

January 23, 2025

President Trump Issues Executive Order Directing Agencies to Consider Designating Drug Cartels and Other Organizations as Foreign Terrorists

Order Directs the U.S. Secretary of State to Make Recommendations Concerning Potential Designations Within 14 Days

SUMMARY

On January 20, 2025, President Donald J. Trump issued an Executive Order declaring international drug cartels and other transnational criminal organizations unique and extraordinary threats to U.S. national security, and directing the U.S. Secretary of State to recommend within 14 days whether to designate any such organizations as Foreign Terrorist Organizations or Specially Designated Global Terrorists.¹ The Order declares a national emergency to address these threats. The Order also directs the Attorney General and the Secretary of Homeland Security to prepare operationally to implement future directives that the President might issue to detain and deport certain non-citizens pursuant to the President's wartime powers. When implemented, the Order could carry major implications for the corporate enforcement landscape and for the compliance programs of financial institutions and other companies, including through (i) potentially increased risks of civil liability arising from narcotics-related financial activities; (ii) the use of criminal terrorism laws to investigate and charge companies or their employees in relation to such activities; and (iii) new and increased challenges in connection with anti-terrorism, Bank Secrecy Act/Anti-Money Laundering, and U.S. economic sanctions compliance obligations.

BACKGROUND AND PURPOSE

In recent years, President Trump has made numerous public statements signaling potential plans to designate drug cartels and their members as foreign terrorist organizations. The Order serves as a first

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step in implementing such plans. The Order states expressly that it “creates a process by which certain international cartels . . . and other organizations *will be* designated as Foreign Terrorist Organizations [or Specially Designated Global Terrorists[.]]” (emphasis added). It describes drug cartels as having “engaged in a campaign of violence and terror throughout the Western Hemisphere that has not only destabilized countries with significant importance for our national interests but also flooded the United States with deadly drugs, violent criminals, and vicious gangs.” It also notes that such cartels constitute a national security threat beyond that of traditional organized crime. The Order specifically highlights other transnational organizations, including “Tren de Aragua” (TdA) and “La Mara Salvatrucha” (MS-13), as posing a “similar threat.” The stated purpose of the Order is “to ensure the total elimination of these organizations’ presence in the United States” as a means of “protecting the American people and the territorial integrity of the United States.”

AUTHORITIES AND IMPLEMENTATION

The Order invokes the President’s authority to designate a foreign party as a Foreign Terrorist Organization (“FTO”)² under section 219 of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1189, and as a Specially Designated Global Terrorist (“SDGT”) under both the International Emergency Economic Powers Act (“IEEPA”), 50 U.S.C. § 1702, and Executive Order 13224 (Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism). In doing so, the Order initiates a process for designating cartels and other organizations as FTOs or SDGTs. It also invokes the President’s authority under the Alien Enemies Act (“AEA”), 50 U.S.C. § 21 *et seq.*, which grants the President wartime authority for the potential large-scale removal of certain foreign citizens from the United States, and directs his cabinet to prepare operationally for the potential exercise of that authority.

FTO Designations

Section 219 of the INA allows the Secretary of State to designate certain groups that engage in terrorist activity as FTOs. The Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, must base any designation on specific factual findings, which may include classified national security information. Once an entity is designated as an FTO, the Secretary of the Treasury may require United States financial institutions possessing or controlling any assets of that entity to block all financial transactions involving those assets. Additionally, U.S. laws impose criminal liability on those who provide “material support or resources” to a designated FTO.³ The Anti-Terrorism Act (“ATA”), 18 U.S.C. § 2331 *et seq.*, also provides for civil liability against those who carry out, assist, or aid and abet others in carrying out terrorist acts on behalf of an FTO.

