

Client Alert

Special Matters & Government Investigations

MARCH 31, 2025

For more information, contact:

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

Grant W. Nichols
+1 512 457 2006
gnichols@kslaw.com

Christine E. Savage
+1 202 626 5541
csavage@kslaw.com

Lucas M. Fields (Luke)
+1 202 626 2399
lfields@kslaw.com

Michael Galdo
+1 512 457 2081
mgaldo@kslaw.com

Samuel Newmier
+1 202 626 5586
snewmier@kslaw.com

King & Spalding

Houston
1100 Louisiana Street
Suite 4100
Houston, Texas 77002
T. +1 713 751 3200

Austin
500 W. 2nd Street
Suite 1800
Austin, Texas 78701
T. +1 512 457 2000

Recent FTO Designations Raise FCA Liability Concerns for Multinational Organizations

INTRODUCTION

On February 20, 2025, the State Department designated multiple Mexican drug cartels and Transnational Criminal Organizations (“TCOs”) as foreign terrorist organizations (“FTOs”). At the same time, these groups were designated as Specially Designated Global Terrorists (“SDGTs”). The designation creates a new risk that businesses operating in areas where those entities are active, particularly Mexico, could be investigated and prosecuted for materially supporting those entities (18 U.S.C. § 2339B). However, criminal investigations and prosecutions for material support require the Department of Justice (“DOJ” or “The Department”) to investigate, pursue charges, and litigate in federal court.

For federal contractors and grant recipients, liability is not limited to situations in which DOJ decides to open investigations and prosecute criminal “material support” cases. The FTO and SDGT designations also increase the risk that private whistleblowers and DOJ lawyers may additionally pursue cases under the False Claims Act (“FCA”). The FCA prohibits, among other things, submitting, or causing to be submitted, false claims to the U.S. Federal Government. Federal contractors must make a certification related to financial transactions involving the assets of designated FTOs or SDGTs as part of the regular course of their business relationships with the U.S. Government. Federal agencies, such as the U.S. Department of State and U.S. Agency for International Development (“USAID”), require additional certifications related to funding of FTOs in grant awards.

Past FCA enforcement actions have resulted from allegations that these certifications were false. Given the Trump Administration’s focus on combatting drug cartels, the role of (and incentives for) whistleblowers in FCA enforcement, and the pervasive presence of drug cartels in Mexico, multinational companies and non-governmental organizations should

carefully evaluate their business operations and policies related to federal procurement, awards, grants, and other forms of support, including regarding interactions with cartels and potential support for FTOs and SDGTs, to guard against these new and emerging risks.

THE FALSE CLAIMS ACT

Under the FCA, an individual or company may be subject to liability for knowingly presenting, or causing to be presented a false or fraudulent claim for payment, or for knowingly making, using or causing to be made or used, a false record or statement material to a false or fraudulent claim.ⁱ In FCA suits based on alleged false certifications, the allegedly false certification or representation must be “material,” to the Government’s payment of the claim.ⁱⁱ

The FCA allows private individuals or entities, known as relators, to file *qui tam* lawsuits alleging violations of the FCA on the Government’s behalf. If a relator files a *qui tam* lawsuit, the relator can share in the Government’s monetary recovery and recover their attorney’s fees. The Government may elect to assume primary responsibility for the litigation, but if the Government declines to pursue the case, the relator can continue prosecuting the case itself (assuming the Government does not dismiss the case). FCA enforcement statistics suggest that the relators’ financial incentives are a significant driver of *qui tam* suits. In 2024, for example, more than \$2.4 billion of the \$2.9 billion in reported FCA settlements and judgments arose from *qui tam* actions filed by relators.ⁱⁱⁱ

FCA IMPLICATIONS OF FTO AND SDGT DESIGNATIONS

The designation of drug cartels as FTOs and SDGTs expose businesses and non-governmental organizations operating in or sourcing products from locations, especially Mexico, where FTO- and SDGT-designated cartel groups are closely intertwined with the local economy, to potential liability under the FCA based on certifications they must make by virtue of interacting with the U.S. Federal Government.

