

EMPOWER OVERSIGHT

Whistleblowers & Research



July 15, 2026

M. Sean M. O'Neill
Assistant Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530-0001

Dear Assistant Inspector General O'Neill:

Following up on my letter to you of May 12, 2026,¹ I write to provide additional background on the U.S. Attorney's Office for the District of New Mexico (USAO-NM) discouraging Drug Enforcement Administration (DEA) agents from seizing fentanyl.

April 6, 2023 Traffic Stop

The DEA investigated a multi-drug trafficking organization in New Mexico from 2021 to 2023. As part of that investigation, in early 2023 SA Howell and SA Fritz began investigating Suspect 1. Suspect 1 sold 1,000 fentanyl pills to an undercover DEA agent on four different occasions between February 2 and March 3, totaling 4,000 pills. In early March 2023, SA Howell and SA Fritz began working with the USAO-NM's Organized Crime Section to apply for a wiretap on Suspect 1's phone. Their contacts at USAO-NM were Assistant U.S. Attorneys (AUSAs) Louis Mattei and Blake Nichols. The AUSAs were supervised by Deputy Supervisory AUSA Elaine Ramirez and Supervisory AUSA Timothy Vasquez.

When the wiretap application was approved by the Criminal Division's Office of Enforcement Operations (OEO) at Department of Justice (DOJ) headquarters, a Deputy Associate Attorney General in Washington, D.C. signed the application, which a federal district judge in New Mexico then granted. Thereafter, USAO-NM personnel came to DEA's Albuquerque District Office for a "minimization meeting," a standard meeting for every wiretap in which they explained the restrictions for the wiretap (such as not listening to attorney-client communications, etc.). The AUSAs specifically indicated the agents must agree to follow the Fentanyl Protocols issued by DOJ in 2019.

SA Howell and SA Fritz made plans for agents to conduct surveillance throughout the week of April 3. SA Howell also drafted an operational plan detailing how the DEA would seize

¹ <https://empowr.us/wp-content/uploads/2026/06/2026-06-05-TL-to-DOJ-Howell.pdf>

² The DOJ OPR report stated AUSA Mattei "did not recall discussing the stop with [SA Fritz] prior to it occurring," which is correct—the conversation was indeed after the stop. The OPR report also says AUSA Mattei "asserted that the complainant's description of events would have been inconsistent with his regular process for providing input to the agents," which is not a denial. DOJ OPR report at page 8, footnote 6.

drugs if they believed a traffic stop was warranted. DEA Acting Group Supervisor (A/GS) Billy Baker approved the plan.

During the course of the surveillance, the DEA intercepted through the wiretap multiple text messages between Suspect 1 and a second individual Suspect 2 about a suspected purchase of fentanyl on April 6. After Suspect 2 departed Suspect 1's house, agents followed him.

A search of Suspect 2's information revealed he had an extensive criminal history: a December 2016 arrest for possession of a controlled substance; a February 2017 arrest for trafficking a controlled substance; a March 2017 arrest for aggravated assault with a deadly weapon and fleeing law enforcement; a July 2017 arrest for aggravated battery with a deadly weapon, aggravated fleeing a law enforcement officer, and possession of a controlled substance; an August 2017 arrest for aggravated fleeing a law enforcement officer and possession of a firearm or destructive device; a second August 2017 arrest for bringing contraband into a jail and aggravated assault upon a peace officer; and a February 2018 arrest for bringing contraband into a jail, aggravated assault upon a peace officer, fleeing law enforcement, and possession of a firearm or destructive device.

When Suspect 2's next stop was to pick up a small child at school, SA Howell and SA Fritz decided to conduct a traffic stop of Suspect 2 and seize the fentanyl to prevent further danger to the child.² In a written summary of the stop, SA Howell wrote: "The TFO made up an excuse for the traffic stop to which he explained to the driver. (Agents did not want to explain to Suspect 2 the real reason for the traffic stop, as that would endanger their investigation into Suspect 1 and Suspect 1's sources of supply.)" The agents seized 772.1 grams of fentanyl pills from the driver's seat as well as a Glock handgun, a magazine, and 15 9mm rounds.

On returning to the DEA office, SA Fritz saw AUSA Mattei and told him about the traffic stop. AUSA Mattei appeared displeased, and asked "Why'd you do that?" AUSA Mattei asked why they didn't "just get a license plate number" for Suspect 2.³

AUSA Mattei subsequently requested that SA Howell and SA Fritz come to the USAO-NM office for a meeting to discuss the April 6 traffic stop. AUSA Nichols joined the resulting April 13, 2023 meeting. AUSA Mattei stated that although there was probable cause to conduct the traffic stop on Suspect 2, USAO-NM was unlikely to ever charge Suspect 2 because the "optics" of the stop were bad, and because it looked like a "kidnapping" had taken place, the outcome in court would be uncertain if they were to get the wrong judge. When the DEA agents raised their own internal DEA policy requiring the seizure of controlled substances except in

² The DOJ OPR report stated: "The Deputy Supervisory AUSA's . . . preference was for the agents to conduct additional surveillance on the customer's residence, surveil illicit activities there and stop other buyers, and use that new information, separate and apart from the Title III interceptions, to obtain a search warrant." However, if the goal was what the USAO-NM would subsequently indicate to OEO, "disrupting and dismantling this DTO," conducting further surveillance of Suspect 2 and other downstream buyers rather than focusing on Suspect 1 and his upstream suppliers would not advance that goal.

³ The DOJ OPR report stated AUSA Mattei "did not recall discussing the stop with [SA Fritz] prior to it occurring," which is correct—the conversation was indeed after the stop. The OPR report also says AUSA Mattei "asserted that the complainant's description of events would have been inconsistent with his regular process for providing input to the agents," which is not a denial. DOJ OPR report at page 8, footnote 6.

certain circumstances, AUSA Mattei said, “Well that is a ridiculous policy.”⁴ The meeting ended in disagreement regarding whether the traffic stop should have been conducted.⁵

Wiretap Spin-Off

In May and early June 2023, SA Howell and SA Fritz worked on an application to extend the wiretap on Suspect 1’s phone and to spin off two new wiretaps on two individuals believed to be Suspect 1’s suppliers. USAO-NM sent the applications to DOJ Criminal Division’s OEO in Washington, D.C.

On June 15, 2023, AUSA Nichols emailed SA Howell and SA Fritz: “OEO got back to us with some requested edits this afternoon They also want to confirm fentanyl and risk mitigation protocols. I’ll forward those protocols in a separate email and ask that you respond to the numbered questions.” The separate email AUSA Nichols sent attaching the Fentanyl Protocols had the subject line “Supplier 1 and Supplier 2 spin – Operational Issues from OEO.” It said: “OEO has asked that I forward the attached protocols to you and ask that you confirm you have reviewed them. Please respond confirming same. Additionally, they’ve sent the following questions for us to answer”:

- Do all members of the investigative team continue to agree to abide by the fentanyl protocols and the risk mitigation guidelines for firearms/violence?
- Since the most recent period of interceptions began, either through interceptions or other investigative efforts, did law enforcement become aware of any situations that potentially could have necessitated, or did necessitate, the implementation of the fentanyl protocols? If so, please explain the situation(s), including law enforcement’s response to each.
 - What, if any, law enforcement action was taken and why during the two fentanyl sales to Suspect 1 by Supplier 1 and Supplier 2 that law enforcement surveilled?
 - Since the most recent period of interceptions began, did the investigative team learn of any overdoses related to the distribution of fentanyl or narcotics laced with fentanyl by members of this DTO?

