

Trump Administration Targets International Cartels and Transnational Criminal Organizations, Shifting Enforcement Focus for Businesses

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A recent Executive Order from President Donald Trump and subsequent memoranda from the Department of Justice (“DOJ”) signal an anticipated crackdown on international cartels, transnational criminal organizations (“TCOs”), and those who provide material support to such entities. This development exposes companies and individuals with foreign business operations and activities, particularly in Latin America, to potential increased risks in this area, while suggesting a shift in focus away from investigations and cases that do not involve such a connection. Since these cartels and TCOs are not formal entities with clear memberships, businesses operating in countries where these groups operate will likely face substantial challenges with respect to compliance and risk management.

I. Introduction

On January 20, 2025, President Trump signed an executive order (the “FTO Executive Order” or the “Order”) directing the Secretary of State to act within 14 days to recommend whether certain international cartels and other transnational criminal organizations should be designated as Foreign Terrorist Organizations (“FTOs”) and Specially Designated Global

If you have any questions concerning this memorandum, please reach out to your regular firm contact or the following authors:

NEW YORK

Joon H. Kim

+1 212 225 2950

jkim@cgsh.com

Lisa Vicens

+1 212 225 2524

evicens@cgsh.com

Rahul Mukhi

+1 212 225 2912

rmukhi@cgsh.com

Katherine Lynch

+1 212 225 2236

kalynch@cgsh.com

Jordan McMeans

+1 212 225 2207

jmcmmeans@cgsh.com

WASHINGTON D.C.

David A. Last

+1 202 974 1650

dlast@cgsh.com

Samuel Chang

+1 202 974 1816

sachang@cgsh.com



Terrorists (“SDGTs”). *See* Order § 3(a).¹ As a result of these designations, payments or other forms of assistance made to organizations or affiliated individuals—even under implicit threat—could potentially subject businesses to criminal and civil liability in the U.S. The Order specifically names Tren de Aragua (“TdA”) and La Mara Salvatrucha (“MS-13”) as TCOs that pose a threat to U.S. national security. Order § 1(b).² Other organizations are also likely to be designated pursuant to the Order. The Secretary of State has not yet publicly announced which organizations will be designated, but designations will become effective upon publication in the Federal Register, which could happen quickly given the Trump administration’s focus on this issue.³

Subsequently, on February 5, 2025, Attorney General Pamela Bondi issued several memoranda outlining DOJ enforcement priorities under the Trump administration, including a focus on cartels and TCOs. One memorandum, entitled “Total Elimination of Cartels and Transnational Criminal Organizations,” directs the DOJ to prioritize investigations related to foreign bribery that facilitates the criminal operations of cartels and TCOs and to “shift focus away” from matters unrelated to that priority.⁴ Examples of cases that could fall within this focus include the bribery of foreign officials to facilitate human smuggling and trafficking of narcotics and firearms, or to seek protection or preferential treatment from the threat of targeted groups and corrupt officials with whom they operate.⁵ Additionally, the memorandum disbands the DOJ’s Task Force KleptoCapture, which focused on enforcing Russian sanctions.⁶ The memorandum also suspends internal DOJ approval requirements for the

filing of certain charges in connection with investigations associated with cartels and TCOs.⁷ These policies will be initially in place for 90 days, at which time it will be determined whether they are renewed or made permanent.⁸

Another memorandum, entitled “General Policy Regarding Charging, Plea Negotiations, and Sentencing,” reiterates the DOJ’s focus on immigration enforcement, human trafficking and smuggling, and transnational organized crime, cartels and gangs. The memorandum also shifts resources in the National Security Division (“NSD”) by disbanding the NSD Corporate Enforcement Unit as well as the Foreign Influence Task Force, which under the last administration were focused on enforcement of the Foreign Agent Registration Act.⁹

The FTO Executive Order and the Bondi memoranda indicate that the Trump administration intends to prioritize enforcement actions relating to cartels and TCOs. These steps could raise potential new risks for businesses from both a criminal and civil perspective. Below we provide further background and context for the anticipated FTO designations and DOJ prioritization, as well as highlight related business risks and steps that businesses can take to mitigate those risks.

II. Impact of FTO and SDGT Designations

FTO and SDGT designations may increase existing risks of doing business. Certain of these groups are already sanctioned by the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”). For example, TdA and MS-13 are already

¹ Exec. Order. No 14157, *Designating Cartels and Other Organizations as Foreign Terrorist Organizations and Specially Designated Global Terrorists* (Jan. 20, 2025), available at <https://www.whitehouse.gov/presidential-actions/2025/01/designating-cartels-and-other-organizations-as-foreign-terrorist-organizations-and-specially-designated-global-terrorists/>.

