyl in only one day. *Id.* It's enough to drive a law enforcement officer to drink.
28. See CDC, FENTANYL, *supra* note 1; U.S. DRUG ENFORCEMENT ADMIN., DIVERSION CONTROL DIV., DRUG & CHEMICAL EVALUATION SECTION, FENTANYL (Jan. 2023); U.S. DRUG ENFORCEMENT ADMIN., U.S. DEP'T OF JUSTICE, DRUG FACT SHEET: FENTANYL 1 (Oct. 2022), https://www.dea.gov/sites/default/files/2020-06/Fentanyl-2020_0.pdf [hereafter DEA FACT SHEET: FENTANYL]; Chung et al., *supra* note 17.
29. See DRUG ENFORCEMENT ADMIN., U.S. DEP'T OF JUSTICE, *Carfentanil: A Dangerous New Factor in the U.S. Opioid Crisis*, <https://www.justice.gov/usao-edky/file/898991/dl> ("Carfentanil is a synthetic opioid approximately 10,000 times more potent than morphine and 100 times more potent than fentanyl."); Valdez et al., *supra* note 25, at 2 Fig. 2 (2014). Fentanyl Analogs include Acetylfentanyl, Butyrfentanyl, Carfentanil, FUF Fentanyl HCL, Furanylfentanyl, Isobutyrfentanyl, Lofentanil, 4'-methyl Acetyl fentanyl HCL, Valeryl fentanyl, and the U series, including U-47700. For lists of fentanyl analogs, see, for example, U.S. SENT'G COMM'N, *Quick Facts: Fentanyl Analogue Trafficking 1 & 2 n.4* (2023); U.N. INT'L NARCOTICS CONTROL BD., Statement by Prof. Jallal Toufiq, President, Int'l Narcotics Control Bd. (INCB) (2024), https://www.incb.org/documents/Speeches/Speeches2024/CND_Item5a_INCBstatement1_scheduling_US_proposal_19_03_2024.pdf (noting that the UNINCB has a list of fentanyl-related substances).
30. See Andrew Olivastro, *Fentanyl's Wake*, AM. MIND, May 25, 2022, <https://americanmind.org/salvo/fentanyls-wake/> ("It takes only 2 milligrams to be lethal. That's not even enough to cover the year on the front of the penny in your pocket."). For an enlightening (and frightening) visual depiction of that point, see Chung et al., *supra* note 17.
31. DEA FACT SHEET: FENTANYL, *supra* note 28, at 2; NAT'L INST. ON DRUG ABUSE, *Fentanyl DrugFacts* (2021), <https://nida.nih.gov/publications/drugfacts/fentanyl> [hereafter NIDA, *DrugFacts*]; Tamman et al., *supra* note 27.
32. WESTHOFF, *supra* note 2, at 125 ("'Fentanyl has taken over as the drug that is killing people here,' said county coroner Stephen Nonn. 'When we go to a death scene and you still see the needle in the arm, we know that it was fentanyl because it works that quick[ly].'"). The consequences of uses outside the clinical setting have been, to put it mildly, suboptimal. See, e.g., Valdez et al., *supra* note 25, at 1 ("[T]here has been documented military misuse of these compounds for their crowd controlling properties. As a particularly infamous case, the presumed use of gaseous/aerosolized fentanyl derivatives by Russian security forces to incapacitate terrorists during a Moscow theater hostage crisis in 2002 led to the death of 170 people, 127 of them hostages.") (endnotes omitted).
33. DEA FACT SHEET: FENTANYL, *supra* note 28, at 1; NIDA, *DrugFacts*, *supra* note 31.
34. Klobucista & Ferragamo, *supra* note 3 ("A lethal dose requires just two milligrams of the drug—an amount roughly equivalent to ten to fifteen grains of table salt.").
35. CDC, FENTANYL, *supra* note 1, at 1; see BRIAN TSAI, CNTRS. FOR DISEASE CONTROL & PREVENTION, NAT'L CNTR. FOR HEALTH SERVS., *Fentanyl Overdose Death Rates More Than Tripled from 2016 to 2021* (2023) (noting that "[d]rug overdose death rates involving fentanyl increased by 279% from 5.7 per 100,000 in 2016 to 21.6 in 2021"); U.S. DEP'T OF HEALTH & HUMAN SERVS., CNTRS. FOR DISEASE CONTROL & PREVENTION, NAT'L CNTR. FOR HEALTH STATISTICS, *Drug Overdose Deaths Involving Fentanyl, 2011–2016*, 68 NAT'L VITAL STATISTICS REPORTS No. 3 (2019); Molly M. Jeffrey et al., *Correspondence, Fentanyl-Associated Overdose Deaths Outside the Hospital*, 389 NEW ENG. J. MED. 87 (2023) (noting that a Mayo Clinic and Yale University study found that the number of fentanyl-related out-of-hospital fatalities increased by 282 percent from 2016 to 2021).

36. CDC, FENTANYL, *supra* note 1, at xi–xii (“Illegal drug manufacturing has become easier to conceal by moving from the field to the laboratory. The production of synthetic opioids does not begin by harvesting poppies. Materials needed for manufacturing synthetic opioids can be purchased from online platforms or directly from licensed chemical producers overseas. A few experienced people manufacture the drugs in small laboratories that are harder to detect than a poppy field. The supply chain is simplified and more condensed, making it easier for Mexican traffickers to retain their control and profits.... Overall, synthetic opioids offer economic and tactical advantages that allow criminals to vastly outpace enforcement efforts. These production and distribution advantages reduce operational costs and risks. Fentanyl is much cheaper to supply, attracting criminals who are eager to cut costs and increase profits. Fentanyl is far more profitable for cartels than heroin is.”).
37. *Id.* at x–xii, xii (“The Commission estimated that only 3 to 5 metric tons of pure fentanyl is needed to satisfy the entire annual U.S. consumption of illegally supplied opioids—a fraction of the estimated 47 metric tons of heroin and 145 metric tons of cocaine that were consumed in the United States in 2016.”).
38. *Id.* at xii; Vanda Felbab-Brown, *The Opioid Crisis in America: Domestic and International Dimensions: Fentanyl and Geopolitics: Controlling Opioid Supply from China*, BROOKINGS INST. 5 (July 2020).
39. *Id.* at xii (“Many vendors use online platforms, including business-to-business and social media websites, to connect with buyers, including Mexican cartels, and then communicate through other encrypted systems that remain beyond the reach of law enforcement. Existing global logistics and trade networks—postal, courier, and commercial cargo systems—also play an important role in the movement of precursors and sometimes finished products. Smuggling across the southwestern U.S. border is the principal method of transport for illegally imported fentanyl manufactured in Mexico. However, cartels’ and other criminals’ use of the U.S. domestic mail system to move fentanyl within the United States has increased. Regardless of distribution channel, smaller and more-compact shipments are easier to conceal, and novel chemicals can and often do escape existing detection tools and capacities. Law enforcement must rely on expensive, advanced technologies that require more personnel to screen or on conventional screenings that rely on agent observations and intuitions.”).
40. Larkin, *supra* note 2, at 6–8. Smugglers also use commercial freighters, private boats, and drones. *Id.*
41. *Id.* at 8–9.
42. *Id.*
43. “Synthetic drugs pose an increasing threat to U.S. communities because they can be made anywhere, at any time, given the required chemicals and equipment and basic know-how. Health officials, regulators, and law enforcement are constantly challenged to quickly identify and act against the fentanyl threat, and the threat of new synthetic drugs appearing on the market.” 2024 DEA DRUG THREAT ASSESSMENT, *supra* note 11, at 1; see also Larkin, *supra* note 15, at 9–11. For a photograph of a facility producing illicit fentanyl see, for example, Jon Kamp et al., *How Two Mexican Drug Cartels Came to Dominate America’s Fentanyl Supply*, WALL ST. J., Aug. 30, 2022, <https://www.wsj.com/articles/mexico-drug-cartels-fentanyl-overdose-sinaloa-jalisco-11661866903>.
44. BILLIARDS DIGEST, https://www.billiardsdigest.com/new_current_issue/ma9_09/story_4.php (last accessed Aug. 27, 2025).
45. Tamman et al., *supra* note 27 (“The fentanyl business is largely a three-nation trading system, with the United States, Mexico and China linked in a toxic triangle as the illicit drug’s biggest consumer, manufacturer and raw-materials supplier.”). Yet “[t]he game is different now,” said Christopher Landberg, deputy assistant secretary in the U.S. State Department’s Bureau of International Narcotics and Law Enforcement Affairs. The supply chain is ‘more difficult to track, it’s more difficult to go after,’ and fentanyl itself is ‘so much more deadly,’ he said.” *Id.* China has also proven to be less than enthusiastic about prosecuting even obviously guilty precursor traffickers or extraditing them to the United States for trial here. *Id.* (“The U.S. Department of Justice (DOJ) has indicted at least a dozen Chinese chemical suppliers since mid-2023. [¶] But at least three of those operators remained in business—and sold precursors to Reuters months after they were charged. One of these was [sales assistant] Jenny’s company, which shipped Reuters the kilo of 1-boc-4-piperidone. In chats while arranging the sale, she scoffed at the U.S. crackdown. [¶] ‘We are a powerful company,’ Jenny wrote in July 2023. ‘This incident has no impact on us.’”).
46. See, e.g., the Synthetic Drug Abuse Prevention Act of 2012, Subtit. D, Tit. XI of the Food and Drug Administration Safety and Innovation Act, Pub. L. No. 112-144, 126 Stat. 993 (addressing the problem of “synthetic cannabinoids,” compounds that were not analogous to the active ingredient in cannabis, delta-9-tetrahydrocannabinol); Foreign Narcotics Kingpin Designation Act, Tit. VIII of the Intelligence Authorization Act for Fiscal Year 2020, Pub. L. No. 106-120, 113 Stat. 1606 (1999) (codified at 21 U.S.C. §§ 1901–1908 (West 2024)) (authorizing on a worldwide basis the identification of and application of sanctions to significant foreign narcotics traffickers, their organizations, and the foreigners supporting them if their activities “threaten the national security, foreign policy, and economy of the United States”); Chemical Diversion and Trafficking Act of 1988, a component of the Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, 102 Stat. 4181, §§ 6051–6061 (codified at various provisions of 21 U.S.C. ch. 13, subchapters 1–3) (amending the CSA to address the precursor chemical used to synthesize drugs, as well as tableting and encapsulating machines, by imposing recordkeeping and reporting requirements on the purchase, sale, and import of such items); Controlled Substances Analogue Enforcement Act (CSAEA), § 1202, Subtit. E, Tit. I, Pub. L. No. 99-570, 100 Stat. 3207, 3207-13 to 3207-14 (codified at 21 U.S.C. § 813 (2018)) (treating as a “controlled substance” any “controlled substance analogue”—viz., any drug, “to the extent intended for human consumption,” whose chemical structure is “substantially similar to the chemical structure of a” Schedule I or II controlled substance and has a “stimulant, depressive, or hallucinogenic effect” on the central nervous system that is “similar to” the effect of such a controlled substance); CSA, *supra* note 13 (the basic illicit drug regulatory regime); Continuing Criminal Enterprise Act, Tit. II, § 408, of the Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub. L. No. 91-513, 84 Stat. 1236 (codified at 21 U.S.C. § 848 (West 2025)) (making it a crime to conduct a continuing criminal drug enterprise); 21 U.S.C. § 959(a) (“It shall be unlawful for any person to manufacture or distribute a controlled substance in schedule I or II...or a listed chemical intending, knowing, or having reasonable cause to believe that such substance

or chemical will be unlawfully imported into the United States or into waters within a distance of 12 miles of the coast of the United States.”); *id.* § 959(d) (“This section is intended to reach acts of manufacture or distribution committed outside the territorial jurisdiction of the United States.”); Racketeer Influenced and Corrupt Organizations Act, Tit. IX of the Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922 (1970) (codified at 18 U.S.C. §§ 1961–1968 (West 2025) (making it a crime to engage in a pattern of racketeering activity through the use of an “enterprise” to commit various predicate offenses).

