

EMPOWER OVERSIGHT

Whistleblowers & Research



June 5, 2026

Colin M. McDonald
Acting Deputy Attorney General
Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Acting Deputy Attorney General McDonald:

Empower Oversight represents Special Agent (SA) David Howell, a veteran criminal investigator with the Drug Enforcement Administration (DEA) Albuquerque District Office. Over the past two years, SA Howell has made protected whistleblower disclosures to his supervisors, the Office of Inspector General (OIG) and the Office of Special Counsel (OSC). His protected disclosures warned of “a substantial and specific danger to public health or safety” due to the DEA and the U.S. Attorney’s Office for the District of New Mexico (USAO-NM) refusing to interdict massive quantities of fentanyl despite having probable cause to do so.

This practice, known as “walking” drugs, is sometimes rationalized by some in law enforcement as supposedly justified in order to keep an investigation covert for longer in hopes of making a bigger case against more senior-level drug traffickers. However, illicit fentanyl is so deadly it has been designated by the President as a “weapon of mass destruction.” In 2019 the first Trump Administration issued Title III Risk Mitigation Protocols directing law enforcement to seize fentanyl whenever the government developed the probable cause needed through a wiretap—rather than leave it on the street where it could cause death and destruction (“2019 Fentanyl Protocols”).

In direct response to our client’s protected disclosures about DEA Albuquerque and USAO-NM’s violations of the 2019 Fentanyl Protocols, the DEA and USAO-NM subjected SA Howell to a continuous campaign of retaliation. Officials actually reprimanded SA Howell for interdicting a vehicle suspected of carrying fentanyl. In December 2023, SA Howell reported violations of the 2019 Fentanyl Protocols to OSC, which referred his protected disclosures for investigation to DOJ’s Office of Professional Responsibility (DOJ-OPR).

Shortly thereafter SA Howell's supervisors summoned him to a meeting and stripped him of his law enforcement duties. They said USAO-NM would not allow him testify in court on any case because of its concerns that he would be honest about DEA's fentanyl walking practices if asked by defense counsel. DEA re-assigned SA Howell to non-case agent duties.

During the DOJ-OPR investigation, on June 10, 2024, the Biden Administration altered the 2019 Fentanyl Protocols to allow significantly more discretion to leave fentanyl on the street for purposes of "protecting" or furthering an investigation ("2024 Fentanyl Protocols"). On September 3, 2024, DOJ-OPR issued a report that shockingly whitewashes the serious violations our client reported. DOJ-OPR erroneously excused the fentanyl walking as a justified exercise of this law enforcement discretion. On September 17, 2024, SA Howell submitted his rebuttal to OSC critiquing the DOJ-OPR report, consistent with OSC procedures.

OSC then failed to notify the President or publish the key documents on its website for nearly a year. On September 4, **2025**, OSC published redacted versions of the DOJ-OPR report, our client's rebuttal, and a transmittal letter to the President on its website.¹ Although the documents purportedly redacted our client's name, there was an instance where someone failed to redact part of our client's last name. This allowed the Associated Press (AP) to eventually identify and contact our client about his remarkably alarming, protected disclosures to OSC.

SA Howell exercised his rights under 5 U.S.C. § 2302 to confirm his protected disclosures. In recent weeks, after the AP began contacting DEA and USAO-NM officials for comment, our client was informed that DEA Headquarters was going to "go after [him] hard" because officials there erroneously believe his contact with the AP means he does not have whistleblower protection.

SA Howell is a decorated DEA agent who faithfully and effectively helped protect Americans from dangerous drugs for his entire 19-year career. Yet, he has essentially been benched for the final years of his career, merely because he stood up for what is right, legally and properly.

Given these imminent threats of further retaliation and your role overseeing the DEA, DOJ-OPR, and USAO-NM, we respectfully request that you exercise your authority to immediately put a halt to any further retaliation and ensure that the past retaliation is remedied. Thank you for your prompt attention to this matter, and please find attached my letter to Congress and the Department's Acting Inspector General for more details and documentation.

Cordially,
/Tristan Leavitt/
Tristan Leavitt
President

Attachments

¹ <https://www.osc.gov/cases/?year=2025> (case DI-24-000207).

