

Mexican Cartels and the FTO Debate

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The Designation Process and Relevant Government Stakeholders

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Executive Summary

[Mexican cartels](#) represent a multifaceted and complex problem with significant implications for Mexico and the United States. These criminal organizations have long been a U.S. national security concern, which has become more severe with an increase of lethal drugs smuggled into the U.S., impacting millions of lives in North America. There are debates between governments and organizations on the most impactful way to combat these illicit groups. These have included the question of whether designating Mexican cartels as Foreign Terrorist Organizations (FTOs) would debilitate transnational criminal organizations and reduce the amount of drugs entering the United States.

An FTO is a legal designation the United States government uses to identify foreign organizations that engage in premeditated, politically motivated acts of terrorism against non-combatant targets. Designating a group as an FTO carries legal and financial implications aimed at protecting national security.

In the past, when Mexican cartels have harmed American citizens, members of Congress and other experts have been quick to propose an FTO designation for these organizations. However, designating a group as an FTO requires completing a specific and multi-faceted legal process and meeting certain criteria.

The potential designation of Mexican cartels as FTOs is complex and contentious as it involves considering various implications, including security concerns, legal issues, and human rights impacts. This paper aims to explain the stages of an FTO designation, and the roles of the various government stakeholders involved.

Clarifying the complexities and technicalities of this process may prove beneficial when engaging in debates and weighing the potential impact of an eventual FTO designation for Mexican cartels.

I. Introduction and Background Information

Passage of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDP) provided the United States with a legal basis to create a list of Foreign Terrorist Organizations (FTOs) to be

used as an instrument to apply special sanctions and isolation measures on groups designated under this Act. This classification is part of a diverse list of legal instruments developed by the U.S. over time to curb international terrorism, encourage other countries to do so, and heighten public awareness of the issue.

The question remains: who can be included in that list, what does the process entail, and who are the relevant stakeholders?

Some examples of already designated Foreign Terrorist Organizations include al-Qa'ida, Boko Haram, ISIS, and Hamas. However, in the past, there have been ongoing conversations about adding yet another group to the [FTO list](#): Mexican drug cartels. Various U.S. public officials have requested that the designation be considered and adopted.

Congress first proposed the FTO designation for the Mexican cartels in 2011 in response to two separate killings of U.S. citizens by the cartels. House Resolution 1270, introduced by Representative Michael McCaul (R-TX), sought to use existing statutes to designate the Arellano Félix Organization, Los Zetas, La Familia Michoacana, and the Beltran Leyva, Sinaloa, Juárez, and Gulf cartels as FTOs.

Though H. Resolution 1270 was not adopted, [it was not the only attempt to legislate an FTO designation](#). The killing of nine US-Mexican dual citizens in November 2019, additional high-profile attacks, and the escape of one of the main cartel leaders in Mexico reawakened concern for U.S. citizens living on the US-Mexico border. In response, the idea of designating drug cartels as terrorists reemerged during the Trump administration. As expected, Mexican public officials pushed back against the proposal. Apart from that, [Mexico's President Andrés Manuel López Obrador reaffirmed the willingness to cooperate with the U.S.](#) but reiterated that such a country must refrain from intervening in Mexico's internal politics. Due to President López Obrador's desire to collaborate with the U.S., President Trump agreed to pause FTO designations.

Separately, in September 2022, [Texas Governor Greg Abbott issued an executive order designating Mexican cartels as terrorist organizations](#) and instructing the Texas Department of Public Safety to ramp up efforts to protect Texas citizens from the fentanyl crisis.

Five months later, [21 Republican attorneys general signed a letter asking President Joe Biden to declare Mexican drug cartels as FTOs](#), arguing that they threaten U.S. national security interests beyond drug-related activities. The aim was to give federal and state law enforcement agencies more aggressive tools to confront the fentanyl crisis, such as freezing assets, denying cartel members entry into the U.S., and allowing prosecutors to pursue harsher punishments against those providing material support.

