

118TH CONGRESS  
1ST SESSION

# S. 389

To deter the trafficking of illicit fentanyl, provide justice for victims, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 9, 2023

Mr. THUNE introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To deter the trafficking of illicit fentanyl, provide justice for victims, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Justice Against Spon-  
5 sors of Illicit Fentanyl Act of 2023”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress finds the following:

8 (1) International drug trafficking is a serious  
9 and deadly problem that threatens the vital interests

1 of the United States and the safety and health of  
2 every community in the United States.

3 (2) Transnational criminal organizations, car-  
4 tels, and violent gangs are leading perpetrators of  
5 drug trafficking, often combining the manufacture  
6 and distribution of synthetic opioids with violence,  
7 human smuggling and trafficking, firearms traf-  
8 ficking, and public corruption, and pose a sustained  
9 threat to the homeland security of the United  
10 States.

11 (3) Illicit fentanyl is primarily produced in clan-  
12 destine laboratories and trafficked into the United  
13 States in powder and pill form, including fentanyl-  
14 laced counterfeit pills.

15 (4) The People’s Republic of China (hereinafter  
16 in this section referred to as “China”) is the pri-  
17 mary source country of fentanyl precursor chemicals  
18 used to manufacture the illicit fentanyl that is traf-  
19 ficked into the United States.

20 (5) The Commission on Combating Synthetic  
21 Opioid Trafficking, established under section 7221  
22 of the National Defense Authorization Act for Fiscal  
23 Year 2020 (Public Law 116–92), reported in 2022  
24 that China, which supplied 70 to 80 percent of  
25 fentanyl seized by Federal authorities between 2014

1 and 2019, has been surpassed by Mexico as the  
2 “dominant source” of illicit fentanyl in the United  
3 States.

4 (6) Illicit fentanyl is primarily trafficked by  
5 land into the United States through legal ports of  
6 entry, as well as between such ports of entry, with  
7 some trafficking facilitated by domestic and foreign-  
8 based social media and encrypted communication ap-  
9 plications.

10 (7) In fiscal years 2021 and 2022, U.S. Cus-  
11 toms and Border Protection seized over 24,000  
12 pounds of fentanyl at ports of entry, a 200 percent  
13 increase from the amounts seized in fiscal years  
14 2019 and 2020.

15 (8) Deaths caused by the trafficking of illicit  
16 fentanyl have reached epidemic proportions, as—

17 (A) fentanyl was involved in nearly  
18 200,000 deaths in the United States during the  
19 period between 2014 and 2020;

20 (B) the number of drug overdose deaths in  
21 the United States surpassed 100,000 during  
22 the period between May 2020 and April 2021,  
23 of which over 64,000 deaths were related to  
24 fentanyl; and

1 (C) fentanyl and other synthetic opioids  
2 caused approximately  $\frac{2}{3}$  of more than 107,000  
3 fatal overdoses in the United States during  
4 2021.

5 (9) Overdose deaths remain a leading cause of  
6 injury-related death in the United States, and  
7 fentanyl-related deaths are the leading cause of  
8 deaths among adults aged 18 to 45.

9 (10) Failure to meaningfully combat illicit  
10 fentanyl trafficking will continue to stress the health  
11 care and law enforcement resources of the United  
12 States.

13 (11) It is necessary to recognize the substantive  
14 causes of action for aiding and abetting and con-  
15 spiracy liability under the Controlled Substances Act  
16 (21 U.S.C. 801 et seq.).

17 (12) The decision of the United States Court of  
18 Appeals for the District of Columbia in *Halberstam*  
19 *v. Welch*, 705 F.2d 472 (D.C. Cir. 1983), which has  
20 been widely recognized as the leading case regarding  
21 Federal civil aiding and abetting and conspiracy li-  
22 ability, including by the Supreme Court of the  
23 United States, provides the proper legal framework  
24 for how such liability should function in the context

1 of the Controlled Substances Act (21 U.S.C. 801 et  
2 seq.).

3 (13) Persons, entities, or countries that know-  
4 ingly or recklessly contribute material support or re-  
5 sources, directly or indirectly, to persons or organi-  
6 zations that pose a significant risk of committing  
7 acts of trafficking of illicit fentanyl that threaten the  
8 safety and health of nationals of the United States  
9 or the national security, foreign policy, or economy  
10 of the United States, necessarily direct such conduct  
11 at the United States, and should reasonably antici-  
12 pate being brought to court in the United States to  
13 answer for that conduct.