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May 12, 2026

The Honorable Chuck Grassley
Chairman, Committee on the Judiciary
U.S. Senate

The Honorable Jim Jordan
Chairman, Committee on the Judiciary
U.S. House of Representatives

The Honorable Rand Paul
Chairman, Committee on Homeland
Security and Governmental Affairs
U.S. Senate

The Honorable James Comer
Chairman, Committee on Oversight and
Government Reform
U.S. House of Representatives

RE: DOJ Walking Fentanyl Contrary to 2019 Policy

Dear Chairmen:

Please find enclosed a letter sent today to the Department of Justice Office of Inspector General (DOJ-OIG) regarding the legally protected whistleblower disclosures our client has made regarding the Department and its Drug Enforcement Administration (DEA) intentionally failing to interdict fentanyl shipments that it could have legally seized, a practice known as “walking” fentanyl.

This practice, which occurred from at least 2023 to March 2025, violated clear written protocols issued during the first Trump Administration and posed “a substantial and specific danger to public health or safety.”¹ Following an Office of Special Counsel (OSC) referral of the whistleblower’s protected disclosures to the Department’s Office of Professional Responsibility (DOJ-OPR) and during DOJ-OPR’s investigation in 2024, DOJ issued new protocols providing increased discretion to allow dangerous fentanyl shipments to walk.

Our whistleblower client has information that this shockingly risky practice occurred in his DEA field office in New Mexico, at the direction of the United States Attorney’s Office for the District of New Mexico. The attached letter asks the DOJ-OIG to investigate these matters and whether it may have been a more widespread practice across the country.

¹ See 2302(b)(8)(B)(ii).

Under this practice, and contrary to explicit DOJ policy, fentanyl was allowed to remain on the streets and a danger to the public even when there was probable cause to seize it, reminiscent of the Fast and Furious gunwalking scandal. Accordingly, it is vital that Congress also conduct vigorous oversight of this matter to independently gather the facts and ensure that the Acting Inspector General does a thorough and comprehensive review.

Cordially,
/Tristan Leavitt/
Tristan Leavitt
President

EMPOWER OVERSIGHT

Whistleblowers & Research



May 12, 2026

William M. Blier
Acting Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530-0001

RE: DOJ Walking Fentanyl Contrary to 2019 Policy

Dear Acting Inspector General Blier:

Empower Oversight represents a special agent in the Drug Enforcement Administration's (DEA) Albuquerque District Office (DEA-NM), which is part of DEA's El Paso Division. Our client, David Howell, has made protected whistleblower disclosures concerning "a substantial and specific danger to public health or safety" that occurred from early 2023 to March 2025.¹

Mr. Howell is a senior DEA Special Agent with approximately 19 years of dedicated service and a longstanding record of outstanding performance, professionalism, and commitment to the agency's mission. Throughout his career, he has received numerous commendations, including multiple DEA Exceptional Performance Awards and Certificates of Appreciation from the United States Attorney's Office for his contributions to cooperative law enforcement and justice. His performance appraisals consistently rated him "Outstanding" or "Excellent" in critical areas such as investigative analysis, operational planning, communication, and complex narcotics investigations, with supervisors specifically praising his "strong personal commitment to DEA's mission," leadership, sound judgment, and ability to manage significant investigations with minimal oversight, including Organized Crime Drug Enforcement Task Force (OCDETF) investigations. This extensive history of recognized performance and professional integrity underscores the credibility and reliability of his protected disclosures.

¹ See 2302(b)(8)(B)(ii).

Illicit fentanyl is so dangerous to public health and safety as to be classified a weapon of mass destruction by the President.² This substance “is closer to a chemical weapon than a narcotic”; just “[t]wo milligrams,” which is “equivalent to 10 to 15 grains of table salt,” “constitutes a lethal dose.”³

As the DEA warns the public repeatedly, “one pill can kill.”⁴

The 2019 Fentanyl Risk Mitigation Protocols

Due to fentanyl’s inherent and exceptional dangerousness, in November 2019—during the first Trump Administration—the Department of Justice (DOJ) Criminal Division issued Title III wiretap investigation risk mitigation protocols to address this unique threat to public health and safety. As part of these protocols, the Criminal Division expressly directed:

If agents have probable cause to believe that a subject intends to distribute fentanyl . . . [a]gents should make reasonable efforts to prevent the distribution” and consult with the U.S. Attorney’s Office.