² *Id.*

³ *See* 8 U.S.C. § 1189.

⁴ Office of the Attorney General, *Total Elimination of Cartels and Transnational Criminal Organizations* (Feb. 5,

2025) (“Bondi Cartel Memorandum”), available at <https://www.justice.gov/ag/media/1388546/dl?inline>.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Office of the Attorney General, *General Policy Regarding Charging, Plea Negotiations, and Sentencing* (Feb. 5, 2025), available at <https://www.justice.gov/ag/media/1388541/dl?inline>.

designated as TCOs subject to blocking sanctions by OFAC, which means that the U.S. government already broadly prohibits transactions with or involving these entities or their property within U.S. jurisdiction, including involvement of the U.S. financial system.¹⁰ There are existing civil and criminal penalties for violating or causing U.S. persons to violate such sanctions. Once an organization is formally designated as an FTO, there is expanded jurisdiction for U.S. prosecutors and further heightened criminal penalties and potential civil liability as described below.

The U.S. has extraterritorial jurisdiction to prosecute businesses and persons who provide material support to FTOs outside of the U.S. in many cases with limited U.S. connections.¹¹ U.S. dollar transactions are a common means to establish U.S. jurisdiction as most U.S. dollar transactions clear through banks in the U.S. However, even transactions occurring outside of the U.S. in other currencies may establish a sufficient U.S. jurisdictional nexus for criminal liability, including where there is the involvement of a person over whom the U.S. has jurisdiction or if the offense affects foreign commerce. This expansive jurisdiction poses additional risks for foreign financial institutions that operate outside of the U.S. but may nonetheless have operations with a sufficient U.S. nexus for material support prosecution such as transactions with persons over whom the U.S. has jurisdiction.

Transactions with or involving entities designated as “SDGTs” or their property interests are also prohibited under the U.S. sanctions regime, as outlined in

Executive Order 13224.¹² Additionally, any persons found to “to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or [those persons designated as SDGTs],” irrespective of any jurisdictional link to the U.S., may themselves be designated as SDGTs.¹³

In addition, any U.S. person, including any U.S. financial institution,¹⁴ that becomes aware that it has possession of or control over funds or other property in which a designated FTO, SDGT, or TCO has an interest must block (*i.e.*, retain possession or control over) the funds and report such property to OFAC. Assets tied to any person engaged in terrorism, including FTOs, are also subject to civil forfeiture actions without the need to prove a link to additional criminal offenses.¹⁵

III. Criminal Anti-Terrorism Act (“ATA”) Liability Risks

The criminal provisions of the federal Anti-Terrorism Act (“ATA”) make it a crime to provide, or to conspire to provide, material support or resources to designated FTOs and to terrorists generally. “Material support or resources” means *any* property or service, including “currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance,” and other forms of support and resources.¹⁶ Medicine or religious materials are excluded from this definition, but other forms of humanitarian or charitable assistance or training are

¹⁰ See Press Release, *Treasury Sanctions Latin American Criminal Organization* (Oct. 11, 2012), available at <https://home.treasury.gov/news/press-releases/tg1733>; Press Release, *Treasury Sanctions Tren de Aragua as a Transnational Criminal Organization* (July 11, 2024), available at <https://home.treasury.gov/news/press-releases/jy2459>.

¹¹ See 18 U.S.C. § 2339B(d).

¹² Exec. Order No. 13224, *Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism*, 66 Fed. Reg. 49079 (Sept. 24, 2001), available at <https://www.state.gov/executive-order-13224/>.

¹³ *Id.*

¹⁴ The blocking regulations under OFAC’s FTO sanctions apply only with respect to U.S. financial institutions; in practice, however, all FTOs to date have also been designated as SDGTs. See 31 C.F.R. § 597.319, which defines “U.S. Financial Institution” as, “(a) Any financial institution organized under the laws of the United States, including such financial institution’s foreign branches; (b) Any financial institution operating or doing business in the United States; or (c) Those branches, offices and agencies of foreign financial institutions which are located in the United States, but not such foreign financial institutions’ other foreign branches, offices, or agencies.”

¹⁵ 8 U.S.C. § 981(a)(1)(G).

¹⁶ See 18 U.S.C. § 2339A(b)(1).

not. Potential criminal penalties include substantial fines (for companies and individuals) and jail time.