⁴ The DEA Agent’s Manual directive on Risk Assessment and Mitigation (Section 6683) requires that the DEA “make assessments, based on their training, experience, good judgment, and common sense, of the potential risks to life and physical safety involved in law enforcement activities, and then make reasonable efforts to mitigate those risks to . . . the public.” It gives as examples of reasonable efforts executing search warrants, interdicting contraband, and more, and specifically mandates that law enforcement officials at the DEA “take into account that protecting public safety is paramount, even if taking preventive measures may run the risk of compromising the investigation.” The DEA Agent’s Manual section on Non-Seizure of Controlled Substances (Section 6628) discusses undercover personnel becoming aware of shipment, delivery, or caches of controlled substances and states that “[w]hile the usual course of action is to seize them, there may be instances where the investigative objectives can be achieved by not doing so.” However, this policy requires that the SAC or SES-level manager determine that non-seizure is the appropriate course of action.

⁵ The OPR report did not reference this meeting in its report, although it did state: “AUSA [Nichols] told OPR that he discussed with the agents alternatives to the traffic stop to obtain information separate and apart from the Title III interceptions and using that information for a search warrant on the customer’s home. AUSA [Nichols] explained that the USAO-NM did not want the agents to use the information derived from the Title III interceptions as the sole reason to act and that there was a way to conduct a search and seizure that insulated the enforcement actions from the Title III interceptions. Nonetheless, he ultimately told the agents that it was up to them to decide what to do. He discussed the matter with the Deputy Supervisory AUSA, who concurred with the suggested course of action.”

- Since the most recent period of interceptions began, did agents identify or locate any stash locations where fentanyl and/or narcotics laced with fentanyl are being stored? If so, have agents obtained a search warrant for that location? If not, please discuss why not.
- Since the most recent period of interceptions began, either through interceptions or other investigative efforts, did law enforcement become aware of any situations that potentially could have necessitated, or did necessitate, the implementation of the violence/firearms protocols? If so, please explain the situation(s), including law enforcement's response to each.
 - Have agents identified any locations where firearms are being stored? If so, have agents obtained a search warrant for that location? If not, please discuss why not.⁶

The next day, on June 16, 2023, SA Howell emailed AUSA Nichols and copied SA Fritz on responses for OEO to each of the questions, detailing several instances where the DEA had believed fentanyl was being sold or transported.⁷

On June 22, 2023, OEO sent USAO-NM additional operational questions regarding prior traffic stops DEA had conducted in this case, underscoring the extent to which they believed that was the appropriate response to fentanyl trafficking. In response to OEO's request, SA Howell emailed AUSA Nichols a detailed list of the traffic stops they had conducted, closing:

I do not believe that any of the stops mentioned above had the ability to dismantle Suspect 1's DTO, as the people that were stopped were simply customers of Suspect 1. Agents do not believe Suspect 1's drug purchasing customers had any knowledge as to who or how Suspect 1 was sourced with fentanyl. This is why Agents are attempting to gather additional intelligence by furthering their investigation into Suspect 1's alleged sources for fentanyl whom have been identified as Supplier 1 and Supplier 2.

The next day, on June 23, 2023, AUSA Nichols emailed SA Howell and SA Fritz: "After significant discussion with OEO and our supervisors, here is the draft response to OEO regarding the fentanyl protocols in this case."⁸ USAO-NM's draft excluded entirely SA Howell's descriptions of likely fentanyl sales or transportation, and only provided a discussion of why search warrants had not been executed on where fentanyl was believed to be stored:

Agents and AUSA's wished to maximize the impact in seizing large quantities of fentanyl and ultimately disrupting and dismantling this DTO. . . . Immediate searches of these suspected stash house locations may not have been fruitful in seizing fentanyl, would have exposed the investigation and thwarted the campaign to disrupt this DTO's trafficking of fentanyl and Agents' efforts to maximize the impact on community safety.⁹

⁶ Attachment 1.

⁷ Attachment 2.

⁸ Attachment 3.

⁹ *Id.*

USAO-NM's response also stated that agents had conducted "multiple interdictions" resulting in the seizure of 6,000 fentanyl pills and 2 firearms—but did not make clear that USAO-NM had chastised the agents for the interdiction of the fentanyl.¹⁰

On the morning of June 26, AUSA Nichols emailed that OEO had responded:

We want to make sure that we understand what, if any, law enforcement action was taken for each of the following three specific interceptions discussed in the Affidavit (and if no action was taken, was that after a risk assessment was completed consistent with what was discussed below with respect to the potential stash locations or some other reason). . . . Separately, given the extensive amount of fentanyl involved in this case, can you confirm whether your Criminal Chief has also been briefed on this investigation, and if not, can you confirm that you will brief your Crim Chief?¹¹

Even after AUSA Nichols sent his response to OEO, he emailed again early that afternoon: "Jeez, one more question from OEO before I can submit: 'Generally, where do you/the investigative team see this case going and what your end goals are at this time.' Can one of you give me a call on this?"¹²

OEO sent the application to the DAAG's office that afternoon, and the DAAG-approved application was filed in district court on June 29, 2023. AUSA Nichols later admitted to SA Howell that OEO was pleased the DEA had made the seizures outlined above.

The next day, June 30, 2023, SA Howell assisted with surveillance on another agent's case. On the wiretap, agents heard Target 1 ask Target 2 how many pills there were, and Target 2 answer, "Like a shit load." Target 1 asked how many came in thousands, and Target 2 said 40. But SA Howell was astounded that when they surveilled the female courier delivering the 40,000 fentanyl pills to an apartment, they made no stop, and there was no discussion of obtaining a warrant.

Later that evening agents also became aware that the recipient of the earlier pills planned to make a 74,000 pill sale, which they also surveilled—yet again did not stop. When SA Howell asked A/GS Baker why, Baker indicated it was at the direction of USAO-NM. On July 3, 2023, the lead DEA case agent sent a WhatsApp message to the group that had participated in the surveillance: "Please place your evidence related to the 100k pill buy we covered into [evidence folder]."¹³

On July 5, 2023, AUSAs from USAO-NM held a minimization meeting with SA Howell and SA Fritz for the new wiretaps on Supplier 1 and Supplier 2. Per standard practice, the USAO-NM once again referenced the Fentanyl Protocols—even as the agents had come to realize these AUSAs interpreted them very differently.

¹⁰ *Id.*

¹¹ Attachment 4.

¹² *Id.*

¹³ The subsequent DOJ OPR report said of this transaction that the DEA case agent "told OPR that, in his view, the fentanyl guidance did not apply because, at that time, they did not know what drugs were being transacted, and they did not have probable cause to believe it was fentanyl"; he told OPR this information was only uncovered "with the benefit of hindsight five to six weeks after the fact." This is inconsistent with the case agent's WhatsApp message from July 3, 2023. It is also inconsistent with a text message the case agent sent to SA Howell and others on July 17, 2023, where he asked, "Do any of you guys have notes for the 6/30/23 surveillance where we followed the load car and watched our target sell 74k pills . . . ?"

July 18, 2023 Arrest and Fallout

Over the next two weeks of wiretaps, the DEA obtained little useful information from the wiretap on Supplier 2's phone, and SA Howell and SA Fritz discussed terminating the wire.¹⁴ Then on July 17, 2023, the wiretap revealed Supplier 2 was planning a large drug sale to Suspect 1 that agents believed was fentanyl—perhaps as many as 20,000 pills. Since the wiretap had been providing little useful information to that point, SA Howell decided the best course of action was to stop these drugs and see if they could turn Supplier 2 into an informant. SA Howell contacted AUSA Nichols and informed him of the DEA's intentions. AUSA Nichols initially agreed with this course of action, and SA Howell drafted an operational plan which A/GS Baker and ASAC Scott Garland approved.

But early in the afternoon of July 18, once agents were already out on surveillance of Supplier 2, AUSA Nichols called SA Howell to say that his supervisors were hoping the DEA would not stop Supplier 2, but rather allow the drugs to be distributed, possibly with prolonged surveillance and a future traffic stop on a lesser target. SA Howell responded that the DEA's manpower would make prolonged surveillance and the possibility of future seizure in that case quite difficult. Thus, SA Howell indicated that if there was an opportunity to make a traffic stop to prevent fentanyl from being distributed, he believed they should take it. Nevertheless, he recommended AUSA Nichols expressly contact A/GS Baker to discuss his concerns. After AUSA Nichols and A/GS Baker spoke, A/GS Baker called SA Howell to say the traffic stop could continue as planned.