1. The Federal Acquisition Regulation (“FAR”)

The FAR, which is the primary regulation governing executive agency procurement, contains mandatory certifications that apply to contracts with all federal agencies. The FAR contains an express restriction on certain foreign purchases, including “any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC’s implementing regulations at 31 CFR chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.”^{iv} OFAC’s implementing regulations contain several parts under which cartels or those associated with cartels may now be designated:

- Part 590 (Transnational Criminal Organizations Sanctions Regulations) prohibits “the making of any contribution or provision of funds, goods, or services,” to any person the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, determines to have “materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of” any person whose interests are blocked.^v
- Part 594 (Global Terrorism Sanctions Regulations), implementing the SDGT designations, prohibits transactions involving foreign persons designated by the Secretary of State to have committed or participated in training to commit “acts of terrorism that threaten the security of U.S. nationals.”^{vi}
- Part 597 (Foreign Terrorist Organizations Sanctions Regulations) requires financial institutions to block all financial transactions involving the assets of any organization designated as an FTO by the Secretary of State and maintain control over those funds.^{vii}
- Part 536 (Narcotics Trafficking Sanctions Regulations) prohibits transactions involving foreign persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of

State to “play a significant role in international narcotics trafficking centered in Colombia” or “materially to assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities” of such designated persons.^{viii}

- Part 598 (Foreign Narcotics Kingpin Sanctions Regulations) prohibits virtually all transactions with designated “significant foreign narcotics traffickers” as well as those “materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities” of persons designated under the sanctions.^{ix}
- Part 599 (Illicit Drug Trade Sanctions Regulations) prohibits virtually all transactions with foreign persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and the Secretary of Homeland Security, “to have engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production,” to have knowingly received any property or interest in property that are derived from such activities or transactions, or who pose a significant risk of materially contributing to or facilitating such activities or transactions.^x

Because federal contractors must certify they have not triggered a violation of any OFAC rules, any transactions involving persons designated under the sanctions programs listed above may give rise to liability under the FCA, because the contractors or subcontractors will have expressly certified compliance with OFAC sanctions. The new FTO and SDGT designations significantly broaden the scope of exposure for businesses operating in Mexico in particular. Virtually all transactions in support of activities related to any of these designated persons would constitute a violation of OFAC sanctions and expose the contractor to liability under an FCA suit. Moreover, given the *qui tam* provision, whistleblowers (such as disgruntled employees, subcontractors, or competitors, amongst others) will be incentivized to bring FCA suits for alleged violations of the FAR OFAC certification requirements.

2. USAID and State Department Grant Awards

Certifications related to grant awards issued by the State Department or USAID offer another potential basis for FCA liability.^{xi} Prospective grantees are required to affirm, in their grant applications, that grant funding will not be used to materially support terrorism. For example, grants awarded by USAID contain a required certification that the grantee “did not, within the previous three years, knowingly engage in transactions with, or provide material support or resources to, any individual or entity who was, at the time, subject to sanctions administered by [OFAC] within the U.S. Department of Treasury pursuant to the Global Terrorism Sanctions Regulations (31 CFR Part 594), and the Foreign Terrorist Organizations Sanctions Regulations (31 CFR Part 597).”^{xii} As a standard term, State Department federal awards mandate “the recipient shall comply with the following Executive Orders,” including EO 13224, which provides that the Secretary of State may designate a group or person as an SDGT.^{xiii} Importantly, these requirements also flow down to subcontractors.^{xiv}

Using these certifications, DOJ has litigated FCA cases alleging that grant recipients provided material support for terrorism.^{xv} In one case a relator alleged that a USAID grant recipient provided material support to terrorists by facilitating meetings with and between designated FTOs and by providing training to police officers in territory controlled by FTOs.^{xvi} Similarly, if a State Department grant recipient provided support to a group designated as an SDGT under EO 13224, the grant recipient may be exposed to FCA liability for falsely certifying compliance.

Given the broad scope of activities covered by the “material support” provision, and the pervasive presence of drug cartels and TCOs in impoverished regions of Latin America where outside assistance is often delivered, grant recipients should carefully evaluate their activities following the drug cartel FTO designations. In addition to financially motivated

whistleblowers, given the political disputes regarding foreign aid, there is an additional possibility of ideologically motivated whistleblowers or outside groups bringing FCA *qui tam* matters.

CONCLUSION

Given the significant publicity accompanying the designation of drug cartels as FTOs, and the strong financial incentives for whistleblowers to file *qui tams* based on interactions between federal contractors and grant recipients and FTOs, contractors and grant recipients should take the following steps to attempt to mitigate these risks:

- Review processes and procedures associated with internal whistleblower intake mechanisms to ensure that issues raised internally are dealt with in a thorough and timely manner. Some whistleblowers will not proceed to file FCA litigation if they perceive that the company has handled their concerns internally.
- Conduct a risk assessment to identify potential points of contact with FTOs and SDGTs. Common risk areas are interactions with third parties, including vendors and other suppliers. Third-party vetting that may be sufficient to address FCPA or anticorruption issues may not be sufficient to mitigate risks of interactions with FTOs and SDGTs. Employees on the ground in areas with pervasive cartel activity are most likely to have relevant knowledge; any risk assessment should capture their knowledge in a systematic manner and be part of regular trainings and compliance verification processes.
- An acquiring entity should include in its due diligence process a review of any risks created by the FTO and SDGT designations, paying close attention to any government contracts or grants. With a statute of limitations that may stretch to 10 years, these FCA risks can linger long after the conduct occurred, so a detailed historical review will be essential from now on.