47. See, e.g., *Harmelin v. Michigan*, 501 U.S. 957, 961 (1991) (opinion of Scalia, J.) (offender sentenced to a mandatory term of life imprisonment without the possibility of parole for the possession of 672 grams of cocaine); *United States v. Barnes*, 604 F.2d 121 (2d Cir. 1979) (several defendants sentenced to imprisonment of 15 years, one for life); *People v. Bergman*, 458 N.E.2d 1370, 1373 (Ill. App. Ct. 1984) (offender sentenced to imprisonment of 25 years for the possession and distribution of 30 grams of cocaine); *State v. Benoit*, 477 So. 2d 489, 850-51 (La. Ct. App. 1985) (sentencing defendant to life imprisonment at hard labor on two counts of the distribution of narcotics, the sentences to run concurrently). See generally Paul J. Larkin & GianCarlo Canaparo, *The Fallacy of Systemic Racism in the American Criminal Justice System*, 18 LIBERTY U.L. REV. 1, 118 n.298 (2023) (collecting cases).
48. See, e.g., *United States v. Shows Urquidi*, 71 F.4th 357, 365 (5th Cir. 2023) (“The Sinaloa Cartel has a hierarchical structure and was led by Joaquín ‘El Chapo’ Guzmán Loera and Ismael ‘El Mayo’ Zambada García during the events that were recounted at trial. Below Chapo and Mayo were ‘plaza bosses’ who managed the Cartel’s daily operations in each major city within its network. These operations included moving and importing drugs, accounting for the cash proceeds returned from drug sales in the United States, acquiring weapons, and managing ‘sicarios,’ i.e., Cartel assassins. Under the plaza bosses were Cartel members in charge of individual ‘offices’ (sometimes referred to as ‘houses,’ ‘safe houses,’ or ‘safety houses’), where meetings were held; drugs, cash, and firearms were stored; money was counted; and individuals were kidnapped, tortured, and murdered. Beneath the office heads were rank-and-file members of the Cartel who served as sicarios, provided security, paid bribes, packaged or transported drugs, and counted money, among other Cartel duties.”) (footnote omitted); *United States v. Guzmán Loera*, 24 F.4th 144 (2d Cir. 2022) (upholding the conviction of Joaquín Archivaldo Guzmán Loera, known as “El Chapo,” a former leader of the Sinaloa Drug Trafficking Organization). The federal government has the sovereign authority to prosecute parties who never set foot in this nation if their crimes have an effect in this country. See, e.g., *Ford v. United States*, 273 U.S. 593, 620–24 (1927) (Taft, C.J.) (affirming that proposition and collecting Supreme Court cases to that effect); *United States v. Bowman*, 260 U.S. 94, 97–103 (1922) (Taft, C.J.). See generally *Church v. Hubbard*, 6 U.S. (2 Cranch) 187, 234 (1804) (Marshall, C.J.) (noting that a nation’s “power to secure itself from injury may certainly be exercised beyond the limits of its territory.”); *Hartford Fire Ins. Co. v. California*, 509 U.S. 764, 813–14 (1993) (Scalia, J., dissenting) (“Congress has broad power under [the Foreign Commerce Clause], and this Court has repeatedly upheld its power to make laws applicable to persons or activities beyond our territorial boundaries where United States interests are affected.”); cf. *Strassheim v. Daily*, 221 U.S. 280, 285 (1911) (in a state prosecution: “Acts done outside a [state’s] jurisdiction, but intended to produce and producing detrimental effects within it, justify a state in punishing the cause of the harm as if he had been present at the effect, if the state should succeed in getting him within its power.”); *United States v. Baston*, 818 F.3d 651, 667–71 (11th Cir. 2016); *United States v. Baker*, 609 F.2d 134, 136 (5th Cir. 1980) (“The issue would appear to have no constitutional implications, but rather depends on congressional intent and the statutes involved.”); WAYNE R. LAFAVE, CRIMINAL LAW § 4.4, at 223–24 (5th ed. 2010).
49. Ch. 1, 38 Stat. 785 (1914) (prohibiting the distribution of heroin even for medical purposes) (since repealed).
50. *E.g.*, 21 U.S.C. § 841(a)(1)–(2), (b)(1)(A)(i) (West 2024).
51. ONE HUNDRED YEARS OF HEROIN (David F. Musto ed., 2002); DAVID F. MUSTO, THE AMERICAN DISEASE: ORIGINS OF NARCOTIC CONTROL (1999).
52. Once colorfully labeled “a partnership in crime,” the crime of conspiracy is a separate offense, distinct from the one that is the object of the conspiracy. *Pinkerton v. United States*, 328 U.S. 640, 644 (1946); see also, e.g., *Ocasio v. United States*, 578 U.S. 282, 287 (2016) (“The fundamental characteristic of a conspiracy is a joint commitment to an endeavor which, if completed, would satisfy all of the elements of the underlying substantive criminal offense.”) (punctuation omitted); *Smith v. United States*, 568 U.S. 106, 110 (2013) (“The essence of conspiracy is the combination of minds in an unlawful purpose.”) (punctuation omitted); *United States v. Bayer*, 331 U.S. 532, 542 (1947) (the “essence” of a conspiracy “is in the agreement or confederation to commit a crime”). As a result, a conspiracy may be separately charged and cumulatively punished. *United States v. Recio*, 537 U.S. 270, 274 (2003) (“The conspiracy poses a threat to the public over and above the threat of the commission of the relevant substantive crime—both because the combination in crime makes more likely the commission of other crimes and because it decreases the probability that the individuals involved will depart from their path of criminality.”) (punctuation omitted); *Pinkerton*, 328 U.S. at 643 (“It has been long and consistently recognized by the Court that the commission of the substantive offense and a conspiracy to commit it are separate and distinct offenses. The power of Congress to separate the two and to affix to each a different penalty is well established.... A conviction for the conspiracy may be had though the substantive offense was completed.... And the plea of double jeopardy is no defense to a conviction for both offenses.”) (citations omitted). Generally speaking, the “essence” of the crime of conspiracy is “an agreement to commit an unlawful act.” *Iannelli v. United States*, 420 U.S. 770, 777 (1975); see also, e.g., *Recio*, 537 U.S. at 274 (collecting cases); *Ingram v. United States*, 360 U.S. 672, 677–78 (1959); *Bayer*, 331 U.S. at 542; *Pinkerton*, 328 U.S. at 643–44; *United States v. Rabinowich*, 238 U.S. 78, 88 (1915); LAFAVE, *supra* note 48, § 12.2(b), at 661 (“[T]here must be: (1) an agreement between two or more persons, which constitutes the act; and (2) an intent thereby to achieve a certain objective, which, under the common law definition, is the doing of either an unlawful act or a lawful act by unlawful means.”). The general federal statute defining the offense of conspiracy, 18 U.S.C. § 371 (West 2024), requires the government to prove that at least one party committed an “overt act” in furtherance of the conspiracy. See, e.g., *Bayer*, 331 U.S. at 542; LAFAVE, *supra* note 48, § 12.2(b), at 661. The CSA, by contrast, does not require proof of an overt act. *United States v. Shabani*, 513 U.S. 10 (1994)). A party can be liable for conspiring to commit a crime by taking action to further the conspirators’ purpose. As the Supreme Court has explained, a person “can be a conspirator by agreeing to facilitate only some of the acts leading to the substantive offense.” *Salinas v. United States*, 522 U.S. 52, 65 (1997) (emphasis added); *id.* at 63–64 (“A conspiracy may exist even if a conspirator does not agree to commit or facilitate each and every part of the substantive offense. See *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 253–54 (1940). The partners in the criminal plan must agree to

- pursue the same criminal objective and may divide the work, yet each is responsible for the acts of each other. See *Pinkerton*, 328 U.S. at 646 (“And so long as the partnership in crime continues, the partners act for each other in carrying it forward”). If conspirators have a plan that calls for some conspirators to perpetrate the crime and others to provide support, the supporters are as guilty as the perpetrators. See *United States v. Holte*, 236 U.S. 140, 144 (1915) (Holmes, J.) (“[P]lainly a person may conspire for the commission of a crime by a third person.”). In addition, the agreement need not be express; a “tacit” agreement can suffice. *Direct Sales Co. v. United States*, 319 U.S. 703, 714 (1943) (“[I]t can make no difference the agreement was a tacit understanding, created by a long course of conduct and executed in the same way.”). Because “most conspiracies are clandestine in nature,” it would be difficult for the government “to present direct evidence of the agreement.” *LaFAVE*, *supra* note 48, § 12.2(a), at 658. Accordingly, the federal courts, being aware of this problem, have ruled that the government and jury may “rely on inferences drawn from the course of conduct of the alleged conspirators.” *Interstate Circuit v. United States*, 306 U.S. 208, 221 (1938); see also, e.g., *Regina v. Murphy*, 172 Eng. Rep. 502 (1837) (jury instruction: “If you find that these two persons pursued by their acts the same object, often by the same means, one performing one part of an act and the other another part of the same act, so as to complete it, with a view to the attainment of the object which they were pursuing, you will be at liberty to draw the conclusion that they have been engaged in a conspiracy to effect that object.”); *LaFAVE*, *supra* note 48, § 12.2(a), at 658. Moreover, the government may rely entirely on circumstantial evidence to prove a conspiracy because circumstantial evidence can have the same probative value as direct evidence of a crime. See *Blumenthal v. United States*, 332 U.S. 539, 556–57 (1947); *Direct Sales*, 319 U.S. at 714 (footnote omitted) (“The proof, by the very nature of the crime, must be circumstantial and therefore inferential to an extent varying with the conditions under which the crime may be committed.”); *LaFAVE*, *supra* note 48, § 12.1(c)(4), at 654.
53. See *United States v. R.L.C.*, 503 U.S. 291, 309 (1992) (Scalia, concurring in part and concurring in the judgment) (noting that “[i]t may well be true that in most cases the proposition that the words of the United States Code or the Statutes at Large give adequate notice to the citizen is something of a fiction” but adding that it is a fiction “required in any system of law”). There is a difference, however, between (1) knowledge that a particular substance is heroin and (2) knowledge that heroin trafficking or possession is a crime. The former is subject to a mistake of fact defense if someone reasonably believed that a powder was talcum, not heroin. That defense is not available to someone who knows that a substance is heroin but does not know that it is contraband. See, e.g., *Reynolds v. U.S.*, 98 U.S. 145, 167 (1878) (“Ignorance of a fact may sometimes be taken as evidence of a want of criminal intent, but not ignorance of the law.”).
 54. The use of undercover law enforcement officers to infiltrate criminal organizations is commonplace. See, e.g., *Illinois v. Perkins*, 496 U.S. 292 (1990); *Hoffa v. United States*, 385 U.S. 293 (1966); U.S. DEP’T OF JUSTICE, UNDERCOVER AND SENSITIVE OPERATIONS UNIT, ATTORNEY GENERAL’S GUIDELINES ON FBI UNDERCOVER OPERATIONS § IV.H. (2017); MICHAEL MCGOWAN & RALPH PEZZULLO, GHOST: MY THIRTY YEARS AS AN FBI UNDERCOVER AGENT (2018); JOSEPH D. PISTONE, DONNIE BRASCO: MY UNDERCOVER LIFE IN THE MAFIA (1988); Elizabeth E. Joh, *Breaking the Law to Enforce It: Undercover Police Participation in Crime*, 62 STAN. L. REV. 155 (2009); cf. U.S. MARSHAL’S SERVICE, WHAT WE DO, *Witness Security* (“The U.S. Marshals Service provides for the security, health and safety of government witnesses, and their immediate dependents, whose lives are in danger as a result of their testimony against drug traffickers, terrorists, organized crime members and other major criminals.”).
 55. See, e.g., *Bourjaily v. United States*, 483 U.S. 171 (1987); *United States v. Inadi*, 475 U.S. 387 (1986); *United States v. Gooding*, 25 U.S. (12 Wheat.) 460, 468–70 (1827) (Story, J.).
 56. See, e.g., *United States v. White*, 401 U.S. 745 (1971); *Lopez v. United States*, 373 U.S. 427 (1963); *Rathbun v. United States*, 355 U.S. 107 (1957); 18 U.S.C. §§ 2510–2523 (West 2025) (federal laws governing domestic electronic interception of telecommunications).
 57. Circumstantial evidence can have the same probative effect as direct evidence, such as eyewitness testimony. See *Holland v. United States*, 348 U.S. 121, 140 (1954) (“Circumstantial evidence in this respect is intrinsically no different from testimonial evidence. Admittedly, circumstantial evidence may in some cases point to a wholly incorrect result. Yet this is equally true of testimonial evidence. In both instances, a jury is asked to weigh the chances that the evidence correctly points to guilt against the possibility of inaccuracy or ambiguous inference. In both, the jury must use its experience with people and events in weighing the probabilities. If the jury is convinced beyond a reasonable doubt, we can require no more.”); see also, e.g., *Regina v. Murphy*, 172 Eng. Rep. 502 (1837) (jury instruction: “If you find that these two persons pursued by their acts the same object, often by the same means, one performing one part of an act and the other another part of the same act, so as to complete it, with a view to the attainment of the object which they were pursuing, you will be at liberty to draw the conclusion that they have been engaged in a conspiracy to effect that object.”); *LaFAVE*, *supra* note 48, § 12.2(a), at 658.
 58. *LaFAVE*, *supra* note 48, § 12.2(a), at 654, 658; see *Blumenthal v. United States*, 332 U.S. 539, 556–57 (1947) (“[T]hat may be what took place chronologically, for conspiracies involving such elaborate arrangements generally are not born full grown. Rather they mature by successive stages which are necessary to bring in the essential parties. And not all of those joining in the earlier ones make known their participation to others later coming in. [¶] The law does not demand proof of so much. For it is most often true, especially in broad schemes calling for the aid of many persons, that after discovery of enough to show clearly the essence of the scheme and the identity of a number participating, the identity and the fact of participation of others remain undiscovered and undiscoverable. Secrecy and concealment are essential features of successful conspiracy. The more completely they are achieved, the more successful the crime. Hence the law rightly gives room for allowing the conviction of those discovered upon showing sufficiently the essential nature of the plan and their connections with it, without requiring evidence of knowledge of all its details or of the participation of others. Otherwise the difficulties, not only of discovery, but of certainty in proof and of correlating proof with pleading would become insuperable, and conspirators would go free by their very ingenuity.”).
 59. *Iannelli*, 420 U.S. at 777.
 60. *Direct Sales*, 319 U.S. at 714 (footnote omitted).