That evening, the DEA made the traffic stop and arrested Supplier 2 pursuant to their operational plan. Rather than fentanyl, Supplier 2 had a kilogram of cocaine, as well as a loaded firearm. Because of the arrest, Supplier 2 subsequently provided the DEA with the name of *his* supplier.

The morning after the arrest, SA Howell emailed USAO-NM to inform them of the arrest and that the wiretap could come down. Shortly thereafter, Supervisory AUSA Timothy Vasquez requested a meeting with SA Howell, SA Fritz, and A/GS Baker.

In the resulting July 21 meeting at the USAO-NM, Supervisory AUSA Vasquez was joined by his Deputy Supervisory AUSA Ramirez. AUSA Vasquez told the attendees it was a good thing two days had passed since the July 18 arrest so his anger could pass. AUSA Vasquez said that despite SA Howell being instructed not to make the traffic stop on Supplier 2's vehicle, Howell purposefully disregarded teamwork with his office and acted instead as a "rogue" agent. AUSA Vasquez told SA Howell that if they were both in the military he would have Howell at "Captain's Mast," a disciplinary proceeding in the Navy. AUSA Vasquez added he was inclined to decline prosecution of Supplier 2.

SA Howell reiterated that the DEA had believed Supplier 2 was preparing to sell over 20,000 fentanyl pills, not just cocaine, and that per the Fentanyl Protocols, the goal of their operation was to stop the distribution of fentanyl as well as to gather necessary evidence. SA Howell also noted that he did not work for the USAO-NM but had sworn an oath to protect the public, and in arresting Supplier 2, he had not been "rogue" but acted precisely in accordance with the operational plan his first- and second-line DEA supervisors had approved. SA Howell disclosed that he believed other cases in 2023 where the USAO-NM had directed agents not to seize over 50,000 total fentanyl pills altogether had been a violation of the Fentanyl Protocol, and that just as criminals couldn't rely on "willful blindness" to claim they didn't know what they were trafficking, law enforcement couldn't use the same excuse to claim they didn't know for certain whether the Fentanyl Protocol applied.

¹⁴ Agents later learned this was because Supplier 2 had been using encrypted messaging to communicate.

AUSA Vasquez replied that sometimes they have to let drugs get distributed in order to catch the “bigger fish.” However, AUSA Vasquez noted, since SA Howell apparently couldn’t handle the knowledge of drugs being not seized due to his “conscientious objections,” perhaps the USAO-NM might no longer accept Howell’s cases or allow him to work “long-term” investigations in the future. The meeting ended with SA Howell telling the AUSAs he believed their logic was deeply flawed and that the general public would be outraged if they knew the federal government was allowing fentanyl to be distributed just to further an investigation, and someone would likely be fired. AUSA Vasquez responded that SA Howell could very well be right, but that it was Vasquez’s decision to make.

On July 27, 2023, DEA agents had a meeting with AUSAs Mattei and Nichols regarding how to bring the case to a conclusion. AUSA Raquel Ruiz Velez also attended the meeting. For the first time, the USAO-NM informed DEA agents that they did not intend to charge Suspect 2, stating their office—including their supervisor, AUSA Ramirez—believed “you stole his drugs” in the April 6 traffic stop and it was “gross government misconduct.” The AUSAs also reiterated that the DEA should not have conducted the July 18 traffic stop on Supplier 2. The AUSAs concluded the meeting by telling the agents they were no longer allowed to stop a wire target during a wiretap investigation while the wire target is holding the phones that agents were listening to.

Protected Whistleblower Disclosures

On August 2, 2023, SA Howell emailed DEA El Paso Division Counsel Gregory Stevens requesting a phone call. The subsequent call lasted 30 minutes. After describing the situation, SA Howell indicated that he was considering filing a complaint with the DOJ Office of Inspector General (OIG). However, Stevens asked him to wait on the complaint to give time for Stevens to communicate with Acting Special Agent in Charge (A/SAC) Eric Castaneda.

On Thursday, August 3, 2023, SA Howell met with A/GS Baker and ASAC Garland. ASAC Garland told SA Howell he was well within his right to file an OIG complaint, and that Division Counsel Stevens should not have asked him to wait because the decision was solely SA Howell’s. SA Howell indicated he had been thinking of contacting U.S. Attorney Alex Uballez prior to filing a complaint, and ASAC Garland approved of the contact. That afternoon SA Howell attempted to call Uballez and left him a voicemail.

The next day, near the close of business on Friday, August 4, 2023, SA Howell sent U.S. Attorney Uballez a lengthy email detailing how he believed the AUSAs’ conduct had been violating the Fentanyl Protocol—and that what they were asking DEA to do also violated the DEA Agent’s Manual. SA Howell closed the email by requesting an in-person meeting.¹⁵

U.S. Attorney Uballez emailed back just one hour later, at 5:42 pm: “I’m happy to sit down with you, but I think the conversation needs to involve your supervisors as well. . . . If you give me a few dates you, your GS, and the ASAC are available . . . I’d invite you all to our office for a talk with me and the relevant leadership on my side.”¹⁶

Yet less than two hours later, at approximately 7:21 pm, SA Howell received a phone call from A/GS Baker, who said he had just spoken with ASAC Garland and A/SAC Castaneda, that U.S. Attorney Uballez had shared SA Howell’s email with A/SAC Castaneda, and that SA Howell should not contact Uballez again in the future.

¹⁵ Attachment 5.

¹⁶ Attachment 5.

On the morning of Tuesday, August 8, A/GS Baker contacted SA Howell to request that he come meet with A/SAC Castaneda, who had traveled to the Albuquerque District Office from the El Paso Division headquarters. Castaneda said he had met with U.S. Attorney Uballez about the Fentanyl Protocol, and that they “simply disagreed” with SA Howell’s tactics. Castaneda noted the DEA had had a very good relationship with USAO-NM, and “it would be nice to maintain that relationship.”

SA Howell informed A/GS Baker, ASAC Garland, and Division Counsel Stevens that he would be filing a complaint with DOJ OIG on Friday, August 11. Stevens requested to discuss the OIG complaint with SA Howell, who informed Stevens in a phone call that he believed USAO-NM’s conduct constituted a failure to follow protocol, an abuse of authority, and a failure to protect the public. Then SA Howell filed the attached ten-page complaint with the DOJ OIG.¹⁷

On November 16, 2023, SA Howell also filed a disclosure with the U.S. Office of Special Counsel (OSC). OSC referred his disclosures to DOJ on December 22, 2023, which resulted in the production of the flawed September 3, 2024 DOJ Office of Professional Responsibility (OPR) report referenced in my last letter. As has been publicly reported, SA Howell also became aware of a wider pattern and practice of fentanyl not being seized in New Mexico, which we would be pleased to explain in more detail in an interview.

Finally, as I indicated in my last letter, SA Howell has suffered several prohibited personnel practices for his decision to make protected disclosures to your office and others. So have others in his office for supporting his disclosures. Although we will be pursuing corrective action with the U.S. Office of Special Counsel for most of this retaliation, the leadership of DEA’s Albuquerque District Office is also currently retaliating against a retired DEA agent working as a contractor with the office, which is within DOJ OIG’s jurisdiction. That retaliation complaint will be transmitted separately.

Cordially,
/Tristan Leavitt/
Tristan Leavitt
President

cc: Colin M. McDonald, Acting Deputy Attorney General
U.S. Department of Justice

Charles N. Baldis, Senior Counsel/Designee of Acting Special Counsel Jamieson Greer
U.S. Office of Special Counsel

¹⁷ Attachment 6.

Attachment 1

Howell, David M.