In March 2023, only weeks after the signature of the letter, two American citizens were kidnapped and murdered by members of the Cartel del Golfo in the border town of Matamoros. These [attacks provoked calls for action by several members of Congress](#). The

Ending the Notorious, Aggressive, and Remorseless Criminal Organizations and Syndicates (NARCOS) Act was introduced in March 2023 by six Republican Senators led by Lindsey Graham (R-South Carolina). This piece of [legislation sought to designate nine Mexican cartels as FTOs and create an Interagency Task Force](#) to coordinate U.S. Government efforts to stop their illicit activities. The line of argument was very similar to the one proposed just one month earlier by the 21 attorneys general.¹ Additionally, [21 members of the House of Representatives reintroduced the Drug Cartel Designation Act](#). This Act sought to formally designate four leading Mexican drug cartels as FTOs and require the Department of State to issue -within 30 days- a report to Congress with any additional cartels that met the criteria for designation.

II. Legal Framework and FTO Definition

The legal framework developed to establish the process, definitions, and concepts for an FTO designation is based on the United States Code (USC) and the Immigration and Nationality Act (INA), as well as some amendments contained in the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), focused primarily on the review and revocation procedures after an FTO designation.

Insofar as its conceptualization is framed through the fulfillment of three requirements contained in Section 219 of the INA, as amended via Section 302 of the Antiterrorism and Effective Death Penalty Act of 1996:

- a. That it is a foreign organization.
- b. That the organization engages or retains the capability and intent to engage in terrorist activity (as defined in section 212 (a)(3)(B) of the INA (8 U.S.C. § 1182(a)(3)(B)), or terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. § 2656f(d)(2)).
- c. That the organization threatens the security of U.S. nationals or the national security (national defense, foreign relations, or the economic interests) of the United States.

III. Mapping of the FTO Designation Process and the involved Government Stakeholders

The identification and designation of a foreign criminal group as an FTO follows a [complex and multifaceted process involving several stakeholders](#) within the United States federal government. [The FTO process intends to consolidate interagency actions](#) and coordination when defining international criminal groups of interest to the U.S. national security community.

¹ The 9 Mexican cartels that the bill intended to designate as FTOs are Sinaloa Cartel, Jalisco New Generation Cartel, Gulf Cartel, Los Zetas Cartel, Northeast Cartel, Juarez Cartel, Tijuana Cartel, Beltran-Leyva Cartel, and La Familia Michoacana, also known as the Knight Templar Cartel.

USC 1189: Designation of Foreign Terrorist Organizations (FTOs)

Department of State, Bureau of Counterterrorism (CT): Leads FTO designation process