61. Accomplice liability parallels conspiratorial liability. The federal aiding and abetting statute, 18 U.S.C. § 2 (West 2024), derives from the common law standard for accomplice liability. See, e.g., *Rosemond v. United States*, 572 U.S. 65, 70–71 (2014); *Standefer v. United States*, 447 U.S. 10, 14–19 (1980). Section 2 provides that someone is punishable as a “principal” (someone who personally carries out a crime) if he or she furthers (viz., “aids, abets, counsels, commands, induces or procures”) the commission of a federal offense. *Rosemond*, 572 U.S. at 71; *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 181 (1994) (“[T]hose who provide knowing aid to persons committing federal crimes, with the intent to facilitate the crime, are themselves committing a crime.”); *Hicks v. United States*, 150 U.S. 442, 449 (1893) (noting that an accomplice is liable when he assists a principal “with the intention of encouraging and abetting” the crime).
62. See *Riley v. California*, 573 U.S. 373, 385 (2014) (“These cases require us to decide how the search incident to arrest doctrine applies to modern cell phones, which are now such a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human anatomy.”).
63. See *LaFAVE*, *supra* note 48, § 12.2(c)(3), at 667–69.
64. 311 U.S. 205 (1940).
65. *Id.* at 206–11.
66. *Id.* at 210.
67. 319 U.S. 703 (1943).
68. The facts in *Direct Sales* were the following: “Petitioner is a registered drug manufacturer and wholesaler. It conducts a nationwide mail-order business from Buffalo, New York. The evidence relates chiefly to its transactions with one Dr. John V. Tate and his dealings with others. He was a registered physician, practicing in Calhoun Falls, South Carolina, a community of about 2,000 persons. He dispensed illegally vast quantities of morphine sulphate purchased by mail from petitioner. The indictment charged petitioner, Dr. Tate, and three others, Black, Johnson and Foster, to and through whom Tate illegally distributed the drugs, with conspiring to violate Sections 1 and 2 of the [Harrison Narcotics Tax] Act, over a period extending from 1933 to 1940.... [Tate] was a small-town physician practicing in a rural section. All of his business with Direct Sales was done by mail. Through its catalogues petitioner first made contact with him prior to 1933. Originally he purchased a variety of pharmaceuticals. But gradually the character of his purchases narrowed, so that during the last two years of the period alleged for the conspiracy he ordered almost nothing but morphine sulphate. At all times during the period he purchased the major portion of his morphine sulphate from petitioner. The orders were made regularly on his official order forms. The testimony shows the average physician in the United States does not require more than 400 one-quarter grain tablets annually for legitimate use. Although Tate’s initial purchases in 1933 were smaller, they gradually increased until, from November, 1937, to January, 1940, they amounted to 79,000 one-half grain tablets. In the last six months of 1939, petitioner’s shipments to him averaged 5,000 to 6,000 half-grain tablets a month, enough as the Government points out to enable him to give 400 average doses every day.” *Id.* at 704–06 (footnotes omitted).
69. *Id.* at 707 (footnotes omitted): “All this was not without warning, purpose or design. In 1936 the Bureau of Narcotics informed petitioner it was being used as a source of supply by convicted physicians. The same agent also warned that the average physician would order no more than 200 to 400 quarter-grain tablets annually and requested it to eliminate the listing of 5,000 lots. It did so, but continued the 1,000 and 500 lot listings at attractive discounts. It filled no more orders from Tate for more than 1,000 tablets, but continued to supply him for that amount at half-grain strength. On one occasion in 1939 he ordered on one form 1,000 half and 100 quarter grains. Petitioner sent him the 1,000 and advised him to reorder the 100 on a separate order form. It attached to this letter a sticker printed in red suggesting anticipation of future needs and taking advantage of discounts offered. Three days later Tate ordered 1,000 more tablets, which petitioner sent out. In 1940, at the Bureau’s suggestion, Direct Sales eliminated its fifty and ten per cent discounts. But on doing so it translated its discount into its net price.”
70. *Id.* at 708–15.
71. *Id.* at 709.
72. *Id.*
73. *Id.* at 710.
74. *Id.*
75. *Id.*
76. See *supra* note 49.
77. *Direct Sales*, 319 U.S. at 710.
78. *Id.* at 710–11.
79. *Id.* at 711.
80. *Id.*
81. *Id.*
82. *Id.* at 712.
83. *Id.* (“Mass advertising and bargain counter discounts are not appropriate to commodities so surrounded with restrictions. They do not create new legal demand and new classes of legitimate patrons, as they do for sugar, tobacco and other free commodities. Beyond narrow limits, the normal legal market for opiates is not capable of being extended by such methods. The primary effect is rather to create black markets for dope and to increase illegal demand and consumption.”).

84. *Id.*
85. *Id.* at 713.
86. *Id.*; see, e.g., *United States v. Michelena-Orovio*, 719 F.2d 738, 749 (5th Cir. 1983) (en banc) (“The Supreme Court recognized in *Direct Sales* that the strength of an inference of participation in the illicit conspiracy based on the sale of goods to the conspirators is dependent on the nature of the goods sold. Because the narcotics in *Direct Sales* were heavily regulated, there was a greater inference that the distributor knew that the doctor would use the goods illegally and that the distributor intended to further, promote, and cooperate in the doctor’s misuse of the commodity[.]”).
87. *Direct Sales*, 319 U.S. at 713.
88. *Id.*
89. *Id.*; *id.* (“[The *Direct Sales* Company’s] stake here was in making the profits which it knew could come only from its encouragement of Tate’s illicit operations. In such a posture the case does not fall doubtfully outside either the shadowy border between lawful co-operation and criminal association or the no less elusive line which separates conspiracy from overlapping forms of criminal cooperation.”).
90. *Id.*
91. *Id.*
92. *Id.* at 714.
93. *Id.*; see *Michelena-Orovio*, 719 F.2d at 748–49 (“On at least two occasions, the Supreme Court has assessed the culpability of a person who supplies goods to people who intend to use those goods unlawfully. Where the goods were ‘themselves innocent,’ the Court held that the evidence was insufficient to support convictions of aiding and abetting a conspiracy of persons who knowingly supplied the goods to the conspirators. *United States v. Falcone*, 311 U.S. 205 (1940) (evidence insufficient to support convictions of aiding and abetting a conspiracy to distill spirits of persons who knowingly supplied a large volume of sugar and yeast to illegal distillers). Where the defendant had supplied restricted narcotics, however, the Court was willing to infer the supplier’s knowledge of and complicity in the illegal narcotics distribution scheme from the large quantity of narcotics sold over a prolonged period of time. *Direct Sales Co. v. United States*, 319 U.S. 703 (1943) (affirming conviction of drug manufacturer and wholesaler who had, over a period of years, supplied large amounts of morphine sulphate to a doctor who was distributing the drugs illegally.”).
94. See, e.g., *United States v. Brandon*, 17 F.3d 409, 428 (1st Cir. 1994) (“Once a conspiracy is established, as well as defendant’s intent to further it, any connection between the defendant and the conspiracy, even a slight one, will be sufficient to establish knowing participation.”); *Michelena-Orovio*, 719 F.2d at 742 (ruling that factors such as the length of the voyage, the quantity of contraband on board, the size of the cargo, the relationship between captain and crew, and evasive action to avoid capture by the U.S. Coast Guard were sufficient to establish that the defendant was more than merely present on board); *United States v. Sockwell*, 699 F.2d 213 (5th Cir. 1983) (ruling that even the cook on a vessel ferrying 150,000 pounds of marijuana can be deemed to have joined a conspiracy); *United States v. Elam*, 678 F.2d 1234, 1246 (5th Cir.1982) (“Where the activities of one aspect of the scheme are necessary or advantageous to the success of another aspect of the scheme or to the overall success of the venture, where there are several parts inherent in a larger common plan, or where the character of the property involved or the nature of the activity is such that knowledge on the part of one member concerning the existence and function of other members of the same scheme is necessarily implied due to the overlapping nature of the various roles of the participants, the existence of a single conspiracy will be inferred.”) (citations omitted); *United States v. Martino*, 664 F.2d 860, 876 (2d Cir.1981) (“As we have long recognized, in many narcotics distribution networks the ultimate retailers may not know the identities of those who supply their wholesaler, and the retailers’ identities may be unknown to those suppliers; but all are well aware that they are participating in a collective venture.”).
95. *Michelena-Orovio*, 719 F.2d at 751 (“As we recognized in *Mann*, *supra*, common sense leads to the conclusion that an importer of that much marijuana knows perfectly well, and indeed relies on the fact, that there is a plan for the distribution of his cargo.”); see *Turner v. United States*, 396 U.S. 398, 417 (1970) (“Common sense...tells us that those who traffic in heroin will inevitably become aware that the product they deal in is smuggled, unless they practice a studied ignorance to which they are not entitled.”).
96. See, e.g., *United States v. Page*, 123 F.4th 851, 856–57 (7th Cir. 2024) (en banc) (ruling that, under *Falcone*, “repeated, distribution-quantity drug transactions alone can sustain a conspiracy conviction”); *id.* at 860 (“There is an inherent and necessary trust between parties to an illegal transaction—at the least, that the other will not reveal the transaction to law enforcement—that is not shared by buyers and sellers of innocuous items. For this reason, facts such as quantity sales or abnormal increases in the size of the buyer’s purchases...which would be wholly innocuous or not more than ground for suspicion in relation to unrestricted goods, may furnish conclusive evidence, in respect to restricted articles, that the seller knows the buyer has an illegal object and enterprise.... When the evidence establishes repeated, distribution-quantity transactions in an illicit market, the step from knowledge to intent and agreement may be taken. There is more than suspicion, more than knowledge.... There is informed and interested cooperation, stimulation, instigation.”) (citations and punctuation omitted); *United States v. Weston*, 443 F.3d 661, 670 (8th Cir. 2006) (“In essence, *Falcone* holds that the supplier of goods used for an illegal purpose must have had knowledge of the conspiracy to illegally use the goods”; Woodard admitted that she informed Officer Sutherland of her suspicions that Weston was manufacturing methamphetamine. At the same time, despite her suspicions, Woodard supplied Weston with wholesale quantities of pseudoephedrine at a premium price. The cases of pseudoephedrine were not purchased from the shelves of the Sims General Store but were kept in the back room of the store, awaiting purchase by Weston or his agents. Furthermore, Woodard purchased other methamphetamine precursors, including ten gallons of Coleman fuel and six lithium batteries, from Wal-Mart. Although Woodard contends that she purchased these items for resale in the store, the jury could have reasonably concluded that the purchase of these items indicated a deeper involvement in the conspiracy to manufacture methamphetamine than merely supplying large quantities

