



July 1, 2026

Ryan Ellison
First Assistant United States Attorney
United States Attorney's Office
District of New Mexico
201 3rd Street NW, Suite 900
Albuquerque, NM 87102
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VIA CERTIFIED U.S. MAIL & ELECTRONIC MAIL

Re: Touhy Demand under 28 C.F.R. §§ 16.21–16.29 for Voluntary Production of Agency Records Concerning the Drug Enforcement Administration's Fentanyl Operations and Decisions to Forgo Seizure of Large Quantities of Fentanyl between 2022 and 2025 in New Mexico

Dear First Assistant United States Attorney Ellison:

The New Mexico Department of Justice (NMDOJ) has opened an investigation into the decisions and conduct of the Drug Enforcement Agency (DEA) that exposed New Mexicans to vast quantities of fentanyl. According to whistleblower statements and media reporting, the DEA, potentially in violation of agency policy, deliberately chose not to seize millions of fentanyl pills in New Mexico, thereby resulting in these pills being distributed throughout New Mexico communities. Fentanyl is a highly addictive narcotic associated with violent crime, property crime, and deaths due to overdose, and its presence in large quantities in New Mexico has caused substantial harm to the state's residents.

To conduct this investigation, NMDOJ requires policies, protocols, documents, and investigative reports generated by the DEA and the United States Attorney's Office for the District of New Mexico (USAONM) that are currently in the possession of the United States Department of Justice (USDOJ). Under *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951) and 28 C.F.R. §§ 16.21 to 16.29, NMDOJ respectfully demands production of these materials and asks for the voluntary cooperation of the

USDOJ in the investigation of this very serious matter.

Factual Background

On June 22, 2026, the Associated Press (AP) and the Albuquerque Journal reported that DEA agents in the District of New Mexico monitored numerous large fentanyl shipments between 2023 and 2025 for which they elected not to intervene or seize the dangerous contraband and instead allowed those shipments to reach New Mexico communities. These decisions were apparently motivated by the goal to build even larger trafficking prosecutions.

In one documented transaction, agents observed and recorded the delivery of 74,000 fentanyl pills to an Albuquerque mobile home park in June 2023 without intervening. A former DEA supervisor told the AP that the DEA permitted “millions” of pills to go unseized during a separate multistate investigation. DEA Special Agent David Howell, a nineteen-year agency veteran, filed an official whistleblower complaint in 2023 and subsequently disclosed to DOJ’s Office of Professional Responsibility in early 2024 that agents had observed, without seizing, separate deliveries of 150,000 and 50,000 fentanyl pills.

The AP reported the existence of USDOJ protocols specifically governing fentanyl seizure decisions that made the protection of public safety paramount and required agents to seize or prevent the distribution of fentanyl pills “as soon as practicable.” This protocol was not previously made public, and as part of its investigation, NMDOJ needs to know when it was adopted and how long it was in effect. The USDOJ apparently rewrote those protocols in 2024 to afford agents greater discretion.

The decision of the DEA to allow millions of fentanyl pills to be distributed to New Mexico residents had disastrous real-world consequences. During the relevant period, national overdose deaths fell 14 percent while New Mexico recorded a 21 percent increase—the largest such spike in the nation.

Demand for Materials Relevant to NMDOJ’s Investigation

On June 24, 2026, Governor Michelle Lujan Grisham formally requested that the New Mexico Department of Justice investigate this matter and determine whether to seek criminal prosecution or civil remedies. The Attorney General of New Mexico has a statutory duty to prosecute any civil or criminal matter in which the State of New Mexico may be a party or interested “when requested to do so by the governor.” NMSA 1978, § 8-5-2(B) (1975). NMDOJ makes the present *Touhy* demand pursuant to this statutory duty.

