

Client Alert

Providing Strategic Legal Guidance to the Financial Services Industry



Special Matters & Government Investigations

MARCH 11, 2025

For more information, contact:

Brandt Leibe

+1 202 626 8983

bleibe@kslaw.com

Craig Carpenito

+1 212 556 2142

ccarpenito@kslaw.com

Grant Nichols

+1 512 457 2006

gnichols@kslaw.com

Michael Galdo

+1 512 457 2081

mgaldo@kslaw.com

Paul Craft

+1 202 626 2940

pcraft@kslaw.com

King & Spalding

Houston

1100 Louisiana

Suite 4100

Houston, Texas 77002

T. +1 713 751 3200

New York

1185 Avenue of the Americas

34th Floor

New York, New York 10036

T. +1 212 556 2100

State Criminal and Civil Liability for Material Support

How the FTO Designation of Drug Cartels Increases the Risk of State Enforcement

INTRODUCTION

The State Department's February 20, 2025, designation of specific Mexican drug cartels and Transnational Criminal Organizations (TCOs) as foreign terrorist organizations (FTOs) creates serious new risks for businesses operating in Latin America, especially Mexico. The federal laws triggered by the FTO designation include the broad Material Support of Terrorists criminal statute ("Material Support" 18 U.S.C. Section 2339B), with its related forfeiture authorities and administrative requirements for financial institutions, and the Anti-Terrorism Act's (ATA) civil cause of action.

These federal legal tools, when viewed in combination with the announced plans by the Department of Justice to increase cartel-related enforcement, the extraterritorial reach of federal laws, and the use of new intelligence gathering tools, should be the focus for most U.S. and foreign businesses as they assess their risks caused by the FTO designations.

However, U.S. persons and businesses have an added variable to add in their risk calculus: the role of state enforcement.

Background on State Enforcement

The federal FTO designation of the Mexican drug cartels and TCOs unlocks several state laws, creating an opening for potential legal actions in state courts brought by Attorneys General, local District Attorney's offices, and private plaintiffs. Multiple states have a triggering clause in their criminal code, adopting a definition of "terrorist organizations" as those designated by the U.S. Secretary of State, and states have

enacted prohibitions on providing “material support” to such organizations with broad language similar to the federal prohibition.

As a result, hundreds of local District Attorneys across the country now arguably have been empowered to conduct investigations and potentially bring criminal charges for providing material support to the designated Mexican drug cartels and TCOs. Additionally, in some states, there are now potential civil claims for injuries, for example fentanyl deaths, against entities that aided and abetted these “terrorist organizations.” Unlike the groups such as ISIS that were designated as FTOs in the past, local law enforcement has a long history with these newly designated FTO groups. State law enforcement and prosecutors are the primary entities prosecuting drug offenses and dealing with the fallout from the surge in fentanyl deaths, and they have arrested local members of these groups in their communities, creating a justifiable motivation to use these stronger prosecutorial tools.

Below, we discuss several of the states with “material support” laws, highlighting some of the key similarities and differences with the federal statute. Florida, New Jersey, Texas, Arizona, Missouri, and Arkansas have all made it a state crime to support terrorism. Florida, New Jersey, and Arizona, among other states, incorporate the federal FTO designation in the criminal statute; Texas incorporates the federal FTO designation in parts of its anti-terrorism regime and uses a broader definition that explicitly includes drug cartels in its definition of terrorist organizations. Florida has also created a state civil cause of action that mirrors the federal ATA, opening the door to civil liability under state law for companies operating in Florida.

For all of these state laws, jurisdiction and venue requirements for prosecutions may pose some challenges due to the extraterritorial nature of much of the conduct. However, for many prosecutors, a sufficient link to at least initiate an investigation will be found with business activity or activity by the cartel, to include fentanyl deaths, inside their jurisdiction.

Florida

Florida has statewide prosecutors that focus on organized crime, including drug cartel-linked activity, and a civil statute directly authorizing victims of FTO crimes to bring cases in state courts. Many businesses operating in Mexico and Latin America have a presence in Florida, opening them up to investigation and potential prosecution or civil action in state courts.