- of pseudoephedrine.... [G]iven the highly regulated nature of pseudoephedrine, Woodard's repeated bulk sales to the same individuals rather than to businesses or professionals are inconsistent with innocent sales of common consumer products."); *United States v. Beech-Nut Nutrition Corp.*, 871 F.2d 1181, 1191 (2d Cir. 1989) ("If buyer and seller deal in a commodity that has limited legal uses, the very nature of the commodity may help to establish the parties' knowledge of and intent to further, promote, and cooperate in the illegal scheme.") (citation and punctuation omitted).
97. See *United States v. Bruno*, 105 F.2d 921, 922 (2d Cir. 1939), *rev'd on other grounds*, 308 U.S. 287 (1939); see also, e.g., *United States v. Hernandez*, 668 F.2d 824 (5th Cir.1982) (affirming conviction of person who was aboard a boat containing 13 bales of marijuana and five boxes of methaqualone tablets, who had keys to the cabin where the contraband was stored, and who had a station wagon on land waiting to transport the boat); *United States v. Alvarez*, 625 F.2d 1196, 1198 (5th Cir. 1980) (en banc); *United States v. Love*, 599 F.2d 107 (5th Cir. 1979) (upholding the convictions of defendants found on a shrimping vessel headed toward Texas that contained no shrimping equipment or shrimp but did hold 15 tons of marijuana).
98. Fake pills containing fentanyl are a major-league problem today. See Tamman et al., *supra* note 27 ("The [Reuters] reporters [who purchased precursors online from China to see if it could be done] also bought a pill press, two die molds and a binding agent that could be used to produce small, light-blue tablets stamped with an 'M' on one side and the number '30' on the other. Those are the signature markings of a generic version of the prescription painkiller oxycodone. Use of illicit fentanyl soared as a substitute for that highly addictive drug, and the copycat look has stuck. Much of the illegal fentanyl sold in the United States still comes in the form of blue M30 pills, authorities say:").
99. Chung et al. *supra* note 17.
100. *Id.*
101. 2024 INCB REPORT, *supra* note 24, at iii.
102. U.N. INT'L NARCOTICS CONTROL BD., *Fentanyl-Related Substances with No Currently Known Legitimate Uses*, ANNEX I. *Non-Fentanyl Opioids and Related New Psychoactive Substances with No Currently Known Legitimate Uses* (2023), https://www.incb.org/documents/Global_Projects_OPIOIDS/INCB.GRIDS.OPIOIDS.NoFOs_list.pdf (last visited Aug. 18, 2025); see U.N. INT'L NARCOTICS CONTROL BD., *Global Opioids Project: Fentanyl Opioids, and Benzodiazepines—Fentanyl-Related Substances with No Currently Known Legitimate Uses*, Annex I. *Fentanyl-Related Substances with No Currently Known Legitimate Uses* (2023), *Non-Fentanyl Opioids and Related New Psychoactive Substances with No Currently Known Legitimate Use* (2023), and *Benzodiazepines with No Currently Known Legitimate Uses* (2023), https://www.incb.org/documents/Global_Projects_OPIOIDS/INCB.GRIDS.OPIOIDS.Fentanyl-Rel_Subs_list.pdf (last visited Aug. 18, 2025).
103. *United States v. Falcone*, 311 U.S. 205, 206 (1940).
104. *Direct Sales*, 319 U.S. at 710.
105. *Falcone*, 311 U.S. at 207.
106. *Id.*; see *id.* at 208 n.1 ("The two Falcones who were in business as sugar jobbers were shown to have sold sugar to three wholesale grocers who in turn were shown to have sold some of the sugar to distillers. To establish guilty knowledge the Government relies upon evidence showing that the volume of their sales was materially larger during the periods of activity of the illicit stills; that Joseph Falcone was shown on two occasions, at one of which Salvatore Falcone was present, to have been in conversation with one of the conspirators who was a distiller, and on one occasion with another distiller conspirator who was his brother-in-law; that Joseph Falcone had been seen at the Venezia Restaurant which was patronized by some of the conspirators and knew its proprietor; and on two occasions Salvatore Falcone had visited the restaurant, on one to collect funds for the Red Cross and on another for a monument to Marconi. [¶] Respondent Alberico was a member of a firm of wholesale grocers who dealt in sugar and five-gallon tin cans among other things. They sold sugar to wholesale grocers and jobbers. To establish Alberico's guilty knowledge the Government relies on evidence that his total purchases of sugar materially increased during the period when the illicit stills were shown to be in operation; that some of his sugar purchases from a local wholesaler were at higher prices than he was then paying others; that on the premises of one of the distillers there were found fifty-five cardboard cartons, each suitable for containing one dozen five-gallon cans, on one of which was stenciled the name of Alberico's firm; that on eight to ten occasions Alberico sold sugar and cans in unnamed amounts to Morreale, one of the defendant distillers who was not convicted, and on one occasion was overheard to say, in refusing credit to Morreale, 'I could not trust you because your business is too risky.' [¶] Respondent Nicholas Nole was shown to be proprietor of Acme Yeast Company and also the Utica Freight Forwarding Company, to which one and one-half tons of K & M yeast was consigned by the seller. Wrappers bearing the distinctive marks of the Acme Yeast Company and K & M yeast, quantity not stated, were found at one of the stills; and a K & M yeast container was found at another. To show guilty knowledge of Nicholas Nole the Government relies on the circumstance that he registered the Acme Yeast Company in the county clerk's office in the name of a cousin; that the order for the consignment of K & M yeast was placed in the name of an unidentified person; that Nole had been seen in conversation with some of the convicted distillers at a time when some of the illicit stills were in operation, and that on one occasion during that period he sold and delivered fifteen five-gallon cans of illicit alcohol from a source not stated. [¶] Respondent John Nole was shown to be a distributor for the National Grain Yeast Company in Utica during the period in question. Yeast wrappers bearing the National labels were found at three of the stills. To show guilty knowledge of John Nole the Government relies on evidence that he had assisted his brother Nicholas in unloading yeast at the Utica Freight Forwarding Co.; that he was a patron of the Venezia Restaurant; that on one occasion he was seen talking with Morreale, the unconvicted distiller, in the vicinity of a store in Utica, whose store it does not appear. On three occasions Morreale and another convicted defendant procured yeast in cartons and some in kegs at the store and on one occasion John Nole told the person in charge of the store to let them have the yeast; that John Nole's information return required by the Government of all sales of yeast in excess of five pounds to one person did not show in February or March, 1938, any sale of yeast to Morreale or any sale of keg yeast:").
107. *Id.* at 210–11.

108. See *Direct Sales*, 319 U.S. at 705–15 (detailing the facts that justified the inference that the Direct Sales company used Dr. Tate as a pusher).
109. Tamman et al., *supra* note 27; see Chung et al., *supra* note 17 (“Descriptions of the [most commonly used illicit] process are now widely available online.”); *supra* notes 22–23 and accompanying text. Some precursor sellers are also quite helpful. See Tamman et al., *supra* note 17 (“A sales rep named Sunnee was even more explicit. During a chat in April on Telegram, Sunnee sent a molecular diagram of “the best piperidine product.” Sunnee followed up two days later with instructions on how to chemically change the compound so that it could easily be turned into fentanyl. [¶] ‘Keep stirring until a large number of bubbles overflow from the mixing barrel,’ one of the steps read.”). It’s like having available your own Julia Child of fentanyl.
110. See, e.g., 2024 DEA DRUG THREAT ASSESSMENT, *supra* note 11, at 2 (“Drug sales are enabled by encrypted and open messaging applications and social media, used by cartel members and street dealers alike to advertise, arrange delivery, and get paid quickly, all on a single device, and with minimal exposure.”), 7 (“The Sinaloa Cartel uses a variety of tactics to conceal precursor chemical shipments coming into Mexico, including hiding the chemicals among legitimate commercial goods, mislabeling the containers, using front companies to create the appearance of legitimacy, or shipping through third-party countries. DEA reporting also indicates that the Sinaloa Cartel has contracted with Mexico-based brokers who work independently of any drug cartel to purchase large quantities of fentanyl precursor chemicals directly from China.”), 8 (“Precursor chemicals have to get into Mexico before they can be used to make fentanyl and methamphetamine, and South American cocaine must arrive in Mexico before the cartels can traffic it across the border into the United States. Seaports, therefore, are critical parts of the Sinaloa Cartel’s criminal infrastructure. The Port of Mazatlán on the Pacific Coast of Sinaloa is wholly controlled by the Sinaloa Cartel, and they charge other drug trafficking organizations a piso for use of the port. The Sinaloa Cartel maintains logistical and corrupt government contacts at other maritime ports on both coasts of Mexico.... A long history of alliances with drug trafficking organizations operating in Colima give[s] the Sinaloa Cartel access to the Port of Manzanillo, strategically significant because of its location on the central Pacific Coast and its high volume of shipping traffic due to widespread use of the port by foreign countries to exchange legitimate trade goods with Mexico and to refuel. The Port of Manzanillo is located just south of the rival Jalisco Cartel’s stronghold, however, which increases tensions between the two main Mexican cartels. Numerous complicit trucking companies work with the Sinaloa Cartel to transport illicit drugs and precursor chemicals from the ports to Mexico City and other inland locations.”), 9 (“The Sinaloa Cartel also uses border tunnels to cross drugs into the United States undetected. Most of the tunnels are not built by the cartel but are part of the border cities’ sewage and water systems. A small number, however, are underground structures that begin beneath a home or business on the Mexico side of the border and end beneath an industrial area in the United States, where the departure of tractor-trailers from a warehouse is unremarkable.”); 2024 INCB REPORT, *supra* note 24, at 6 (“To further conceal precursor supply chains and exploit regulatory loopholes for dual-use chemicals, synthetic drug manufacturers obtain small batches of different precursor analogues from multiple sources, rather than on an industrial scale, to avoid drawing the attention of regulators or law enforcement authorities.”); U.S. DEP’T OF THE TREASURY, FINANCIAL CRIMES ENFORCEMENT NETWORK, *Supplemental Advisory on the Procurement of Precursor Chemicals and Manufacturing Equipment Used for the Synthesis of Illicit Fentanyl and Other Synthetic Opioids*, FinCen Advisory No. FIN-2024-A002, at 2 (June 20, 2024), <https://www.fincen.gov/sites/default/files/advisory/2024-06-20/FinCEN-Supplemental-Advisory-on-Fentanyl-508C.pdf> [hereafter 2024 FINCEN ADVISORY] (“Illicit fentanyl precursor chemicals and manufacturing equipment may be shipped directly from the PRC to Mexico, or be routed to Mexico through third-party jurisdictions, including the United States.”) (footnote omitted).
111. Lauren Greenwood & Kevin Fashola, *Illicit Fentanyl from China: An Evolving Global Operation*, U.S.–China Economic and Security Rev. Comm’n *Issue Brief* 1 (Aug. 24, 2021).
112. 2024 DEA DRUG THREAT ASSESSMENT, *supra* note 11, at 23.
113. *Direct Sales*, 319 U.S. at 713.
114. 2024 INCB REPORT, *supra* note 24, at 5.
115. *Id.* (“Illicit synthetic drug producers have also demonstrated more efficient and simplified manufacturing processes enabled by compounds that increase potency or extend the duration of the drugs’ action.”); Tamman et al., *supra* note 27 (“Turning these precursors into fentanyl would have required just modest lab skills and a basic grasp of chemistry.... It’s mega-easy making that drug.”).
116. Chung et al. *supra* note 17 (“A reporter traveled in February to Mexico’s Sinaloa state, home of the powerful Sinaloa Cartel, to speak with a freelance fentanyl producer about his craft. He operated in a poor neighborhood on the edge of the state capital Culiacán, an area controlled by the cartel that’s dotted with stash houses.... This cook, who left school at age 12, got his start as an assistant to another producer. Fentanyl recipes are prized assets, he said. His mentor was stingy with information and forbade him from taking notes. But within six months the apprentice had memorized all the steps and went into business for himself. He said he sourced his chemicals from local brokers, who took orders on WhatsApp and delivered within hours.”).
117. *Id.* A current production process involves at most three steps, and, depending on the precursors, sometimes just one. *Id.*
118. See UNITED NATIONS OFF. ON DRUGS & CRIME, *Global Smart Update: Fentanyl and Its Analogues—50 Years On* 7 (2017) (“The materials and apparatus used in fentanyl synthesis and tableting are inexpensive and easy to obtain from online vendors, and the synthesis does not require sophisticated laboratory skills.”); Chung et al., *supra* note 17 (“Gupta’s original method requires just three steps. The whole process takes place at room temperature and there’s no specialized lab equipment required.”). See also photographs of Mexican fentanyl production laboratories in Jon Kamp et al., *supra* note 43, and Natalie Kitroeff & Paulina Villegas, “This Is What Makes Us Rich”: Inside a Sinaloa Cartel Fentanyl Lab, N.Y. TIMES, Dec. 29, 2024, <https://www.nytimes.com/2024/12/29/world/americas/inside-fentanyl-lab-mexico.html>.
119. See FINANCIAL CRIMES ENFORCEMENT NETWORK, U.S. DEP’T OF THE TREASURY, *Financial Trend Analysis—Fentanyl-Related Illicit Finance: 2024 Trend Pattern & Threat Information* 2–19 (2025) [hereafter 2025 FINCEN THREAT REPORT]; 2024 INCB REPORT, *supra* note 24, at 5 (“Traffickers manufacturing synthetic drugs have also displayed an ability to adjust the size and sophistication of manufacturing facilities to avoid both detection and interdiction. They