Based on the risk of FCA litigation and the potential fact discovery that would occur in litigation, contractors and grant recipients should consider the extent to which the review measures recommended above should be taken in the context of a confidential investigation conducted under the attorney-client privilege.

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
rehlich@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

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
wmclintock@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

Nema Milaninia
Washington, DC
+202 626 9273
nmilaninia@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

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](#).

ⁱ 31 U.S.C. § 3729(a)(1) (2024).

ⁱⁱ *Universal Health Servs., Inc. v. U.S. ex rel. Escobar*, 579 U.S. 176, 194 (2016).

ⁱⁱⁱ See Dep't of Just., Press Release, False Claims Act Settlements and Judgments Exceed \$2.9B in Fiscal Year 2024 (Jan. 15, 2025), *available at* <https://www.justice.gov/archives/opa/pr/false-claims-act-settlements-and-judgments-exceed-29b-fiscal-year-2024>.

^{iv} 48 C.F.R. § 52.225-13.

^v 31 C.F.R. § 590 (Jan. 21, 2022).

^{vi} 31 C.F.R. § 594 (June 6, 2003).

^{vii} 31 C.F.R. § 597 (Oct. 8, 1997).

^{viii} 31 C.F.R. § 536 (Mar. 5, 1997).

^{ix} 31 C.F.R. § 598 (Jul 5, 2000).

^x 31 C.F.R. § 599 (Dec. 20, 2022).

^{xi} We are unaware of any FCA cases specifically involving State Department grants, though it appears this would be a viable avenue for an FCA enforcement action.

^{xii} Primary source documents providing the USAID provision are not publicly available. The standard reference included in all USAID contracts after 2020 is noted and available at other sources. See CHARITY & SEC. NETWORK, ISSUE BRIEF FALSE CLAIM ACT CASES AGAINST NPOs, 9 (June 2020), *available at* <https://charityandsecurity.org/wp-content/uploads/2018/09/Revised-2020-Updated-Fact-Sheet-FCA-Cases-April-2019-Autosaved.pdf>.

^{xiii} See U.S. Dep't of State, Standard Terms and Conditions for Federal Awards 12 (October 1, 2024), *available at* <https://bo.usembassy.gov/wp-content/uploads/sites/16/2024/11/Standard-Terms-and-Conditions-for-Federal-Awards-10.1.24.pdf>.

^{xiv} See *id.* at 3.

^{xv} See *U.S. ex rel. TZAC, Inc. v. Norwegian People's Aid*, No. 1:15-cv-04892-GHW (October 3, 2019) (dismissal order); *U.S. ex rel. TZAC v. Am. Univ. Beirut*, No. 1:14-cv-06899-JPO (November 16, 2018) (dismissal order). In USAID grant awards, the term "material support" is broadly defined, in a manner that mirrors the "material support" provision in 18 U.S.C. § 2339B. The complaints in these cases focused on the Supreme Court's holding in *Holder v. Humanitarian L. Project*, 561 U.S. 1 (2010) (explaining that the "material support" prohibition is constitutional as applied to "training," "expert advice or assistance," "service," and "personnel" provided to designated FTOs).

^{xvi} See U.S. Dep't of Just., *Manhattan U.S. Attorney Announces Settlement With Norwegian Not-For-Profit, Resolving Claims That It Provided Material Support To Iran, Hamas, And Other Prohibited Parties Under U.S. Law* (Apr. 3, 2018), *available at* <https://www.justice.gov/usao-sdny/pr/manhattan-us-attorney-announces-settlement-norwegian-not-profit-resolving-claims-it>; U.S. Dep't of Just., *Acting Manhattan U.S. Attorney Announces Settlement With American University Of Beirut, Resolving Claims It Provided Material Support To Three Entities Designated Prohibited Parties Under U.S. Law* (Mar. 23, 2017), *available at* <https://www.justice.gov/usao-sdny/pr/acting-manhattan-us-attorney-announces-settlement-american-university-beirut-resolving>.