<p>STAGE 1</p>	<p>Equity Check or Identification</p>	<p>For identification purposes, the Bureau of Counterterrorism in the State Department (CT) is the agency in charge of continuously monitoring the activities of active terrorist groups worldwide to identify those that could have potential for designation. During the Identification stage, CT considers not only the terrorist attacks that a criminal group has carried out but also whether they have engaged in planning and preparations for future possible attacks or retain the capability and intent to carry them out.</p> <p>Then, CT proceeds to carry out consultations to determine whether any concern (law enforcement, diplomatic, or intelligence) should prevent a designation of a particular terrorist group. If problems exist, a hold is placed on the designation process until the requesting entity lifts the hold. However, it is worth mentioning that a hold can be placed in any step of the FTO designation process prior to the Secretary of State’s decision to designate (stage 4).</p>	<p>Providing input</p> <p>Department of Defense: Office of the Secretary of Defense</p> <p>Department of Homeland Security: Office of Policy</p> <p>Intelligence community: Central Intelligence Agency, National Counterterrorism Center, National Security Agency</p> <p>Department of Justice: Federal Bureau of Investigation</p> <p>National Security Council: Counterterrorism staff</p> <p>Department of State: Relevant regional bureaus</p> <p>Consultative partners</p> <p>Department of the Treasury: Office of Foreign Assets Control</p> <p>Department of Justice: National Security Division</p>
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STAGE 2	Administrative Record	After identifying a potential designee, CT compiles classified ² and non-classified information and prepares a detailed “administrative report” demonstrating that the statutory criteria for an FTO designation have been satisfied.	Department of State: Bureau of Counterterrorism (CT)
STAGE 3	Clearance Process	The administrative record draft is first reviewed by the Secretary of State’s Office of the Legal Adviser, the Department of Justice (Attorney General) and the Department of Treasury. Once any proposed changes have been incorporated, Treasury and DOJ sign letters of concurrence indicating that such a record is legally sufficient to be passed on to the Secretary of State. CT then sends the administrative record to additional State Department bureaus for further clearance.	Department of Justice (Attorney General) Department of Treasury Review Secretary of State: Office of the Legal Adviser Consultative Partners Department of the Treasury: Office of Foreign Assets Control
STAGE 4	Decision by the Secretary of State	The Secretary of State receives materials that support the proposed FTO designation and following a review, decides whether to continue with the designation. Note: The Secretary is authorized, but not legally required, to make the designation if the legal requirements are met.	Secretary of State
STAGE 5	Congressional Notification	If the Secretary of State decides to proceed, then he or she shall notify in writing of the intent to designate an organization as an FTO, together with the findings made by CT concerning that organization and the factual basis within 7 days before the designation is formally carried out, to the following officials in Congress:	Secretary of State and specific members of Congress

² 1(a) of the Classified Information Procedures Act (18 U.S.C. App.) “Classified Information” means any information or material that has been determined by the United States Government pursuant to an Executive order, statute, or regulation, to require protection against unauthorized disclosure for reasons of national security and any restricted data, as defined in paragraph r. of section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).

		<ol style="list-style-type: none"> 1. Speaker and Minority Leader of the House of Representatives; 2. President pro tempore of the Senate; 3. Majority Leader and Minority Leader of the Senate; 4. Members of the Committees on the Judiciary, Intelligence, and Foreign Relations of the Senate; and 5. Members of the Committees on the Judiciary, Intelligence, and International Relations of the House of Representatives. <p>If any of these members of Congress wish to block the designation after reviewing it, they must do so within seven days.</p>	
STAGE 6	Federal Register Notice	The Department of State publishes the FTO designation in the Federal Register for the designation to be adequate for purposes of penalties.	Department of State and Office of the Federal Register (OFR): National Archives and Records Administration (NARA)

IV. Possible Scenarios in the Aftermath of an FTO Designation

Initially, the INA provided FTOs to be re-designated every two years, or the designation would lapse. However, under the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) [specific review and revocation procedures](#) replaced the redesignation requirement.

Judicial Review	After designation, an FTO has the right to seek judicial review of such designation in the United States Court of Appeals for the District of Columbia Circuit not later than 30 days after the designation is published in the Federal Register.	FTOs and United States Court of Appeals for the District of Columbia Circuit
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<p>Review of Designation Upon Petition</p>	<p>The IRTPA states that an FTO may file a review petition or a petition for revocation two years after its designation date or the determination date on its most recent petition for revocation. To file such a petition, the FTO must provide a basis for revocation and evidence that the circumstances for the basis of the designation are sufficiently different as to merit revocation.</p> <p>If no such review has been conducted during 5 years concerning a designation, the Secretary of State must review the designation to determine whether revocation would be appropriate.</p>	<p>FTO</p>
<p>Revocation by the Secretary of State</p>	<p>If the Secretary finds that the circumstances that were the basis of the designation have changed in such a manner as to warrant revocation.</p> <p>If the Secretary finds that the national security of the U.S. warrants a revocation, the designation is rescinded.</p> <p>The Secretary of State may revoke a designation at any time.</p> <p><i>*In the 3 cases, the revocation shall take effect on the date specified in the revocation or upon publication in the Federal Register. The revocation shall not affect any action or proceeding based on conduct committed before the effective revocation date.</i></p>	<p>Secretary of State</p>
<p>Revocation by Congress</p>	<p>A designation may be revoked by an Act of Congress, illustrating that Congress has a significant role in the policy debate.³</p>	<p>Secretary of State</p>