have hedged against risks, designing manufacturing facilities capable of being shifted across borders when the threat of interdiction is high. Criminal networks often engage a complex business structure of specialists such as chemists, laboratory assistants, brokers, scouts, drivers and couriers to source and synthesize precursor materials, find equipment and scout out possible laboratory locations and transit routes, and transport the products. To help manage the financial operations of the process and reduce risks, financiers and waste contractors are also utilized.”) (footnotes omitted); *id.* at 7 (“Taking advantage of chemicals, precursors or pre-precursors that are not under international control, traffickers have identified new methods of procuring these through encrypted applications, online commerce and business-to-business wholesalers, and shipping by common carriers.”).

120. See, e.g., 2024 FINCEN ADVISORY, *supra* note 110; HOUSE SELECT COMM. REPORT, CCP AND FENTANYL, *supra* note 4, at 32–33 (noting that fentanyl trafficking has “empowered [the PRC’s] organized crime assets through lucrative money laundering” and that “illicit fentanyl material and the accompanying money laundering also benefits Chinese transnational criminal groups, many of whom have ties to the CCP and PRC government”); Greenwood & Fashola, *supra* note 111, at 1 (“Chinese brokers are laundering Mexican drug money through China’s financial system: Chinese money launderers are using financial technology, mobile banking apps, and social media to evade authorities.”).
121. See, e.g., 2025 FINCEN THREAT REPORT, *supra* note 119; 2024 FINCEN ADVISORY, *supra* note 110, at 2 (“U.S. financial institutions’ [Bank Secrecy Act] reporting to FinCEN allows law enforcement to follow the money behind the illicit fentanyl supply chain, identify and prosecute the illicit actors that profit off this unprecedented epidemic, and ultimately aid in the effort to save American lives.”), 4–5 (“Through E.O. 14059, Treasury’s Office of Foreign Assets Control (OFAC) has sanctioned over 290 foreign nationals and entities involved in the illicit fentanyl supply chain, including...money launderers that obfuscate the illicit proceeds sustaining the supply chain.”) (footnote omitted); SYNTHETIC OPIOID COMM’N, *supra* note 2; HOUSE SELECT COMM. REPORT, CCP AND FENTANYL, *supra* note 4; WESTHOFF, *supra* note 2; Greenwood & Fashola, *supra* note 111, at 1; cf. White House, Executive Order No. 14,059: *Executive Order on Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade*, 86 FED. REG. 71,549 (Dec. 15, 2021).
122. 2025 FINCEN THREAT REPORT, *supra* note 119, at 2, 7; *id.* at 2 (“Sinaloa and Jalisco, strongholds of the Sinaloa Cartel and the Cartel Jalisco Nueva Generación (CJNG), were the top two Mexican states identified in subject address fields of BSA reports related to fentanyl.... Methods to launder suspected fentanyl proceeds varied in sophistication. Simple schemes often included the direct repatriation of illicit proceeds to Mexico through MSB funds transfers. BSA filers also identified complex schemes including suspected professional money laundering organizations (PMLOs)—such as Chinese money laundering organizations—potentially facilitating the movement of illicit fentanyl proceeds on behalf of the cartels.”) (footnote omitted), 4 (“Cross-border [electronic funds transfers], including wire transfers conducted by depository institutions and [money services businesses] funds transfers, demonstrate the cartels’ reliance on the U.S. financial system to move funds internationally to facilitate the fentanyl trade.”), 5 (“FinCEN analysis of [Bank Secrecy Act] reporting identified Mexico and the PRC as the most frequently cited locations of companies and individuals reported in fentanyl-related filings with a foreign nexus. Illicit financial networks in these two countries underpin fentanyl production via the precursor chemical trade while also enabling the laundering of illicit proceeds through complex money laundering schemes and underground banking systems. BSA reports involving Mexico- and PRC-based subjects primarily reported MSB funds transfers and wire transfers conducted via U.S.-domiciled correspondent bank accounts held by Mexican and Chinese financial institutions. [¶] BSA reporting also identified Hong Kong-based subjects potentially facilitating precursor chemical sales and money laundering. Hong Kong-based companies were often reported in conjunction with PRC-based subjects conducting similar financial activity or operating within the same financial networks. In some instances, Hong Kong-based entities were identified as branches or subsidiaries of PRC-based chemical companies suspected of supplying fentanyl precursor chemicals.”), 6 (“FinCEN analysis revealed nearly 32 percent of Mexico-based BSA report subjects in the dataset were concentrated in the Mexican states of Sinaloa and Jalisco, strongholds of the Sinaloa Cartel and [Jalisco New Generation Cartel, or CJNG],” the two most powerful Mexican TCOs), 7 (“BSA reporting identified Sinaloa- and Jalisco-based companies and individuals as the predominate remitters of bank wire transfers to suspected PRC-based precursor chemical suppliers. In some instances, BSA filers identified subjects with addresses in key “plazas,” or towns, along the U.S.-Mexico border in the states of Baja California, Sonora, and Chihuahua. The Mexican cartels and associated criminal organizations often stage drug shipments, including fentanyl, in these areas before smuggling them into the United States.”) (footnotes omitted).
123. HOUSE SELECT COMM. REPORT, CCP AND FENTANYL, *supra* note 4, at 3.
124. 402 U.S. 558 (1971).
125. *Id.* at 563–64.
126. *Id.* at 565.
127. See *United States v. Balint*, 258 U.S. 250 (1922); *United States v. Dotterweich*, 320 U.S. 277 (1943); *United States v. Freed*, 401 U.S. 601 (1971). *Balint* involved a provision in the Harrison Narcotics Tax Act, which outlawed the sale of opium and cocaine products except as required by that law. *Balint*, 258 U.S. at 251. The district court dismissed an indictment charging two physicians with the unlawful distribution of those drugs on the ground that the indictment did not allege and the statute did not require proof that the physicians knew that their conduct was unlawful. The Supreme Court, in an opinion by Chief Justice William Howard Taft, reversed. Taft explained that the Harrison Act intentionally departed from the common law requirement that the government prove that the defendant acted with a corrupt or evil intent. *Id.* at 251–52. The reason was that the purpose of the act was “to stimulate proper care” in the sale of products that might be “dangerous” to the public, as in the case of “selling diseased food or poison,” even if the absence of a scienter element would “require the punishment of the negligent person though he be ignorant of the noxious character of what he sells.” *Id.* at 252–53. *Dotterweich* was a prosecution under the Federal Food, Drug, and Cosmetic Act (FDCA), 21 U.S.C. §§ 301–392, which made it a crime to ship adulterated food or drugs in interstate commerce without requiring proof that a party involved in that conduct knew that the drugs were adulterated. The FDCA did not require knowledge of wrongdoing, the Court reasoned, because such a requirement would defeat the regulatory purpose of the act. *Dotterweich*, 320 U.S. at 280–85. In *Freed*, the district court dismissed an indictment against two defendants for possession of hand

grenades, for which the federal firearms law required registration. The Supreme Court reversed, ruling that the statute in *Freed* did not require proof that the defendants were aware of the registration requirement. As the Court quipped, “[t]his is a regulatory measure in the interest of the public safety, which may well be premised on the theory that one would hardly be surprised to learn that possession of hand grenades is not an innocent act.” *Freed*, 401 U.S. at 609.

128. See *supra* notes 19–20 and accompanying text.
129. 2024 FINCEN ADVISORY, *supra* note 110, at 4–5.
130. *Id.* (footnote omitted); see *id.* at 5 n.24 (listing reports of the sanctions).
131. *Id.* at 4–5]. In *Dotterweich*, the Court wrote that we can and should trust the good judgment of prosecutors not to bring unjust cases. See *Dotterweich*, 320 U.S. at 285 (“It would be too treacherous to define or even to indicate by way of illustration the class of employees which stands in such a responsible relation. To attempt a formula embracing the variety of conduct whereby persons may responsibly contribute in furthering a transaction forbidden by an Act of Congress, to wit, to send illicit goods across state lines, would be mischievous futility. In such matters the good sense of prosecutors, the wise guidance of trial judges, and the ultimate judgment of juries must be trusted. Our system of criminal justice necessarily depends on ‘conscience and circumspection in prosecuting officers,’ *Nash v. United States*, 229 U.S. 373, 378, even when the consequences are far more drastic than they are under the provision of law before us. See *United States v. Balint*, *supra* (involving a maximum sentence of five years).”). The nicest response that I can offer to that point is to say that the Supreme Court later rejected it in *United States v. Stevens*, 559 U.S. 460 (2010), when it rejected the government’s request to uphold the constitutionality of an overbroad criminal statute because the government would select cases to prosecute involving only truly “bad” people. *Id.* at 480 (“[T]he First Amendment protects against the Government; it does not leave us at the mercy of *noblesse oblige*. We would not uphold an unconstitutional statute merely because the Government promised to use it responsibly.”). Not only was *Dotterweich* wrong on this point, but the issue is also even clearer than the Court concluded in *Stevens*. See Paul J. Larkin, Jr., *Public Choice Theory and Overcriminalization*, 36 HARV. J.L. & PUB. POL’Y 715, 776 (2013) (“[F]or more than two centuries the American legal system has been based on the proposition—set forth by Chief Justice John Marshall in *Marbury v. Madison* and unmentioned by Justices Holmes and Frankfurter—that ours is ‘a government of laws, and not of men.’ In this context that principle means that it is the legislature’s job to draft criminal laws with precision, not the court’s job to fill in the blanks, and certainly not the prosecutor’s job to decide where the line between lawful and illegal conduct belongs. The government’s ‘Trust us’ argument flips that principle on its head. It asks the courts to look the other way and force the public to bear the risk of a government that might not be trustworthy. That was the system of government before America became a nation, a system in which the King had the role of making those calls. But the Framers quite clearly opted for a different system of government, a system where the written Constitution interposes itself between the government and the public. One of the virtues of our system is that no one has to rely on the judgment of a benevolent king or fear the wrath of a malevolent one. *Marbury* made clear that it is the function of the written law to protect us against the mistakes of the former and the wickedness of the latter.”) (footnote omitted).
132. “While the PRC government publicly acknowledged in November 2023 that the trafficking of fentanyl precursors and other illicit narcotics materials in the manner described above is illegal under Chinese law, the Select Committee found thousands of PRC companies openly selling these illicit materials on the Chinese internet—the most heavily surveilled country-wide network in the world. The CCP runs the most advanced techno-totalitarian state in human history that ‘leave[s] criminals with nowhere to hide’ and has the means to stop illicit fentanyl materials manufacturers, yet it has failed to pursue flagrant violations of its own laws.” HOUSE SELECT COMM. REPORT, CCP AND FENTANYL, *supra* note 4, at 3; *id.* at 32 (“The global illicit fentanyl trade has enriched the PRC itself, empowered its organized crime assets through lucrative money laundering, and offer[ed] PRC elites a means to move a certain amount of their capital abroad, thus diminishing the risk of their dissent. It allows the PRC to further its strategic interests by, per PRC Major General Qiao, ‘caus[ing] disasters in other countries and mak[ing] huge profits.’ Through subsidies, grants, and other incentives, the PRC harms Americans while enriching PRC companies. It also, through the drug trade, gains dominance over the world of illicit finance.”) (footnotes omitted); *id.* at 33–34 (“[I]llicit fentanyl material and the accompanying money laundering also benefits Chinese transnational criminal groups, many of whom have ties to the CCP and PRC government. According to public reporting, [CCP] Chairman Xi [Jinping] has ‘intensified [the PRC’s] alliance with Chinese organized crime overseas’ as he has pursued greater international influence. The partnership between the PRC government and organized crime ‘mix[es] geopolitics and corruption for mutual benefit’ where, according to western national security officials, ‘in exchange for their services as overseas enforcers and agents of influence, the Chinese state protects the mobsters.’”) (footnotes omitted); *id.* at 34 (“In the context of America and the fentanyl crisis, this partnership [between the PRC government or CCP and organized crime elements] resulted in Chinese organized crime taking over money laundering for the cartels, further enriching PRC criminal networks and entrenching their influence. According to retired DEA agent Thomas Cindric, ‘[a]t no time in the history of organized crime is there an example where a revenue stream has been taken over like this, and without a shot being fired.’”); *id.* at 34–35 (“The PRC’s success in taking over the cartels’ money laundering apparatus is because ‘the Chinese brokers mostly manage to bypass the U.S. and Mexican formal banking systems, thus evading anti-money laundering measures and simplifying one of the biggest challenges for the cartels, namely moving large amounts of bulk money subject to law enforcement detection. The only interface with the formal banking system takes place in China, into which U.S. law enforcement agencies have little-to-no visibility.’ The criminal syndicates’ money laundering activities reportedly involve individuals affiliated with the Chinese state in certain instances. U.S. law enforcement investigating Chinese money laundering found ‘evidence indicating that... money laundering schemes involved Chinese government officials and the Communist Party elite.’ Specifically, they found evidence that Chinese organized criminal groups were moving ‘tens of millions of dollars among Chinese banks and companies with seeming impunity,’ despite the fact that ‘China’s omnipresent security forces tightly control and monitor its state run economy.’ ‘More than \$3.8 trillion of capital has left China since 2006, making the country the world’s top exporters of hot money.’ Former Commander of U.S. Southern Command, Admiral Craig