SDGT Designations

IEEPA grants the President extensive powers to regulate a variety of economic transactions. To use this authority, the President must first declare a national emergency under the National Emergencies Act

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(“NEA”), 50 U.S.C. § 1601 *et seq.*, by finding there is an “unusual and extraordinary threat” to the national security, foreign policy, or economy of the United States. Executive Order 13224, issued in the aftermath of the September 11, 2001 terrorist attacks, creates a process through which the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, or the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General, may designate persons or entities as SDGTs if they “pose a significant risk of committing” or have committed “acts of terrorism that threaten” U.S. national security. Once designated, a designee’s “property and interests in property” within the jurisdiction of the United States are blocked by the Office of Foreign Assets Control (“OFAC”). OFAC may also block the assets of the designee’s agents, associates, and supporters.

Detention and Removal of Aliens Under the AEA

The AEA grants the President separate powers to order the arrest, relocation, or deportation from the United States of certain foreign citizens of an “enemy” nation during wartime. In particular, it authorizes such actions when “any invasion or incursion is perpetrated, attempted, or threatened against the territory of the United States by any foreign nation or government.” Past U.S. presidents have invoked the AEA when taking actions to detain or expel foreign citizens who are affiliated with a country that is engaged in hostilities against the United States, including individuals of German, Austro-Hungarian, Japanese, and Italian ancestry during World Wars I and II.

The Order’s Directives

The Order invokes each of the above statutory authorities to issue three directives. *First*, the President, as required by IEEPA, declares a national emergency to address the threat posed by drug cartels and similar organizations. The Order notes that such groups “threaten the safety of the American people, the security of the United States, and the stability of the international order in the Western Hemisphere.” *Second*, the Order directs that within 14 days, the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, the Secretary of Homeland Security, and the Director of National Intelligence, must recommend whether any cartel or organization should be designated as an FTO or an SDGT. *Third*, the Order directs the Attorney General and the Secretary of Homeland Security to take action, also within 14 days and in consultation with the Secretary of State, to prepare to implement any future decision by the President to invoke the AEA, and to “prepare such facilities as necessary to expedite the removal of those who may be designated under” the Order.

OBSERVATIONS AND IMPLICATIONS

The Order comes amidst efforts by the U.S. Department of Justice (DOJ) and other agencies over several administrations to investigate and prosecute financial institutions, other companies, or their employees who engage in, or fail adequately to prevent, money laundering, narcotics trafficking, sanctions violations, and terrorist financing activities. DOJ and other agencies have established numerous task forces and

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enforcement teams to address specific threats, including those posed by MS-13, Hizballah, ISIS, Russian oligarchs, trade-based money laundering organizations, and drug cartels. Several international banks have also settled investigations and paid penalties exceeding \$1 billion to DOJ, FinCEN, OFAC, and bank regulators in connection with, among other things, their allegedly deficient efforts to detect and report narcotics-related money laundering activities. In 2023, the DOJ also appointed within its National Security Division a Chief Counsel for Corporate Enforcement, whose primary responsibility is to oversee and pursue investigations of companies for violations of U.S. national security laws.

This Order signals that the Trump administration will likely be even more aggressive than prior administrations in pursuing enforcement efforts against drug trafficking organizations and those who support or facilitate their activities. The proposed convergence of the government's counterterrorism and counter-narcotics/anti-money laundering authorities, through the designation of drug cartels as FTOs and/or SDGTs, will significantly expand the government's enforcement tools and the related risks of potential civil and criminal liability in this area. Such convergence will likely impose new and heightened compliance burdens on financial institutions and other companies.

First, companies could face substantially increased risks of civil liability arising from narcotics-related activities that affect their business operations or financial activities. Under the ATA, 18 U.S.C. § 2333, plaintiffs may bring private causes of action by alleging that they were injured “by reason of” a crime that constitutes an act of international terrorism. In the last two decades, a large number of plaintiffs have brought actions against banks, social media companies, and other entities for allegedly providing services to parties engaged in terrorist activities. *See, e.g., Linde v. Arab Bank, PLC*, 384 F. Supp. 2d 571 (E.D.N.Y. 2005). Up to the present, victims of cartel-related violence have been mostly unsuccessful in recovering damages or seeking forfeiture and restitution under federal terrorism statutes.⁴ This is because such laws do not expressly define terrorist organizations or terrorism to include cartels and cartel-related violence, and federal narcotics laws contain limited, if any, provisions permitting victims to obtain restitution or victim compensation through forfeiture. If drug cartels are designated as FTOs or SDGTs, plaintiffs could be more successful in pursuing claims as “terrorism” victims under the ATA and other statutes.