V. Legal Ramifications of an FTO Designation

An FTO designation carries various sanctions, penalties, and authorities from an enforcement and intelligence perspective. [The United States can take action against FTOs in three ways](#) that would fall primarily on the FBI, the National Counterterrorism Center, the Department of Justice, Immigration and Customs Enforcement (ICE), and the U.S. Treasury Department.

³ Laws are also known as Acts of Congress. When a bill is passed in identical form by both the Senate and the House, it is sent to the president for his signature. If the president signs the bill, it becomes law.

Implications for Persons Subject to U.S. Jurisdiction

- a. It is unlawful for a person in the United States or subject to its authority to knowingly provide “material support or resources” to a designated FTO, which can be punished with fines or imprisonment (up to life if a death results). The prosecutor must prove that the defendant knowingly provided, attempted, or conspired to support an FTO or that group engaged in terrorist activities or terrorism.⁴

This prohibition could have two separate consequences for drug cartels. First, it would allow federal prosecutors to reach defendants extraterritorially; in other words, they could prosecute individuals acting in foreign countries not ordinarily subject to U.S. criminal law. Second, defendants charged under this section could face longer prison sentences than if charged with criminal liability under the prohibited acts of §841, and additionally, are forced to serve their sentences for each separate charge concurrently. Additional criminal liability would exist for the defendants already prosecuted under §841. Lastly, it would also open the door to prosecute people not directly involved with drug trafficking but who assisted cartels and their affiliates by providing logistical or financial services. Consequently, a much broader pool of defendants could be charged given that the Mexican cartels widely operate in the U.S. and often alongside street gangs and other criminal groups.⁵

- b. Any U.S. financial institution that becomes aware that it has possession of or control over funds in which a designated FTO or its agent has an interest must retain possession of, or control over, the funds and report it to the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury.

Implications for the Cartels and Related Parties

- a. Any alien that supports, represents, trains, or is a member of a designated FTO is inadmissible to enter and, in certain circumstances, removable from the United States. This punishment also applies to immediate family (if the activity causing the alien to be inadmissible occurred within the last five years).

VI. Comparative Analysis: Legal effects of the Foreign Narcotics Kingpin Designation Act (the "Kingpin Act").

The debate on whether to designate Mexican cartels as FTOs has caused confusion between this process and the Foreign Narcotics Kingpin Designation Act (the "Kingpin Act") (21 U.S.C. 1901-1908, 8 U.S.C. 1182). A distinction must be made.

⁴ 18 U.S. Code § 2339B - Providing material support or resources to designated foreign terrorist organizations. “Material support or resources” is defined in 18 U.S.C. § 2339A(b)(1) as “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 (1 or more individuals who maybe or include oneself), and transportation, except medicine or religious materials.

⁵ 21 U.S. Code Section §841 Prohibit Acts A. contains a list of illicit conducts regarding controlled substances.

The Kingpin Act became law in December 1999. Its purpose is to deny significant foreign narcotics traffickers, their related businesses, and their operatives access to the U.S. financial system and to [prohibit all trade and transactions between the traffickers and American companies and individuals](#). The President is authorized under this Act to take specific actions when he or she determines that a foreign person plays a significant role in international narcotics trafficking.

In broad terms, the Kingpin Act requires that the Secretary of the Treasury, the Attorney General, the Secretary of State, the Secretary of Defense, and the Director of the Central Intelligence Agency (CIA) coordinate to identify drug kingpins and recommend them to the President for sanction. The Department of Homeland Security and the Directorate of National Intelligence are also included in the process. The Act calls for the President to report to specified congressional committees by June 1 of each year on those foreign persons that are determined as appropriate for sanction, designating them as Significant Foreign Narcotics Traffickers.

