FTO Designations: Containing Foreign Firms' Legal Risks

By **David Raskin** (January 28, 2026)

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The designation of drug cartels as foreign terrorist organizations has understandably unsettled companies operating in Mexico and elsewhere in Latin America.[1] The implications seem dramatic: Conduct long analyzed through frameworks of organized crime, corruption and security risk could suddenly be reframed as terrorism-related material support, with severe criminal, sanctions and reputational consequences.

A closer legal examination, however, suggests a more nuanced risk profile, one that non-U.S. companies are particularly well positioned to contain.

Unlike jihadi terrorism cases involving the likes of al-Qaida or ISIS, cartel-based FTO theories rest on significantly weaker U.S. constitutional and jurisdictional foundations, particularly when applied extraterritorially to foreign companies whose alleged conduct occurred entirely abroad and lacked any meaningful U.S. nexus.

This does not mean the risk is hypothetical. The U.S. Department of Justice has made the eradication of cartels a top priority. It is likely to take a hard line against any non-U.S. company whose conduct disadvantages U.S. competitors or undermines U.S. interests, a posture in line with the America-first policy environment.[2]

But there are constitutional constraints. The decisive issue for non-U.S. companies is not whether the DOJ may investigate under a cartel-FTO banner but whether it can sustain a prosecution consistent with due process and the limits on extraterritorial criminal jurisdiction.

How Cartel FTO Issues Would Arise in Practice

Unlike sanctions regimes, FTO designations do not directly regulate commercial activity. The legal risk emerges indirectly, when the DOJ seeks to apply material-support statutes to conduct allegedly benefiting a designated cartel. Companies that conduct indirect business with an FTO — be it through a supplier, vendor, contractor, landlord or client — risk becoming the subjects of an investigation.

Because material-support statutes require only knowledge, not intent, companies operating in cartel-affected regions face heightened risk that ordinary commercial decisions made amid criminal violence could be reframed as terrorism support, even absent intent to advance cartel objectives.[3]

Statutory challenges to FTO designations themselves are limited and unavailable to companies.[4] The battleground is constitutional, particularly in criminal investigations where defendants can seek to avoid prosecution by contesting jurisdiction, fair notice, and the nexus between the alleged conduct and U.S. interests.

Why Cartel-Based FTO Theories Are Structurally Weaker

Cartels are criminal enterprises, not ideological terrorists. Traditional FTO prosecutions are

built around organizations whose defining purpose is terrorism: advancing ideological or political objectives through violence, often directed at civilians and the U.S. itself.

Courts have repeatedly upheld broad material-support theories in that context because defendants could plausibly be said to understand that any assistance furthered terrorism.

Drug cartels are fundamentally different. Their objectives are profit, market control and territorial dominance. Violence is instrumental, not expressive. It is used to secure routes, deter rivals or intimidate local populations, not to advance an ideological program or wage war against the U.S.

This distinction matters constitutionally. Applying terrorism statutes to cartels stretches material-support liability beyond its historical core.

The overreach becomes especially problematic when prosecutors seek to impose liability on companies whose conduct was commercial, defensive or coerced rather than intentionally aligned with cartel goals.

Extraterritorial Limits Loom Large for Non-U.S. Companies

Cartel FTO theories face an additional hurdle for non-U.S. companies: due process limits on extraterritorial criminal jurisdiction. Courts require a sufficient nexus between the defendant, the conduct and the U.S. such that applying U.S. law is not arbitrary or fundamentally unfair.[5]

This poses no impediment for jihadi groups whose defining objective is to attack and destroy the U.S., making any assistance inherently and foreseeably directed at harming the U.S. By contrast, drug cartels seek to preserve the U.S. as a lucrative consumer market, not to attack it, making the U.S. nexus in cartel cases economically incidental rather than ideologically or operationally intentional.

The idea that drug trafficking inevitably affects the U.S., supplying the necessary nexus, is most persuasive where defendants knowingly participate in the narcotics supply chain or direct activity toward the U.S. market.