Second, designating cartels as FTOs would for the first time permit individuals or entities who provide material support and/or resources to international drug cartels to be prosecuted under a powerful criminal counterterrorism statute, 18 U.S.C. § 2339B. Although existing criminal laws used to pursue those who facilitate large-scale narcotics trafficking—including the Controlled Substances Act, the Foreign Narcotics Kingpin Designation Act, and the Racketeer Influenced and Corrupt Organizations (RICO) Act—can result in stiff monetary and incarceration penalties, the addition of Section 2339B charges to prosecutors' arsenal will expand the variety and potential severity of charges that they can bring against such defendants. That statute imposes criminal liability on individuals who “knowingly provide[] material support or resources to a foreign terrorist organization, or attempt[] or conspire[] to do so.” It defines “material support” broadly to

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include “any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel ... and transportation, except medicine or religious materials.” In 2022, French cement manufacturer Lafarge and its Syrian subsidiary were charged with and pled guilty to conspiring to provide “material support” to two FTOs, ISIS and the al-Nusra Front (ANF), in connection with bribes they paid to those organizations. The case, which marked the first-ever corporate guilty plea for material support of terrorism, resulted in criminal fines and forfeiture totaling \$777.78 million.⁵ Numerous multinational companies in the United States, Latin America, and elsewhere have been used, and proven susceptible to influence, by international drug cartels and their money laundering networks. Therefore, FTO designations arising from the Order could cause a multitude of additional entities (or their employees) to become subjects of U.S. counterterrorism investigations or prosecutions. Such prosecutions typically result in more severe terms of imprisonment, fines, and/or forfeiture than in narcotics cases not involving major narcotics suppliers and traffickers, due to higher statutory penalties and sentencing guidelines applicable to terrorism offenses.

Third, international financial institutions in particular will likely face new and increased challenges in connection with their anti-terrorism, Bank Secrecy Act/Anti-Money Laundering (“BSA/AML”) and OFAC sanctions compliance obligations. International banks—especially U.S. banks providing dollar clearing services and their foreign bank customers—will risk becoming ensnared in U.S. counterterrorism investigations based on transactions in which their customers or counterparties potentially have engaged in or facilitated narcotics-related crimes or money laundering. Under existing designation authorities, financial institutions typically treat narcotics-related money laundering activities as distinct from terrorist financing for purposes of their transaction monitoring and suspicious activity reporting. FinCEN also has generally treated these categories as distinct, issuing a series of advisories specific to narcotics-based money laundering typologies—including funnel accounts, trade-based money laundering, black market peso exchange, fentanyl and synthetic opioids, and bulk currency.⁶ In addition, many financial institutions and government agencies prioritize the review, investigation, and reporting of BSA/AML cases involving potential “terrorist financing” over other cases, due to the perceived risk of immediate danger to the public. Once cartels are designated as FTOs or SDGTs, the number of financial transactions potentially implicating “terrorist financing” will significantly increase, which could complicate banks’ efforts to prioritize and quickly resolve cases involving threats to public safety.

Fourth, it is notable that the Order leaves open the possibility that it could be used to further restrict international corporate engagement with Venezuela and other countries where state actors have been alleged to support international narcotics trafficking. The Justice Department during the prior Trump administration brought narco-terrorism charges against Nicolás Maduro and other Venezuelan officials,

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alleging that Maduro was the leader of a cartel that, among other things, sought to “flood” the United States with cocaine.⁷ The Order, which specifically targets organizations that have “flooded the United States with deadly drugs, violent criminals, and vicious gangs,” could be used to designate Maduro and other state officials or entities. While it remains to be seen how the Order will be implemented, such designations would bring increasing complexity and limitations to any financial institutions or other companies navigating current sanctions against Venezuela.