In Florida, Title XLVI Section 775.33(3) makes it a first-degree felony to provide “material support or resources to a designated foreign terrorist organization.” Section 775.33 defines a “designated foreign terrorist organization” as any group designated by the Secretary of State as an FTO. The statute defines material support for terrorism with the same broad language as the federal Material Support statute: “property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, or transportation.” (Section 775.33(1)(c))ⁱ.

The Florida civil Anti-Terrorism Act mirrors the federal ATA, creating a private right of action under Florida law when individuals are injured by acts of terrorism. Under this statute, a person who is injured by an act of terrorism or an act facilitating terrorism has a cause of action for three times the actual damages.ⁱⁱ

The Florida ATA law was originally passed in 2017. Very few cases have been filed under it, mostly directly against the FTOs themselves, like the Colombian FARC. One case relying on an aiding and abetting theory of liability was brought in federal court in combination with federal ATA claims against the Associated Press for publishing the work of a pro Hamas freelance photographer in connection with the Hamas terrorism attack on October 7, 2023. In December 2024, a

state court ruled that the Associated Press was not liable because it did not knowingly provide material support to Hamas's efforts to attack.ⁱⁱⁱ

New Jersey

With the number of financial institutions and other multilateral entities with key hubs in New Jersey, combined with its long connections to drug cartel and TCO activity, state authorities in New Jersey have the ability to open a number of investigations using the New Jersey law.

New Jersey also criminalizes "material support" for FTOs. The statute is worded differently from the analogous federal law, but it arguably has similarly broad applicability. New Jersey Revised Statutes Section 2C:38-5 states: "It shall be unlawful for any person, charitable organization or professional fund raiser to solicit, transport or otherwise provide material support or resources to or on behalf of a person or an organization that is designated as a foreign terrorist organization by the United States Secretary of State pursuant to 8 U.S.C. s.1189. It shall not be a defense to a prosecution for a violation of this section that the actor did not know that the person or organization is designated as a foreign terrorist organization."

The New Jersey law goes on to define "material support" in multiple ways, including "currency, financial securities or other monetary instruments, financial services, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, including but not limited to persons recruited to participate directly or indirectly in a terrorist organization, transportation and other physical assets or anything of value."^{iv}

New Jersey does not have a specific civil statute like the ATA that creates a private cause of action for aiding and abetting an FTO. However, aiding and abetting is a recognized legal theory in New Jersey tort liability, and the New Jersey Supreme Court has recognized that there are situations where the violation of a criminal statute will give rise to a civil remedy, even when there is no explicit civil remedy in the criminal statute.^v

Texas

Given its location on the border, its aggressive public stance towards fighting drug cartel activity, its legal regime directed at drug cartel FTOs, and the direct contact Texas has with drug cartels along the lengthy Texas-Mexico border, Texas is primed to open investigations into companies alleged to support cartels designated as terrorist organizations using its state statutes.

Texas Governor Greg Abbott has made combatting foreign criminal organizations a state priority by integrating the concept of "foreign terrorist organization" into Texas executive orders and state law. In September 2022, the Governor issued an executive order designating Sinaloa Cartel, the Jalisco New Generation Cartel (CJNG), and "similarly situated" Mexican drug cartels as designated foreign terrorist organizations and instructing the Texas Department of Public Safety to act against cartels.^{vi} In response, the Texas legislature enacted a series of statutes defining and penalizing connections with foreign terrorist organizations.

Texas has its own definition of a "foreign terrorist organization" in Section 71.01(e) of the Texas Penal Code, which was enacted in 2023: "three or more persons operating as an organization at least partially outside the United States who engage in criminal activity and threaten the security of this state or its residents, including but not limited to a drug cartel." While the Texas criminal law does not incorporate the federal FTO designation, it uses an arguably broader definition of a "foreign terrorist organization" that specifically references drug cartels. District Attorneys in Texas could rely on the federal FTO designation as strong evidence that those groups meet the Section 71.01(e) definition.