Material support liability extends to extortion or ransom payments, with a potential limited exception for “legal duress” where there is an *immediate* threat of death or serious bodily injury.¹⁷ For example, in 2007, Chiquita pleaded guilty to making security payments to the designated terrorist organization AUC in order to protect Chiquita’s banana operations in Colombia, and paid a \$25 million fine. The U.S. government rejected Chiquita’s duress defense and noted that Chiquita continued to make such payments even after being advised by the government that they were illegal and could not continue.¹⁸ As discussed further below, a jury also subsequently rejected Chiquita’s duress defense in follow-on civil litigation.¹⁹

A common defense to criminal liability under the ATA is lack of knowledge that the payment or service is being provided to a designated FTO. However, knowledge may be established by showing “deliberate indifference” or “willful blindness” to a substantial probability that an organization is engaged in or related to terrorism or falls within the designation of an FTO.²⁰

IV. Civil Liability Risks

There have been numerous cases filed in the U.S. where plaintiffs sought to recover civil money damages against corporate defendants (generally following criminal resolutions) for injuries perpetrated by FTOs and SDGTs. Generally, civil plaintiffs can seek recourse under three legal avenues:

1. *Anti-Terrorism Act:*

The ATA has civil liability provisions that provide a private right of action to any U.S. national injured in an act of international terrorism.²¹ The civil ATA provisions impose treble liability for damages, which creates the risk of substantial monetary damages.²²

Civil ATA plaintiffs may proceed under both primary and secondary theories of liability, but the ATA’s secondary liability provisions are only available in cases involving a terrorist act that was “committed, planned, or authorized by an organization that had been designated as a [FTO] . . . as of the date on which such act of international terrorism was committed, planned, or authorized.”²³ Thus, the designation of cartels and TCOs as FTOs will significantly heighten potential civil liability risks under the ATA.

For example, plaintiffs cannot assert primary liability claims unless they can allege that terrorism was committed by the defendant. However, once cartels are designated as FTOs, civil plaintiffs can rely on aiding and abetting and conspiracy theories of secondary liability under the ATA.

2. *Alien Tort Statute:*

Civil plaintiffs may bring claims under the Alien Tort Statute (“ATS”),²⁴ which provides a right of action for non-U.S. nationals injured in violation of international law. ATS claims may not be brought against foreign corporations.²⁵

3. *Common law:*

Plaintiffs may also bring common law claims in U.S. courts, and the applicable law is most commonly the law of the jurisdiction in which the injury occurred. As

¹⁷ See *United States v. Kozeny*, 582 F. Supp. 2d 535, 540 (S.D.N.Y. 2008).

¹⁸ See DOJ, *Chiquita Brands International Pleads Guilty to Making Payments to a Designated Terrorist Organization And Agrees to Pay \$25 Million Fine* (Mar. 9, 2007), available at https://www.justice.gov/archive/opa/pr/2007/March/07_nsd_161.html.

¹⁹ See BBC News, *Banana Giant Held Liable for Funding Paramilitaries*, June 11, 2024, available at <https://www.bbc.com/news/articles/c6pprrpd3x96o>.

²⁰ *Weiss v. Nat’l Westminster Bank PLC*, 768 F.3d 202, 208 (2d Cir. 2014).

²¹ 18 U.S.C. § 2333(a).

²² *Id.*

²³ See 18 U.S.C. § 2333(d).

²⁴ 28 U.S.C. § 1350.

²⁵ See *Jesner v. Arab Bank PLC*, 584 U.S. 241 (2018).

noted, Chiquita was recently found liable in U.S. federal court under Colombian law to family members of victims of AUC, the FTO to which Chiquita pleaded guilty to providing material support.²⁶ The jury rejected Chiquita's arguments at trial that it should not be held liable for aiding AUC because its payments to AUC were made under duress in order to protect Chiquita staff from violence.²⁷

V. Foreign Corrupt Practices Act (“FCPA”) Enforcement Risks

The recent Bondi memoranda underscore that DOJ will be looking to use all of the tools at its disposal to fight cartels and TCOs. Among other steps, Bondi stated that DOJ will be prioritizing investigations related to potential violations of the FCPA and the Foreign Extortion Prevention Act (“FEPA”) to combat foreign bribery related to cartels and TCOs and “shift[ing] focus away from investigations and cases that do not have such a connection.” According to the Bondi memo, the new policies will be implemented over a 90-day period, during which certain DOJ components will provide input on potential modifications believed to be necessary to the Justice Manual and existing regulations.²⁸ On February 10, 2025, President Trump issued another Executive Order that pauses enforcement of the FCPA for a period of 180 days pending new DOJ guidance.²⁹ The forthcoming guidance will also be used to evaluate current and past cases. It therefore remains to be seen precisely how DOJ will implement these new directives and what this shift in focus will mean in practical terms for DOJ enforcement of corporate FCPA violations. While it suggests that certain types of enforcement may be less emphasized, companies should continue to maintain robust compliance programs, particularly related to their operations in countries in which cartels and TCOs have a significant presence.

