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Drug Cartels' Terrorist Label Raises Litigation Risk For Cos.

By **José Arvelo, Madeline Sanderford and Gabriel Gates** (February 4, 2025, 5:55 PM EST)

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The recently installed Trump administration has announced plans to designate Mexican and other Latin American drug-trafficking groups as foreign terrorist organizations, or FTOs.[1]

A number of these groups have already been designated by the U.S. government as sanctioned drug traffickers, so the FTO designation will largely add both to existing federal bans on transactions with those groups and to U.S. enforcement risk relating to any such transaction.[2]

But the designation of Latin American drug-trafficking groups as FTOs creates an additional and little-noticed source of legal exposure: U.S. civil litigation risk involving terrorism claims by victims of those groups.

Latin American drug-trafficking organizations do not limit their crimes to drug trafficking. As they have gained effective control over territory, these groups have diversified their income sources to other crimes such as extortion.[3]

As a Trump executive order on the FTO designations points out, "[i]n certain portions of Mexico, [cartels] function as quasi-governmental entities, controlling nearly all aspects of society."[4]

These groups have embedded themselves in the legal economy, including the tourism and other industries, and tried to launder money through the financial system.[5]

According to the U.S. Drug Enforcement Administration, Mexico's Sinaloa Cartel, for example, has "engaged in extortion, the theft of petroleum and ores," and other crimes in their areas of influence.[6] Another Mexican cartel — the Cartel de Jalisco Nueva Generación — reportedly steals fuel from pipelines and extorts agave and avocado farmers.[7]

Many businesses have reportedly been affected either directly or in their supply chains by Mexican organized crime.[8] These drug-trafficking groups have harmed people in the U.S. and elsewhere, and companies doing business where these groups operate may suddenly find themselves in the crosshairs of costly U.S. lawsuits in the wake of the FTO designations.

Claims Under the Antiterrorism Act and U.S. Tort Law

A U.S. law known as the Antiterrorism Act, or ATA, creates a federal cause of action enabling U.S. nationals injured by reason of an "act of international terrorism" to sue those allegedly responsible for their injuries.[9]

This law extends liability not just to those designated as "terrorists" who have directly injured a U.S. national, but also to secondary actors who "aid[ed] and abet[ted], by knowingly providing substantial assistance," or "conspire[d] with the person who committed" the injurious "terrorist" act, so long as that act was "committed, planned, or authorized" by an FTO.[10]

The U.S. government's designation of Mexican and other Latin American drug-trafficking groups as FTOs thus opens the door to civil lawsuits by alleged U.S. victims of those groups against the groups' alleged supporters. The universe of alleged victims is potentially large.

Mexican cartels have kidnapped or killed U.S. citizens within Mexico, for example,[11] and similar incidents after the FTO designations could give rise to ATA claims.

The illicit fentanyl trade has affected many thousands of people. In 2022 alone, over 70,000 people died of illicit fentanyl overdose in the U.S.[12]

The Trump executive order calling for the designation of drug cartels as FTOs accordingly notes that these groups have "flooded the United States with deadly drugs."[13] All of this could potentially prompt U.S. plaintiffs lawyers to bring ATA claims under the theory that the illicit fentanyl trade by newly minted FTOs and its post-designation harmful effects on Americans qualify as "international terrorism" under the statute.

While ATA claims of this sort would be untested and their likelihood of success uncertain, the potential ATA liability could be substantial. The ATA provides for treble damages and entitles successful ATA plaintiffs to attorney fees and costs.[14]

And being the target of incendiary terrorism claims in U.S. court could bring important reputational and litigation costs regardless of the lawsuit's outcome.

The risk of U.S. litigation is not limited to ATA suits by U.S. nationals injured by Latin American drug-trafficking groups. While non-U.S. victims of these groups would not be able to pursue ATA claims because only U.S. nationals may bring ATA claims, non-U.S. victims might sue alleged supporters of Latin American drug-trafficking groups in the U.S. under tort theories such as negligence.