From: Nichols, Blake (USANM)
Sent: Thursday, June 15, 2023 5:14 PM
To: Fritz, Emmett; Howell, David M.
Subject: [REDACTED] & [REDACTED] spin - Operational Issues from OEO
Attachments: Criminal Division-suggested Title III Risk Mitigation Guidelines.pdf; CRM-T-III-Fentanyl-Protocols.pdf

Gents,

OEO has asked that I forward the attached protocols to you and ask that you confirm you have reviewed them. Please respond confirming same.

Additionally, they've sent the following questions for us to answer. If you'd like to discuss by phone or in person tomorrow as well, that works for me.

1. Do all members of the investigative team continue to agree to abide by the fentanyl protocols and the risk mitigation guidelines for firearms/violence?
2. Since the most recent period of interceptions began, either through interceptions or other investigative efforts, did law enforcement become aware of any situations that potentially could have necessitated, or did necessitate, the implementation of the fentanyl protocols? If so, please explain the situation(s), including law enforcement's response to each.
 - a. What, if any, law enforcement action was taken and why during the two fentanyl sales to [REDACTED] by [REDACTED] and [REDACTED] that law enforcement surveilled?
 - b. Since the most recent period of interceptions began, did the investigative team learn of any overdoses related to the distribution of fentanyl or narcotics laced with fentanyl by members of this DTO?
 - c. Since the most recent period of interceptions began, did agents identify or locate any stash locations where fentanyl and/or narcotics laced with fentanyl are being stored? If so, have agents obtained a search warrant for that location? If not, please discuss why not.
3. Since the most recent period of interceptions began, either through interceptions or other investigative efforts, did law enforcement become aware of any situations that potentially could have necessitated, or did necessitate, the implementation of the violence/firearms protocols? If so, please explain the situation(s), including law enforcement's response to each.
 - a. Have agents identified any locations where firearms are being stored? If so, have agents obtained a search warrant for that location? If not, please discuss why not.



Blake Nichols
Assistant U.S. Attorney
Organized Crime Section
United States Attorney's Office
District of New Mexico

Attachment 2

Howell, David M.

From: Howell, David M.
Sent: Friday, June 16, 2023 1:09 PM
To: Nichols, Blake (USANM)
Cc: Fritz, Emmett
Subject: RE: [REDACTED] & [REDACTED] spin - Operational Issues from OEO

My response is as follows: Yes, I have read the protocols.

- 1) Yes, I will do my best to follow and abide by the fentanyl protocols and risk mitigation guidelines for firearms/violence.
- 2) Yes, law enforcement became aware of some situations where Agents believed fentanyl was being sold and/or transported and the fentanyl protocol was attempted several times.

On March 13, 2023, Agents intercepted calls/texts where they believed fentanyl was to be delivered to a subject. Agents went out on surveillance and attempted to cover the meet, however, Agents were unsuccessful in observing the suspected sale of fentanyl.

On March 14, 2023, Agents intercepted calls/texts where a subject was believed to have purchased drugs from our target [REDACTED]. [REDACTED] is known to sell fentanyl. Code words were used during these phone call. Agents conducted surveillance and covered the meeting. After Agents made the stop on the subject vehicle, Agents discovered they were mistaken and that the subject had not purchased fentanyl, but rather marijuana.

Marijuana and a handgun were seized from the vehicle as a result of this traffic stop.

On April 3, 2023, Agents intercepted calls/texts where they believed that a source of fentanyl was to deliver an unknown quantity of fentanyl to [REDACTED]. Agents covered this meeting. However, due to inclement weather, the DEA aircraft had to land and no Agent was able to observe if a delivery or an exchange was made to our target, though Agents did observe the two parties meet. Surveillance was conducted afterwards, however, the source ([REDACTED]) drove erratically making surveillance difficult and Agents ultimately had to cancel surveillance due to the intentional heat runs conducted by [REDACTED].

On April 4, 2023, Agents intercepted calls/texts where fentanyl was suspected of being delivered to a subject in Santa Fe, NM. Agents attempted to cover this meeting, however, the target, [REDACTED] drove extremely fast and made surveillance difficult. During this surveillance, Agents did observe [REDACTED] meet with a female prior to heading to Santa Fe. Agents followed the female away, however, she drove arrived home quickly, prior to

Agents being able to formulate a plan on whether or not to stop her vehicle. Agents did not cover the suspected meeting in Santa Fe.

On April 6, 2023, Agents intercepted calls/texts between a subject and [REDACTED] for the purchase of suspected fentanyl. Code words again were used during this call. Agents believe they understood the code words to indicate that the drug being sold was in fact fentanyl. Agents went out on surveillance and covered the meeting between the subject and [REDACTED]. A traffic stop was made and approximately 747 net grams of fentanyl and a firearm were seized from the subject's vehicle.

Numerous calls/texts were intercepted over the initial wiretap and the above examples are some of what Agents encountered over their first 30 days.

- a) Only one sale was observed between [REDACTED] and [REDACTED]. (not two sales) and Agents did not observe an actual exchange between the two parties, only a meeting between the two parties. Thus no traffic stops were made.
 - b) No overdoses were made known to Agents during the wire intercept.
 - c) Agents did identify places where drugs were being stored (possibly three locations). Agents have not requested warrants for these locations based upon their efforts to further investigate the sources for this DTO. Agents will attempt to search these locations on a future date, based upon their probable cause at the time the warrants are being written.
- 3) Agents did not become aware of any situation which necessitated the implementation of the violence/firearms protocols. (The two seizures of handguns mentioned above were just a result of the traffic stop and not a planned seizure.)
- a) Agents have not identified any location where firearms are being stored.

SA David Howell



From: Nichols, Blake (USANM) [REDACTED]
Sent: Thursday, June 15, 2023 5:14 PM
To: Fritz, Emmett [REDACTED]; Howell, David M. [REDACTED]
Subject: [REDACTED] & [REDACTED] spin - Operational Issues from OEO

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 - a. What, if any, law enforcement action was taken and why during the two fentanyl sales to [REDACTED] by [REDACTED] and [REDACTED] that law enforcement surveilled?
 - b. Since the most recent period of interceptions began, did the investigative team learn of any overdoses related to the distribution of fentanyl or narcotics laced with fentanyl by members of this DTO?
 - c. Since the most recent period of interceptions began, did agents identify or locate any stash locations where fentanyl and/or narcotics laced with fentanyl are being stored? If so, have agents obtained a search warrant for that location? If not, please discuss why not.
3. Since the most recent period of interceptions began, either through interceptions or other investigative efforts, did law enforcement become aware of any situations that potentially could have necessitated, or did necessitate, the implementation of the violence/firearms protocols? If so, please explain the situation(s), including law enforcement's response to each.
 - a. Have agents identified any locations where firearms are being stored? If so, have agents obtained a search warrant for that location? If not, please discuss why not.



Blake Nichols
Assistant U.S. Attorney
Organized Crime Section
United States Attorney's Office
District of New Mexico

Attachment 3

Howell, David M.

From: Nichols, Blake (USANM)
Sent: Friday, June 23, 2023 5:47 PM
To: Howell, David M.; Fritz, Emmett
Subject: Fentanyl protocol

Importance: High

After significant discussion with OEO and our supervisors, here is the draft response to OEO regarding the fentanyl protocols in this case.

Please review for accuracy ASAP. Call to discuss if needed.

If this is good to go, I will send it. If we need edits, please let me know and I will make those and then send it.

This is the last step. OEO has everything else. Once we get this done, and if OEO approves, we go to DAAG for approval and we can request a time to sign.

