How Cos. Can Navigate Risks Of New Cartel Terrorist Labels

By **Iris Bennett, Andrew Adams and Lillian Stevens** (May 19, 2025)

Iris Bennett

Andrew Adams

Lillian Stevens

The transition from the Biden administration to the Trump administration has brought dramatic shifts in U.S. economic statecraft. Those changes span from the use of tariffs and export controls, on the one hand, to the ratcheting — both up and down — of economic sanctions regimes, on the other.

While that drama has captured widespread public attention in the tariff space, substantial changes in sanctions policies have remained somewhat under the radar.

But the impact of recent sanctions is unlikely to remain so for long. On Jan. 20, President Donald Trump issued Executive Order No. 14157, authorizing the designation of known narcotics trafficking cartels as foreign terrorist organizations, or FTOs, and specially designated global terrorists.

A month later, on Feb. 20, the U.S. Department of State designated eight cartels as FTOs and specially designated global terrorists: Tren de Aragua; MS-13; Cártel de Sinaloa; Cártel de Jalisco Nueva Generación; Cártel del Noreste, formerly known as Los Zetas; La Nueva Familia Michoacana; Cártel de Golfo; and Cárteles Unidos.

Unlike other recent sanctions targeting Iran or the Houthis in Yemen — jurisdictions with relatively scant trade with U.S. businesses — the cartel designations implicate one of the globe's most economically active borders and deepest bilateral trade relationships, since seven of the eight designated cartels are active in Mexico.

Given the potential for pervasive involvement by the designated cartels and their proxies in all manner of businesses operating across the U.S.-Mexico border, the enforcement risks for businesses in both countries are significant.

However, similar shifts and restructuring within the executive order may undercut the administration's ability to enforce these changes in a targeted manner.

Below, we look through the lens of two prototypical businesses — a financial services firm and a firm engaged in producing or moving goods — to explore the risks associated with operating in the region, and steps companies may take to mitigate those risks.

Implications of the FTO Designation for the Criminal and Civil Statutes

The executive branch has historically used several mechanisms to designate and sanction drug trafficking organizations: the Foreign Narcotics Kingpin Designation Act;[1] designation as a transnational criminal organization; and Executive Order No. 14059, which placed sanctions on designated foreign persons involved in narcotics trafficking and was issued in 2021 under the Biden administration.

However, the recent designation of cartels as FTOs gives rise to additional liability risks for companies that are engaged in legitimate business operations, but find themselves exposed to cartel activity and interacting with cartels and their members.

Specifically, such companies, as well as their executives and employees, are now at risk of potential criminal liability under the federal material support statute,[2] as well as potential civil liability from private litigants under both the Antiterrorism Act[3] and the Justice Against Sponsors of Terrorism Act.[4] These incentives for private litigants make the risks under that statute much more significant.

The material support statute makes it illegal to "knowingly provide[] material support or resources to a foreign terrorist organization," including indirect financial support and services. Critically, the material support statute not only prohibits the provision of support or supplies to FTOs, but also creates an affirmative duty for financial institutions to freeze any assets they become aware of that an FTO or its agent has an interest in.

JASTA and the ATA impose further liability by permitting U.S. nationals — or their estate, survivors or heirs — "whose person, property, or business" has been harmed by "an act of international terrorism" to sue any person or company "who aids and abets, by knowingly providing substantial assistance" for such an act.[5]

The provision of support — e.g., money or services — to a terrorist organization does not automatically qualify as aiding and abetting within the meaning of the ATA because this secondary liability claim requires that the support relate to "an act of international terrorism" that harmed the plaintiff. Indeed, there are scenarios where a company could be liable under the material support statute, but not under the ATA.

However, as the U.S. Supreme Court analyzed at length in its 2023 decision in Twitter Inc. v. Taamneh,[6] the ATA does not necessarily "demand a strict nexus between" the aider and abettor's support and the act by a terrorist organization that harmed the plaintiff. The tort principle of "foreseeable risk" applies. Whether that principle will be satisfied in a given case will depend very much on the particular facts and circumstances.

Another important element is that the harmful act must be one of international terrorism.[7] Kidnapping, torture and murder committed by the designated cartels are the most obvious candidates to qualify under this definition.

That said, because the ATA affords a private right of action only to U.S. nationals or their heirs and estates, and because, in many cases, the cartels are committing these coercive crimes in Mexico and other Latin American countries and against nationals of those countries, the universe of cases in which a U.S. national can bring such a claim may be somewhat limited.

A more novel theory, but one that we would not be surprised to see, is that the core business of the cartels — i.e., distribution of narcotics into the U.S. — together with U.S.-based violence to hold turf or clientele, or to dissuade law enforcement intervention, constitutes an act of international terrorism if the cartel is a designated FTO.

Under such a theory, acts of violence intended to further the cartels' economic aims in the U.S., as well as potentially even overdose deaths traceable to that illicit business, could be pursued as a predicate for an ATA suit against a company that has provided the cartel with money or other substantial assistance in, for example, Mexico.

Financial Services

Navigating the risks of entanglement with illicit financial networks is nothing new for large financial services firms. Anti-money laundering laws of general applicability, including the Bank Secrecy Act and criminal money laundering statutes, have formed the basis or backdrop of several prominent enforcement actions and prosecutions targeting the movement of funds to, through, and from Central and South America.

The Trump administration's intensive focus on narcotics cartels and transnational criminal organizations, coupled with the administration's professed "all tools" approach to sanctions enforcement — redirecting the Biden administration's Russia sanctions toolbox — augurs an unprecedented level of scrutiny for financial services firms operating across the U.S.-Mexico border.

The onus of this prioritization falls particularly heavily on operations that provide retail payment or remission services across the border, including financial technology startups and firms seeking to break into those markets.