Faller, likewise testified to Congress that Chinese launderers are the ‘number one underwriter’ of drug trafficking in the Western Hemisphere, with the Chinese government ‘at least tacitly supporting’ money laundering. [¶] The money laundering system has an added benefit for [the] PRC elite, namely that the ‘cash accumulated from street sales remain[s] in the U.S., where it is ‘offered for sale to Chinese citizens eager to avoid currency controls, which limit moving yuan valued at more than \$50,000 out of China.’”) (footnotes omitted).

133. “Americans are accustomed to and prefer taking drugs by swallowing pills rather than receiving or self-administering injections, so the cartels use commercial-grade presses to manufacture counterfeit pills containing fentanyl, either in part or entirely, creating look-alikes for legitimate prescription drugs such as OxyContin or Adderall. The machines allow the cartels to manufacture millions of pills. The goal is to attract new customers. To entice juveniles, the cartels also manufacture pills in various colors to make them look like candy.” Larkin, *supra* note 2, at 12 (footnotes omitted); see also, e.g., U.S. DRUG ENFORCEMENT ADMIN., *Sharp Increase in Fake Prescription Pills Containing Fentanyl and Meth* (2022), <https://www.dea.gov/alert/dea-laboratory-testing-reveals-6-out-10-fentanyl-laced-fake-prescription-pills-now-contain> (“The DEA Laboratory has found that, of the fentanyl-laced fake prescription pills analyzed in 2022, six out of ten now contain a potentially lethal dose of fentanyl. This is an increase from DEA’s previous announcement in 2021 that four out of ten fentanyl-laced fake prescription pills were found to contain a potentially lethal dose. [¶] ‘More than half of the fentanyl-laced fake prescription pills being trafficked in communities across the country now contain a potentially deadly dose of fentanyl.’”); FINCEN ADVISORY, *supra* note 110, at 2.
134. “Many sellers have stopped offering ‘immediate’ precursors: chemicals that are the easiest to turn into fentanyl and face the toughest controls. Instead, these suppliers sell the ingredients that are used to create the immediate precursors. These alternatives, or ‘pre-precursors,’ require just minor extra steps to make fentanyl. [¶] Another trick is to tweak the chemical structure of a precursor to circumvent regulations. Such ‘designer’ precursors can still be used to make fentanyl or one of its analogs, which are often just as potent as fentanyl, or even more so.” Tamman et al., *supra* note 27.
135. At one time, China shipped synthesized fentanyl to the United States, but China has now shifted to producing only the precursor chemicals and production equipment. After years of diplomatic pressure during the Obama and Trump Administrations to reduce processed fentanyl shipments to this nation, the PRC designated all fentanyl analogues as controlled substances in May 2019 and agreed to cease sending fentanyl or its analogues to the United States without a special export license. That agreement, however, amounted to a shift in the PRC’s strategy but not in its goals, because China might continue to export fentanyl’s precursor chemicals to America. See HOUSE SELECT COMM. REPORT, CCP AND FENTANYL, *supra* note 4, at 6–7; Larkin, *supra* note 2, at 7.
136. See Felbab-Brown, *supra* note 38, at 5 (noting that an important interest of the Chinese Communist Party is “to generate jobs and revenues at the provincial level.”); *id.* at 7 (“More than 5,000 firms make up China’s politically powerful and government-supported and protected pharmaceutical industry, the world’s largest in terms of exports of basic chemical ingredients and precursors and second largest in terms of annual revenue of more than \$100 billion (one third of the value of the U.S. pharmaceutical industry). The pharmaceutical industry produces more than 2,000 products in annual output of more than 2 million tons. The world’s leading chemical exporter by value, China also has between 160,000 and 400,000 chemical manufacturers and distributors, many of which operate without legal approval, others of which hide behind shell companies, and most of which are capable of producing fentanyl and hiding it amongst its massive chemical output production.”) (footnotes omitted); *id.* (“Like the pharmaceutical industry, the chemical industry is also politically powerful, constituting some 3% of China’s national economy and generating some \$100 billion in profits yearly, according to a private-sector analysis.”); *id.* at 8 (noting that “China’s chemical exports make up one third of all global shipments”); see also SYNTHETIC OPIOID COMM’N, *supra* note 2, at 6–7 (estimating the number of Chinese pharmaceutical firms at from 2,000 to 5,000 and the number of chemical firms at from 24,000 to 160,000); WESTHOFF, *supra* note 2, at 181–82; Kamp et al., *supra* note 43.
137. See HOUSE SELECT COMM. REPORT, CCP AND FENTANYL, *supra* note 4, at 33 (“As author Ben Westhoff has explained, the PRC government encouraged the export of fentanyl, fentanyl precursors, and other synthetic narcotics as they are ‘seen as a vital part of its economy.’ To foster these exports, it offered subsidies and tax breaks for chemical companies that produce and export those drugs that may run into the millions of dollars in potential revenue. Each individual company can secure hundreds of thousands if not millions of dollars in potential revenue. These companies also enjoy a symbiotic relationship with the PRC provincial authorities who consider it an imperative to achieve the provincial GDP goals set by Beijing. As Westhoff noted in a 2019 interview, beyond any national policy, ‘you might [therefore] have a provincial official who wants to let these companies keep doing what they’re doing because it brings in more revenue for the area.’”) (footnotes omitted); Larkin, *supra* note 2, at 7 (“China’s regulation of [its chemical] industry, whether purposeful or not, was, in a word, lax. Perhaps that is because the initial response of the Chinese Communist Party (CCP) to flaws in its Communist paradise is to deny the existence of any problem. Perhaps it is because the economic might of China’s chemical and pharmaceutical industries translates directly into considerable power. Perhaps it is because China has no interest in penalizing companies that employ thousands of workers in the provinces. Perhaps it is China’s way of repaying the West for the Opium Wars and resulting addiction that England forced China to endure in the 19th century. Or perhaps it is a combination of those factors and others as well (such as an unstated desire to weaken the United States.)” (footnotes omitted).
138. Greenwood & Fashola, *supra* note 111, at 5 (punctuation omitted).
139. *Id.* at 5 & n.1, 8 (footnotes omitted).
140. HOUSE SELECT COMM. REPORT, CCP AND FENTANYL, *supra* note 4, at 7–8 (footnote omitted).
141. *Id.* at 8 (footnotes omitted).
142. There are alternative sources for fentanyl’s precursor chemicals. *Id.* at 6 n.1; 2024 DEA DRUG THREAT ASSESSMENT, *supra* note 11, at 9 (noting that the Mexican “TCOs are diversifying their precursor chemical sources of supply, and moving to precursor chemicals further down the synthesis chain to avoid international chemical controls.”); *id.* at 15 (“Law enforcement seizures in 2019 and 2020 include many chemicals which are uncontrolled in China

and Mexico.”); WESTHOFF, *supra* note 2, at 224–25; Kamp et al., *supra* note 43. Various chemicals can be used to synthesize fentanyl; Chinese chemical companies develop new ones; some precursors have legitimate uses; the precursor manufacturing technique does not demand rocket science–level knowledge; and the law regulating the production and export of precursor chemicals varies widely from country to country. Greenwood & Fashola, *supra* note 111, at 4–5 (“According to the Center for Advanced Defense Studies (CADS), since the 2019 scheduling of all fentanyl [by China], Chinese producers have developed at least four more precursor substitutes, which contribute to evading detection.... The State Department dubbed China’s precursor substitutes ‘indirect precursors’ or ‘pre-precursors.’”) (footnotes omitted); Larkin, *supra* note 2, at 8; see 2024 DEA DRUG THREAT ASSESSMENT, *supra* note 11, at 9, 15; WESTHOFF, *supra* note 2, at 224–25. Mexican TCOs could turn to India or Myanmar (or Chinese companies operating out of India) to purchase the same precursor chemicals in the open market, smuggling them in legitimate shipments or mislabeling them to hide their origin and nature. See 2025 INTELLIGENCE ASSESSMENT, *supra* note 10, at 6; 2024 DEA DRUG THREAT ASSESSMENT, *supra* note 11, at 15; WESTHOFF, *supra* note 2, at 226 (“According to the DEA, there are sixteen different known precursor chemicals that can be used to make fentanyl, most of which remain unscheduled,” and therefore legal, “worldwide.”); Vanda Felbab-Brown, *The Opioid Crisis in America: Domestic and International Dimensions: Fending Off Fentanyl and Hunting Down Heroin: Controlling Opioid Supply from Mexico*, BROOKINGS INST. 5 (July 2020); Felbab-Brown et al., *supra* note 38, at 10 (“[I]f the production and trafficking of fentanyl in China is reduced, illicit production and supply will likely intensify in India and Myanmar. TCOs smuggling fentanyl to the United States already collaborate with Indian pharmaceutical companies.”). As a result, shutting down China’s supply of precursor chemicals would still leave us with law enforcement challenges. *Id.* at 10–11 (“[T]he enforcement challenge with both countries is no smaller than with China. India’s large pharmaceutical industry is even more poorly regulated than China’s. It is also politically powerful, and aggressively promotes the sale of opioids in India and abroad, for example in Africa, where its sales of tramadol contribute to an intensifying drug epidemic. But U.S. counternarcotics leverage with India will be severely constrained by the U.S. desire to cultivate India as a geopolitical counterweight against China.... U.S. capacity to generate anti-fentanyl law enforcement actions in Myanmar is also severely constrained—both by the ongoing and intensifying civil war in the country and by geopolitical considerations. A myriad of militant groups and pro-government militias have been implicated in the production or taxation of illicit drugs. For decades, the Myanmar military has allowed the ethno-secessionist groups to trade in anything, including drugs, as an inducement to get the groups to agree to and maintain ceasefires with the government. It has similarly allowed progovernment militias to self-finance through the production of methamphetamine and heroin. The military has mostly undertaken counternarcotics actions when militants or militias crossed its domestic redlines, such as by trading with militant groups against which the military is engaged in active hostilities. New broad U.S. sanctions are unlikely to change this calculus while undermining other U.S. objectives.”). Nonetheless, by supplying the Mexican TCOs with precursor chemicals, China is responsible for thousands of American fatalities, and our relations with nations like India are not as hostile as our current relations with China are. The result is that we might be able to gain support from those governments for our efforts against fentanyl smuggling.