U.S. Lawsuits Against Alleged Terrorist Supporters

For years, U.S. plaintiffs lawyers have relied on the ATA and other tort theories to sue multinational companies alleged to have supported FTOs in various parts of the world.

Over 10 years ago, for instance, several U.S. citizens who were kidnapped by an FTO-designated Colombian armed group known as the FARC sued Chiquita Brands International Inc. under the ATA in the U.S. District Court for the Southern District of Florida.[15] These plaintiffs alleged that the company's extortion payments to that group made the company liable.[16]

By 2018, these cases had been settled and dismissed,[17] but — in June 2024 — Colombian plaintiffs

asserting non-ATA tort claims against the company in the same Florida district court won a Southern District of Florida jury verdict of over $38 million in In re: Chiquita Brands International Inc. Alien Tort Statute and Shareholder Derivative Litigation.[18]

ATA lawsuits alleging support for FTOs have centered on Middle Eastern terrorist groups and asserted claims against banks, pharmaceutical companies and telecommunications companies, among others.

For example, in May 2023, the U.S. Supreme Court decided Twitter Inc. v. Taamneh, an ATA case brought against Twitter, Facebook and Google by U.S. victims of a shooting attack at an Istanbul nightclub, for which ISIS, a designated FTO, took credit.[19]

The plaintiffs alleged that these companies supported ISIS by allowing their algorithms to disseminate ISIS messaging through their platforms.[20] The Supreme Court held that the social media companies' failure to do more to remove ISIS-related content did not constitute "aiding and abetting" FTO terrorism under the ATA.[21]

Despite the result in the Taamneh case, ATA lawsuits against alleged corporate supporters of Middle Eastern FTOs have continued, and similar lawsuits may follow the designation of Latin American drug trafficking organizations as FTOs.

Indeed, one case, Zapata v. HSBC Holdings PLC, already tried to assert ATA claims for alleged support of Mexican drug trafficking organizations but was dismissed in part because those organizations were not FTOs at the time. In that case, victims of cartel violence brought suit against HSBC in the U.S. District Court for the Eastern District of New York, alleging that the cartels' use of the bank for money laundering formed a basis for ATA liability.[22]

While recognizing the "horrific violence" inflicted by the cartels and "the unimaginable pain suffered by Plaintiffs at their hands," the court nevertheless dismissed the claims in 2019, noting that the plaintiffs could not pursue secondary liability claims under the ATA because the cartels had not been formally designated as FTOs at the time.[23]

A court addressing similar claims arising from the activities of FTO-designated drug cartels could potentially rule differently.

Conclusion

The designation of drug-trafficking organizations as FTOs should draw the attention of more than just compliance-and-investigations counsel for multinational companies operating in areas where those organizations operate, including hot spots within Mexico and even parts of the U.S.

While FTO designations pose enhanced enforcement risks that these companies should address, these designations also pose material risk of civil litigation in U.S. federal court against these companies by victims of the newly designated FTOs.

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Disclosure: Author José Arvelo and Covington represented defendants in Julin v. Chiquita Brands,

Pescatore v. Chiquita Brands, Stansell v. Chiquita Brands, and related cases through 2017.

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[1] E.g., Executive Order Designating Cartels and Other Organizations as Foreign Terrorist Organizations and Specially Designated Global Terrorists (Jan. 20, 2025) [hereinafter "Executive Order"], https://www.whitehouse.gov/presidential-actions/2025/01/designating-cartels-and-other-organizations-as-foreign-terrorist-organizations-and-specially-designated-global-terrorists/.

[2] See, e.g., Grant Nichols, et al., Preparing for Mexican Drug Cartels' Terrorist Designation, Law360 (Jan. 13, 2025), https://www.law360.com/articles/2282689/preparing-for-mexican-drug-cartels-terrorist-designation; U.S. Office of Foreign Assets Control, Sanctions Pursuant to the Foreign Narcotics Kingpin Designation Act (Sept. 2022), https://ofac.treasury.gov/media/6791/download?inline.