- a. Yes, Agents did identify potential stash locations where fentanyl may be temporarily stored (possibly three locations). Agents did not obtain search warrants based upon the following assessment and analysis:
 - i. Agents and AUSA's assessed the risk presented by the suspected fentanyl and the impact to community safety to be gained from further investigation of this DTO. While Agents had information that fentanyl may have been stored temporarily at these locations, agents did not know whether there were substantial quantities of fentanyl in these locations. Agents had learned during the prior interception period that [REDACTED] would occasionally source directly and then immediately resell. Additionally, [REDACTED] is a polydrug trafficker who also sold methamphetamine and marijuana; while Agents believed they had identified potential stash house locations, additional investigation was needed to determine whether significant quantities of fentanyl or other narcotics were being stored in these locations. Agents and AUSA's wished to maximize the impact in seizing large quantities of fentanyl and ultimately disrupting and dismantling this DTO. There have been no overdose deaths associated with this DTO, the fentanyl the DTO is known to distribute is marketed as such and not disguised or concealed in other products, and Agents have conducted multiple interdictions in this case resulting in the seizure of 6,000 fentanyl pills and 2 firearms. Immediate searches of these suspected stash house locations may not have been fruitful in seizing fentanyl, would have exposed the investigation and thwarted the campaign to disrupt this DTO's trafficking of fentanyl and Agents' efforts to maximize the impact on community safety. Upon conducting these risk assessments, agents and AUSA's did not seek immediate warrants for the suspect locations. If Agents are able to develop probable cause that substantial quantities of fentanyl are being stored at these locations, Agents will seek search warrants for these locations at a future date.



Blake Nichols
Assistant U.S. Attorney
Organized Crime Section
United States Attorney's Office
District of New Mexico

Attachment 4

Howell, David M.

From: Nichols, Blake (USANM)
Sent: Monday, June 26, 2023 1:58 PM
To: Fritz, Emmett; Howell, David M.
Subject: RE: [REDACTED] & B [REDACTED] spin - OEO supervisor follow up

Jeez, one more question from OEO before I can submit:

“Generally, where do you/the investigative team see this case going and what your end goals are at this time.”

Can one of you give me a call on this?

From: Fritz, Emmett [REDACTED]
Sent: Monday, June 26, 2023 12:31 PM
To: Nichols, Blake (USANM) [REDACTED]; Howell, David M. [REDACTED]
Subject: RE: [REDACTED] & [REDACTED] spin - OEO supervisor follow up

From: Nichols, Blake (USANM) [REDACTED]
Sent: Monday, June 26, 2023 10:59 AM
To: Fritz, Emmett [REDACTED]; Howell, David M. [REDACTED]
Subject: [REDACTED] & [REDACTED] spin - OEO supervisor follow up

Gents,

Just heard back from OEO. Please see below for follow up requests from OEO supervisor regarding affidavit and operational issues.

Affidavit

- [REDACTED]
- [REDACTED]
- Have you considered adding and firearms offenses to your target subject list, given that you’ve seized at least two during the last period and these folks seem to be carrying them. Adding a firearms offense(s) will also help your argument regarding minimization on the back end if calls regarding firearms were ever intercepted and challenged.

I am good adding the firearms into the target offenses.

- [REDACTED]

- Para. 85 – Can you add a summary of the CS's criminal history?

CS criminal history includes armed robbery, kidnapping, drug possession, auto burg, DWI, unlawful taking of motor vehicle, tampering with evidence, assault on a PO, possession of burglary tools, probation violation, parole violation, disorderly conduct, bringing contraband into prison conspiracy, possession of destructive device by felon, and agg assault.

Operational

(I'll address item 4)

"We want to make sure that we understand what, if any, law enforcement action was taken for each of the following three specific interceptions discussed in the Affidavit (and if no action was taken, was that after a risk assessment was completed consistent with what was discussed below with respect to the potential stash locations or some other reason)."

1. The March 9 interceptions in which [REDACTED] ordered a large amount of fentanyl pills from [REDACTED]
 - a. Also, is it fair to say that Bolivar did not request these pills in order to supply to the UC (and that this was a separate transaction from the controlled purchase)?
 - b. Yes this was a separate transaction. We were unable to cover this meeting between [REDACTED] and [REDACTED] due to us not knowing about this call when it came in. It was not marked as PERT on the first go around. The second interception with [REDACTED] ordering up from [REDACTED] was did cover but we were unable to take action due to we saw no physical exchange of a bag, backpack, etc between [REDACTED] and [REDACTED].
2. The April 3 interceptions regarding the sale of fentanyl pills to Bolivar from Martinez

Stated above sorry. The second interception with [REDACTED] ordering up from [REDACTED] was did cover but we were unable to take action due to we saw no physical exchange of a bag, backpack, etc between [REDACTED] and [REDACTED] [REDACTED] walked up to [REDACTED]'s car, what appeared to be empty handed, but left with a box in his hands which we assumed was money.

3. And the April 3 interceptions between [REDACTED] and [REDACTED] regarding the sale of fentanyl pills

No action was taken due to the fact that [REDACTED] arrived to [REDACTED] house unannounced (did not tell him he was there/on the way) and he drove into the curtilage of [REDACTED] residence. We also did not identify that that was [REDACTED] until he departed from [REDACTED] house.

4. Separately, given the extensive amount of fentanyl involved in this case, can you confirm whether your Criminal Chief has also been briefed on this investigation, and if not, can you confirm that you will brief your Crim Chief?

--Blake



Blake Nichols
Assistant U.S. Attorney
Organized Crime Section
United States Attorney's Office
District of New Mexico

Attachment 5

Howell, David M.

From: Howell, David M.
Sent: Friday, August 4, 2023 6:38 PM
To: Uballez, Alexander M, (USANM)
Cc: [REDACTED]
Subject: Re: the protocol

Thank you!
I will let them know - and I will get back with you asap (like Monday).
I appreciate your response too.

DH

On Aug 4, 2023, at 5:41 PM, Uballez, Alexander M, (USANM) [REDACTED] wrote:

It is good to hear from you, even under these circumstances. Any my apologies for not getting back to you sooner, I've been booked up this week.

I'm happy to sit down with you, but I think the conversation needs to involve your supervisors as well. I'm full-up next week, but if you give me a few dates you, your GS, and the ASAC are available the week of the 14th, I'd invite you all to our office for a talk with me and the relevant leadership on my side. I'm cc-ing [REDACTED] who will help us find a good day.

Take care, friend.

amu

amu

From: Howell, David M. [REDACTED]
Sent: Friday, August 4, 2023 4:41 PM
To: Uballez, Alexander M, (USANM) [REDACTED]
Subject: the protocol

Good afternoon Mr. Uballez,
I left a voicemail on your desk phone yesterday afternoon. This e-mail will explain the reason why I called you. I also want you to know the information I am going to share with you below, I have also shared with my DEA management. My management have given me permission to contact you regarding this issue.
First, we have worked together on several cases over the years and I obviously respect you – this is why I am contacting you. Unfortunately this e-mail does serve as a complaint – and I am

sorry for that. You are my second to last step in rectifying this problem – prior to me seeking a last option for a more formal type of complaint.

During the months of March and April 2023, my DEA partner and I worked a fentanyl wiretap. During those months we were working closely with both AUSA Louis Mattei and AUSA Blake Nichols. This is an OCDETF investigation titled, [REDACTED] We continued this wiretap investigation on a source of supply target in July 2023. These wiretaps involved fentanyl and cocaine sources of supply. This investigation is still ongoing.

Prior to receiving approval for these wiretaps, I was provided with a “fentanyl protocol.” I attached this “fentanyl protocol” to this e-mail as a reference point. The “fentanyl protocol” is quite clear. I was told to abide by this protocol by your office and by OEO prior to the commencement of the wiretaps.

I am not going to get into all of the details as to everything that has transpired (and there are two sides to this story – I know). But the bottom line is we (at DEA) encountered situations where we believed fentanyl was to be distributed. This information was received via the aforementioned wiretaps. We contacted your office, specifically AUSA Mattei and AUSA Nichols regarding these suspected distributions, which we believed involved the distribution of fentanyl. We were instructed by your office not to conduct these traffic stops – or at the very least we were provided with language which hinted strongly to us at DEA not to conduct the traffic stops on these two vehicles. However, myself and my supervisor believed the advice provided to us was not correct. Instead, we made the decision to go ahead and attempt the two traffic stops anyways (or without the permission/blessing of the AUSAs).