* * *

If agents have probable cause to believe that fentanyl is being stored at a particular location for later illegal distribution (i.e., a stash house), the USAO and agents should apply for a search warrant **as soon as practicable and seize or otherwise prevent the distribution of the fentanyl**[.]⁵

The fentanyl protocols reflected the reality that fentanyl is just too dangerous to be intentionally “walked”—not even for purposes of furthering an investigation. In law enforcement terms, “walking” illegal drugs, guns, or other contraband means allowing criminals to continue controlling and distributing it without law enforcement intervening to seize it.

These fentanyl protocols were similar to Title III wiretap risk mitigation protocols for firearms, adopted after the Operation Fast and Furious gun-walking scandal. Operation Fast and Furious demonstrated clearly the risks inherent in purposely refusing to interdict dangerous contraband when there is a legal opportunity to do so. At least initially, it appears that DOJ’s Criminal Division correctly applied those lessons in the fentanyl context, providing clear guidance to try to keep this inherently dangerous substance off of American streets by interdicting it whenever probable cause of fentanyl trafficking exists.

Failure to Follow the Risk Mitigation Protocols

However, beginning in at least 2023, DEA-NM intentionally disregarded the risk mitigation protocols for fentanyl and did so at the direction of the United States Attorney’s Office for the District of New Mexico (USAO-NM). Instead, DEA-NM allowed massive

² *Designating Fentanyl as a Weapon of Mass Destruction*, 90 Fed. Reg. 59365 (Dec. 18, 2025).

³ *Id.*

⁴ <https://www.dea.gov/onepill>.

⁵ Attachment A (“2019 Fentanyl Protocols”) (emphasis added).

shipments of this immensely dangerous drug—as much as 100,000 pills at a time—to remain in the custody and control of the criminals spreading its devastatingly tragic effects in our communities. According to our client’s protected disclosures, this lax enforcement practice allowed massive, unknown quantities of fentanyl to flow through Albuquerque and its communities for years.

On May 7, 2025, the DEA announced that DEA-NM made “the largest seizure of deadly fentanyl pills in DEA history.”⁶ The press release declared: “This single seizure of 2.7 million fentanyl pills equates to more than 1.5 million lives potentially saved, which is nearly enough fentanyl to kill the majority of people in the entire state of New Mexico.”⁷ Yet, just like the announcement of a large firearms seizure that the government touted at the end of Operation Fast and Furious, the press release failed to explain that the government intentionally walked this type of dangerous contraband for years before that point, which may have allowed criminals to distribute untold numbers in the meantime, before the government finally did the right thing.

Flawed DOJ-OPR Investigation and the New 2024 Fentanyl Protocols

The whistleblower made protected disclosures about the intentional walking of fentanyl to the U.S. Office of Special Counsel (OSC) in November 2023. Pursuant to 5 U.S.C. § 1213, OSC referred the disclosures to DOJ on December 22, 2023, writing that it concluded “there is a substantial likelihood that the information provided to OSC discloses a violation of a law, rule, or regulation; an abuse of authority; and a substantial and specific danger to public health and safety.”⁸

In response, the DOJ Office of Professional Responsibility (DOJ-OPR) opened an investigation as required by statute. In the midst of this investigation, prompted by our client’s disclosures, the DOJ Criminal Division issued new Title III wiretap investigation risk mitigation protocols on June 10, 2024. The new protocols—issued during the Biden Administration—expressly introduced more discretion in determining whether to interdict fentanyl:

The investigative team may exercise discretion in determining whether to take action to prevent the trafficking of fentanyl, understanding that protecting public safety is paramount and **the benefits to be achieved through preserving the investigation must be assessed** against the potential public safety risks posed by foregoing immediate reasonable enforcement action. . . . If the investigative team determines that **broader public safety benefits would ultimately be achieved by not taking such an enforcement action**, they must notify, consult with, and obtain the concurrence of the supervisory attorney . . . and the law enforcement agency[ies] leading the investigation. This consultation and concurrence should take place prior to the investigative team **deciding not to take that action**.⁹

⁶ <https://www.dea.gov/stories/2025/2025-05/2025-05-07/dea-seizes-record-setting-number-fentanyl-pills-albuquerque-new>.