It is a felony under Section 76.03 to raise, solicit, collect, or provide “material support” or resources with intent or knowledge that the material support or resources will be used, wholly or partly, to solicit, direct, supervise, plan, prepare, promote, carry out, assist, or aid in terrorism. Section 76.01 uses a definition of “material support” that closely tracks the federal language, including currency, financial services, and any other tangible assets. The criminal offense in Section 76.03 has additional requirements, narrowing its applicability more than the federal Material Support statute by requiring knowledge that the “material support” will be used in particular ways. However, given the nature of the Mexican drug cartels activities, it would not be a difficult evidentiary burden to clear—especially at a probable cause investigatory stage seeking a search warrant—that someone providing material support to an entity it knows is a Mexican drug cartel also knows that the assistance will be used to further the cartel’s illegal activities.

Texas also requires divestment and cessation of government contracts with businesses that engage in business operations with “designated foreign terrorist organizations,” which are defined under the Texas Government Code Title 10 Section 2270.0001(3) as an “organization designated as a foreign terrorist organization by the United States secretary of state as authorized by 8 U.S.C. Section 1189.” (1) Section 2270.0151 defines “Business operations” to include engaging in commerce in any form, including by acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

Arizona

Under an Arizona law enacted in 2017, it is unlawful for a person to intentionally or knowingly... provide advice, assistance or direction in the conduct, financing or management of a terrorist organization.”^{vii} Arizona defines “terrorist organization” as “any organization that is designated by the United States department of state as a foreign terrorist organization under section 219 of the immigration and nationality act (8 United States Code § 1189).”^{viii}

While “advice, assistance or direction” is not defined in the statute, in Section 6 of the same Arizona law, Arizona prohibits providing “advice, assistance or direction in the conduct, financing or management of an act of terrorism knowing or having reason to know that an act of terrorism has occurred or may result by” and then provides a list of way that a person could provide “advice, assistance or direction.” That list includes by “providing any person with material support or resources” and defines “material support” similarly to the federal Material Support statute.

While not dispositive, given the lack of case law, the potential broad meaning of “advice, assistance or direction,” and the similar language in the nearby statute, there is a strong argument that Arizona’s statute is in essence a prohibition on providing material support to an FTO. Arizona’s Governor issued an Executive Order in February to launch Operation Desert Guardian, expanding border security operations aimed at dismantling drug cartel and TCO supply chains and operating networks. The continued attention given to drug cartel activity in Arizona, combined with its arguably broad criminal statute, heightens the risk that local prosecutors will launch investigations into individuals or entities with connections to drug cartels.

Arizona does not have a version of the federal civil ATA law. However, in Arizona a criminal statute can create a private cause of action based on an analysis that includes the context of the statute, the language, the subject matter, the effects and consequences, and the spirit and purpose of the law.^{ix}

Other States

In addition to the highlighted states above, other states have similar laws. Missouri’s material support criminal offense (Missouri Revised Statute Title XXXVIII § 576.080) makes it a criminal offense to “knowingly provides material support to any organization designated as a foreign terrorist organization pursuant to 8 U.S.C. Section 1189, as amended, and

acts recklessly with regard to whether such organization had been designated as a foreign terrorist organization.” Missouri uses a definition of “material support” that mirrors the federal definition.

Arkansas is another state that criminalizes the knowing material support of an FTO and a private cause of action for injury because of a felony, but the reference to the State Department FTO designation list includes only organizations listed at the time the Arkansas bill passed in 2003.^x Other states have pending bills under consideration that reference FTOs, including Virginia, which is considering House Bill 1650 that updates the “Virginia Antiterrorism Act” to include FTOs in its definition of terrorism. The proposed bill would also create a cause of action for any person harmed by material support for terrorism.^{xi}

Conclusion

Federal authorities will play the primary role in the administration’s full court press against the drug cartels and their facilitators. Extraterritorial reach, evidence-gathering tools, and powerful resources, make federal enforcers the main risks that businesses should evaluate after the new FTO designations.

However, businesses in the states described above should also do a thorough analysis of the applicable state laws. The potential role of local prosecutors and state AGs should be considered as a business conducts its internal assessments and contemplates any required remediation. While state enforcers may not have the global reach of federal law enforcement, they possess powerful tools, including grand jury subpoenas and search warrants, that businesses would be wise to consider as they assess their risks.

ABOUT KING & SPALDING

Celebrating more than 140 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 1,300 lawyers in 24 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality, and dedication to understanding the business and culture of its clients.