The first traffic stop resulted with the seizure of 700+ net grams of fentanyl and a firearm. The second traffic stop resulted with the seizure of a kilogram of cocaine and another firearm. (There were no traffic stops made on our investigation – which did not result with either drugs, guns or money being seized.) The “fentanyl protocol” also mentions that drugs which fentanyl can be mixed with to include (but not limited to) heroin and cocaine should also be seized. The first traffic stop which resulted with the seizure of fentanyl and a gun was conducted on April 6, 2023. I was reprimanded by AUSA Mattei for conducting this traffic stop on April 13, 2023.

The second stop in question was conducted on July 18, 2023, which resulted with the seizure of cocaine and another handgun. On July 21, 2023, I was called in again to your office and was this time reprimanded by AUSA Tim Vasquez and AUSA Elaine Ramirez. AUSA Vasquez also spoke of how he would have disciplined me for the traffic stops – had we been in the military together. I was also told that your office was unlikely to take any more of my investigations – unless I worked on the “reservation” or “death resulting” cases.

I am not going to get into all of the details. Those AUSAs will freely tell you and explain why I was reprimanded – because I am a “rogue agent,” because I do not see the “big picture,” and also because I am not able to conduct “long-term drug investigations.”

I told AUSA Vasquez that we cannot knowingly allow drugs to be distributed. He replied to me – that sometimes that is the cost of doing business if we are going to catch the “sources of supply.”

I am sending you this e-mail because I believe some AUSAs (including AUSA Vasquez, AUSA Ramirez and AUSA Mattei) are encouraging or at the very least – they are strongly hinting to DEA Agents at my office to intentionally violate our DEA Agent’s Manual. It is a violation of our DEA policy to knowingly allow drugs – especially killer drugs like fentanyl – to be distributed (unless you have SES/SAC approval). I do not think any supervisor anywhere in DEA would allow an Agent to knowingly allow fentanyl to be distributed. I also believe those three AUSAs are intentionally circumventing the “fentanyl protocol” by intentionally not stopping vehicles

transporting or distributing fentanyl in and to Albuquerque. I have examples of such inaction. They can circumvent this "protocol" by simply not stopping a source vehicle. Once the vehicle is not stopped – then it is easy to say that no one can say for sure just what was in that transporting vehicle – if anything. This of course could be described as "looking the other way" or "plausible deniability."

I would like to meet with you in person – if you are willing - to discuss everything in detail – so this problem can be resolved.

I also explained to all the AUSAs mentioned in this e-mail, that our DEA Administrator is on the front line preaching every day to everyone that is willing to listen that "One Pill Can Kill."

Apparently the right hand does not know what the left hand is doing.

Thank you for your time. I know that you are very busy. You can contact me at your convenience.

My cell phone is listed below.

Please call me anytime day or night (weekends are good too).

SA David Howell



<image002.jpg>

Attachment 6

To whom it may concern;

My name is David Howell. I am currently employed as a Special Agent with the Drug Enforcement Administration. I have been employed by the DEA since August 2006. I work for the DEA in Albuquerque, New Mexico. Prior to joining DEA, I spent almost eleven years in the Navy.

The purpose of this submission is to file a complaint regarding “wrongdoing” being conducted by certain Assistant U.S. Attorneys (“AUSAs”) at the U.S. Attorney’s Office (“USAO”) in Albuquerque, New Mexico, and more specifically being conducted by AUSA Louis Mattei, AUSA Timothy Vasquez and AUSA Elaine Ramirez (this complaint may also implicate DEA Special Agents that I work with) for the following acts of “wrongdoing:”

- 1) A violation of a regulation;
- 2) Abuse of authority; and
- 3) Substantial and specific danger to the public health or safety.

I am not submitting this complaint lightly, as I have struggled with making this decision for the past several weeks. I have lost sleep every night for weeks now and feel sick because I feel that I may cause embarrassment (and maybe discipline) to those I work close with. Nonetheless, I have made the decision that doing nothing – which is the easy thing to do – was not the right thing to do. And so, I have decided to move forward with this complaint – because I believe the behavior being conducted by the aforementioned three U.S. Attorneys is at the very least unethical and at worse is gross government misconduct - which is a concern for the safety and wellbeing of the general public, to whom I work for and swore an oath to protect.

I am seeking protection under the “Whistleblower” rights and protections offered to employees of the Department of Justice.

Regarding this allegation I do not need to remain anonymous. If need be, I am perfectly willing to let everyone know that I am the “whistleblower.” In fact, my entire DEA chain of command, from my immediate Supervisor - to the Assistant Special Agent in Charge (in Albuquerque) - to the Special Agent in Charge (of the El Paso Field Division) are aware that I am filing this complaint. You should also know that prior to filing this complaint, I worked to handle this allegation “in-house” with my DEA chain-of command and with our Assistant United States Attorneys in Albuquerque, prior to filing this complaint. Unfortunately, we were unable to come to an agreement on how we should proceed, which left me thinking that they would continue as business as usual thus forcing me to either do nothing or – do what I am doing now.

I will start with allegation number 1) A violation of a regulation.

In our DEA Agents Manual – section 6628 - states rules for the “Non-Seizure of Controlled Substances.” (The following is a synopsis of sections 6628.) This rules states that the normal course of action is if Agents have knowledge of a shipment of drugs that the normal course of actions are to seize these drugs. Our Agents Manual continues to state, there may be instances

where the investigative objectives can be better achieved by not seizing the drugs. If drugs are not to be seized, an SES level manager or a Special Agent in Charge must first approve the non-seizure.

This rule has been and is continuing to be violated by Special Agents in our Albuquerque District Office. Let me be more specific. During this year (2023) myself and other Agents have conducted wiretaps on targets believed to be selling fentanyl. These wiretaps have allowed agents to intercept communications where shipments of suspected fentanyl - and the selling of suspected fentanyl were intercepted. Most of these communications were not followed up with law enforcement actions – such as vehicles stops - and the subsequent seizure of drugs. Instead, the suspected drugs were permitted to be distributed due to our failure to act. During these times, there was never an approval by an SES level manager or a SAC approving these drugs to be distributed to our community.

The USAO have placed pressure and have acted purposefully by making decisions and having discussions with DEA agents in my office (and also to me specifically) to intentionally not stop vehicles suspected of distributing fentanyl destined for the streets of Albuquerque. In so doing, the USAO have asserted that “the investigation” comes before the general public’s wellbeing. This behavior is unconscionable.

You should be made aware that prior to receiving approval for a wiretap, the wiretap must first be approved by the Office of Enforcement Operations, also known as “OEO.” Due the fact that fentanyl is a known killer drug, claiming the lives of tens of thousands of Americans per year, OEO has issued a “fentanyl protocol.” I have attached this “fentanyl protocol” to the bottom of my complaint, for your review. (You may reach out to OEO to confirm this protocol and to see how serious they treat this protocol with our AUSAs and agents.) OEO makes sure both the USAO and agents will abide by the “fentanyl protocol” prior to granting approval to the fentanyl wiretap.

The “fentanyl protocol” is quite specific and lists out a seven-step procedure on what AUSAs and agents should do if they are to encounter fentanyl. This protocol states, “If agents have probable cause to believe that a subject intends to distribute fentanyl, they should consult with the USAO. Agents should then make reasonable efforts to prevent the distribution.” It also states, “that protecting public safety is paramount.”

