

EMPOWER OVERSIGHT

Whistleblowers & Research



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

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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.