

## Include State And Local Enforcers In Cartel Risk Evaluations

By **Brandt Leibe, Craig Carpenito and Michael Galdo** (March 26, 2025, 6:26 PM EDT)

The U.S. Department of State's Feb. 20 designation of specific Mexican drug cartels and transnational criminal organizations as foreign terrorist organizations creates new risks for businesses operating in Latin America, especially Mexico.

The federal laws triggered by the foreign terrorist organization, or FTO, designation include the broad criminal statute on material support of terrorists, Title 18 of the U.S. Code, Section 2339B; its related forfeiture authorities and administrative requirements for financial institutions; and the Anti-Terrorism Act's, or ATA's, civil cause of action.

These federal legal tools should be the focus for most U.S. and foreign businesses as they assess their risks caused by the FTO designations, but U.S. persons and businesses also need to consider the role of state enforcement.

### Background on State Enforcement

The federal designations unlock several state laws, creating an opening for potential legal actions in state courts brought by state 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. As a result, states and localities are empowered to conduct investigations and potentially bring criminal charges for providing material support to the federally designated Mexican drug cartels and transnational criminal organizations.

State law enforcement and prosecutors are the primary entities 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.

Additionally, in some states, there are now potential civil claims for injuries, for example, fentanyl deaths, that can be made against entities that aided and abetted these terrorist organizations.



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Below, we discuss several states with material support laws, highlighting some of the key similarities with and differences from 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 their 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.

Jurisdiction and venue requirements for prosecutions may be challenging 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, such as selling fentanyl, resulting in an overdose inside their jurisdiction.

## **Florida**

Florida has statewide prosecutors that focus on organized crime, including drug cartel-linked activity. In addition, there is 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.

Title XLVI of the Florida Statutes, 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 broad language similar to the federal material support statute: "property, tangible or intangible, or service."

Florida's civil ATA, Title XLV of the Florida Statutes, Section 772.13, 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.

The Florida ATA law was originally passed in 2017. Very few cases have been filed under it, and were those that have were mostly directly against FTOs, like the Revolutionary Armed Forces of Colombia, themselves.

One case relying on state theories of aiding and abetting liability, in combination with federal ATA claims, was *Newman v. Associated Press*, brought in 2024 in the U.S. District Court for the Southern District of Florida. The plaintiffs alleged that the Associated Press published the work of pro-Hamas freelance photographers in connection with its coverage of the Oct. 7, 2023, Hamas attack on Israel.

In December 2024, the court ruled that the Associated Press was not liable because it did not knowingly provide material support to Hamas' efforts to attack.

## **New Jersey**

Given the number of financial institutions and other multinational entities with key hubs in New Jersey, and its past connections to drug cartel and transnational criminal organization activity, it is not surprising that state authorities have the ability to open a number of investigations using New Jersey law.

New Jersey also criminalizes material support for FTOs. The statute is worded differently than the analogous federal law, but arguably, it has similarly broad applicability.

New Jersey Revised Statutes Section 2C:38-5 makes it unlawful for any person to provide material support or resources to an FTO. The New Jersey law also says that not knowing the person or group was designated as an FTO is not a defense. The New Jersey law goes on to define material support in broad language similar to the federal statute.

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. In the 1987 case *Matter of State Commission of Investigation*, the New Jersey Supreme Court 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.

## **Texas**

Given its aggressive public stance toward fighting drug cartel activity, as well as its legal regime directed at drug cartel FTOs, authorities in Texas are primed to investigate companies alleged to support cartels designated as terrorist organizations using state statutes.

Texas Gov. Greg Abbott has made combating foreign criminal organizations a state priority by integrating the concept of foreign terrorist organizations into executive orders and state law.

In September 2022, the governor issued an executive order designating the Sinaloa Cartel, the Jalisco New Generation Cartel and "similarly situated" Mexican drug cartels as FTOs, and instructing the Texas Department of Public Safety to act against cartels.[1] In response, the Texas Legislature enacted a series of statutes defining and penalizing connections with FTOs.

Texas law does not incorporate the federal FTO definition, and is arguably broader. The Texas statute defines foreign terrorist organization as "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."

District attorneys in Texas could rely on the federal FTO designation as strong evidence that those groups meet the state definition.

It is a felony under Texas Penal Code 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 of the Texas Penal Code uses a definition of material support that closely tracks the federal language, including currency, financial services and any other tangible assets.

The criminal offense under Section 76.03 additionally requires knowledge that the material support will be used in particular ways, narrowing its applicability compared to the federal material support statute.

However, given the nature of the Mexican drug cartels' activities, showing that someone providing material support to an entity they know is a Mexican drug cartel also knows the assistance will be used to further the cartel's illegal activities may not be a difficult evidentiary hurdle to clear — especially when seeking a warrant at the probable cause investigatory stage.

Texas also requires divestment from and cessation of government contracts with businesses that engage in business operations with a designated FTO, which is defined under Title 10 of the Texas Government Code, 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."

Section 2270.0151 of the Texas Government Code 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 Arizona Revised Statutes, Section 13-2308.01, 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."

Section 13-2301(13) 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)."

While "advice, assistance or direction" is not defined in the statute, Section 6 of the same Arizona law 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 provides a list of ways that a person could provide advice, assistance or direction. The list includes by "providing any person with material support or resources," and defines material support similarly to the federal material support statute.

Arizona does not have a civil ATA law. However, in 1974, the Arizona Supreme Court held in *Sellinger v. Freeway Mobile Home Sales Inc.* that a criminal statute can create a private cause of action based on an analysis that includes "the context of the statute, the language used, the subject matter, the effects and consequences, and the spirit and purpose of the law."

## **Conclusion**

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

However, businesses should also do a thorough analysis of applicable state laws. As companies conduct internal assessments and contemplate any required remediation, they should consider the role of local

prosecutors and state attorneys general. 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.

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[1] "Relating to designation of Mexican drug cartels as foreign terrorist organizations" Executive Order GA 42, Governor Greg Abbott, Signed September 21, 2022. Available online.