[3] See, e.g., Arantza Alonso Berbotto, et al., Can Businesses Stay Safe from Gangs in Mexico?, The Dialogue (Aug. 22, 2024), https://thedialogue.org/analysis/can-businesses-stay-safe-from-gangs-in-mexico/.

[4] Executive Order, § 1(a).

[5] See, e.g., Maria Abi-Habib & Simón Romero, How Labeling Cartels 'Terrorists' Could Hurt the U.S. Economy, NY Times (Jan. 22, 2025), https://www.nytimes.com/2025/01/22/world/americas/mexico-cartel-terrorists-trade.html.

[6] U.S. Drug Enforcement Administration, 2024 National Drug Threat Assessment, p. 10 (May 2024), https://www.dea.gov/sites/default/files/2024-05/5.23.2024%20NDTA-updated.pdf.

[7] Karol Suárez, Mexican Cartels Are Diversifying Business Beyond Drugs, USA Today (July 5, 2024), https://www.usatoday.com/story/news/nation/2024/07/05/mexican-cartels-diversify-fuel-tortillas-piso/74286304007/.

[8] Michael O'Boyle, Trump's Terrorist Label for Cartels Is Putting Banks on Edge, Bloomberg (Jan. 22, 2025), https://www.bnnbloomberg.ca/business/politics/2025/01/22/trumps-terrorist-label-for-cartels-is-putting-banks-on-edge/.

[9] 18 U.S.C. § 2333(a).

[10] 18 U.S.C. § 2333(d).

[11] See, e.g., Aleks Phillips, More Americans Are Killed in Mexico Every Year Than You Realize, Newsweek (Mar. 8, 2023), https://www.newsweek.com/americans-killed-mexico-homicide-data-1786431; Mitchell McCluskey & Nouran Salahieh, 'None of Us Deserved It': Americans Who Survived Kidnapping in Mexico Share Details of Their Captivity, CNN (Apr. 12, 2023), https://www.cnn.com/2023/04/12/us/kidnapped-americans-mexico-interview/index.html.

[12] National Institute on Drug Abuse, Drug Overdose Deaths: Facts and Figures (Aug. 2024), https://nida.nih.gov/research-topics/trends-statistics/overdose-death-rates#Fig2.

[13] Executive Order, § 1(a).

[14] 18 U.S.C. § 2333(a).

[15] (Julin v. Chiquita Brands Int'l, Inc., No. 08-20641; Pescatore v. Chiquita Brands Int'l, Inc., No. 09-80683; Stansell v. Chiquita Brands Int'l, Inc., No. 10-80954).

[16] E.g., Carmen Gentile, Families Sue Chiquita in Deaths of 5 Men, NY Times (Mar. 17, 2008), https://www.nytimes.com/2008/03/17/us/17chiquita.html.

[17] E.g., Brendan Pierson, Chiquita Settles with Families of U.S. Victims of Colombia's FARC, Reuters (Feb. 5, 2018), https://www.reuters.com/article/world/chiquita-settles-with-families-of-us-victims-of-colombias-farc-idUSKBN1FQ04R/.

[18] E.g., Verdict, In re: Chiquita Brands Int'l, Inc. Alien Tort Statute & Shareholder Derivative Litig., No. 08-1916 (S.D. Fla. June 10, 2024); Curt Anderson, Florida Jury Finds Chiquita Brands Liable for Colombia Deaths, Must Pay $38.3M to Family Members, Associated Press (June 11, 2024), https://apnews.com/article/chiquita-colombia-death-squads-jury-verdict-b2519c1bc2d7eb6bea207f543d8301fd.

[19] Twitter, Inc. v. Taamneh, 598 U.S. 471 (2023).

[20] Id. at 479-81.

[21] Id. at 493, 506–07.

[22] Zapata v. HSBC Holdings PLC, 414 F. Supp. 3d 342, 345–46 (E.D.N.Y. 2019).

[23] See id. at 354–59.