The legal consequences of the Kingpin Act do not differ substantially from those of an FTO designation. Concerning financial sanctions, which in both cases are carried out by the OFAC, the Kingpin Act provides a [broader regime](#) since it extends the penalties to [traffickers and their associates](#) (supporters and collaborators). On the other hand, an FTO designation only allows for the freezing of FTO's assets.

Regarding penalties, one could argue that the main "spillover" effect of an FTO designation, compared to the Kingpin Act, is the potential for material support prosecutions, which originate from federal anti-terrorism statutes. In general terms, this type of prosecution intends to charge defendants that provide "any service tangible or intangible" to designated terrorists or to support the commission of certain designated offenses caused by terrorists. Some have even argued that the main reason to designate Mexican cartels as FTOs is to [facilitate](#) material support prosecutions.

The above demonstrates that a significant overlap exists between both provisions. In essence, the sanctions regime would not change dramatically from one to the other. Therefore, the main difference is the possibility of material support prosecutions under an FTO designation.

It is essential to explore the [efficacy of both approaches](#) since targeting a criminal organization is different from targeting its collaborators or even unaffiliated persons intertwined with illicit groups, such as migrants attempting to enter the U.S.

Comparative Analysis Between the Legal Effects of an FTO and a Kingpin Designation		
	FTOs	Kingpins
Government Official(s) Responsible for Designation	The Secretary of State	The President and Treasury Secretary
Consequences of Designation	Asset Freeze. The Treasury Secretary may require U.S. financial institutions to block transactions involving assets of an FTO.	Asset Freeze. Kingpin owned or controlled property and interests in property within U.S. jurisdiction are blocked, including assets of any foreign person or entity designated by the Treasury for materially assisting or supporting a kingpin.
	Alien Inadmissibility. FTO members, supporters, trainees, and immediate family (if the activity causing the alien to be inadmissible occurred within the last five years) are barred from U.S. entry.	Alien Inadmissibility. Drug traffickers (including aiders, abettors, assisters, conspirators, and colluders) and immediate family (if they received financial or other benefits from the illicit activity within the last five years) are barred from U.S. entry.
	Penalties. Fines and/or imprisonment for knowingly providing material support or resources to FTOs (up to life if a death results); civil penalties for financial institutions (in an amount greater of \$50,000 per violation or twice the amount that should have been frozen).	Penalties. Fines (up to \$10 million for corporate violators) and/or imprisonment (up to 30 years for corporate officers); civil penalties up to \$1.5 million per violation.

VII. Conclusions

Designating a Mexican cartel as an FTO is a complex decision involving both potential benefits and drawbacks. Here are some pros and cons.

Pros

- **Enhanced Legal Tools:** Designating a cartel as an FTO provides law enforcement with additional legal tools to combat its activities, specifically in the material support clauses. However, their application is very complex and time-consuming and has yet to be proven to impact the number of prosecutions substantially.

- **Heightened Awareness:** Designation can raise awareness about the severity of the cartel's activities on the global stage, potentially garnering increased support for counter-terrorism efforts.
- **Global Stigmatization:** An FTO designation raises the international profile of the cartel, increasing awareness and potentially garnering global support for counter-terrorism efforts.
- **Military Action Intelligence:** A designation would allow the intelligence community to have broader authorities to collect military action intelligence.
- **Potential for Cooperation:** Labeling a variety of cartels as FTOs may lead to more collaboration on from their part with U.S. authorities if multiple criminal groups feel under attack.