14 (14) The United States has a compelling inter-  
15 est in providing persons and entities injured as a re-  
16 sult of the trafficking of illicit fentanyl into the  
17 United States with full access to the court system in  
18 order to pursue civil claims against persons, entities,  
19 or countries that have knowingly or recklessly pro-  
20 vided material support or resources, directly or indi-  
21 rectly, to the persons or organizations responsible  
22 for their injuries.

23 (b) PURPOSE.—The purpose of this Act is to provide  
24 civil litigants with the broadest possible basis, consistent  
25 with the Constitution of the United States, to seek relief

1 against persons, entities, and foreign countries, wherever  
 2 acting and wherever they may be found, that have pro-  
 3 vided material support, directly or indirectly, to foreign  
 4 organizations or persons that engage in the trafficking of  
 5 illicit fentanyl into the United States.

6 **SEC. 3. RESPONSIBILITY OF FOREIGN STATES FOR THE**  
 7 **TRAFFICKING OF FENTANYL INTO THE**  
 8 **UNITED STATES.**

9 (a) IN GENERAL.—Chapter 97 of title 28, United  
 10 States Code, is amended by inserting after section 1605B  
 11 the following:

12 **“§ 1605C. Responsibility of foreign states for the traf-**  
 13 **ficking of fentanyl into the united states**

14 “(a) DEFINITION.—In this section, the term ‘fentanyl  
 15 trafficking’ means—

16 “(1) means any illicit activity—

17 “(A) to produce, manufacture, distribute,  
 18 sell, or knowingly finance or transport—

19 “(i) illicit fentanyl, including any con-  
 20 trolled substance that is a synthetic opioid  
 21 and any listed chemical (as defined in sec-  
 22 tion 102 of the Controlled Substances Act  
 23 (21 U.S.C. 802)) that is a synthetic opioid  
 24 utilized for fentanyl production; or

1                   “(ii) active pharmaceutical ingredients  
2                   or chemicals that are used in the produc-  
3                   tion of fentanyl;

4                   “(B) to attempt to carry out an activity  
5                   described in subparagraph (A); or

6                   “(C) to assist, abet, conspire, or collude  
7                   with any other person to carry out an activity  
8                   described in subparagraph (A);

9                   “(2) a violation of section 401(a)(1) of the Con-  
10                  trolled Substances Act (21 U.S.C. 841(a)(1)) involv-  
11                  ing manufacturing, distributing, or dispensing, or  
12                  possessing with intent to manufacture, distribute, or  
13                  dispense, fentanyl or a fentanyl-related substance in  
14                  or into the United States;

15                  “(3) an attempt or conspiracy to commit a vio-  
16                  lation described in paragraph (2);

17                  “(4) having manufactured, distributed, or dis-  
18                  pensed, or possessed with intent to manufacture,  
19                  distribute, or dispense, fentanyl or a fentanyl-related  
20                  substance outside the United States with the inten-  
21                  tion of such fentanyl or fentanyl-related substance  
22                  being distributed or dispensed in or into the United  
23                  States in violation of section 401(a)(1) or 406 of the  
24                  Controlled Substances Act (21 U.S.C. 841(a)(1),  
25                  846); or

1           “(5) having produced or manufactured, distrib-  
2           uted, or dispensed, or possessed with intent to man-  
3           ufacture, distribute, or dispense, a substance that is  
4           a precursor to fentanyl or a fentanyl-related sub-  
5           stance with the intention of such precursor, fentanyl,  
6           or fentanyl-related substance being distributed or  
7           dispensed in or into the United States in violation  
8           of section 401(a)(1) or 406 of the Controlled Sub-  
9           stances Act (21 U.S.C. 841(a)(1), 846).

10          “(b) RESPONSIBILITY OF FOREIGN STATES.—A for-  
11        eign state shall not be immune from the jurisdiction of  
12        the courts of the United States in any case in which money  
13        damages are sought against a foreign state for physical  
14        injury to person or property or death occurring in the  
15        United States and caused by—

16                “(1) an act of fentanyl trafficking in or into the  
17        United States; and

18                “(2) a tortious act or acts of the foreign state,  
19        or of any official, employee, or agent of that foreign  
20        state while acting within the scope of his or her of-  
21        fice, employment, or agency, regardless where the  
22        tortious act or acts of the foreign state occurred.

23          “(c) CLAIMS BY NATIONALS OF THE UNITED  
24        STATES.—



1           “(1) DEFINITION.—In this subsection, the term  
2 ‘person’ has the meaning given the term in section  
3 1 of title 1.