NMDOJ seeks the broadest possible production permitted by 28 C.F.R. § 16.26 of the following categories of records:

- All fentanyl seizure policies, protocols, directives, and guidance issued by the USDOJ, the DEA, or the USAONM in effect in New Mexico or other jurisdictions in the United States from 2017 to 2025.
- All DEA manuals and field directives, guidance, or instruction governing controlled buys, controlled deliveries, or the interdiction of narcotics, including directives relating to the seizure of narcotics for agents in the District of New Mexico issued or in effect from 2022 to 2025.
- All DEA investigative reports, surveillance logs, operational summaries, wiretap monitoring records, case agent notes, and supervisory review or approval records relating to fentanyl investigations in the District of New Mexico between January 1, 2022, and December 31, 2025, including all documents reflecting a decision to seize or not seize fentanyl during an investigation.
- All communications between DEA agents and assistant United States attorneys or other employees of USAONM concerning decisions to seize or not seize fentanyl during investigations in the District of New Mexico, including any admonishments or interpretations of policies, protocols, directives, or guidance.
- All federal court filings in which federal prosecutors or DEA agents referenced unseized fentanyl pills from fentanyl deliveries monitored or observed by the DEA in the District of New Mexico between 2022 and 2025.
- All whistleblower complaints, together with attachments and supporting documentation, filed with the U.S. Office of Special Counsel or USDOJ's Office of Professional Responsibility concerning any decision by the DEA not to seize fentanyl in the District of New Mexico or in other jurisdictions in the United States between 2022 and 2025, including Agent Howell's complaint.
- All communications, disciplinary decisions, adverse personnel actions, performance evaluations, and investigative files concerning or arising from the above whistleblower complaints.

- All records relating to Agent Howell’s seizure of fentanyl identified through wiretap monitoring in Albuquerque, including investigative reports, communications between Agent Howell and his supervisors and between Agent Howell and employees of USAONM about the decision to seize the contraband.
- All records relating to the change in protocol language concerning the seizure of fentanyl and other dangerous narcotics, including communications, memoranda, drafts, and legal analysis.
- All records reflecting whether the non-seizure practice in the District of New Mexico was used, considered, or rejected in other districts in the United States.
- All records supporting or refuting the DEA’s public statements that its fentanyl seizure practices in the District of New Mexico between 2022 and 2025 are “consistent with Department guidance.”
- All communications regarding the AP and Albuquerque Journal reporting on the non-seizure of fentanyl identified in this letter.
- All communications regarding the Governor’s request that NMDOJ investigate the non-seizure of fentanyl by the DEA in New Mexico and NMDOJ’s investigation.
- All records reflecting any internal analysis, assessments, or communications regarding the public health consequences of decisions not to seize fentanyl, including documented overdose deaths or injuries attributable or potentially attributable to fentanyl pills that went unseized and any records reflecting the acknowledgment in Agent Howell’s assertion that the agency “cannot account for the unseized shipments.”
- All records provided to the AP and the Albuquerque Journal in connection with their investigation of the DEA’s practice of not seizing fentanyl pills.

The DEA has publicly represented that “the investigative decisions at issue were lawful, reasonable under the circumstances and consistent with Department guidance.” Considering the lethality of fentanyl and the high overdose rate in New Mexico, it is vital for NMDOJ to be provided with a full record to test that representation. NMDOJ is open to discussing confidentiality agreements or other protective measures to the extent the above materials include sensitive law enforcement information, confidential sources, or other privileged or protected

materials that can be lawfully produced under 28 C.F.R. § 16.26.

NMDOJ's investigation is time sensitive due to statutes of limitations, the need to avoid evidence or information becoming stale, and the public's right to know the truth surrounding the deeply disturbing allegations reported by the media. NMDOJ therefore requests that within thirty days, by **July 31, 2026**, the USDOJ voluntarily produce the above-listed records or provide a production schedule that reflects the urgency and gravity of this matter. All questions or productions should be addressed to the following:

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New Mexico Department of Justice
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The people of New Mexico deserve a full accounting of federal actions impacting their communities. It is my hope that the USDOJ agrees and will produce all documents that can be legally produced.

Sincerely,



Raúl Torrez
Attorney General of New Mexico

cc: Acting Attorney General Todd Blanche
U.S. Department of Justice
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Washington, D.C. 20530

Acting Administrator Robert Murphy
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