⁷ *Id.*

⁸ https://www.osc.gov/~assets/cases/osc-file-no-di-24-000207-referral_redacted.pdf.

⁹ Attachment B (“2024 Fentanyl Protocols”) (emphasis added).

Thus, the new protocols explicitly added: (1) a requirement to assess the benefits of “preserving the investigation,” and (2) discretion to prioritize the speculative “broader public safety benefits” from refusing to seize fentanyl whenever possible over the more certain, specific public safety benefit of immediately seizing fentanyl when there is probable cause to do so.

When DOJ-OPR issued its report to OSC on September 23, 2024, it retroactively read this new discretion into the 2019 Criminal Division protocols, which it claimed was merely “guidance” and “consultative in nature.”¹⁰ Contrary to the plain language of the 2019 protocols, which required “reasonable efforts to prevent the distribution” of fentanyl, the DOJ-OPR report falsely claimed that the 2019 protocols:

allow[ed] investigative teams conducting a Title III investigation to use their discretion and judgment to determine how best to conduct their investigations, reminds teams to balance the risks to public safety of not immediately seizing the suspected drugs with the longer-term goals of the investigation, and includes appropriate supervisory personnel in the decision-making process.¹¹

The DOJ-OPR report also examined certain specific investigations the whistleblower provided as some examples of DEA-NM’s fentanyl-walking practices. But the report failed to address the whistleblower’s central claim that it was the consistent practice of DEA-NM, in conjunction with USAO-NM, to deliberately avoid interdicting fentanyl. The justification for intentionally walking fentanyl in these instances was supposedly to protect the secrecy of a wiretap. However, our client advocated for techniques to interdict the fentanyl without compromising the secrecy of the wiretap. In any event, with respect to the specific investigations reviewed, DOJ-OPR applied its erroneous conclusion that the 2019 protocols afforded discretion as to whether reasonable efforts to interdict must be made.

Independent Investigation Request

On behalf of the whistleblower, Empower Oversight respectfully request that your office conduct a thorough and independent review of DOJ’s, DOJ-OPR’s, and DEA’s handling of this matter, including whether the actions of DEA-NM and USAO-NM were isolated or whether other DEA and USAO offices were also intentionally walking fentanyl shipments. The 2019 Criminal Division protocols were established to protect the public from what we now understand to be a “weapon of mass destruction.” It is vital that DOJ’s deliberate instructions to those in the field are followed across the country—not simply ignored.

It’s also vital for elected leadership accountable to the public in the Executive Branch and in Congress to understand the enormous risks that the current 2024 protocols allow law enforcement to take with Americans’ lives in the hopes of making a big, headline-grabbing case. Your office is in a unique position to review and assess for senior policymakers the real-world consequences of affording so much discretion to law enforcement to intentionally walk fentanyl shipments that could have been interdicted and seized.

¹⁰ <https://www.osc.gov/~assets/cases/osc-file-no-di-24-000207-agency-report.pdf> at 2-3.

¹¹ *Id.* at 2.

Our client is available to be interviewed at your convenience and can provide documentation and further details supporting his claims in this matter, as this letter is a brief summary. His full comments on the DOJ-OPR report are also publicly available.¹² Empower Oversight is also reviewing whether certain actions taken against the whistleblower constitute unlawful retaliation through prohibited personnel practices.

Thank you for your time and consideration.

Cordially,
/Tristan Leavitt/
Tristan Leavitt
President

cc: Acting Attorney General Todd Blanche
U.S. Department of Justice

Drug Enforcement Administrator Terry Cole
U.S. Drug Enforcement Administration

Acting Special Counsel Jamieson Greer
U.S. Office of Special Counsel

¹² https://www.osc.gov/~assets/cases/osc-file-no-di-24-000207-whistleblower-comments_redacted.pdf.