Finally, it remains to be seen whether, and to what extent, the U.S. government will use its broader and more robust investigative powers traditionally reserved for terrorism, espionage, and national security cases to investigate offenses involving drug cartels and narcotics trafficking by construing them as engaging in terrorism or terrorist threats under existing legal frameworks. For example, federal authorities might seek to issue national security letters (“NSL”s), rather than grand jury subpoenas, to financial institutions and other companies in order to compel the production of documents and other records when investigating international narcotics cases. Designations of cartels as terrorist organizations could also lead agencies to restructure their related enforcement efforts. It is unclear, for example, whether the DOJ’s Criminal Division or its National Security Division would principally handle overseeing investigations and prosecutions involving drug cartels that have been designated FTOs or SDGTs.

In connection with these possible designations, financial institutions and other companies should review their compliance programs as they relate to narcotics trafficking and terrorist financing and should continue to monitor regulatory developments in this area.

GLOSSARY OF ABBREVIATED TERMS

AEA	Alien Enemies Act
AML	Anti-Money Laundering
ANF	al-Nusrah Front
ATA	Anti-Terrorism Act
BSA	Bank Secrecy Act
DOJ	Department of Justice
FinCEN	Financial Crimes Enforcement Network
FTO	Foreign Terrorist Organization
IEEPA	International Emergency Economic Powers Act
INA	Immigration and Nationality Act
MS-13	La Mara Salvatrucha
NEA	National Emergencies Act
NSL	National Security Letter
OFAC	Office of Foreign Assets Control

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RICO	Racketeer Influenced and Corrupt Organizations
SDGT	Specially Designated Global Terrorist
TdA	Tren de Aragua

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ENDNOTES

- 1 The White House, *Protecting the United States From Foreign Terrorists and Other National Security and Public Safety Threats* (January 20, 2025), available at <https://www.whitehouse.gov/presidential-actions/2025/01/protecting-the-united-states-from-foreign-terrorists-and-othernational-security-and-public-safety-threats/>.
- 2 For the reader's convenience, a Glossary of Abbreviated Terms is included at the end of this memorandum.
- 3 18 U.S.C. § 2339.
- 4 Kaustuv Basu, *Drug Cartel Victims' Families Swamp Courts to Claim Seized Cash*, BLOOMBERG LAW (March 22, 2024), available at https://www.bloomberglaw.com/bloomberglawnews/us-law-week/XEBECERK000000?bna_news_filter=us-law-week.
- 5 *LaFarge Pleads Guilty to Conspiring to Provide Material Support to Foreign Terrorist Organizations*, DEPARTMENT OF JUSTICE (October 18, 2022), available at <https://www.justice.gov/opa/pr/lafarge-pleads-guilty-conspiring-provide-material-support-foreign-terrorist-organizations>.
- 6 FinCEN, FIN-2024-A002, *Supplemental Advisory on the Procurement of Precursor Chemicals and Manufacturing Equipment Used for the Synthesis of Illicit Fentanyl and Other Synthetic Opioids* (June 20, 2024); FinCEN, FIN-2011-A009, *Information on Narcotics and Bulk Currency Corridors* (April 21, 2011); FinCEN, FIN-2010-A001, *Advisory to Financial Institutions on Filing Suspicious Activity Reports regarding Trade-Based Money Laundering* (Feb. 18, 2010); FinCEN, *Colombian Black Market Peso Exchange* (Nov. 1997).
- 7 *United States v. Nicolas Maduro Moros*, 11-CR-205 (S.D.N.Y. 2020), available at <https://www.justice.gov/opa/page/file/1261806/dl?inline>

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