143. “Mexico has always played an important role as a transshipment point for the smuggling of China’s fentanyl into this country. Once China revised its fentanyl laws in 2019, however, ‘supply pivoted to Mexico.’ Our southern neighbor is now the principal site for fentanyl’s illicit production and the direct source for the finished product to be smuggled into the United States.” Larkin, *supra* note 2, at 8–9 (footnotes omitted). Two particular TCOs—the Sinaloa Cartel and the Cartel Jalisco Nueva Generación (also called CJNG or the Jalisco Cartel)—are the principal and deadliest ones. *Id.* at 1.
144. See 2024 DEA DRUG THREAT ASSESSMENT, *supra* note 11, at 8.
145. DRUG ENFORCEMENT ADMIN., *Fentanyl Supply Chain*, *supra* note 2 (noting that precursor chemicals go from China to Mexico for processing into the final product and smuggling into the United States).
146. The CCP is the shot-caller in China. See Andres Martinez-Fernandez & Andrew J. Harding, *Holding China and Mexico Accountable for America’s Fentanyl Crisis*, HERITAGE FOUND. BACKGROUNDER No. 3851, at 2 (2024) (“[U]nknown to most Americans, the Chinese Communist Party (CCP) is actively funding, supporting, and pushing America’s most deadly drug threat in history.”). In the not-too-distant past, the Mexican government collaborated with the United States to thwart the efforts of the TCOs to poison American citizens. But the immediate past Mexican President Andres Manuel López Obrador, acting like Sergeant Schultz of the 1960s television show *Hogan’s Heroes* (CBS 1965–1971), <https://www.youtube.com/watch?v=34ag4nkSh7Q> (“I see nothing!”), refused to join forces with the federal government. Klobucista & Ferragamo, *supra* note 3 (“Under Mexican President Andrés Manuel López Obrador, Mexico has broadly resisted cooperation with the United States on the issue, claiming that it does not produce fentanyl.”); *Several Violent Episodes in Mexico Suggest a Worrying Trend*, ECONOMIST, Sept. 1, 2022, <https://www.economist.com/the-americas/2022/09/01/several-violent-episodes-in-mexico-suggest-a-worrying-trend>. Last fall, Mexico elected a new president, Claudia Scheinbaum. Her public statement offers some promise that she will abandon the “abrazos no balazos” (“hugs not bullets”) policy of her predecessor, Andrés Manuel López Obrador. See Jose de Cordoba, *Inside Mexico’s New Plan to Take on Cartel Violence*, WALL ST. J., Oct. 7, 2024, https://www.wsj.com/world/americas/inside-mexicos-new-plan-to-take-on-cartel-violence-fcff2a54?mod=Searchresults_pos1&page=1 (“Mexico’s new President Claudia Sheinbaum is using her first 100 days in office to try to lower homicides and loosen the grip of organized crime groups that control swaths of the country, extort businesses, smuggle drugs and kill with impunity. [¶] Among Sheinbaum’s top efforts to ‘pacify the country’ will be a push to slash killings in the country’s 10 deadliest cities, including Tijuana and Ciudad Juárez on the U.S. border, according to a presentation of the strategy seen by The Wall Street Journal. She is also planning new efforts to combat the smuggling of the deadly drug fentanyl, which kills tens of thousands of Americans a year, the presentation says.”); see also *What Claudia Sheinbaum’s Victory Might Mean for Mexico*, ECONOMIST, June 3, 2024, <https://www.economist.com/leaders/2024/06/03/mexicos-new-president-must-do-a-high-stakes-u-turn>; *The Probable Next President Outlines Her Plan to Make Mexicans Safer*, ECONOMIST, May 20, 2024, <https://www.economist.com/by-invitation/2024/05/20/the-probable-next-president-outlines-her-plan-to-make-mexicans-safer>. To be sure, Sheinbaum has taken some steps to halt fentanyl smuggling. See, e.g., *Mexico Deploys 10,000 Troops to the US Border*, ECONOMIST, Feb. 23, 2025, <https://www.economist.com/the-americas/2025/02/23/mexico-deploys-10000-troops-to-the-us-border>; *How Mexico and Canada Handled Trump’s Tariff Threat*, ECONOMIST, Feb. 6, 2025, <https://www.economist.com/the-americas/2025/02/06/how-mexico-and-canada-handled-trumps-tariff-threat> (“Ms Sheinbaum pledged to deploy 10,000 National Guard troops to Mexico’s northern border, adding to the 10,000 already stationed there.”); Alan Feuer, *Mexico Transfers Dozens of Cartel Operatives to U.S. Custody*,

- N.Y. TIMES, Feb. 27, 2025, <https://www.nytimes.com/2025/02/27/us/politics/mexico-cartel-sheinbaum-trump.html?searchResultPosition=1> (“The Mexican government on Thursday sent to the United States 29 top cartel operatives wanted by the American authorities, including one notorious drug lord whom U.S. officials had been seeking to bring to justice for 40 years, according to statements by the American and Mexican governments.”). Whether she can maintain her commitment to that policy over the long haul remains to be seen.
147. See, e.g., DRUG ENFORCEMENT ADMIN., *DEA Fentanyl Seizures in 2024* (2024) (“In 2023, DEA seized more than 80 million fentanyl-laced fake pills and nearly 12,000 pounds of fentanyl powder. The 2023 seizures are equivalent to more than 381 million lethal doses of fentanyl. [¶] The 2024 fentanyl seizures represent over 174 million deadly doses.”).
 148. See, e.g., 2024 DEA DRUG THREAT ASSESSMENT, *supra* note 11, at 20 (“China-based chemical suppliers are the main source of the chemicals used in the production of illicit fentanyl. The Sinaloa and Jalisco cartels manufacture fentanyl in clandestine labs they oversee in Mexico, in both powder form and pressed into fake pills, and traffic it into the United States through any of the many entry points they control.”); HOUSE SELECT COMM. REPORT, CCP AND FENTANYL, *supra* note 4, at 2 (“Companies in China produce nearly all of illicit fentanyl precursors, the key ingredients that drive the global illicit fentanyl trade.”); *id.* at 5 (“The PRC, under the leadership of the CCP, is the ultimate geographic source of America’s fentanyl crisis. Companies in China earlier produced 97% of illicit fentanyl that entered the United States. Today, these Chinese companies produce nearly all fentanyl precursors that are used to manufacture illicit fentanyl worldwide. The PRC’s central role in the fentanyl crisis is uncontroversial, acknowledged by administrations of both parties and the bipartisan U.S. Commission on Combating Synthetic Opioid Trafficking. The Drug Enforcement Administration (DEA), Department of Justice (DOJ) indictments, and independent experts have reached the same conclusion.”) (footnotes omitted); *Countering Illicit Fentanyl Trafficking, Hearing Before the S. Comm. on Foreign Relations*, 118th Cong. (2023) (testimony of U.S. Surgeon General, Dr. Rahul Gupta), <https://www.whitehouse.gov/wp-content/uploads/2023/02/Testimony-Dr.-Rahul-Gupta-Senate-FRC-Feb.-15-2023.pdf> (“Criminal elements, mostly in the People’s Republic of China, ship precursor chemicals to Mexico, where they are used to produce illicit fentanyl.”); *House Select Comm., CCP and Fentanyl Hearing*, *supra* note 5, Written Statement of former DEA Chief of Operations Ray Donovan 1–2 (“Mexican transnational criminal organizations have been DEA’s primary focus in the narcotics trafficking space in recent years.... These criminal organizations act as the wholesalers and logistical orchestrators of the movement of illicit narcotics over the southern border of the United States. Over the course of the last 10-plus years, we saw a significant increase in the number of ‘super labs,’ or high-volume narcotics manufacturing labs, used to mass produce synthetic narcotics in Mexico, and the correlated increase in the adulteration of what we at DEA consider to be ‘traditional’ narcotics, heroin, cocaine, and methamphetamine with fentanyl. When these labs were interdicted, extensive evidence of Chinese produced chemicals (blue barrels with Chinese labeling, bills of lading, etc.) were found.... DEA noted a sharp uptick in the use of Chinese precursor chemicals gathered from the super labs as well as a significant increase in Chinese money laundering organizations operating globally in the narcotics trafficking space.”); Greenwood & Fashola, *supra* note 111, at 2. In the 1980s, there were some isolated cases of illicit fentanyl production, but the “cooks” lacked a large-scale distribution network. Bryce Pardo & Peter Reuter, *The Opioid Crisis in America: Enforcement Strategies for Fentanyl and Other Synthetic Opioids*, BROOKINGS INST. 8–10 (June 2020).
 149. According to the DEA, the handoff from Chinese companies to the Mexican TCOs works as follows: “The Sinaloa and Jalisco cartels and their chemical suppliers in China rely on deliberate mislabeling, multi-phase shipping maneuvers, and other evasive techniques to get fentanyl precursor chemicals into Mexico without being detected by law enforcement or stopped by international chemical regulators. Suspect vendors and darkweb marketplaces based in China use certain keywords or phrases to indicate their willingness to defy bans and restrictions, such as ‘discreet delivery,’ ‘no customs issues,’ or ‘100% guaranteed delivery or free reshipment.’ In shipping notifications, vendors sometimes hide the shipment details by embedding them in photos or images that do not raise suspicions. Cargo containing these chemicals can be deliberately mislabeled or misspelled or contain the Chemical Abstracts Registry number instead of the chemical name—a number unlikely to be known by shippers, freight forwarders, or port workers. China-based chemical suppliers prefer cryptocurrency payments over other forms, and encrypted messaging and communications platforms. The Mexican cartels use international export brokers, consignees, third-party countries, and other methods to anonymize the contents and source of the chemical shipments. The cartels also use legitimate but likely complicit companies in the United States, Mexico, and India to import chemicals for subsequent diversion to clandestine fentanyl labs in Mexico.” 2024 DEA DRUG THREAT ASSESSMENT, *supra* note 11, at 23.
 150. HOUSE SELECT COMM. REPORT, CCP AND FENTANYL, *supra* note 4, at 2–3.
 151. *Id.* at 3 (“While the PRC government publicly acknowledged in November 2023 that the trafficking of fentanyl precursors and other illicit narcotics materials in the manner described above is illegal under Chinese law, the Select Committee found thousands of PRC companies openly selling these illicit materials on the Chinese internet—the most heavily surveilled country-wide network in the world. The CCP runs the most advanced technototalitarian state in human history that ‘leave[s] criminals with nowhere to hide’ and has the means to stop illicit fentanyl materials manufacturers, yet it has failed to pursue flagrant violations of its own laws.”); *id.* at 6–7 (“Although PRC officials would privately admit to U.S. officials that manufacturing and exporting precursors or other non-scheduled narcotics were still illegal under PRC law when they were tied to drug trafficking, they denied the fact publicly—a clear signal to the Chinese chemical industry.... The PRC government does not police the mass exportation of these [precursor] substances abroad. There is little to no record of any PRC prosecutions for exporting these substances or any tangible reduction in PRC-based drug trafficking. This is in stark contrast to the PRC’s prosecution, including of foreigners, for domestic drug trafficking. For years, the U.S. government has repeatedly brought cases and evidence to the PRC government’s attention and asked them to prosecute the offenders under its own laws. Based on discussions with former government officials and a review of PRC criminal law databases, with the exception of one case, the PRC government has thus far refused.”) (footnotes omitted).
 152. *Id.* at 2–3 (emphasis in original). For a detailed discussion of those activities, see *id.* at 8–32. To be sure, “the PRC government publicly acknowledged in November 2023 that the trafficking of fentanyl precursors and other illicit narcotics materials in the manner described above is illegal under Chinese law,” and China has taken some steps to address fentanyl precursor trafficking. See 2024 INCB PRECURSORS, at 5 (“In China, on 1 May 2024, the list of

chemicals for which a non-objection letter is required prior to their export to specific countries and regions was extended to include an additional 24 chemicals that are not under international control but could be used in illicit drug manufacture. At the request of the Government of China, these substances were added to the PEN [Pre-Export Notification] Online Light system so that importing Governments can be notified of planned exports from China.”). But a House Select Committee found “thousands of PRC companies openly selling these illicit materials on the Chinese internet—the most heavily surveilled country-wide network in the world.” HOUSE SELECT COMM. REPORT, CCP AND FENTANYL, *supra* note 4, at 3.