Over this year, 2023, I know of several instances where Agents have intercepted communications where they believed that fentanyl was to be distributed to or within Albuquerque, New Mexico. The USAO and agents have intentionally violated this protocol by allowing the suspected distribution to happen. These decisions were made based on the goal of “catching the bigger fish” (the main supplier in Mexico). These are noble goals and is what we at DEA strive to achieve, however, we just cannot allow tens of thousands or even worse, hundreds of thousands of fentanyl pills to be distributed in Albuquerque to achieve this objective. This was a serious point of contention that I made aware to AUSA Timothy Vasquez

and to AUSA Elaine Ramirez. After listening to me, AUSA Vasquez replied to me (in the presence of my supervisor and in the presence of AUSA Ramirez) that sometimes drugs have to be walked in order to further the goals of the long-term investigations. AUSA Ramirez sat silently in support of AUSA Vasquez' inappropriate and completely misguided statement to me.

I want to bring to your attention that I (and other agents in my office) know that this "fentanyl protocol" is not being followed. In fact, this protocol is intentionally being circumvented by an attitude of "willful blindness."

Let me first start with some specific examples. In March/April 2023, my partner and I commenced a wiretap on a fentanyl Target in Albuquerque.

On April 6, 2023, we intercepted 28 text messages and 2 phone calls regarding a person that wanted to be supplied with what we believed was fentanyl from our main Target. We communicated this information to AUSA Louis Mattei. AUSA Mattei told us that Agents only needed to gather a license plate from the secondary target and that a traffic stop was not necessary. This statement by itself was a violation of a regulation (my point number 1 under "wrongdoing"). If my partner and I listened to AUSA Mattei then we would knowingly be walking fentanyl into our community and would be in violation of our agent's manual and the "fentanyl protocol." My partner and I disagreed with AUSA Mattei's assessment. We knew that simply gathering a license plate from a suspected drug trafficking vehicle was not truly making a reasonable attempt to prevent the distribution of drugs. Instead, my partner and I decided to conduct a traffic stop on the secondary target based upon our probable cause. We subsequently seized 747 net grams of fentanyl and a firearm from the secondary target's vehicle. Our decision to seize these drugs led my partner and I to a meeting at the USAO the following week - where we were told by AUSA Louis Mattei that we were wrong for doing what we did.

On April 13, 2023, at approximately 4:00 p.m., my partner and I were invited in for a meeting at the USAO to discuss the traffic stop which was conducted on April 6, 2023. This meeting was called by AUSA Louis Mattei and AUSA Blake Nichols. My partner and I explained to these two AUSAs that we intercepted 28 text messages and 2 phone calls regarding a person who was suspected of purchasing approximately 6,000 to 7,000 fentanyl pills from our main fentanyl Target. We believed this secondary target was planning on selling these thousands of pills to unknown drug users. We continued to explain to AUSA Mattei and to AUSA Nichols that because we received information that fentanyl was likely to be distributed we went ahead and established surveillance. After surveillance was established and a meeting between the two targets was observed we subsequently conducted a traffic stop on the supplied secondary Target where we seized approximately 747 net grams of fentanyl and a loaded firearm. We explained we used the "motor vehicle exception" (also known as the "Carroll Doctrine") as DEA's authority to make this traffic stop. We explained that the secondary Target had extensive, violent criminal history and that we detained him – and later released him pending a hopeful, future indictment. AUSA Mattei responded to us that his Office was unlikely to ever

charge the secondary Target because the “optics” of the traffic stop did not look good. AUSA Mattei and AUSA Nichols explained to my partner and I that it could go bad for us in court if we were to get the wrong Judge. I answered to AUSA Mattei that we had plenty of probable cause to make the traffic stop. AUSA Mattei stated that my partner and I were completely justified in doing the traffic stop, however, the “optics” were bad, and it looked like a “kidnapping” had taken place. AUSA Mattei further told my partner and I that we needed to “act like the good guys.” AUSA Nichols also added that AUSA Elaine Ramirez was aware of our traffic stop and she also disagreed with our traffic stop. I believe AUSA Mattei’s use of hyperbole (telling us we should “act like the good guys,” and it looked like we conducted a “kidnapping”) was completely inappropriate.

In July 2023, we continued our wiretap investigation, this time on a source of supply to our first main Target of fentanyl. Again, we were instructed by OEO to follow the “fentanyl protocol.” This agreement was in place prior to OEO providing us permission to move forward with this wiretap investigation. We again agreed to follow the protocol. This agreement was also known by our USAO.

On July 17, 2023, we intercepted phone calls where a distribution of drugs was likely to take place the next day (on July 18, 2023). I contacted our USAOs and made them aware of the situation and that my supervisor and I were planning a way to stop this drug distribution from happening.

On July 18, 2023, at approximately 1:30 p.m. I was informed by AUSA Blake Nichols that his supervisors (AUSA Timothy Vasquez and AUSA Elaine Ramirez) were hoping we could not stop the supplier and rather allow the drugs to be distributed with a possible prolonged surveillance where maybe agents could conduct a traffic stop on a lesser target. My supervisor and I explained to AUSA Nichols that once the drugs were distributed it would make a later traffic stop and seizure much more difficult based on investigative man-power and other complicating factors. I later told AUSA Nichols that if I was provided an opportunity then I would act and at least attempt a traffic stop if I believed the Target had drugs ready to be distributed.

Later during the evening of July 18, 2023, DEA Agents and I conducted a traffic stop and subsequently arrested the suspected supplier in possession of a kilogram of cocaine and a loaded firearm. The “fentanyl protocol” also states that drugs which are commonly mixed with fentanyl, such as cocaine and heroin should be taken seriously. This traffic stop and subsequent arrest and seizure of drugs led to me receiving a second, more serious reprimand at the USAO.

On July 21, 2023, at approximately 2:00 p.m., my supervisor and I attended another meeting at the USAO.

This section covers number 2) in my complaint: “Abuse of Authority.”

This meeting was hosted by supervisory AUSA Timothy Vasquez and AUSA Elaine Ramirez. This meeting was called by AUSA Vasquez because of the traffic stop that I had conducted on July

18, 2023 (and most likely stemmed from our April 6, 2023, traffic stop too). At the beginning of our meeting, AUSA Vasquez told me that it was a good thing two days had passed prior to our meeting to allow his anger to pass. AUSA Vasquez then informed me that his anger had since turned to disappointment and that he was severely disappointed in me. AUSA Vasquez told me that I was instructed not to make the traffic stop on the supplier's vehicle. AUSA Vasquez told me that I purposefully disregarded teamwork with his office and acted instead as a "rogue" agent. AUSA Vasquez told me that if we were both in the military that he would have me at "Captain's Mast." ("Captain's Mast" is a non-judicial disciplinary procedure used by the Navy.) I understood this to mean that AUSA Vasquez would want to see me punished or disciplined for my actions. AUSA Vasquez also informed me that his initial inclination was to "decline" the arrest of the supplier for federal prosecution (he stated he texted the word "decline" to AUSA Ramirez). I believe AUSA Vasquez's comments were threatening and personal in nature and was an abuse of his authority to direct those words towards me.

In my defense, I explained to both AUSA Vasquez and to AUSA Ramirez that I believed the source was preparing to sell over 20,000 fentanyl pills, and the goal of our operation was to stop the distribution of fentanyl, as well as to gather necessary evidence. I explained to AUSA Vasquez and to AUSA Ramirez that we at DEA have a responsibility to the public as well as a duty to uphold the "fentanyl protocol" (which was issued by OEO) to at least attempt an apprehension of the drugs prior to their distribution. I explained that the protocol has procedures and is very clear that law enforcement should act even if the risk means that my investigation will be compromised. It also states that "protecting public safety is paramount." It was only after the traffic stop was made that we realized the source was preparing to sell cocaine and not fentanyl. (This information would not have been garnered without the traffic stop having been made.)

I further explained to AUSA Vasquez and to AUSA Ramirez that I was not a "rogue" agent as AUSA Vasquez had previously labeled me. In fact, prior to attempting any surveillance or traffic stop on the supplier, I had in place an approved operational plan. This approved operational plan was approved by both my first and second-line supervisors at DEA.