This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice. In some jurisdictions, this may be considered “Attorney Advertising.”

View our [Privacy Notice](#).

Special Matters & Government Investigations Partners

Gary Adamson
New York
+1 212 556 2113
gadamson@kslaw.com

Adam Baker
New York
+1 212 556 2376
abaker@kslaw.com

J.C. Boggs
Washington, DC
+1 202 626 2383
jboggs@kslaw.com

Christopher C. Burris
Atlanta
+1 404 572 4708
cburris@kslaw.com

Craig Carpenito
New York
+1 212 556 2142
ccarpenito@kslaw.com

Steve Cave
Northern Virginia
+1 703 245 1017
scave@kslaw.com

Michael J. Ciatti
Washington, DC
+1 202 661 7828
mciatti@kslaw.com

Daniel R. Coats
Washington, DC
+1 202 626 2642
dcoats@kslaw.com

Patrick M. Collins
Chicago
+1 312 764 6901
pcollins@kslaw.com

Ander M. Crenshaw
Washington, DC
+1 202 626 8996
acrenshaw@kslaw.com

Sumon Dantiki
Washington, DC
+1 202 626 5591
sdantiki@kslaw.com

Dan Donovan
Washington, DC
+1 202 626 7815
ddonovan@kslaw.com

Robert L. Ehrlich, Jr.
Washington, DC
+1 202 626 9710
rehrllich@kslaw.com

David Farber
Washington, DC
+1 202 626 2941
dfarber@kslaw.com

Zachary Fardon
Chicago
+1 312 764 6960
zfardon@kslaw.com

Lucas Fields
Washington, DC
+1 202 626 2399
lfields@kslaw.com

Emily Gordy
Washington, DC
+1 202 626 8974
egordy@kslaw.com

Leah B. Grossi
Washington, DC
+1 202 626 5511
lgrossi@kslaw.com

Ehren Halse
San Francisco
+1 415 318 1216
ehalse@kslaw.com

Ted Hester
Washington, DC
+1 202 626 2901
thester@kslaw.com

Max Hill, K.C.
London
+44 20 7551 2130
mhill@kslaw.com

Amy Schuller Hitchcock
Sacramento/San Francisco
+1 916 321 4819
ahitchcock@kslaw.com