Companies also should bear in mind that TCOs operate on virtually every continent and are often closely tied to corruption and corrupt officials. In this regard, DOJ's enforcement of the FCPA and FEPA may look to target foreign officials and other individuals who are permissive of the exact type of cartels and criminal organizations that the Trump administration is looking to fight—specifically, corrupt officials who enable cartels and organized crime, allowing them to thrive and threaten national security. Foreign officials who solicit and demand bribes from companies often may be the same officials who facilitate criminal organizations engaged in narcotics and firearms trafficking, human smuggling, and other forms of organized crime.

As part of this new enforcement prioritization, DOJ may focus on foreign companies and financial institutions operating in Latin America, as well as parts of Africa, Asia, and the Middle East. Historically, there has been a significant level of enforcement activity arising from conduct in Latin America, largely due to the region's proximity to the U.S., frequent travel of individuals from Latin America to the U.S., and the use of the U.S. financial system and bank accounts located in the U.S. Moreover, the Trump administration's policy of “America First” may signal potential enforcement actions and investigations against foreign companies believed to have engaged in bribery overseas and as posing a threat to U.S. companies over which they seek to gain an unfair advantage by paying bribes.

The Bondi memoranda also note that the DOJ will use all other available tools to prosecute cartel- and TCO-related cases, including money laundering and sanctions-related charges.

²⁶ See BBC News, *Banana Giant Held Liable for Funding Paramilitaries*, June 11, 2024, available at <https://www.bbc.com/news/articles/c6pprpd3x96o>.

²⁷ *Id.*

²⁸ See Bondi Cartel Memorandum at 3 & n.2.

²⁹ <https://www.nytimes.com/2025/02/11/us/politics/trump-fcpa-bribery-law-corruption.html>.

VI. Best Practices to Mitigate Business Risks

Companies and individuals with business operations in Latin America and other regions in which cartels and TCOs operate should act to mitigate the risks associated with this emerging legal regime and can do so in a variety of ways. Generally, best practices for mitigating risk associated with transactions with designated FTOs and SDGTs are consistent with established best practices for ensuring compliance with the FCPA and the U.S. government's existing sanctions, including those against FTOs, TCOs, and SDGTs.

1. *Risk assessment.*

- Conduct a risk/security assessment of operations to identify potential “red zones” or areas that are at high risk.
- Consider consulting with security consultants who specialize in intelligence-gathering and operational security risk management or scaling back operations in those “red zones.” Be particularly attuned to payments or transfers that may be to, from or on behalf of FTOs or SGDTs.
- Likewise, remain vigilant with respect to potential anti-corruption and anti-bribery risk remains important, particularly in countries with high corruption risk and significant presence of cartels and TCOs.

2. *Detection/monitoring program.*

- Conduct random inspections, targeting suspicious transactions, packages, etc. to ensure prevention and detection policies are being followed and documentation of same. Consider further training, disciplinary actions or changes to policies depending on outcome of inspections.
- Conduct investigations if any facts arise that indicate a potential for problematic payments or support to cartels and TCOs.

3. *Prevention.*

- Maintain a robust compliance program and KYC and third party management policies and procedures to limit the risk of directly or indirectly transacting with FTO, SDGT, or TCO-designated entities and affiliated individuals, as well as third parties presenting an increased risk of corruption.
- Enhanced due diligence is recommended when transacting with third parties. Notably, U.S. blocking sanctions also extend to entities owned 50% or greater by one or more blocked parties, as well as persons acting on behalf of blocked persons.
- Use advanced screening tools to conduct background and beneficial ownership checks and continuously monitor transactions, including for individuals or entities on (or owned by other parties on) U.S. and international sanctions lists, as well as third parties who may be linked to corrupt officials. Enhance controls over sources of funds that can be used to finance *derecho de piso* or other extortion payments, for example through enhanced charitable contribution, expense and petty cash policies.
- Be mindful of increased bases by which U.S. authorities and litigants may assert jurisdiction with FTO designations, and thus participation in potentially prohibited activities present greater risk, particularly for companies with U.S. directors and employees.

4. *Enhanced training and guidance to employees in higher-risk areas.*

- Provide additional training to employees in higher-risk zones on how to identify and detect potential illegal activities, as well as what to do in the event that they become aware of such activities.
- Consider what steps to take to address safety concerns and ensure incidents are appropriately investigated and documented.

- Consult with counsel and experts as needed.

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