This argument is far weaker where a company's conduct occurred entirely outside the U.S.; involved lawful commercial activity; was confined to domestic or regional markets; and lacked intent or reasonable foreseeability of U.S. impact.[6]

In those circumstances, stretching material-support statutes to reach foreign companies risks exceeding constitutional bounds.

The DOJ has prosecuted a non-U.S. company for material support occurring almost entirely overseas. But the case — resulting in guilty pleas in 2022 from the French building materials manufacturer Lafarge SA, and its Syrian subsidiary Lafarge Cement Syria — is a poor analogue for cartel-related scenarios.

The companies were engaged in sustained, profit-driven arrangements with ISIS and the al-Nusrah Front, both FTOs, making fixed and volume-based payments, and conditioning compensation on ISIS' assistance in disadvantaging competitors.[7]

Not only was the U.S. nexus inherent in the FTOs' ideology and terrorist objectives, but the record reflected explicit, contemporaneous knowledge that the payments were advancing a

terrorist enterprise.[8]

These features are absent in the typical cartel scenario, where companies operate amid criminal violence without knowingly sharing revenue, shaping markets or advancing an organization whose defining purpose is terrorism.

Cartel FTO designations do not automatically transform ordinary commercial risk into terrorism liability, particularly for non-U.S. companies — where the DOJ's legal theories may require expansive readings of material-support statutes and thin or speculative U.S. nexus arguments, while equating criminal coercion or environmental risk with voluntary terrorist support.

Those are not comfortable positions for prosecutors, especially outside the most egregious fact patterns. As a result, the DOJ may use cartel FTO designations more often as investigative leverage than as a reliable path to conviction.

That reality creates opportunities for companies that prepare carefully.

Considerations for Non-U.S. Companies Operating in Cartel-Affected Regions of Mexico

Cartel exposure typically arises from drug trafficking environments and localized violence, not ideological alignment. The companies best positioned to keep material-support risk contained are those that deliberately structure operations — and periodically test them — to demonstrate that any interaction with cartel-affected environments is incidental, constrained, and unrelated to advancing drug trafficking or violence that harms the U.S.

Naturally, companies need to separate ordinary commerce from the drug trade. Contracts, logistics and customer relationships should reflect lawful commercial purpose and legitimate end use.

Goods or services that could be characterized as dual-use — i.e., transport, fuel, construction, chemicals, warehousing — the company should be able to demonstrate that volumes, specifications, routing and counterparties align with ordinary demand rather than narcotics production, concealment or transport.

But non-U.S. companies should also consider steps to defeat the argument the DOJ often asserts, that drug trafficking inevitably affects the U.S.

This would include prospectively establishing lack of directionality toward the U.S. market by, for example, avoiding involvement in logistics corridors or intermediaries known primarily for cross-border trafficking, and documenting the basis for selecting routes, vendors and facilities that serve local or internal markets.

Evidence that the company neither intended nor reasonably foresaw that its conduct would facilitate U.S.-bound drug flows is central to defeating extraterritorial jurisdiction theories.

Compliance programs should distinguish organized crime and drug-trafficking risk from terrorist support by, for example, designing different risk triggers, controls and escalation paths. This separation allows the company to show that it actively managed cartel-related criminal risk without assuming — or conceding — that operating in a drug-trafficking environment is equivalent to knowingly supporting terrorism.

In the same vein, screening, due diligence and training should focus on corruption, money laundering, trafficking facilitation and coercion, while documenting why terrorism-specific frameworks may not apply under local law.

If DOJ scrutiny arises, companies should be prepared with proof of active oversight — including, for example, internal investigations, compliance reviews, documented escalation and remediation.

A company should have a straightforward narrative to present — that it is a non-U.S. business operating lawfully in a drug-trafficking environment, with no role in narcotics production or distribution, no intent to facilitate violence and no directionality toward the U.S.

Periodic internal reviews of routes, customers and volumes are valuable. For example, a logistics company that audits its Mexican operations confirms that it limits itself to domestic distribution and avoids known trafficking corridors.

It also creates contemporaneous evidence that policy matches practice and that risk is actively managed rather than ignored.

Internal investigations are particularly effective when triggered by anomalies. When a company investigates an unexpected demand spike near the border, confirms a legitimate domestic explanation and documents its decision not to expand further, it strengthens the argument that any U.S. impact would be speculative rather than foreseeable.