4           “(2) CLAIMS.—If a foreign state would not be  
5 immune under subsection (b) with respect to an act  
6 of fentanyl trafficking in or into the United States,  
7 a national of the United States may bring a claim  
8 against the foreign state in the same manner, and  
9 may obtain the same remedies, as a claim with re-  
10 spect to an act of international terrorism brought  
11 under section 2333.

12           “(3) AIDING AND ABETTING LIABILITY.—In an  
13 action under paragraph (2) for an injury arising  
14 from an act of fentanyl trafficking in or into the  
15 United States, liability may be asserted as to any  
16 person who aids and abets, by knowingly providing  
17 substantial assistance, or who conspires with the  
18 person who committed such an act of fentanyl traf-  
19 ficking.

20           “(4) EFFECT ON OTHER FOREIGN SOVEREIGN  
21 IMMUNITIES.—Nothing in paragraph (3) affects im-  
22 munity of a foreign state from jurisdiction under  
23 other law.

24           “(d) RULE OF CONSTRUCTION.—A foreign state shall  
25 not be subject to the jurisdiction of the courts of the

1 United States under subsection (b) on the basis of an  
2 omission or a tortious act or acts that constitute mere neg-  
3 ligence.”.

4 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

5 (1) The table of sections for chapter 97 of title  
6 28, United States Code, is amended by inserting  
7 after the item relating to section 1605B the fol-  
8 lowing:

“1605C. Responsibility of foreign states for the trafficking of fentanyl into the  
United States.”.

9 (2) Subsection 1605(g)(1)(A) of title 28,  
10 United States Code, is amended by striking “or sec-  
11 tion 1605B” and inserting “, 1605B, or 1605C”.

12 **SEC. 4. STAY OF ACTIONS PENDING STATE NEGOTIATIONS.**

13 (a) EXCLUSIVE JURISDICTION.—The courts of the  
14 United States shall have exclusive jurisdiction in any ac-  
15 tion in which a foreign state is subject to the jurisdiction  
16 of a court of the United States under section 1605C of  
17 title 28, United States Code, as added by section 3(a) of  
18 this Act.

19 (b) INTERVENTION.—The Attorney General, in con-  
20 sultation with the Administrator of the Drug Enforcement  
21 Administration, may intervene in any action in which a  
22 foreign state is subject to the jurisdiction of a court of  
23 the United States under section 1605C of title 28, United  
24 States Code, as added by section 3(a) of this Act, for the

1 purpose of seeking a stay of the civil action, in whole or  
2 in part.

3 (c) STAY.—

4 (1) IN GENERAL.—A court of the United States  
5 may stay a proceeding against a foreign state in an  
6 action brought under section 1605C of title 28,  
7 United States Code, as added by section 3(a) of this  
8 Act, if the Secretary of State certifies that the  
9 United States is engaged in good faith discussions  
10 with the foreign state defendant concerning the reso-  
11 lution of the claims against the foreign state, or any  
12 other parties as to whom a stay of claims is sought.

13 (2) DURATION.—

14 (A) IN GENERAL.—A stay under this sec-  
15 tion may be granted for not more than 180  
16 days.

17 (B) EXTENSION.—

18 (i) IN GENERAL.—The Attorney Gen-  
19 eral may petition the court for an exten-  
20 sion of the stay for additional 180-day pe-  
21 riods.

22 (ii) RECERTIFICATION.—A court shall  
23 grant an extension under clause (i) if the  
24 Secretary of State recertifies that the  
25 United States remains engaged in good

1 faith discussions with the foreign state de-  
2 fendant concerning the resolution of the  
3 claims against the foreign state, or any  
4 other parties as to whom a stay of claims  
5 is sought.

6 **SEC. 5. SEVERABILITY.**

7 If any provision of this Act or any amendment made  
8 by this Act, or the application of a provision or amend-  
9 ment to any person or circumstance, is held to be invalid,  
10 the remainder of this Act and the amendments made by  
11 this Act, and the application of the provisions and amend-  
12 ments to any other person not similarly situated or to  
13 other circumstances, shall not be affected by the holding.

14 **SEC. 6. EFFECTIVE DATE.**

15 The amendments made by this Act shall apply to any  
16 civil action—

17 (1) pending on, or commenced on or after, the  
18 date of enactment of this Act; and

19 (2) arising out of an injury to a person, prop-  
20 erty, or business on or after January 1, 2013.

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