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U.S. Terrorism Law Hits Close to Home: The Designation of Drug Cartels as Foreign Terrorist Organizations Is Not a Foreign Issue

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Last week the U.S. Department of State designated six Mexican cartels as Foreign Terrorist Organizations ("FTOs"). That means that a person or company that provides essentially anything of value—a phone, a dollar or a peso, a money remittal, or an email or social media account—to a known cartel member or affiliate is violating the United States' expansive material support law, Section 2339B of Title 18. This may seem like a remote issue in a foreign land. It assuredly is not.

In Mexico, where cartels reportedly control up to one-third of the territory and are enmeshed in broad swaths of lawful economic activity, including in the agricultural and mining sectors, as well as in governance, the effects of FTO designation on U.S. financial institutions and companies—and of course on Latin American and multinational financial institutions and companies—are likely to be seismic.

Particularly in light of a Feb. 5 directive by Attorney General Pam Bondi that "total elimination" of the cartels is a top U.S. Department of Justice priority, U.S. companies should prioritize understanding and addressing the implications of FTO designation. And they should understand with clarity the risks that flow from violations of the material support statute—including wide-ranging criminal investigations, criminal fines and civil forfeiture, follow-on civil lawsuits, and up to two decades in federal prison.

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The Material Support Statute

Historically associated with post-9/11 prosecutions against ISIS and al Qaeda acolytes, the Section 2339B material support statute has an expansive reach: it imposes criminal liability on

any person or company that knowingly provides, attempts to provide, or conspires to provide "material support or resources" to an FTO. Several key terms illustrate the breadth of the law.

First, "material support or resources" encompasses any service or thing of value. Anything ranging from direct cash payments and financial or communication services—to seemingly innocent transactions involving food, clothing, or transportation—may constitute "material support or resources."

The statute's scienter element, "knowingly," requires that a person knows the recipient of the good or service is associated with a designated cartel or cartel activities. But this is not as simple as it sounds. Standard sanctions compliance—just checking OFAC's Specially Designated Nationals and Blocked Persons list—will not be enough. One can expect DOJ to look skeptically upon employees, agents, or executives who turn a blind eye towards suspicious conduct or customers.

Material support investigations targeting legitimate companies and their personnel will inevitably focus on whether circumstantial evidence of cartel links was sufficient to demonstrate that employees, directors or executives knew—or consciously avoided learning—that they were dealing with a cartel. And, drawing lessons from prior FCPA enforcement, U.S. companies should prepare for DOJ to expect broad compliance programs and aggressive reporting policies. Through training, KYC, and careful monitoring, companies will be expected to ensure that their employees and agents are aware of the designation and are taking reasonable, good faith measures to prevent misconduct.

A few other aspects of the material support statute are also worth emphasizing. Its penalties are hefty: individuals face up to 20 years in federal prison, and companies face substantial financial penalties in the form of fines and restitution—to say nothing of the reputational harms associated with even investigations into potential violations of U.S. anti-terrorism laws. Moreover, designation heightens the risk of follow-on lawsuits under the Anti-Terrorism Act ("ATA"), 18 U.S.C. §2333. The ATA imposes civil liability on companies that provide money or services to a designated FTO that is involved in an attack that injures or kills a U.S. national.

This is not a mere notional risk. In recent years, myriad lawsuits have been filed against otherwise legitimate banks and companies under the ATA, involving billions of dollars in awards to victims of designated FTOs. By means of just one example, over the last two decades, Chiquita Brands International faced numerous civil lawsuits in the United States stemming from its alleged support to an FTO operating in Colombia—including an action that resulted in a 2024 verdict of over $38 million against the company.

Increased DOJ Focus on Cartels and Transnational Crime

DOJ is poised to vigorously deploy the material support law against both U.S. and foreign companies in support of the president's whole-of-government strategy targeting the cartels. In a Feb. 5, 2025, memorandum, Attorney General Bondi outlined a "fundamental change in mindset and approach" in DOJ's efforts against the cartels requiring that DOJ "teams...have full and immediate access to the most serious and broad charges that Congress has made available"—including "terrorism charges" such

as the material support law. The memorandum accordingly announced various changes aimed at "removing bureaucratic impediments to aggressive prosecutions" implicating the cartels.

Among these changes, prosecutors are now exempt from first seeking DOJ National Security Division approval before filing charges under the material support law or taking investigative steps in connection with those charges—a shift that will surely embolden prosecutors in U.S. Attorney's Offices across the country to launch material support investigations with haste.

Even as many anticipate diminished DOJ corporate enforcement generally, it would be dangerous to assume any such diminution will extend to enforcement activities related to the cartels. Here, the recent DOJ prosecution of Lafarge SA is instructive.

A Case in Point: '*United States v. Lafarge SA*'

Lafarge is a global building materials manufacturer that pled guilty in 2022 to providing nearly $6 million to designated Syria-based FTOs in order to ensure the protection of its employees and safeguard the continuity of its Syria-based cement plant operation. Although the core of Lafarge's conduct occurred abroad, there was a sufficient nexus to the United States because (i) implicated executives used personal email accounts hosted by U.S.-based providers, (ii) a single wire transfer transited through intermediary banks in New York City, and (iii) an implicated Lafarge executive was a U.S. citizen. As part of its guilty plea, Lafarge agreed to financial penalties totaling $777.78 million.

Material support investigations modeled on the Lafarge case will likely be a key tool for DOJ in its root-and-stem approach to effecting the "total elimination of cartels."

Conclusion

The legal and reputational risks of even a material support investigation are extremely high. Companies should ensure that their internal training, reporting, and compliance policies and protocols reflect and seek to mitigate this risk. A lengthy DOJ investigation focused on whether a transaction involving a cartel-affiliated person or company was the result of an innocent mistake, mere negligence, willful blindness, or intentional conduct will itself have extraordinary financial and reputational costs. Accordingly, companies with business that touches in virtually any way on Latin America—as well as their lawyers—ignore the significance of the cartel FTO designations at their peril.

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