Internal investigations also play a critical role by establishing that the company's conduct was reactive and defensive, not aligned with cartel objectives. Documented decisions to halt work, revise security protocols or exit high-risk areas can be decisive in rebutting claims of voluntary support.

Targeted compliance reviews following designation or policy developments reinforce this distinction. Documenting how the company reassessed risk under United Nations, European Union, U.K. and local regimes — particularly where cartels are not designated as terrorists — helps rebut claims that the company knowingly supported terrorism rather than operating amid criminal conditions.

Conclusion

Cartel FTO designations undeniably change the enforcement conversation — but they do not erase constitutional limits or transform every business risk in Mexico and Latin America into terrorism liability.

For many non-U.S. companies, especially those operating entirely abroad without U.S. directionality, the legal risk is more constrained than initial reactions suggest.

The real differentiator is facts. Companies that understand the fault lines in cartel-based terrorism theories and deliberately shape their operations, compliance, internal investigations and remediation procedures accordingly are best positioned to keep those risks contained — even in an enforcement environment that may, at the margins, favor U.S. companies over foreign ones.

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[1] The wave of designations in 2025 included six Mexican cartels —Cártel de Sinaloa, Cártel de Jalisco Nueva Generación, Cártel del Noreste, La Nueva Familia Michoacana, Cártel de Golfo, and Cárteles Unidos — as well as cartels based in Central America (Mara Salvatrucha (MS-13)), Colombia (Clan del Golfo) and Venezuela (Tren de Aragua and Cartel de los Soles).

[2] In the context of Foreign Corrupt Practices Act enforcement, DOJ has recently singled out foreign companies whose corrupt conduct puts their U.S. competitors at a disadvantage. Under a subheading titled "Safeguarding Fair Opportunities for US Companies," DOJ observed that the "most blatant bribery schemes have historically been committed by foreign companies," deduced that "corrupt [foreign] competitors skew markets and disadvantage law-abiding US companies and others," and promised that prosecutors would consider "whether the alleged misconduct deprived specific and identifiable U.S. entities of fair access to compete and/or resulted in economic injury to specific and identifiable American companies or individuals."

[3] See 18 U.S.C. § 2339B ("Whoever knowingly provides material support or resources to a foreign terrorist organization ... shall be imprisoned for any term of years or for life. To violate this paragraph, a person must have knowledge that the organization is a designated terrorist organization ... that the organization has engaged or engages in terrorist activity ... or that the organization has engaged or engages in terrorism.")

[4] See 8 U.S.C. § 1189(c)(1) (designation may be challenged only by the designated organization itself). No FTO has successfully challenged a designation.

[5] U.S. v. Al Kassar, 660 F.3d 108, 118 (2d Cir. 2011) (jurisdiction for overseas material-support conspiracy where defendant agreed to sell arms to an FTO knowing they would be used to kill Americans); U.S. v. Yousef, 327 F.3d 56, 111 (2d Cir. 2003) (same for an overseas terrorist plot to bomb simultaneously 12 U.S. airliners in flight over the Pacific Ocean where defendants intended to harm U.S. nationals or interests).

[6] U.S. v. Lopez-Vanegas, 493 F.3d 1305, 1313 (11th Cir. 2007) (no jurisdiction where drug conspiracy occurred entirely abroad and did not target U.S. importation).

[7] Between August 2013 and October 2014, Lafarge and its subsidiary used intermediaries to pay the FTOs the equivalent of approximately $5.92 million and the subsidiary obtained from the scheme approximately $70.30 million in total sales revenue; https://www.justice.gov/usao-edny/pr/lafarge-pleads-guilty-conspiring-provide-material-support-foreign-terrorist.

[8] At the time, the U.S. viewed ISIS as an extremist jihadist organization with an explicit

anti-U.S. ideological component. Kate Brennen, Hagel: ISIS Is More Dangerous Than al Qaeda, Foreign Policy News & Analysis (Aug. 21, 2014), https://foreignpolicy.com/2014/08/21/hagel-isis-is-more-dangerous-than-al-qaeda/.