John A. Horn
Atlanta
+1 404 572 2816
jhorn@kslaw.com

Andrew C. Hruska
New York
+1 212 556 2278
ahruska@kslaw.com

Rob Hur
Washington, DC
+1 202 383 8969
rhur@kslaw.com

Mark A. Jensen
Washington, DC
+1 202 626 5526
mjensen@kslaw.com

Dixie L. Johnson
Washington, DC
+1 202 626 8984
djohnson@kslaw.com

William Johnson
New York
+1 212 556 2125
wjohnson@kslaw.com

Barry Kamar
Miami
+1 305 462 6044
bkamar@kslaw.com

Allison F. Kassir
Washington, DC
+1 202 626 5600
akassir@kslaw.com

M. Alexander (Alec) Koch
Washington, DC
+1 202 626 8982
akoch@kslaw.com

Yelena Kotlarsky
New York
+1 212 556 2207
ykotlarsky@kslaw.com

Steve Kupka
Washington, DC
+1 202 626 5518
skupka@kslaw.com

Jade R. Lambert
Chicago
+1 312 764 6902
jlambert@kslaw.com

Jamie Allyson Lang
Los Angeles
+1 213 443 4325
jlang@kslaw.com

Raphael Larson
Washington, DC
+1 202 626 5440
rlarson@kslaw.com

Carmen Lawrence
New York
+1 212 556 2193
clawrence@kslaw.com

Brandt Leibe
Houston
+1 713 751 3235
bleibe@kslaw.com

Aaron W. Lipson
Atlanta
+1 404 572 2447
alipson@kslaw.com

Daniel E. Lungren
Washington, DC
+1 202 626 9120
dlungren@kslaw.com

William S. McClintock
Washington, DC
+1 202 626 2922
wmccclintock@kslaw.com

Amelia Medina
Atlanta
+1 404 572 2747
amedina@kslaw.com

Kendrick B. Meek
Washington, DC
+212 626 5613
kmeek@kslaw.com

Andrew Michaelson
New York
+212 790 5358
amichaelson@kslaw.com

Jim C. Miller III
Washington, DC
+1 202 626 5580
jmiller@kslaw.com

Patrick Montgomery
Washington, DC
+1 202 626 5444
pmontgomery@kslaw.com

Paul B. Murphy
Atlanta/Washington, DC
+1 404 572 4730
pbmurphy@kslaw.com

Grant W. Nichols
Austin/Washington, DC
+1 512 457 2006
gnichols@kslaw.com

Alicia O'Brien
Washington, DC
+1 202 626 5548
aobrien@kslaw.com

Patrick Otlewski
Chicago
+1 312 764 6908
potlewski@kslaw.com

Michael R. Pauzé
Washington, DC
+1 202 626 3732
mpauze@kslaw.com

Michael A. Plotnick
Washington, DC
+1 202 626 3736
mplotnick@kslaw.com

Olivia Radin
New York
+1 212 556 2138
oradin@kslaw.com

John C. Richter
Washington, DC
+1 202 626 5617
jrichter@kslaw.com

Rod J. Rosenstein
Washington, DC
+1 202 626 9220
rrosenstein@kslaw.com

Daniel C. Sale
Washington, DC
+1 202 626 2900
dsale@kslaw.com

Heather Saul
Atlanta
+1 404 572 2704
hsaul@kslaw.com

Greg Scott
Sacramento/San Francisco
+1 916 321 4818
mscott@kslaw.com

Richard Sharpe
Singapore
+65 6303 6079
rsharpe@kslaw.com

Kyle Sheahen
New York
+1 212 556 2234
ksheahen@kslaw.com

Michael Shepard
San Francisco
+1 415 318 1221
mshepard@kslaw.com

Thomas Spulak
Miami
+1 305 462 6023
tspulak@kslaw.com

Aaron Stephens

London
+44 20 7551 2179
astephens@kslaw.com

Cliff Stricklin
Denver
+1 720 535 2327
cstricklin@kslaw.com

Jean Tamalet
Paris
+33 1 7300 3987
jtamalet@kslaw.com

Courtney D. Trombly
Washington, DC
+1 202 626 2935
ctrombly@kslaw.com

Rick Vacura
Northern Virginia
+1 703 245 1018
rvacura@kslaw.com

Anthony A. Williams
Washington, DC
+1 202 626 3730
awilliams@kslaw.com

David K. Willingham
Los Angeles
+1 213 218 4005
dwillingham@kslaw.com

David Wulfert
Washington, DC
+1 202 626 5570
dwulfert@kslaw.com

Sally Q. Yates
Atlanta/Washington, DC
+1 404 572 2723
syates@kslaw.com

Joseph Zales
New York
+1 212 827 4087
jzales@kslaw.com

ⁱ FL Stat § 775.33 (2024).

Available [online](#).

ⁱⁱ Fla. Stat. § 772.13 (2017).

Available [online](#).

ⁱⁱⁱ Newman v. Associated Press,

No. 1:24-CV-20684-KMM, 2024 WL 5063288 (S.D. Fla. Dec. 10, 2024).

^{iv} NJ Rev Stat § 2C:38-5 (2024).

Available [online](#).

^v Matter of State Comm'n of

Investigation, 108 N.J. 35, 41, 527

A.2d 851, 854 (1987).

Available [online](#).

^{vi} “Relating to designation of Mexican drug cartels as foreign terrorist organizations”

Executive Order GA 42, Governor Greg Abbott, Signed September 21, 2022.

Available [online](#).

^{vii} AZ Rev Stat § 13-2308.01 (2024). Available [online](#).

^{viii} AZ Rev Stat § 13-2301(13) (2024). Available [online](#).

^{ix} Sellinger v. Freeway Mobile Home Sales, Inc., 110 Ariz. 573, 575, 521 P.2d 1119, 1121 (1974). Available [online](#).

^x AR Code § 5-54-205 (2024). Available [online](#).

^{xi} Virginia Antiterrorism Act, House Bill No. 1650, offered January 13, 2025. Available [online](#).