ATTACHMENT A
2019 Title III Fentanyl Protocols

Criminal Division Title III Risk Mitigation Protocols

Investigations Involving Fentanyl and/or

Drugs That May Be Mixed with Fentanyl

The Criminal Division has adopted the procedures and protocols set forth below as required to be reviewed and followed by the investigative team as a condition precedent to the approval of Title III requests in investigations involving fentanyl and/or drugs (including, but not limited to, heroin and cocaine) that are commonly mixed with fentanyl. Operational issues should be reviewed and discussed by members of the investigative team, including the Assistant United States Attorney and the law enforcement agency, to ensure that all agree to adhere to these protocols. While reviewing these procedures and protocols, the investigative team must contemplate how circumstances that could implicate the protocols may be encountered in the particular investigation and, if those circumstances arise, what steps will be taken to protect the public from exposure to Fentanyl or drugs that may be mixed with fentanyl. Any concerns with these procedures and protocols must be discussed with the Office of Enforcement Operations prior to submission of the Title III application to the Office of the Assistant Attorney General, so that any concerns may be considered by the authorizing Deputy Assistant Attorney General or Assistant Attorney General during that official's review. As used in these protocols, the term "fentanyl" includes fentanyl and fentanyl analogues, whether or not they are scheduled.

These protocols do not create or confer any legal rights or duties, and should not be relied upon by members of the public.

1. Law enforcement agencies and U.S. Attorney's Offices (USAOs) conducting investigations involving drug trafficking must be on the lookout for any evidence that the drug trafficking organization (DTO) under investigation is illegally using or distributing fentanyl.
2. In connection with any Title III application submitted to the Office of Enforcement Operations (OEO), the investigative agency and USAO must bring to OEO's attention any known, credible evidence that a DTO or subject of their investigation is illegally using or distributing fentanyl.
3. The Criminal Chief or Narcotics Chief in the USAO should be briefed on the investigation, including the fact that fentanyl is being illegally used or distributed by the DTO, and should personally approve any Title III application involving fentanyl.
4. If agents have probable cause to believe that a subject intends to distribute fentanyl, they should consult with the USAO. Agents should make reasonable efforts to prevent the distribution. Depending on the nature and immediacy of the threat, and the specificity of the information obtained, those steps may include: (1) arresting the suspects; (2) conducting walled-off stops; (3) conducting additional physical surveillance; (4) obtaining court-authorized tracking devices; (5) disclosing information to state and local law enforcement

officers for appropriate action; or (6) increasing a visible presence of law enforcement at a particular time and location relevant to the distribution.

5. If agents have probable cause to believe that fentanyl is being stored at a particular location for later illegal distribution (i.e., a stash house), the USAO and agents should apply for a search warrant as soon as practicable and seize or otherwise prevent the distribution of the fentanyl and any other controlled substances.
6. If there is specific and credible evidence of fatal or near-fatal overdoses from fentanyl connected to the DTO or any subject of the investigation, agents should develop appropriate protocols tailored to the case. The United States Attorney should be fully briefed on the investigation and those protocols, and should personally approve of the operational plan.
7. The investigative agency and USAO will use their discretion in determining what methods to employ to prevent a potential illegal use or distribution of fentanyl from occurring, understanding that regardless of whether they run the risk of compromising the investigation, protecting public safety is paramount.

Revised November 2019

ATTACHMENT B
2024 Title III Fentanyl Protocols

Criminal Division Title III Risk Mitigation Protocols for Investigations Involving Substances Containing Fentanyl

These protocols are intended for the guidance of law enforcement officers and prosecutors (the “investigative team”) utilizing Title III authority in investigations that have encountered or are reasonably likely to encounter substances containing fentanyl, fentanyl analogues, or fentanyl-related substances under 21 C.F.R. § 1308.11(h)(30)(i) (“fentanyl”). These protocols are not intended to limit the use of Title III authority in investigations involving fentanyl. Rather they are an acknowledgment that the presence of fentanyl, even in small doses, can be fatal. This increased risk of harm to public safety requires additional consideration and prompt action by those in a position to intervene. Therefore, investigative teams must continually assess the potential public safety risks posed by foregoing immediate reasonable enforcement action to prevent the trafficking of fentanyl against the broader public safety benefits that would ultimately be achieved through a successful investigation and prosecution.¹ Prior to seeking Criminal Division authorization to apply for Title III authority in investigations involving or reasonably likely to involve fentanyl, members of the investigative team must review and discuss these protocols to ensure that all agree to adhere to and apply them in their investigation.