153. “Consider what happened in October 2019 in Culiacán, capital of the Mexican State of Sinaloa and home of the Sinaloa Cartel. Mexican law enforcement authorities arrested Ovidio Guzmán, the son of the infamous Sinaloa Cartel leader Joaquín ‘El Chapo’ Guzmán, who had been convicted of drug trafficking in the United States and sentenced to life imprisonment. In response, cartel sicarios engaged in more than 70 firefights in that city and forced President Obrador to order the city of Culiacán to release Ovidio. That would be the equivalent of the Gambino Crime Family ‘going to the mattresses’ against the federal government when the latter arrested and prosecuted John Gotti, with the federal government giving in to the Gambino Family’s demand that Gotti be freed. The teaching that any such dereliction of duty sends is that there is no rule of law and no consequence for the cartels’ illegal activities.” Larkin, *supra* note 2, at 9–10 (footnotes omitted); see also *Mexico’s President and His Family Are Fighting Claims of Corruption*, ECONOMIST, Feb. 8, 2024, <https://www.economist.com/the-americas/2024/02/08/mexicos-president-and-his-family-are-fighting-claims-of-corruption> (“Mexico’s president, Andrés Manuel López Obrador, has long railed against corruption. But on January 30th a consortium of news outlets reported that in 2006 his campaign team had accepted \$2m from drug gangs in return for favours. The reports, based on information from the us Drug Enforcement Administration, do not show that the president knew what was going on. But a close aide did, they allege. Mr López Obrador completely rejects the allegations, calling them slander.”).
154. “To be sure, Mexico...[took] some steps ostensibly to limit fentanyl trafficking. For example, President Andres Manuel López Obrador has placed Mexico’s ports and largest Mexico City airport under the control of the Mexican navy, which has seized approximately 320 tons of illicit precursor chemicals this year [2022]. Mexican authorities also claim to have destroyed roughly 1,000 labs and fentanyl production sites. But the truth is that the current Mexican president has no stomach for fighting the cartels. His stated policy of ‘abrazos no balazos’ (hugs not bullets)—attacking poverty rather than the cartels—has not merely failed to stem Mexico’s violence. It has emboldened the cartels, allowing them to grow in strength, bravado, and influence by proving that the Mexican government is not a threat.” Larkin, *supra* note 2, at 9 (footnotes omitted).
155. See, e.g., *Boulware v. United States*, 552 U.S. 421, 433 (2008) (ruling that “acting on bad intentions, alone, is not punishable” as tax evasion) (punctuation omitted); *United States v. Pomponio*, 429 U.S. 10, 12–13 (1976) (proof of willfulness does not require “a finding of bad purpose or evil motive”); ROLLIN M. PERKINS & RONALD N. BOYCE, *CRIMINAL LAW* 927–28 (3d ed. 1982).
156. See, e.g., JEROME HALL, *GENERAL PRINCIPLES OF CRIMINAL LAW* 84 (2d ed. 1960) (describing “motive as a ‘spring[] of action’”) (punctuation omitted); GLANVILLE WILLIAMS, *CRIMINAL LAW: THE GENERAL PART* § 21, at 48 (2d ed. 1961) (“[M]otive is an ulterior intention—the intention with which an intentional act is done (or, more clearly, the intention with which an intentional consequence is brought about). Intention, when distinguished from motive, relates to the means, motive to the end[.]”); Walter Wheeler Cook, *Act, Intention, and Motive in the Criminal Law*, 26 YALE L.J. 645, 660–61 (1917) (“If A’s object in killing B had been to obtain B’s money, it would be said that his intention was to kill B, and that his motive was to obtain the money. In this sense, therefore, *motive* seems to be merely a name for the *desire coupled with the intention* to bring about a certain consequence as an end, by means of other consequences which are also desired and intended but only as means.”) (emphasis in original; footnote omitted).
157. PERKINS & BOYCE, *supra* note 155, at 926 (footnotes and punctuation omitted).
158. “It is important to distinguish between motives and intentions. An intention to do anything is consistent with any number of different motives, and may remain unchanged while the motives vary. In the crime of publishing a libel the intention must always be to give more or less publicity to a certain libel. The motives for this may be infinite, and may vary from time to time. So an intention to kill may be the result of all sorts of motives. It may be the act of an executioner, of a soldier in time of war, of a man defending his own life, of a murderer. The intent to kill is the same in all these and many other cases. Intention is a much more definite thing than motive, and is usually of much greater importance in criminal cases.... Every wrongful act may raise two distinct questions with respect to the intent of the doer. The first of these is: *How* did he do the act—Intentionally or accidentally? The second is: If he did it intentionally, *why* did he do it? The first is an inquiry into his immediate intent; the second is concerned with his ulterior intent, or motive.” Cook, *supra* note 156, at 658–59 (quoting SIR JAMES FITZJAMES STEPHEN, *GENERAL VIEW OF THE CRIMINAL LAW OF ENGLAND* 71 (1863)) (emphasis in original).
159. *Id.* at 646 n.2.
160. PERKINS & BOYCE, *supra* note 155, at 927 (footnote and punctuation omitted).
161. LaFAVE, *supra* note 48, § 5.3, at 272, 276 (“[E]specially when the prosecution’s case against the defendant is circumstantial, the fact that the defendant had some motive, good or bad, for committing the crime is one of the circumstances which, together with other circumstances, may lead the factfinder to conclude that he did in fact commit the crime; whereas lack of any discernible motive is a circumstance pointing in the direction of his innocence.”) (footnote omitted).
162. HOUSE SELECT COMM. REPORT, CCP AND FENTANYL, *supra* note 4, at 32; *id.* at 33 (“Each individual company can secure hundreds of thousands if not millions of dollars in potential revenue. These companies also enjoy a symbiotic relationship with the PRC provincial authorities who consider it an imperative to achieve the provincial GDP goals set by Beijing. As Westhoff noted in a 2019 interview, beyond any national policy, ‘you might [therefore] have a provincial official who wants to let these companies keep doing what they’re doing because it brings in more revenue for the area.’ [¶] In addition, illicit fentanyl material and the accompanying money laundering also benefit[s] Chinese transnational criminal groups, many of whom have ties to the CCP and PRC government.... [T]his partnership resulted in Chinese organized crime taking over money laundering for the cartels, further enriching PRC criminal

networks and entrenching their influence.”) (footnotes omitted). Coupled with laundering the TCOs trafficking proceeds, precursor sales also enable the PRC to evade anti-money laundering efforts by obscuring the Mexican TCOs’ profits and its own. *Id.* at 33 (punctuation omitted) (“The PRC’s success in taking over the cartels’ money laundering apparatus is because the Chinese brokers mostly manage to bypass the U.S. and Mexican formal banking systems, thus evading anti-money laundering measures and simplifying one of the biggest challenges for the cartels, namely moving large amounts of bulk money subject to law enforcement detection. The only interface with the formal banking system takes place in China, into which U.S. law enforcement agencies have little-to-no visibility.... More than \$3.8 trillion of capital has left China since 2006, making the country the world’s top exporter[s] of hot money. Former Commander of U.S. Southern Command, Admiral Craig Faller, likewise testified to Congress that Chinese launderers are the ‘number one underwriter’ of drug trafficking in the Western Hemisphere, with the Chinese government ‘at least tacitly supporting’ money laundering.”).

163. *Id.* at 37 (“The PRC-sourced illicit fentanyl and fentanyl precursors have indeed “spread[] disaster” in the United States. As DEA Administrator [Anne] Milgram noted, ‘Fentanyl is killing Americans at an unprecedented rate. Hundreds of thousands are dead, millions are addicted, and entire communities have suffered unimaginable harm. In addition to the steep price in blood, the fentanyl crisis has also cost the American people over \$1.5 trillion dollars. It also impacts force readiness, both because it has taken a record toll on active-duty military personnel and because it is the leading cause of death for adults 18-45 who otherwise could serve in the military at a time of crisis.’”) (footnotes omitted).
164. *Id.* at 36 (footnote omitted); *id.* (noting that one of the Chinese professed “means and methods used to fight a non-military war” is to use “drug warfare that cause[s] disasters in other countries and make[s] huge profits”) (quoting QIAO LIANG & WANG XIANGSUI, UNRESTRICTED WARFARE: CHINA’S MASTER PLAN TO DESTROY AMERICA (1999) (translated from original Mandarin by native Mandarin speaker on Select Committee Staff)).
165. *Id.* at 37 (“In addition to being consistent with the PRC government’s tacitly approved strategies, the enabling of fentanyl trafficking also provides another value: diplomatic leverage. As Brookings Institution’s Vanda Felbab-Brown has previously testified, ‘Unlike the U.S. Government, which seeks to delink counternarcotics cooperation with China from the overall bilateral geostrategic relationship, China subordinates its counternarcotics cooperation to its geostrategic relations.’ Put another way, illicit fentanyl is not a scourge to eradicate, but one of many items to negotiate. The PRC government suspended all counternarcotics and law enforcement cooperation with the United States, for instance, after House Speaker Nancy Pelosi visited Taiwan.”) (footnotes omitted).
166. *Id.* at 37–38 (“Fentanyl is also a valuable rhetorical and propaganda tool for the PRC government. Through its state-owned organs and the PRC embassy, it decries the decadence of American-led western democracies, stating that the ‘root cause of U.S. fentanyl abuse problem is in itself’ (i.e., the United States) and that the PRC will ‘not bear the responsibility for the abuse of fentanyl.’ Chinese Central TV even produced a documentary showing America’s devastation due to fentanyl (that it blames on U.S. companies), contrasting it with the tight controls on fentanyl in the PRC. In response to criminal cases brought against PRC citizens for fentanyl trafficking, Chinese media claims that ‘the same trade has become “state run” in the U.S.’ and that there is insufficient evidence for any charges. It also claims that the United States is ‘slandering China’ and that its government has ‘not found a single case of fentanyl smuggling and manufacturing.’ PRC state media also states that the United States should blame itself for the fentanyl crisis, claiming that ‘while the epidemic is wreaking havoc on the U.S. economy and the workforce’ Washington is both ‘at its wits’ end on how to fix it and ‘at times, it seems uninterested.’ The PRC government has increasingly relied on this type of anti-American rhetoric to hide the failures of its own policies. This has escalated to the point of absurdity with PRC media publishing stories about an imminent or even ongoing civil war between the United States federal government and Texas, with PRC social media platforms similarly elevating the topic. This domestic propaganda all serves to show its populace that the PRC government is a superior form of government over ‘failing’ democracies, diverting attention from the CCP’s oppression, corruption, and self-inflicted economic woes.”) (footnotes omitted).
167. “Dozens of sellers there offered various chemicals needed to manufacture illicit drugs.” Tamman et al., *supra* note 27. Yet Reuters’ investigation discovered that “prowl[ing] the dark web wasn’t necessary to find precursors: Vendors abound on the regular internet. Reuters located sellers via their company websites, on an international chemical marketplace, and through crude digital advertisements scattered across the Web.” *Id.*
168. See Tamman et al., *supra* note 27; *supra* note 109.
169. “Many [Dark Web companies] touted the phony packaging they used to disguise shipments, including engine oil containers and bags of coffee.” Tamman et al., *supra* note 27 (emphasis added).
170. See *supra* note 116 and accompanying text.
171. In 2023, the TCOs publicized an effort to “stop fentanyl” production and distribution. It was a feint according to the DEA. “In early 2023, the Sinaloa and Jalisco cartels allegedly ordered their subordinates to stop the production and trafficking of fentanyl. In October 2023, Los Chapitos orchestrated a public show of enforcing the so-called ban by hanging banners in prominent locations in Sinaloa, Sonora, and Baja California. The ban is probably a public relations stunt, however, or an attempt by the cartels to consolidate production among a smaller number of trusted manufacturers and punish others. Throughout 2023, fentanyl was seized at the border in equal or higher quantities as in previous years, and no DEA field office reported that fentanyl is less available or more expensive, either of which would point to a decrease in the supply.” 2024 DEA DRUG THREAT ASSESSMENT, *supra* note 11, at 23.
172. Chung et al. *supra* note 17.
173. See U.S. DEP’T OF THE TREASURY, FINANCIAL CRIMES ENFORCEMENT NETWORK, *Advisory to Financial Institutions on Illicit Financial Schemes and Methods Related to the Trafficking of Fentanyl and Other Synthetic Opioids*, FinCen Advisory No. FIN-2019-A006, 5–18 (Aug. 21, 2019), <https://www.fincen.gov/sites/default/files/advisory/2019-08-21/Fentanyl%20Advisory%20FINAL%20508.pdf>.



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