In addition to the risk of unknowing transactions with FTO targets, the administration's all-tools approach has included a dramatic drop in the threshold amount for transactions that require the filing of a currency transaction report with the Financial Crimes Enforcement Network, from $10,000 to $200 for money services businesses operating in 30 ZIP codes near the U.S.-Mexico border.[8]

The geographic targeting order highlights the administration's focus on the border and forecasts the enforcement risks that financial services businesses operating between U.S. and Mexico may face. The legality of the geographic targeting order has been challenged in court, including in the U.S. District Courts for the Western District of Texas and the Southern District of California.

Both courts granted temporary restraining orders, temporarily halting enforcement of the geographic targeting order. The Texas district court granted the plaintiff's motion for preliminary injunction in Texas Association of Money Services Businesses v. Bondi, while the California district court has yet to rule on a similar motion in Novedades Y Servicios Inc. v. FinCEN. Both decisions will likely be appealed, regardless of the outcome.

While established financial services companies may have similarly established procedures for assessing AML and BSA risks, startups or companies expanding their services, particularly in the retail payment or remittance space, should ensure that written policies addressing money laundering and sanctions risks are updated and implemented in practice.

Moreover, for novel financial technologies, including those operating on crypto rails, firms should consider proactive engagement with regulators or law enforcement, whether individually or as an industry, in order to calibrate both best practices within the industry, but also to calibrate officials' appreciation of technological limitations on financial surveillance. These same precautions will serve companies well in the event they face civil claims, as well.

Operating Companies

For companies that manufacture products, transport supplies or goods, or otherwise require for their operations a physical presence in locations where cartels operate, exposure to cartel activity can come in various forms.

A July 2024 survey of a cross-section of multinational and national companies operating in Mexico, conducted by the American Chamber of Commerce in Mexico, reveals the gravity and extent of these threats.[9]

Moreover, the form that these threats take can end up entangling a company in providing money to, or even engaging in business dealings with, cartels. Unfortunately, those are precisely the types of activities that could, depending on the circumstances, constitute material support under the material support statute or substantial assistance under the ATA.

There are many news reports of cartels that have diversified their methods of generating funds by infiltrating or taking over legitimate businesses. Just last year, for example, media reports indicated that Mexico's largest convenience store company, Oxxo, closed numerous stores and several gas stations in the border city of Nuevo Laredo after two employees were abducted. Prior to the abductions, however, the company reported that for years, it had faced demands to buy gasoline sold by distributors designated by the cartels.[10]

Sometimes, as in the case of protection payments demands, or in a situation like that of Oxxo, it will be apparent to a company that it is, in fact, dealing with a cartel. Other times, however, the situation may be more opaque.

A company operating in a region with a high level of cartel activity may find out through an internal audit or an ethics complaint that certain suppliers appear to be routinely overcharging for goods and services, or are being paid without providing anything at all. In these regions, it is important to consider whether cartels are somehow involved, and whether employees are either willingly or unwillingly facilitating that involvement.

This may require an investigation into facts and circumstances that may be difficult to uncover given the degree of fear that individuals involved will have if the suppliers are connected to cartels.

What does this mean for operating companies? With the recent designation of several cartels as FTOs, companies facing the types of situations described above cannot afford to ignore the risk that they may be dealing with these organizations in their business operations. Unfortunately, those dealings could expose companies themselves to liability risk.

Furthermore, as discussed above, the risk is not only U.S. government enforcement, but could also take the form of private citizen litigation. That risk is heightened where a company sells goods into the U.S. — not because doing so is itself illegitimate or illegal, but because, at a minimum, such companies are more likely to draw the attention of potential litigants in the U.S.

Conclusion

Ultimately, the dissolution of many enforcement components in the U.S. Department of Justice and elsewhere across the executive branch may mean that the broad threat of future action, and the present threat of private litigation, drives decision-making for affected companies. That is of little comfort for firms facing these blunt instruments of geopolitics.

In order to address these risks, the first step must be to understand whether and to what extent they exist.

That, in turn, requires thoughtful training of employees to be able to spot, and feel comfortable reporting internally, cartel activity that affects the company's transactions and operations; appropriate due diligence of third-party suppliers and other business partners, as well as internal audit reviews and other checks of such partners to provide reasonable assurances that they are legitimate companies with which the company should be doing business; internal investigations, where appropriate, to dig into particular concerns; and strategic advice on how best to deal with pressure from a cartel where it is identified.

Iris E. Bennett is a partner at Steptoe LLP.

Andrew Adams is a partner at the firm. He previously served as director of the DOJ's Task Force KleptoCapture, acting deputy assistant attorney general for the DOJ's National Security Division, and co-chief of the U.S. Attorney's Office for the Southern District of New York's Money Laundering and Transnational Criminal Enterprises Unit.

Lillian Stevens is an associate at Steptoe.

[1] 21 U.S.C. §§ 1901 et seq.

[2] 18 U.S.C. § 2339B.

[3] 18 U.S.C. § 2333.

[4] 18 U.S.C. § 2333(d).

[5] 18 U.S.C. § 2333(d)(2).

[6] Twitter v. Taamneh, 598 U.S. 471, 497 (2023).

[7] 18 U.S.C. § 2331(1).

[8] Geographic Targeting Order, https://www.federalregister.gov/documents/2025/03/14/2025-04099/issuance-of-a-geographic-targeting-order-imposing-additional-recordkeeping-and-reporting.

[9] https://amcham.org.mx/files/Envios/Eventos24/Sondeo/KitAliados/10o_Sondeo_de_Seguridad_Empresarial_AMCHAM.pdf.

[10] https://www.nbcnews.com/news/latino/mexico-companies-extortion-gangs-cartels-rcna164649.