These protocols are for internal use only and do not create or confer any privileges, benefits, or substantive or procedural rights enforceable by any party or witness in any administrative, civil, or criminal matter.

1. The investigative team should regularly confer regarding evidence developed during the investigation that affects potential risks to public safety associated with the trafficking of fentanyl in their investigation and area of operation.
2. In connection with any Title III application submitted to the Office of Enforcement Operations (OEO), the investigative team must notify OEO of known, credible evidence of fentanyl trafficking, and the actions contemplated or taken by the team in accordance with the protocols.
3. For investigations involving or reasonably likely to involve fentanyl, a supervisory attorney² must review and approve the investigative team’s procedure to evaluate and address the

¹ See Memorandum of Deputy Attorney General James M. Cole, Baseline Risk Assessment and Mitigation Policies for Law Enforcement Operations in Criminal Matters, December 7, 2013, available for U.S. Attorney’s Offices [here](#), and for DOJ components [here](#) (setting “forth baseline principles that reflect the Department’s approach to risk assessment in criminal investigations and operations,” and highlighting that investigative teams “should be mindful whether the benefits of any operation continue to outweigh the potential public safety risks as the investigation moves forward. Ongoing risk assessment is the product of good judgment and common sense by agents and prosecutors who are attentive to the presence of public safety risks associated with an investigation and actively take steps to address those risks as they occur”).

² A supervisory attorney includes a supervisory Assistant U.S. Attorney, as designated by the U.S. Attorney’s Office, and, in a matter staffed by a DOJ component attorney, a supervisory component attorney designated by the relevant Division or Section leadership.

public safety risks encountered or likely to be encountered. This review and approval should occur prior to OEO submission.

4. Additionally, if an investigation involves or is reasonably likely to involve aggravating factors that significantly increase the threat to public safety, the U.S. Attorney and, in a matter staffed by a DOJ component attorney, the Head of the Component must be fully briefed on and approve the investigation. The investigative team must also brief the appropriate supervisors at the law enforcement agency(ies) leading the investigation. Aggravating factors include but are not limited to: (1) specific and credible evidence of overdoses from fentanyl connected to the organization under investigation or any subject of the investigation; (2) the possession by or distribution of fentanyl to unsuspecting or vulnerable individuals (*e.g.*, minors); or (3) the storage or distribution of significant quantities of fentanyl, the attempted seizure of which would present an opportunity to significantly impact downstream distribution.
5. The investigative team may exercise discretion in determining whether to take action to prevent the trafficking of fentanyl, understanding that protecting public safety is paramount and the benefits to be achieved through preserving the investigation must be assessed against the potential public safety risks posed by foregoing immediate reasonable enforcement action. In circumstances involving aggravating factors, the investigative team, including leadership at the U.S. Attorney's Office/DOJ component and law enforcement agency(ies), must assess the operational plan and the need to act promptly to prevent or mitigate the threat to public safety considering this heightened risk.
6. If the investigative team develops probable cause to believe that fentanyl is being or will be trafficked, including distribution from a specified identifiable location or storage at a specified identifiable location for later distribution, the investigative team should promptly consider taking reasonable law enforcement actions to disrupt the trafficking of and/or seize the fentanyl. Such actions may include but are not limited to: (1) arresting or notifying suspects; (2) conducting walled-off stops; (3) conducting a controlled purchase; (4) increasing a visible presence of law enforcement at a particular time and location relevant to the distribution; (5) disclosing information to state and local law enforcement officers for appropriate action; and (6) applying for and executing search warrants. The reasonableness of these actions should be evaluated in the context of the overall investigation, as well as the nature, specificity, and immediacy of the threat, understanding that public safety is paramount. If the investigative team determines that broader public safety benefits would ultimately be achieved by not taking such an enforcement action, they must notify, consult with, and obtain the concurrence of the supervisory attorney referenced above, or a comparable supervisory attorney, and the law enforcement agency(ies) leading the investigation. This consultation and concurrence should take place prior to the investigative team deciding not to take that action.