I explained to AUSA Vasquez and to AUSA Ramirez that their office has been aware of numerous other times on other DEA agents' cases (this year/2023) in Albuquerque where they were made aware and were complicit in allowing quantities of fentanyl pills in excess of 50,000 + to be distributed in Albuquerque. I continued to explain that for us to charge a criminal with an illegal act – we must first prove their knowledge and intention to commit said act. However, if in law enforcement we have the same knowledge regarding drugs about to be distributed and then we intentionally fail to act on this knowledge – we would be no different than the criminals – whom we are tasked to apprehend. I also discussed "willful blindness" with the AUSA Timothy Vasquez and AUSA Elaine Ramirez and explained that if criminals were not allowed to use such an excuse, then neither should law enforcement. For example, if Agents did not attempt to stop or intervene on a person suspected of transporting drugs in a vehicle, and

after the drugs were allowed to be delivered to a residence for further distribution it would be disingenuous to later state, "...Well we can't say for sure what that person was transporting because we did not stop and search the vehicle." Obviously, we are held to a higher standard, and such an excuse is simply unacceptable. (This excuse is commonly used by some at the USAO and by some at DEA too.)

Towards the end of this meeting, AUSA Vasquez explained to me that I may not be able to work "long-term" investigations in the future – with their office - because I have broken the trust of their AUSAs. They also explained to me that in order to catch the bigger (drug) supplier that sometimes decisions must be made to allow drugs to be distributed and that I was not able to handle such knowledge due to my "conscientious objections." AUSA Ramirez sat with and supported AUSA Vasquez' statements to me. AUSA Ramirez also told me that earlier that morning (on July 18th) she knew what decision I was going to make prior to me even making it. I told AUSA Vasquez and AUSA Ramirez that I believed their logic was deeply flawed and that the general public would be outraged if they knew fentanyl was being permitted to be distributed – just to further an agent's (or their office's) investigation.

On July 27, 2023, at approximately 11:00 a.m., my partner and I were invited in for another meeting at the USAO in downtown Albuquerque. This meeting was organized by AUSA Nichols and me. AUSA Mattei, AUSA Nichols, AUSA Raquel Ruiz Velez, and an AUSA intern were present, along with my partner and me. During this meeting we primarily discussed how we planned on ending this investigation. Towards the end of the meeting, AUSA Nichols and AUSA Mattei informed my partner and I that the Target whom agents seized 747 grams of fentanyl from on April 6, 2023, was not going to be criminally charged, because it was believed at their office (and also specifically by AUSA Elaine Ramirez who was quoted) that my partner and I conducted "gross government misconduct." AUSA Mattei even stated to me the words, "you stole his drugs." (Referring to agents stealing fentanyl out of the secondary Target's vehicle.)

I believe these words spoken by AUSA Mattei were completely out of line and are again another example of "Abuse of Authority."

AUSA Mattei further told me that I was wrong to have conducted a traffic stop on July 18, 2023, (which resulted in an arrest and the seizure of a kilogram of cocaine) because I am not allowed to stop a wire target during a wiretap investigation while the wire target is holding the phones that agents were listening too. I explained to AUSA Mattei that it would be against our DEA agent's manual to knowingly allow drugs to be distributed. AUSA Mattei told my partner and I that our Agents policy was "ridiculous."

I believe AUSA Mattei's statement to my partner and I was again another example of "abuse of authority" as he does not have the authority to tell DEA agents not to stop a vehicle being used to distribute drugs.

I believe during the meetings mentioned above an "abuse of authority" was made by the USAOs by placing pressure on my DEA partner and I not to stop vehicles being used to

distribute drugs. The USAO is so focused on furthering their drug conspiracies that they are willing to look the other way and allow drugs to continue to flow into our communities.

The above investigation has the following DEA case number [REDACTED]. My DEA partner whom I have mentioned in this complaint is Special Agent Emmett Fritz. He can confirm my statements. He can be reached at [REDACTED] and at [REDACTED]. My immediate supervisor can also confirm my statements. His name is William "Billy" Baker and he can be reached at [REDACTED] and at [REDACTED].

In addition, I and several other DEA agents in our Albuquerque office are aware of two other DEA investigations regarding fentanyl. These investigations are also wiretap investigations.

This brings me to my final complaint number 3) Substantial and specific danger to the public health or safety.

During these fentanyl investigations listed under DEA case numbers [REDACTED] and [REDACTED] agents intercepted phone calls where they believed fentanyl was likely to be distributed. However, on several of these large shipments of fentanyl into Albuquerque, New Mexico, no attempt to stop the distribution of fentanyl were made by the USAO and DEA. This was based on pressure from our USAO. I know that AUSA Mattei specifically did not want traffic stops to be made under DEA case number [REDACTED], until the end of the investigation when the traffic stops were later authorized and resulted in massive seizures of drugs.

In addition, my supervisor Billy Baker and I were witness to a surveillance on June 30, 2023, where other DEA agents believed up to 74,000 fentanyl pills were allowed to be delivered to Albuquerque, New Mexico. No attempt to stop this fentanyl shipment was made. And thus, is a clear example of Substantial and specific danger to the public health or safety. If needed, I have a text message on my government issued phone which can be used as evidence to this example of allowed distribution.

Additional possible witnesses to the above two fentanyl cases include:

Intelligence Analyst [REDACTED], [REDACTED] and at [REDACTED]

Special Agent [REDACTED], [REDACTED] and at [REDACTED]

Special Agent [REDACTED], [REDACTED] and at [REDACTED]

The above three individuals are exceptional at their work. I have great respect for them. I believe they have been pressured by the USAO to let shipments of fentanyl go – rather than having some negative side effect happen to their investigations, by making the necessary stops. These three individuals have specific knowledge regarding large amounts of fentanyl that were delivered to Albuquerque, and they will most likely feel uncomfortable discussing this topic with you - due to its sensitive nature.

Lastly – and maybe the second most important part to this complaint is the word "knowledge."

The defense that the USAO and other agents and supervisory agents at DEA will use is that they did not really know the vehicle was transporting illegal drugs because they physically did not see the drugs. This is an obvious defense strategy – however, it is completely flawed and frankly, it is a weak argument to make.

First, the “fentanyl protocol” states a much lower standard is needed to stop the distribution of fentanyl and that is “probable cause.” “Probable cause” does not mean the USAO, or the DEA have to be 100% certain that fentanyl is being distributed, only that “probable cause” is needed. “Probable cause” is a standard that is higher than “reasonable suspicion,” however, it is also much lower than needing to be 100% certain.

When phone calls are intercepted which targets of the investigation state, they are going to distribute drugs. And when agents combine surveillance with the intercepted phone calls, and subsequently observe the traffickers do what they said they would do, this then leads to knowledge. Knowledge is the determining factor which dictates how we should act.

Another excuse likely to be used by the USAO and agents is - what if we conduct a traffic stop on a source vehicle and afterwards, we discover we were wrong regarding the distribution of drugs? The agent’s manual and the “fentanyl protocol” never say the USAO nor agents must be correct in their belief, only that agents believe that the distribution is more likely to take place than not. Having the fear of being wrong is not an acceptable excuse to use when factoring in whether to make a traffic stop.

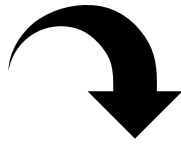
Having provided my statement, this simple fact remains. Drugs, specifically fentanyl, have been and will continue to be allowed to be distributed as long as the USAO and agents believe their investigation comes first or their unwillingness to jeopardize their investigation comes first - over the seizing of drugs.

Lastly, I know that the USAO and the agents I have mentioned usually have the right intention, and that is to apprehend the largest traffickers they can. However, I believe they are at times severely misguided and could potentially be held liable, if someone were to find out they were allowing killer drugs, such as fentanyl, to be distributed simply to catch “the bigger fish.”

Please feel free to contact me at [REDACTED] or at [REDACTED] for further information.

I am reaching out to you - the Office of Inspector General - as my last effort to rectify these problems.

Sincerely, SA David Howell, DEA, dated August 11, 2023.



OEO's fentanyl protocol is listed below.

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