Cons

- **Potential for Escalation:** Labeling a cartel as an FTO may escalate violence as the organization perceives itself under increased threat. This could result in more brutal tactics and retaliation against law enforcement or rival groups.
- **Challenges in Prosecution:** Designating a cartel as an FTO may not necessarily lead to additional successful prosecutions. The legal frameworks for terrorism and organized crime can differ, and adapting existing laws to combat cartels effectively may pose challenges.
- **Impact on Civilian Populations:** Anti-cartel operations can inadvertently impact civilian populations, especially if escalated due to FTO designation. There is a risk of displacement, human rights abuses, and an overall deterioration of security in affected regions, especially on migrant populations on both sides of the US-Mexico border.
- **Impact on U.S. citizens:** The material support clauses open the door to prosecuting any person in the United States or subject to the jurisdiction of the United States if they knowingly provided "material support or resources" to a designated FTO.
- **Economic Consequences:** Because of the material support clauses, an FTO designation may have economic repercussions, affecting not only the cartel but also potentially impacting legitimate businesses and individuals in the region, leading to economic instability.
- **Political and Economic Backlash:** Governments, and in some cases their armies, that have FTO-designated groups inside their territories can feel threatened, risking straining diplomatic relations and ties between countries, which in consequence could further the politicization of FTOs and cause retaliation and sanctions on other fronts, such as trade, migration, security, information exchange, etc.

Deciding whether to designate a Mexican cartel as an FTO requires careful consideration of these factors while considering the potential benefits of law enforcement tools and international cooperation, balanced against the risks of escalation and unintended consequences. Policymakers must carefully weigh the pros and cons to formulate an effective and responsible strategy.

In conclusion, the process of designating an organization as a Foreign Terrorist Organization is multifaceted and intricate, involving various stakeholders, including government agencies, intelligence organizations, legal experts, and international partners. It is a complex and carefully deliberated procedure that considers a wide range of factors, including the organization's activities, its impact on national security, and global reach. Designating Mexican cartels as FTOs is not a matter of unilateral decision-making or the caprice of a single entity. Instead, it underscores the gravity and complexity of addressing transnational criminal organizations that pose a significant threat to regional and international security. Such designations require a coordinated and comprehensive effort, reflecting the collective commitment of diverse actors to combat the cartels' illicit activities.

EXHIBITS

Stakeholders in the FTO Designation Process		
Organization	Relevant Component	Role in FTO Process
Department of Defense	Office of the Secretary of Defense	Provides input during equity check
Department of Homeland Security	Office of Policy check	
	U.S. Citizenship and Immigration Services	Adjudicates immigration benefits
	U.S. Customs and Border Protection	Determines eligibility for admission at U.S.
	U.S. Immigration and Customs Enforcement	Enforces immigration restrictions
Intelligence Community	Central Intelligence Agency	Provides input during equity check
	National Counterterrorism Center	
	National Security Agency	
Department of Justice	Federal Bureau of Investigation	Consultative partner in FTO designations and prosecutes individuals for FTO-related offenses
	National Security Division	
National Security Council	National Security Council Counterterrorism staff	Provides input during equity check
Department of State	Bureau of Counterterrorism	Leads FTO designation process
	Consular Affairs	Adjudicates visa applications
	Office of the Legal Adviser	Reviews the administrative record
	Relevant regional bureaus	Provide input during equity check
Department of the Treasury	Office of Foreign Assets Control	Consultative partner in FTO designations and blocking of assets





Agencies that intervene in the aftermath of an FTO Designation

Organization	Relevant Component	Role in FTO Process
Department of the Treasury	Office of Foreign Assets Control	Blocks assets of FTOs
Department of Justice	National Security Division	Prosecutes individuals for FTO-related offenses
Department of Homeland Security	National Security Division U.S. Citizenship and Immigration Services	Prosecutes individuals for FTO-related offenses Adjudicates immigration benefits
Department of State	U.S. Customs and Border Protection	Determines eligibility for U.S. admission
	U.S. Immigration and Customs Enforcement	Enforces immigration restrictions
	Consular Affairs	Adjudicates visa applications




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